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Key Tax Issues at Year End for Real Estate Investors 2018/2019

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

Introduction

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

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

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

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

This publication is intended to help detect the need for a specific action or to demonstrate the various options. It has been prepared by PwC for general guidance, and does not constitute professional advice. You should not act upon information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given to the accuracy or completeness of the information contained in this publication.

We hope that you will find *Key Tax Issues at Year End for Real Estate Investors 2018/2019* a useful reference and source of information. We would be pleased to assist you with any further requests.

Berlin, November 2018

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List of abbreviations

ACE	Allowance for Corporate Equity
AE	Associated Enterprise
AFIP	Administración Federal de Ingresos Públicos (Ministry of Economy and Public Finance and the Federal Adminstration of Public Revenue)
AIMI	Portuguese Additional Real Estate Municipal Tax
AMIT	Attributable Managed Investment Trust
ATAD	Anti Tax Avoidance Directive
ATED	Annual Tax on Enveloped Dwellings
ATO	Australian Taxation Office
BCRA	Banco Central de la República Argentina (Argentine Central Bank)
BEPS	Base Erosion and Profit Shifting
BGC	Business as a Going Concern
BIST	Borsa Istanbul
BITA	Business Income Tax Act
CbCR	Country-by-Country-Reporting
CCA	Capital Cost Allowance
CFC	Controlled foreign corporation
CGT	Capital Gains Tax
CIT	Corporate Income Tax
CITA	Corporate Income Tax Act
CIV	Collective Investment Vehicle
COFINS	Contribuição para o Financiamento da Seguridade Social (Contribuition for Social Security Financing)
CMN	Conselho Monetário Nacional (National Monetary Council)
CRA	Canada Revenue Agency
CRS	Common Reporting Standard

CSLL	Contribuição Social sobre o Lucro Líquido
CTR III	Corporate Tax Reform III
CVAE	Cotisation sur la valeur ajoutée des entreprises
CRS	Common Reporting Standard
DDD	Deemed Dividend Distribution
DJAS	Advance Services Sworn Statement
DTT	Double Tax Treaty
DWHT	Dividend Withholding Tax
EBITD	Earnings before Interest, Tax and Depreciation
EBITDA	Earnings before Interest, Tax, Depreciation and Amortisation
ECJ	European Court of Justice
EEA	European Economic Area
EIA	Energie, Investeringsaftrek (Energy Investment Allowance)
EOI	Exchange of Information
FAIA	Computerised Tax Audit File from the Luxembourg VAT authorities
FATCA	Foreign Account Tax Compliance Act
FDI	Foreign Direct Investment
FII	Fiscal Investment Institutions
FIIS	Belgian Real Estate Investment Fund
FIFO	First In First Out
FIRB	Foreign Investment Review Board
FIRPTA	Foreign Investment in Real Property Act
FMV	Fair Market Value
FONDCE	Trust for Developing and Financing Entrepreneurial Capital
FY	Fiscal Year
GAAP	Generally Accepted Accounting Principles
GAAR	General Anti-Avoidance Rule
GDP	Gross Domestic Product
GST	Goods and Service Tax

GVBF	gespecialiseerd vastgoedbeleggingsfonds (dutch for FIIS)
GVV	Gereglementeerde Vastgoed Vennootschap (dutch for SIR)
HUF	Hindu Undivided Family
IREF	Irish Real Estate Funds
IRES	Imposta sul reddito delle socità (Italian Corporate Income Tax)
IFI	Impôt sur la Fortune Immobilière
IFRS	International Financial Reporting Standards
IMI	Portuguese Real Estate Municipal Tax
IMU	Italian Local Property Tax
IndAS	Indian Accounting Standards
IOF	Imposto Sobre Operações Financeiras (Financial Transaction Tax)
IPO	Initial Public Offering
IP	Intellectual Property
IP rights	Intellectual property rights
IRAP	Italian regional production tax
IRES	Italian Corporate Income Tax
ISF	Impôts de la Solidarité sur la Fortune
IT	Information technology
ITA	Income Tax Act
ITAA	Income Tax Assessment Act
ITBI	Imposto sobre Transmissão Intervivos de Bens Imóveis (Real Estate Transfer Tax)
ITC	Input Tax Credit
JDA	Joint Development Agreement
MAT	Minimum Alternative Tax
MEC	Malta Enterprise Corporation
MIA	Milieu Investeringsaftrek (Environment Investment Allowance)
MIT	Managed Investment Trust
MLI	Multilateral Instrument

MNE	Multi National Enterprise
MREC	Mutual Real Estate Company
NATO	North Atlantic Treaty Organisation
NCST	List of non-cooperative States and Jurisdictions
NFE	Net Financial Expenses
NID	Notional Interest Deduction
No	Number
NOL	Net Operating Loss
NRCGT	Non-Resident Capital Gains Tax
NWT	Net Wealth Tax
NZ	New Zealand
OECD	Organisation for Economic Co-operation and Development
OIA	Overseas Investment Act
OPCI	Organisme de Placement Collectif en Immobilier (open-end fund)
PCG	Practical Compliance Guideline
PCM	Project-Completion-Method
PE	Permanent Establishment
PIS	Programa de Integração Social (Employees' Profit Participation Program)
PIT	Personal Income Tax
POCM	Percentage-Of-Completion-Method
PPT	Principle Purpose Test
Q	Quarter
RAP	Reasonably Arguable Position
RE	Real Estate
REAT	Real Estate Acquisition Tax
REIT	Real Estate Investment Trust
REF	Real Estate Fund
RET	Real Estate Tax

RETT	Real Estate Transfer Tax
RMA	Resource Management Act
ROS	Revenue's Online System
RRR	Renovation, Reconstruction and Restoration
RUSF	Resource Utilisation Support Fund
SAF-T	Standard Audit File for Tax Purposes
SCPI	Société Civile de Placement Immobilier
SCSp	Société en Commandite Special
SDC	Special Defence Contribution
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zones
SIR	Société Immobilière Réglementée
SME	Small and Medium sized Enterprise
SOCIMI	Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliari (Real Estate Investment Trusts)
SPA	Sale Purchase Agreement
SPV	Special Purpose Vehicle
SRF	Singapore Resident Fund
STA	Swedish Tax Agency
STT	Securities Transaction Tax
SZE	Special Economic Zone
TARP	Taxable Australian Property Interest
TCP	Taxable Canadian Property
TIVUL	Tax on the Increase in Value of Urban Land
TMK	Tokutei Mokuteki Kaisya
TOFA	Taxation of Financial Agreements
TP	Transfer Pricing
TPCA	Tax Preferential Control Act
VAT	Value Added Tax
WHT	Withholding Tax

Europe

1 Austria

Tax Group

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

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

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

Losses carried forward

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

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

Substance requirements

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 (eg, 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.

Controlled Foreign Corporation (CFC)

In July 2018, Austria introduced CFC rules for financial years beginning after December 31st 2018. The CFC rules shall apply if

- a (directly or indirectly) controlled foreign company (ie, voting rights of more than 50%) without significant business activities;
- earns mainly (ie, more than one third) passive income (eg, interest, royalties, dividends, etc) and
- is subject to low taxation (ie, effective income tax rate of 12.5% or lower) in an EU member state or a third country.

Consequently, the passive income items of the CFC company will be (proportionately) added to the Austrian taxable base of the controlling Austrian company.

To mitigate any negative consequences due to the new CFC rules which become effective on January 1st 2019 we recommend to review the structure of existing groups and to evaluate whether there are any possibilities for tax optimisations.

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.

The mandatory transfer pricing documentation requirements follow a three-tiered documentation approach, 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.

Austrian companies with a turnover above €50 million in the two preceding fiscal years are subject to transfer pricing documentation requirements under the Master File/Local File concept. In case the consolidated group revenue of a multinational enterprise (MNE) group amounted to at least €750 million in the preceding fiscal year, the ultimate parent entity, if resident in Austria, is obligated to file a CbCR with the Austrian tax authorities.

An Austrian business unit (ie, basically legal entities or Permanent Establishments (PEs) preparing financial statements) of a qualifying foreign MNE may take over its parent's duty to report in case the ultimate parent entity is not obligated to file a CbCR in its jurisdiction of tax residence or in case no (functioning) qualifying competent authority agreement is in place with the tax jurisdiction of the ultimate parent entity that provides a basis for the exchange of the CbCR.

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 no longer tax deductible. The restriction applies in case the respective interest income is not taxed or subject to a nominal or effective tax rate of less than 10%. 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 real estate transfer tax (RETT) of 3.5% on the compensation is generally payable upon the transfer of Austrian real estate.

Also, the transfer of shares in a company owning Austrian real estate may trigger RETT in case 95% or more of the shares in the asset-owning company are transferred or finally held by the buyer. In that case, RETT amounts to 0.5% of a so-called 'property value', whereby this 'property value' is comparable to the market value of the property.

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.

Real estate transfer tax (RETT) is generally triggered on transactions that cause a change in the ownership of Austrian real estate or in the person empowered to dispose of such property. RETT in the amount of 0.5% of the property value is also triggered in situations where the shares of corporations or interest in partnerships owning Austrian real estate are transferred.

Land registration fee

The fee for the registration of real estate and transactions within the land register has to be calculated on the basis of the 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 March 31st 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 March 31st 2002 is effectively taxed at
- 18% of the sales price, if the real estate property was rededicated from green area to building area after December 31st 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. However, the transition rules are only applicable for land (and not for buildings).

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 25%.

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.

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

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

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

2 Belgium

Corporate tax rate

As of January 1st 2018, the corporate tax rate has been decreased to 29.58% (nominal rate of 29%, increased by a 2%-crisis tax). As of financial year 2020, the nominal rate will be decreased to 25% and the crisis tax will be abolished. Small and medium-sized enterprises (SMEs) will see a decrease in the rate to 20% as from 2018 for the first bracket of €100,000 in profit.

Advance tax payments

Unless a company pays its Belgian corporate income taxes by means of timely tax prepayments (key dates (April 10th; July 10th; October 10th; December 20th [dates applicable for assessment year 2019 if accounting year equals calendar year]), a surcharge on the final corporate tax amount will be due (average rate of 2.25% for assessment year 2018, 6.75% for assessment year 2019).

If tax prepayments are made, a credit ('bonification') will be granted which can be deducted from the global surcharge. The credit depends on the period in which the prepayment was made.

The company should verify whether any tax prepayments should be performed in order to avoid a possible tax surcharge.

Provisions for risks and charges

Provisions for risks and charges are in principle to be considered as taxable. Provisions for risks and charges can however be tax-exempt under certain conditions. The most important conditions are summarised as follows:
- The provisions are recorded in order to cover a loss that is considered likely due to the course of events;
- The charges for which a provision is established must be deductible as business charges;
- The provision must be included in one or more separate accounts on the balance sheet.

Specific attention should be paid to provisions for major repairs. These provisions can only be tax-exempt to the extent that the following conditions are met:
- The repairs must be manifestly necessary at least every ten years;
- The repairs must be major;
- Any renewal is excluded.

As of assessment year 2019, the following additional conditions need to be met to consider provisions for risks and charges as tax deductible:
- they correspond to an existing and known obligation at year-end closing;
- they result from any contractual, legal or regulatory obligation (other than those resulting merely from the application of the law on accounting rules and annual accounts). This change does not apply to existing provisions created before assessment year 2019.

By the year-end date, the company should book all necessary provisions for risks and charges relating to the assessment year.

Notional interest deduction (NID)

Deduction of interest expenses

Belgian companies are allowed to claim a tax deduction for their cost of capital by deducting a notional (deemed) interest on equity and retained earnings. The equity is the amount reported in the Belgian GAAP balance sheet at the end of the preceding year.

Thin cap rule: 5/1 ratio

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

This 5/1 ratio rule is deemed to disappear and will be replaced by the 30% EBITDA rule, as explained hereafter

30% EBITDA rule

The new interest deductibility limitation rules applies not only to intragroup loans but also to bank loans. Indeed, the exceeding borrowing costs are computed on a net basis and they take into account payments economically equivalent to interest. Three types of loans are outside the scope of the exceeding borrowing cost computation: loans granted before June 17th 2016 without 'fundamental modification' (grandfathering rule – still subject to old 5/1 thin cap rule), loans in relation to public-private co-operation projects, and loans granted between Belgian entities that are part of the same group.

Exceeding borrowing costs will be deductible up to the highest amount of 30% tax EBITDA or €3 million (= de minimis/safe harbour rule – €3 million to be allocated across Belgian group entities – exact guidance still to be communicated). Disallowed exceeding borrowing costs can be carried forward without time limit. The new law provides for a transfer of 'deduction capacity' to another Belgian group entity (while the current law provides for a transfer of exceeding borrowing costs). This must be analysed in conjunction with the new consolidation regime (see below, under consolidation).

For companies of which the tax basis is determined by means of article 185bis BITC (ie, regulated real estate companies (SIR/GVV) and real estate investment funds (FIIS/GVBF), whereby the tax base is composed of the sum of abnormal or gratuitous benefits received and disallowed expenses, the exceeding borrowing costs that are not deductible based on the 30% EBITDA rule do not need to be added back to the taxable basis of those companies, so that they are de facto out of scope of the 30% EBITDA rule.

Although this measure would only enter into force as from 2020, the Belgian government decided in July 2018 that it would advance the entry into force to 2019 (assessment year 2020 that is linked to a taxable period that starts, at the earliest, on January 1st 2019).

Tax losses carried forward

Based on current Belgian tax law, tax losses can be carried forward indefinitely as long as the company is not formally liquidated or dissolved. Under certain circumstances (eg, 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.

As general rule, the tax authorities are entitled to challenge the carried-forward tax losses for three years as of their utilisation by the company.

As from 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, as from 2019) are fully deductible. Other tax attributes (as listed hereafter) can only be claimed on 70% of profits exceeding the €1 million threshold. The remaining 30% of profits are fully taxable at the above new rate. The tax attributes concerned are the deduction of carry-forward tax losses (CF losses), carry-forward dividends-received deduction (CF DRD), carry-forward innovation income deduction (CF IID) and carry-forward notional interest deduction (CF NID) as well as the new incremental NID. The new rules do not apply to losses incurred by SMEs starters.

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

Deferred taxation

The deferred taxation regime allows (provided certain conditions are met) capital gains to be taxed in proportion with the depreciation booked on the qualifying asset(s) (located in EEA member states) in which the realisation proceeds have been reinvested in due time (period of five years for buildings).

In the event that the commitment has been made to reinvest the total sale proceeds but no (full) reinvestment has taken place within the required period, the capital gain (which has not yet been taxed) will be added to the taxable income of the financial year in which the reinvestment period expires and a late payment interest (currently at a rate of 4% per year – may vary between 4% and 10% in the next financial years) will be due.

A capital gain that benefits from the deferred taxation regime and which becomes taxable after the tax reform (and thus after the application of the lower corporate tax rates, see above point 1) because of the absence of reinvestment will be taxed at the highest corporate tax rate that was applicable for the financial year during which the capital gain was realised.

When selling real estate and applying the deferred taxation regime properly monitor the time frame for reinvestment and tax formalities.

Transfer pricing

Generally, all intercompany payments have to comply with the arm's length principle. Failure to do so (incl. failure to have appropriate underlying documentation) might result in the non-deductibility of (some part of) intragroup payments.

In 2016, specific transfer pricing documentation requirements were introduced in Belgian tax law by means of the following three layers:
- Country-by-Country Reporting (CbCR)
- Masterfile: A global Masterfile covering information relevant to the entire group of companies;
- Local file.

The obligations for filing the Masterfile and the Local File are only applicable if at least one of the following thresholds is exceeded:
- Operational and financial revenue (excluding non-recurring revenue) of at least €50 million;
- Balance sheet total of €1 billion at least;
- Annual average full-time equivalents of at least €100 million.

Only Belgian ultimate parent entities of a multinational group with a gross consolidated group revenue of at least €750 million should file a Country-by-Country Report.

As from 2018, part B of the Local File – which aims at obtaining detailed information on each operating unit – must also be completed if the total amount of the cross-border intra-group transactions (part of the same unit) exceed a €1 million threshold during the last (closed) accounting year.

The master file and Country-by-Country Report should be filed no later than 12 months after the last day of the reporting period concerned of the multinational group. The local file, however, should be filed with the tax return concerned.

The arm's length principle should be duly followed and the necessary transfer pricing documentation should be complied with.

December Value Added Tax (VAT) advance payment

Monthly and since 2017 also quarterly VAT payers need to consider the December advance payment regulations. VAT payers have two options to comply. Monthly VAT payers should either pay the VAT due from the transactions occurring between December 1st and December 20th (inclusive) or pay the same amount of VAT due for the month of November. Quarterly VAT payers should either pay the VAT due from the transactions occurring between October 1st and December 20th (inclusive) or pay the same amount of VAT due for Q3.

In both cases, payment must be made by December 24th at the latest (when December 24th is a Saturday or a Sunday, the payment must be made on the last preceding working day).

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

Withholding tax

Since 2017, a uniform withholding tax (WHT) rate of 30% on interest, dividends and royalties is applicable.

Some WHT reductions/exemptions are still provided for under Belgian domestic tax law, such as for: Dividends from the Belgian specialised real estate investment fund or Belgian regulated investment companies to non-resident investors (WHT of 0%) to the extent the income originates from foreign real estate income, interests paid to credit institutions located in the EEA or in a country with which Belgium has concluded a double taxation treaty (0%).

In the light of the corporate tax reform and as from 2018, the reimbursement of capital is deemed to derive proportionally from paid-up capital and from taxed reserves (incorporated and non-incorporated into capital) and exempted reserves incorporated into capital. The reduction of capital will be allocated to paid-up capital in the proportion of the paid-up capital in the total capital increased with certain reserves. The portion allocated to reserves is deemed to be a dividend and becomes subject to withholding tax (if applicable). Share premium distributions

are submitted to the same system. Exempted reserves not incorporated into capital continue to be outside the scope of the rule. Some elements, such as (but not limited to) revaluation surpluses, provisions for liabilities and charges, and unavailable reserves, have to be withdrawn from the reserves taken into account for the coefficient calculation. A sequence of allocation has been set for situations where the amount of the paid-up capital and sums being treated as capital are insufficient.

It should be carefully analysed whether any withholding tax exemptions might apply and to comply with the required formalities

Capital gains on shares

Capital gains on shares are subject to a full exoneration in case the one year holding period is reached. In case the one year holding period is not reached, the capital gain is taxed at the rate of 25.75%.

As from 2018, the previous separate 0.412% capital gains tax for multinational enterprises on qualifying shares has been abolished, while the conditions to benefit from the capital gains exemption are brought in line with the dividend received deduction. This implies the application of a minimum participation threshold of at least 10% or an acquisition value of at least €2.5 million in the capital of the distributing company.

The company should monitor the impact of this tax.

Anti-abuse regulation

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

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

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

Payments to tax havens

Belgian tax-residents have to declare their direct or indirect payments made to tax havens when these payments amount to at least €100,000. This declaration is made through a specific form F275 to be annexed to the tax return. Since assessment year 2016, it is no longer required to report payments to Cyprus or Luxembourg (which were up to then also considered as tax havens).

To avoid any negative tax consequences, this reporting obligation should be carefully monitored.

Recent changes

In addition to the changes already mentioned above, the following modifications in Belgian tax law should be noted:

Option to apply VAT on immovable lease

On July 31st 2018, a draft law introducing, among other changes, the possibility for landlords to apply VAT on immovable lettings has been voted by the Belgian Parliament. For years, investors and landlords in Belgium have been struggling with the cost of non-recoverable or hidden VAT on their real estate as most forms of lettings are VAT exempt. With the new optional regime, the cost of investing in real estate should decrease significantly as input VAT paid on construction and operating costs would become recoverable. This option should be applicable as from January 1st 2019 under strict conditions.

Promotors, investors, landlords and end-users should assess the impact of these newly announced changes on their current lease arrangements as well as on pending and future plans.

Tax consolidation

Tax consolidation would be introduced as from assessment year 2020 (ie, years starting January 1st 2019 or later). This would imply that Belgian companies could offset their (new) profits against tax losses of another Belgian affiliated company. Only the consolidated tax base would then be subject to corporate income tax.

The scope of the consolidation regime is limited to certain qualifying companies:
- a 90% direct shareholding between the companies (or via the EEA parent company) during the entire assessment year is required, limiting the scope to the parent, subsidiary and sister companies and their Belgian permanent establishments;
- the measure is limited to group companies that have been affiliated for at least the last five successive calendar years;
- some companies such as investment companies and regulated real estate companies (SIRs/GVVs) are excluded.

In order to benefit from this new system of tax consolidation, the group companies concerned have to conclude a ‘group contribution agreement’ that meets certain conditions.

Multilateral Instruments

In November 2016, a multilateral convention has been adopted by more than 100 jurisdictions allowing to update in an efficient manner their double tax treaties with some measures to prevent base erosion and profit shifting. The MLI includes provisions relations to Hybrid mismatches (part II, article 3 to 5), Treaty abuse (part III, article 6 to 11), Avoidance of Permanent Establishment status (part IV, art 12 to 15), Improving dispute resolution (part V) and Arbitration (part VI).

A signing ceremony took place on June 7th 2017 in Paris with over 70 Ministers and other high-level representatives. Signatories include jurisdictions from all continents, including Belgium.

Belgium has signed the MLI on June 7th 2017 but has not yet ratified it. However, the MLI has already entered into force in some jurisdiction as from July 1st 2018.

3 Cyprus

Cyprus Income Tax (CIT)

Immovable property trading gains and rental income derived from Cyprus immovable property are subject to Cyprus Income Tax (CIT).

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 has to be added to the other Cyprus taxable income and the following personal income tax (PIT) rates apply:

Chargeable Income for the tax year €	Tax rate (currently applying in 2018) %	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.

Individuals are not allowed to deduct such actual expenses (other than interest expenses and capital allowances), but instead can deduct a notional 20% on the gross rental income from buildings (ie, land not included), independent of whether any actual expenses were incurred in deriving the rental income or not.

In regards to the Cyprus-situated immovable property on which rental income is earned, the deductions could additionally include any interest expense accruing on borrowings that were obtained by an individual or a company to finance the acquisition of the building.

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

Refer also to the 'Special contribution for defense (SDC)' section.

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% (ie, at an effective rate of 2.25%) earned by Cyprus tax resident companies and Cyprus tax resident-domiciled individuals.

For Cyprus sourced rental income where the tenant is a Cyprus company, partnership, the state or local authority SDC on rental income is withheld at source and is payable at the end of the month following the month in which it was withheld.

In all other cases, the SDC on rental income is payable by the landlord in two six monthly intervals on June 30th and December 31st each year.

Payment of tax

Corporate property owners must pay the Cyprus Tax liability arising on rental income in two equal provisional instalments by self-assessment due by July 31st and December 31st. The first instalment may be revisited upwards until December 31st. A final balancing payment must be made on or before August 1st of the following year by self-assessment to bring the total payments of tax to the total actually due according to the tax return.

Corporate property owners also pay SDC arising on rental income in two equal instalments by self-assessment due by June 30th and December 31st. Corporate property tenants must withhold SDC from rental payments on a monthly basis and pay SDC to the authorities by next month.

Individual property owners that earn rental income must pay personal income tax annually by self-assessment due by June 30th of the following year. Individual property owners must also pay SDC in two equal instalments by self-assessment due by June 30th and December 31st.

Tax return for 2017

Corporate property owners should be registered online and submit their annual tax returns electronically. The submission deadline of the 2017 corporate tax return is March 31st 2019.

Individuals (without obligation to prepare accounts as per the law) must submit their annual tax return by July 31st of the following year. For the year 2017 an extension has been granted up to October 31st 2018.

Deemed dividend distribution (DDD) for 2016

A Cyprus tax resident company, is deemed to distribute 70% of its accounting profits of 2016 two years from the end of the tax year in which the profits were generated (ie, by December 31st 2018), otherwise it will be subject to the deemed dividend distribution (DDD) provisions of Special Defence Contribution (SDC) at 17%, and pay the relevant SDC by January 31st 2019.

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 will not come under the scope of the DDD provisions.

Abolishment of the Immovable Property Tax (IPT)

Immovable Property Tax (IPT) has been abolished as from January 1st 2017. Until tax year 2016, the owner of immovable property situated in Cyprus was liable to pay an annual IPT which is calculated on the market value of the property as at January 1st 1980.

Capital gains on sale of property

Unless the seller is considered to be a trader in real estate (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).

Having said that, subject to certain conditions, land as well as land with buildings acquired at market value (excluding exchanges and donations) from unrelated parties in the period of July 16th 2015 up to December 31st 2016 will be exempted from CGT upon its future disposal.

Disposal for the purposes of CGT specifically includes sale, exchange, lease, gift, abandoning use of right, granting of right to purchase, and any sums received upon cancellation of disposals.

Certain disposals of Cyprus-situated immovable property are not subject to CGT, for example gifts from parent to child or between husband and wife or between up to third degree relatives, gifts to charities, expropriations, gifts to charities, etc (non-exhaustive list).

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 Cyprus-situated immovable property.

Shares listed on any recognised stock exchange are exempted from CGT.

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

The taxable gain is generally calculated as the difference between the disposal proceeds and the original cost of the property plus any improvements as adjusted for inflation up to the date of disposal on the basis of the consumer price index in Cyprus. In the case of property acquired before January 1st 1980, the original cost is deemed to be the value of the property as at January 1st 1980 on the basis of the general valuation conducted by the Land Registry Office under the Immovable Property Law.

Other expenses that relate to the acquisition and disposal of immovable property are also deducted from the gain, subject to certain conditions (eg, interest expenses on related loans, transfer fees, legal costs).

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 €85,430.

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.

In the case of industrial and hotel buildings that are acquired during the tax years 2012 and 2018 (inclusive), an accelerated tax depreciation at the rate of 7% per annum applies.

Buildings for agricultural and livestock production acquired during the tax years 2017–2018 (inclusive) are eligible for accelerated tax depreciation at the rate of 7% per annum.

These rates are amended accordingly in the case of second-hand buildings.

Upon disposal of the Cyprus-situated immovable property, a tax balancing allowance/charge is calculated on the difference between sale proceeds and the tax written down value. However, the maximum taxable profit which may be taxed under income tax resulting from a balancing addition is the total tax depreciation allowances previously claimable during the period of ownership.

Individuals who have been claiming tax depreciation allowances on Cyprus-situated immovable property from which rental income derived are not subject to the balancing allowance/charge provisions upon disposal. Further, balancing statements are not required in cases of tax-qualified company reorganisations.

Finally, land does not attract tax depreciation allowances.

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

Generally, all intercompany payments have to comply with the arm's length principle. Failure to do so (incl. failure to have appropriate underlying documentation) might result in the non-deductibility of (some part of) intragroup payments.

In 2016, specific transfer pricing documentation requirements were introduced in Belgian tax law by means of the following three layers:
- Country-by-Country Reporting (CbCR)
- Masterfile: A global Masterfile covering information relevant to the entire group of companies;
- Local file.

The obligations for filing the Masterfile and the Local File are only applicable if at least one of the following thresholds is exceeded:
- Operational and financial revenue (excluding non-recurring revenue) of at least €50 million;
- Balance sheet total of €1 billion at least;
- Annual average full-time equivalents of at least €100 million.

Only Belgian ultimate parent entities of a multinational group with a gross consolidated group revenue of at least €750 million should file a Country-by-Country Report.

As from 2018, part B of the Local File – which aims at obtaining detailed information on each operating unit – must also be completed if the total amount of the cross-border intra-group transactions (part of the same unit) exceed a €1 million threshold during the last (closed) accounting year.

The master file and Country-by-Country Report should be filed no later than 12 months after the last day of the reporting period concerned of the multinational group. The local file, however, should be filed with the tax return concerned.

The arm's length principle should be duly followed and the necessary transfer pricing documentation should be complied with.

December Value Added Tax (VAT) advance payment

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

Group relief (set-off of the income tax loss of one company with the taxable profit of another) is also allowed between Cyprus tax resident companies of a group. A group is defined as:

- one Cyprus tax resident company holding directly or indirectly at least 75% of the voting shares of another Cyprus tax resident company, or
- both of the companies are at least 75% (voting shares) held, directly or indirectly, by a third company.

As from January 1st 2015 interposition of a non-Cyprus tax resident company(ies) will not affect the eligibility for group relief as long as such company(ies) is/are tax resident(s) of either an EU country or a country with which Cyprus has a double tax treaty or an exchange of information agreement (bilateral or multilateral). Also as from January 1st 2015, under conditions, an EU group company loss may be surrendered to a Cyprus company, under conditions.

Capital tax losses may also be carried forward and set off against future capital gains tax profits without time restriction (but not group relieved).

Dividends and withholding tax

No withholding tax is imposed on dividend payments to investors – both individuals and companies – who are non-residents of Cyprus in accordance with the Cyprus domestic tax legislation, irrespective of the percentage and period of holding of the participating shares. Additionally, no withholding tax will apply in case the recipient of the dividend is an individual who is Cyprus tax resident but not Cyprus domiciled – applicable as from July 16th 2015.

No double tax treaty protection is needed for payment of dividends from Cyprus to non-residents of Cyprus

Stamp Duty

The general rule is that Cyprus stamp duty is imposed only on written instruments relating to assets located in Cyprus or relating to matters or things that are done or executed in Cyprus. Unless otherwise stipulated in the sale-purchase agreement, the purchaser is liable for the payment of stamp duty. The applicable rates are based on the value stipulated in each instrument and are nil for values up to €5,000, 0.15% for values from €5,001 up to 170,000, and 0.2% for values above €170,000, subject to an overall maximum amount of stamp duty of €20.000. Exemption from stamp duty applies in the case of a qualifying reorganisation.

Transfer Fees and mortgage fees

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

Market Value €	Rate %	Free €	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.

Mortgage registration fees are 1% of the current market value.

In the case of companies' reorganisations, transfers of immovable property are not subject to transfer fees and mortgage registration fees.

Municipality levy

Subject to certain exemptions property owners are liable to pay Municipality Levy on immovable property which is set at a rate 1.5‰ on the assessed value of the property (this rate applies to all municipalities).

Programmes of Naturalisation and Permanent Residence

Cyprus offers two programmes for foreign investors that are interested in either relocating in Cyprus or in becoming active in Cyprus and the EU. The two programmes are the Cyprus Investment Programme and the programme for obtaining Immigration Permit (Permanent residence) in Cyprus through an expedited process.

Under the Cyprus Investment Programme, an investor and his(er) family (ie, spouse, underage children, qualifying adult dependent children, and investor's parents) can apply for Cyprus citizenship under criteria. Investment amount varies depending on the economic criteria minimum €2 million – €3 million plus VAT.

Non-EU citizens, who purchase new property in Cyprus of a cost exceeding €300,000 plus VAT, are entitled to apply and receive an Immigration Permit (Permanent Residence) through an expedited process. The investment in property/ies could be in 2 residential units, or one residential and one commercial property, subject to certain conditions.

This Permit grants its holders the right to travel to and reside in Cyprus for life. The Permit is extended to the applicant's spouse, under age children, adult dependent children up to 25 years and parents/in-laws of the investor. The holders need a Schengen visa to travel to EU.

Value Added Tax (VAT) on immovable property

The supply of new buildings (before their first use as well as the land on which they are built) is subject to VAT at the standard rate of 19%.

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

VAT is imposed on leasing of immovable property (land and commercial buildings, other than residential buildings) when used by the lessee in making taxable supplies. The lessor has the right to opt not to impose VAT on the specific property. The option is irrevocable. This applies as of November 13th 2017.

VAT is imposed on the sale of non-developed building land, which is defined as land intended for the construction of one or more structures in the course of carrying out a business activity. No VAT is imposed on the purchase or sale of land located in a livestock zone or areas that are not intended for development, such as environmental protection, archaeological, and agricultural zone/areas. This applies as of January 2nd 2018.

Reverse charge provisions apply on transactions relating to transfers of immovable property during the process of loan restructuring and for compulsory transfer to the lender. This applies as of January 2nd 2018.

The long-term leasing of immovable property is regarded as supply of goods for VAT purposes as of January 1st 2019 and will be subject to VAT at the standard rate of 19%

The impact of the above changes should be closely monitored. Real Estate investors, landlords and end-users should assess the impact of these new changes on their existing lease arrangements as well as future plans.

VAT exemptions in respect of letting of immovable property

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

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

The reduced rate of 5% applies to contracts that have been concluded as from October 1st 2011 onwards provided they relate to the acquisition and/or construction of residences to be used as the primary and permanent place of residence for the next 10 years.

Following a legislative amendment, on the November 18th 2016, the restriction that existed for the imposition of the reduced rate of VAT on the first 200 square meters for private residences up to 275 square meters no longer applies. As a result, 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.

As from June 22nd 2012, under certain conditions, eligible persons include residents of non EU Member States, provided that the residence will be used as their primary and permanent place of residence in the Republic.

A person who ceases to use the residence as his primary and permanent place of residence before the lapse of the 10 year period must notify the Commissioner of Taxation, within thirty days of ceasing to use the residence, and pay the difference resulting from the application of the reduced and the standard rate of VAT attributable to the remaining period of 10 years for which the property will not be used as the main and primary place of residence.

In addition, under certain conditions, persons who have already acquired a residence on which the reduced VAT rate was imposed, can re-apply and acquire a new residence on which the reduced VAT rate will be imposed, irrespective of whether the 10 year prohibition period for using the residence has lapsed or not.

VAT Regulations – Compliance

VAT Registration:

VAT Registration is compulsory for businesses with:
(a) turnover subject to VAT in excess of €15.600 during the 12 preceding months, or
(b) expected turnover subject to VAT in excess of €15.600 within the next 30 days.

Businesses with turnover of less than €15.600 or with supplies that are outside the scope of VAT but for which the right to claim the amount of the related input VAT is granted, have the option to register on a voluntary basis.

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 €15.600 per any consecutive 12 month period.

No registration threshold exists for the provision of intra-community supplies of services.

Exempted products and services, and disposals of items of capital nature are not taken into account for determining annual turnover for registration purposes. Registration is effected by completing the appropriate application form

VAT declaration – payment/refund of VAT:

- VAT returns must be submitted quarterly and the payment of the VAT must be made by the 10th day of the second month that follows the month in which the tax period ends.
- VAT registered persons have the right to request for a different filing period. The approval of the Commissioner of Taxation is required.
- The Commissioner of Taxation also has the right to request from a taxable person to file his VAT returns for a different period.
- Where in a quarter input tax is higher than output tax, the difference is refunded or is transferred to the next VAT quarters.
- As from February 19th 2013 taxpayers who make a claim for VAT refund are entitled to repayment of the principal amounts together with interest in the event that the repayment is delayed for a period exceeding four months from the date of the submission of the claim.
- The grace period for the Tax Department to repay the refundable amounts is extended by four months (ie, eight months in total) in the event that the Commissioner of Taxation is carrying out an investigation in relation to the submitted claim.

4 Czech Republic

Real estate acquisition tax (RETA)

The taxpayer of Real Estate Acquisition Tax (REAT) is the purchaser.

Acquisition of a real estate as part of a transformation of companies is generally not subject to REAT, this should not hold true in respect of transfer of assets to a shareholder and/or in-kind contribution.

Extension of free hold right is subject to REAT.

Thin capitalisation rules

All related-party loans are subject to thin capitalisation rules. Any interest-free loans, or loans from which interest is capitalised in the acquisition costs of fixed assets, are excluded from the thin capitalisation rules.

The debt-to-equity ratio of 4/1 applies for thin capitalisation purposes thus any interest from loans granted by related parties exceeding the debt-to-equity ratio represents tax non-deductible costs. For thin capitalisation calculation purposes equity is calculated as the annual daily weighted average. The current year's profit is not included in equity for thin capitalisation calculations.

Thin capitalisation rules are also applicable for any back-to-back financing arrangements in which the provision of a loan by a third party is conditioned by a corresponding loan by a related party to the third party lender.

Going forward, the Czech Republic must adopt with a legal effectiveness to January 1st 2019 new limitations to tax deductibility of interest imposed by the EU Anti-Tax Avoidance Directive (ATAD). These new ATAD interest limitation rules shall apply simultaneously with the already effective thin capitalisation rules as explained above.

In respect of the ATAD interest limitation rules, the Ministry of Finance published a draft amendment to the Income Tax Act (ITA) during 2018, implementing the ATAD provisions.

The draft ITA amendment proposes that net borrowing costs (ie, revenues less costs derived from financing) on both related and unrelated party debt should be deductible in the period in which they are incurred only up to 30% of taxpayer's earnings before interest, corporate income tax and tax depreciation and amortisation (EBITDA). However, if the net borrowing costs do not exceed 80 million CZK per taxpayer in a given taxable period, then all borrowing costs incurred in that taxable period may be considered tax deductible.

Please note that the borrowing costs subject to the ATAD limitation rules comprise not just expensed interest costs but, among others, also capitalised interest and foreign exchange differences arising from financing.

The amount of net borrowing costs considered as tax non-deductible under the ATAD interest limitation rules may be carried forward and utilised in following taxable periods as a deduction from the tax base. The number of taxable periods to which such tax non-deductible borrowing costs may be carried forward is not limited.

Further, the ATAD interest limitation rules should not apply, among other, to a taxpayer that (i) does not hold directly or indirectly at least a 25% share on another taxpayer, (ii) does not have a foreign permanent establishment and (iii) is not subject to consolidation for accounting purposes.

Please note that the Czech ATAD amendment has not been yet finalised and adopted and thus, the exact shape of the Czech version of the ATAD rules may still change before the rules come into force.

The company should review the debt to equity ratio and, in case that the full deductibility of interest will not be achieved, we recommend increasing equity as soon as possible during the end of 2018 period to mitigate any negative tax implications regarding the deductibility of interest for the next taxable periods. Going forward, it is advisable to factor in the envisaged deductibility rules once their final Czech shape becomes known.

Technical improvement

As of 2014, amendment of Accounting Act regulation introduced a definition of technical improvement of long term assets. The definition is similar to that used for tax purposes – nevertheless, the two differ as regards time period to be reviewed and financial limit after exceeding of which the costs incurred are regarded as technical improvement. For accounting purposes, the costs are reviewed for an accounting period whereas for tax purposes for the whole project. For tax purposes the threshold sum is 40,000 CZK whereas for accounting purposes the financial threshold is determined in the internal accounting guidelines.

When company incurs costs on technically improving long term assets it should pay proper attention to testing of meeting the definition of technical improvement for tax and accounting purposes.

Reserve on repairs of fixed assets

Reserves for repairs of fixed assets are tax-deductible only if created in accordance with the Czech Act on Reserves and the corresponding cash amount is deposited in a special escrow bank account.

A company should ensure that the value of the reserve is deposited in the special bank account at latest by the deadline for filing of its corporate income tax return.

Tax losses carried forward

Tax losses can be carried forward for utilisation up to five years after they were incurred.

Where a company is not able to effectively utilise tax losses, it is generally possible to suspend tax depreciation of certain tangible fixed assets in order to increase the tax base of the company for the corporate income tax purposes and utilise the tax losses carried forward that would otherwise expire.

Changes to tax depreciation of technical improvement made on asset leased or subleased

As of April 1st 2017, an amendment to ITA regarding tax depreciation of technical improvement came in force to the Income Tax Act (ITA). Under the amendment, technical improvement made on leased or subleased asset may newly be depreciated for tax purposes even if made by a sub-lessee and in case of assignment of the lease agreement between two lessees, the assignee may depreciate the technical improvement made by the assignor. The consent of the owner of the asset is required in all cases. The newly amended regime of the depreciation of the technical improvement made on leased or subleased assets may not be applied for any technical improvement made on leased or subleased premises before April 1st 2017.

Companies should be aware of the abovementioned potential change to the ITA that is being in force from April 1st 2017. A higher degree of flexibility is introduced in the commercial agreements.

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

As of January 1st 2017, the tax residual value of a demolished building enters the tax basis of the new real estate, if demolished as part of the construction works. So far, it was the accounting residual value that entered the tax basis.

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

Hedge accounting

The use of hedge accounting is based on natural hedges which exist between euro-denominated (or other foreign currency) rental income and financing to defer recognition of any unrealised foreign exchange differences for Czech tax purposes until their actual realisation. Hedge accounting requires that a hedge accounting policy and model is implemented which complies with the requirement of the Czech GAAP.

The company should review the effectiveness of its hedge accounting model.

Control statement

The Czech VAT Act introduced a new control statement mandatory for all VAT payers. The control statement is a new tool in the field of fighting tax evasions and includes detailed information that VAT payers already had to keep in their VAT records.

As the tax authorities accent the control statement in relation with fighting tax evasion, there are strict sanctions in case of late submission of the control statement/subsequent control statement or in case the VAT payer does not submit the control statement at all. The sanction amounts from 1,000 CZK up to 500,000 CZK. Since mid-2016, some of the sanctions may be partially or fully waived under certain conditions.

The company should adjust its internal systems in order to comply with the new tax authorities' requirements.

Changes in Value Added Tax (VAT) exemptions in respect of plots of land

Transfer of plots of land is VAT-exempt in case:
- The plots of land do not compose a functional unit with a building firmly affixed to the land, and
- The plots of land are not considered to be a building plot.

The building plot is a plot of land on which:
- A building shall be built and – was a subject to construction works or administrative acts in order to build the building, or – here are construction works in the neighbourhood of the plot
- A building shall be built according to the building permit.

VAT exemptions in respect of other immovable property

Transfers of other immoveable property, including plots of land other than those listed above are VAT-exempt after the expiry of five years from the final approval inspection or from the date when the first use of the structure commenced, whichever occurs earlier.

There is an option to tax the transfer of immovable property after the expiry of this period as well as to tax the transfer of non-building plots.

Freehold right

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

Reverse-charge regime on transfer of immovable property

The reverse-charge regime is required in case a VAT payer opts for taxation of transfer of immovable property and the customer is a VAT payer as well.

During 2017, the reverse-charge regime was introduced in case of sale of immovable property within a compulsory sale based on a decision of a court (eg, within compulsory public sale) or in case an immovable property is sold as a pledge.

The company should properly verify the VAT regime. In case a standard regime is used instead of the reverse-charge regime, tax authorities should refuse the input VAT deduction of the recipient.

Reverse-charge regime in relation with construction works

As of July 1st 2017, the reverse-charge regime on provision of construction works was widen by introducing this regime in case of hiring-out of labour for constructions works.

Potential claw – back of VAT refund

If a VAT registered company purchases a building for entrepreneurial activities then, in principle, the input VAT charged on the purchase should be fully recoverable.

However, if the building is used solely for activities generating VAT exempt supplies, then the company is not entitled to recover the input VAT at all.

If the building is used for activities generating both VAT-able and VAT exempt supplies, the company is entitled to partially recover the input VAT, in line with the proportion of (i) VAT-able and (ii) VAT-able and VAT exempt supplies.

A change in the use of the building (eg, from VAT-able to exempt activities, or vice-versa) within the period of ten years following the purchase of the building may have an impact on the input VAT claimed. In certain situations this may imply that part of the claimed input VAT has to be paid back.

Please note that the Chamber of Deputies is currently looking at an amendment to the Czech VAT Act according to which the above VAT refund adjustment will apply also to repair/maintenance costs associated with real estate asset exceeding 200,000 CZK.

At year-end the company should evaluate whether the use of its buildings have changed, in terms of what supplies (VAT-able or VAT exempt) the buildings generate and in this regard, assess a potential claw-back of input VAT already refunded on the purchase of the buildings.

Liability of the recipient of the supply for VAT unpaid by the supplier

As a way of fighting tax evasion, the Czech VAT Act has introduced a concept of a so called 'unreliable VAT payer'. Unreliable VAT payers are considered payers that, according to the tax authorities, do not comply with their tax related obligations.

Among other cases, the recipient of the supply is liable for any VAT unpaid by the supplier where:
- The supplier is known to be an unreliable VAT payer, or
- The recipient makes a payment to a bank account other than one which is publicly disclosed. This applies only in cases where the consideration for the supply exceeds the amount of 540,000 CZK, or
- The payment is made on bank account held by a bank not seated in the Czech Republic.

The database of unreliable VAT payers is publicly accessible. Bank account numbers of VAT payers are publicly disclosed in the VAT payers register.

Unreliable person

The status of an unreliable payer has been extended with that of an unreliable person (newly defined in section 106aa of the VAT Act) within the VAT Act amendment, which came into effect on July 1st 2017. The position is to enable the VAT administrator to identify any physical person or legal entity, not necessarily a VAT payer that has failed to meet their obligation related to VAT administration, which has made them an unreliable payer. Also, if an unreliable VAT payer losses its VAT registration, it becomes automatically an unreliable person.

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

Mandatory e-filing

VAT returns, their annexes and all other VAT reports have to be filed only electronically. Paper filing is not allowed anymore. Furthermore, in case the structure of the submitted forms is not in compliance with structure announced by tax authorities, such form will not be accepted by the Tax authorities. It is considered as if the form is not submitted at all.

5 Estonia

Reduction of corporate tax rate

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

From January 1st 2018 the corporate income tax rate for companies paying regular dividends has dropped from 20% to 14% taking into account the period of three years cycle. That means that the payment of dividends in the amount which is below or equal to the amount of taxed dividends paid during the three preceding years (20%), will be taxed with a rate of 14% (the tax rate on the net amount being 14/86 instead of the regular 20/80).

The 14% tax rate is only valid when dividends are paid to another company. When paying dividends to a private individual the total income tax burden remains at 20%.

The corporate income tax rate changed for companies paying regular dividends in 2018 from 20% to 14%.

Sale of shares in a real estate company

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

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

Transfer pricing

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

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

Land tax

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

Budget for land tax payments

Anticipated amendments

Deduction of excessive borrowing costs (as a general rule interest expenses) from tax base will be limited if the following three criteria are met and none of the exceptions apply (Section 54 ITA). The provision will not apply to financial undertakings (banks, insurance companies) and standalone entities. Standalone entity is a taxpayer, which is not part of a consolidated group and has no associated companies or permanent establishment(s).

The criteria is as follows.

First, it needs to be established whether the borrowing costs in a financial year exceed €3 million. If not, then the fulfillment of the next criteria does not need to be checked. If yes, then it needs to be established if the borrowing costs exceed 30% EBITDA-d (ie, earnings before interest, taxes, deductions). If yes, it needs to be established whether the company is in a profit or loss-making position to determine whether the borrowing costs which exceed €3 million and 30% EBITDA, exceed losses. If yes, income tax must be paid on the part exceeding the loss.

As an exception to the general rule of declaring and paying tax on a monthly basis, such taxation will follow the financial year. Exceeding borrowing costs must be declared by July 10th and tax paid by September 10th if the financial year matches the calendar year.

The threshold, which triggers taxation is very high in the context of Estonia and since there are also exceptions to the general rule, the Ministry of Finance estimates that there would be approximately 10 companies in Estonia which are potentially impacted by this rule.

Plan the financing structure in case of excessing borrowing

6 Finland

New interest deduction limitation rules

The Finnish Government proposal concerning the implementation of EU Anti-Tax Avoidance Directive I (2016/1164 – the 'Directive') was issued on September 27th 2018, is currently subject to legislative process, and will come into force January 1st 2019.

The main points of the government bill are as follows:

- The restrictions on interest deductibility would be expanded from interest paid by group companies and permanent establishments to apply to interest paid by 'non-independent' companies and interest paid to third parties.
- The definition of related parties would be changed to 'group undertakings/companies', the definition of group undertakings remains at 50% direct or indirect control.
- Independent companies are completely outside the scope of the restrictions, including in respect of external interest. Independent companies are defined as those where no party has a 25% influence or control stake in another party.
- The restrictions would also apply to general and limited partnerships.
- The restrictions will extend to the sources of income taxed under the Income Tax Act and the Farm Income Tax Act. As a result, the new restrictions will also apply to real estate companies that have in general been outside the scope of interest capping rules until now.
- The restrictions will extend to all expenses related to obtaining financing. Therefore, the type of finance expenses subject to restriction will expand from pure interest expenses.
- Financial consideration paid to mutual real estate companies will not be considered as interest income/expense even to the extent it relates to interest payments made at the level of the mutual real estate company.
- Interest expenses paid to group undertakings will be deductible if total net interest expenses (including group undertakings and third parties) do not exceed €500,000 in a tax year. If net interest expenses exceed this threshold, the limitations will be applied to the total amount and not just the amount exceeding the threshold.
- The restrictions will continue to be calculated based on adjusted taxable income and the maximum deduction allowed will be 25% of the adjusted taxable income. The adjusted taxable income is described as 'taxable EBITD' and is calculated as taxable income including group contributions, adding back interest expenses and tax depreciation (in practice the change in terminology from taxable EBITDA to taxable EBITD does not affect the calculation as all tax depreciation or amortisation is added back to taxable income).
- Annual interest expenses paid to unrelated parties will always be deductible up to €3 million (if expenses are otherwise at arm's length and related to the company's business).
- As is currently the case, a back-to-back arrangement would mean that a loan taken from a third party will be considered a group loan. Additionally, security for a loan given by another group company in the form of a loan receivable leads to a third party being considered as a group loan.
- Non-deductible financing expenses will be carried forward without an expiry date and ownership changes will not effect the carry forward. In practice, the order in which interest expenses carried forward and other interest expenses are deducted will need to be carefully considered.

Exceptions:
- The financial services sector and certain public infrastructure projects would not be in the scope of the restrictions. The excluded infrastructure projects are still under consideration.
- The exemption from the restrictions by comparing the equity ratio (equity divided by gross assets) of the Finnish taxpayer to the group ratio would remain. However, the group's consolidated and the Finnish taxpayer's balance sheet should be prepared using the same accounting standards or the group's balance sheet be converted to be equivalent to the taxpayer's balance sheet in order for the balance sheet comparison test to be applicable.

Grandfathering rules:
- Interest expenses on third party loans taken before June 17th 2016 are outside the scope of the new legislation, provided that the terms of the loan remain unchanged from June 17th 2016.
- Interest expenses on third party loans, capitalised before December 31st 2018 can be deducted after the change in restrictions.

Reform on the Finnish interest deduction limitations represents a major development for the real estate industry as most real estate investors have until now been outside the scope of the Finnish interest capping rules. We recommend that real estate investors analyse the impact of the proposed interest deduction restrictions on all existing and new investments. The proposed rules may also impact the market practises on purchase price discounts required regarding deferred tax liabilities on share deals.

Real estate tax rates

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

The maximum general real estate tax rate was increased as of January 2018. Currently the minimum tax rate set by tax legislation is 0.93% and the maximum tax rate is 2.0%. Higher real estate tax rates are applied eg, to power plants (maximum tax rate 3.10%) and vacant construction sites (maximum tax rate 6.0%).

The Finnish Ministry of Finance is also planning a reform to the determination of tax values for land for real estate tax purposes. One aim is to promote transparency in the tax valuation of the real estates with better publicly available information of the tax valuation basis such as information on prices in different areas and construction expenses. It is expected that the reform would be introduced as of 2020.

The tax law changes with respect to real estate tax rates should be closely followed. While the intention of the legislator does not seem to increase tax collection, the reform will impact differently on different types of properties.

Reform of allocation of income baskets

The Ministry of Finance has published a memorandum concerning a reform of allocation of income baskets in March 2018. The main purpose of the reform is to combine business income and other income baskets of entities. The reform is intended to take effect in the beginning of 2012.

As planned, the Finnish Business Income Tax Act (BITA) would be applied to all taxpayers carrying out business or professional activities. The general definition of business income would be extended to include real estate business activities. In addition BITA would be applied to all entities, excluding public bodies, religious organisations, housing companies, mutual real estate companies (MREC) and non-profit organisation, even when their activities do not meet the conditions of business activities. In practice, more companies would be taxed in the basket of business income.

A new class of asset ie, deemed investment asset is intended to be created within the basket of business income. According to the memorandum deemed investment assets would be more loosely connected to the business activity than other business assets eg, assets currently belonging to other income basket. Treatment of capital losses would depend on classification of the asset.

The assessment of real estate activity being business activity would be made based on the overall assessment, taking into consideration eg, the nature of the activities and the actual purpose of using property. As the exact scope of business and real estate business activities is open to interpretation and as eg, housing companies and MRECs are not taxed in accordance with the BITA solely based on their legal form, at this point the treatment of housing companies and MRECs remain unclear. Same applies to real estate activities of non-profit organisations.

Companies within the same group taxed in accordance with the BITA can level their income by giving and receiving group contributions. The group contribution is considered deductible cost for income tax purposes of the distributing company and taxable income for income tax purposes of the recipient company. Thus, upon reform of the income baskets, additional entities would fall within the scope of BITA which would enable them to level their income with the group companies by way of group contribution

The legislative process around the reform should be followed.

Transfer pricing

Generally, all related-party payments and transactions have to comply with the arm’s length principle. This should be duly documented. During the past few years, the Finnish tax authorities have increasingly paid attention to financing transactions (eg, interest payments).

Ensure compliance with transfer pricing rules.

Mutual Real Estate Company (MREC)

Typically, Finnish real estate is owned via mutual real estate companies (MRECs). In order for the ownership structure to be tax efficient, payments between the MREC and its shareholder(s) need to be carefully planned and documented.

Payments between the MREC and its shareholder(s) need to be carefully planned and documented.

Transfer tax

A transfer tax of 4% of the sales price is payable on the transfer of real estate situated in Finland. The transfer of shares in Finnish companies (other than housing companies and real estate companies) and other domestic securities is subject to a transfer tax of 1.6%. The transfer of shares in Finnish housing companies and real estate companies is subject to a transfer tax of 2%. No transfer tax is payable if both the seller and the transferee are non-residents. Transfer tax is, however, always payable on transfers between non-residents if the transferred shares are shares in a Finnish housing or real estate company.

Transfer tax implications need to be carefully analysed before a transaction takes place. Transfer tax issues are closely investigated by the Finnish tax authorities and there are currently several ongoing disputes.

Change of VAT-able use of premises

In case the VAT-able use of premises has changed compared to the situation when the real estate investment was taken into use, VAT included in the real estate investment might be subject to adjustment.

It should be verified whether there have been changes to the VAT-able use of real estate and determined whether the VAT deductions should be adjusted. The effect can be positive or negative, depending on whether the VAT-able use has increased or decreased.

VAT refunds from the year 2015

The entity registered for VAT in Finland is entitled to apply the input VAT of purchases to its VAT-able business within three years after the end of the calendar year during which the financial year ended.

If there are undeducted VAT in the purchases, it can be investigated whether it is possible to apply the refund before the end of the year.

Own use of real estate management Services

According to the Finnish VAT Act, real estate management services are considered to be taken into own use when the real estate owner or holder is performing services in respect of the real estate by using own employees, if the real estate is used for non-deductible purposes.

However, the holder or the owner of the real estate is not liable to pay tax, if he/she uses the real estate as a permanent home or if the wages and salary costs including social benefit costs relating to these services, during a calendar year, do not exceed the set threshold.

The threshold is €50,000. It may be relevant to make sure that the threshold of costs is observed.

Definition of a real estate from VAT point of view

The definition of a real estate, for VAT point of view changed as of January 1st 2017. The definition of a real estate is determined based on the Council Implementing Regulation (EU) No 1042/2013. The Regulation also includes an example list of transactions identified as services connected with real estate. Services that are considered to relate to real estate are subject to VAT in the country where the real estate is located, ie, reverse charge rules are not applicable.

The new definition has widened the scope of real estate. Thus, also the scope of investment subject to VAT adjustment right and liability is wider and should be taken into account when making the adjustment liability calculations.

7 France

List of states or territories defined as NCST

As for FY 2017, the list of NCST includes, Botswana, Brunei, Guatemala, Marshall Islands, Nauru, Niue, and, as from January 1st 2018, Panama.

As a reminder, French interest, dividends, capital gains (non real estate companies) realised by tax residents of those countries or paid in a bank account located in those countries are subject to a withholding tax of 75%. Capital gains on French real estate companies' shares realised by those tax residents are computed as follows: (sale price – (purchase price – 2% of the acquisition price of the construction per year of holding). These capital gains are subject to withholding tax at the standard CIT rate.

In addition, a French draft law introduced by the Government provides for the inclusion, under some conditions, of countries on the European 'black' list within the French list so-called 'ETNC' countries.

France-Luxembourg double tax treaty

On March 20th, the Luxembourg and French Governments have signed, amongst other, a new double tax treaty (DTT), together with an accompanying Protocol, which should enter into force as from January 1st 2019. We cannot exclude to date that the DTT enter into force as from January 1st 2020.

The new DTT seeks to modernise the rules applying. The new DTT is fully 'post-BEPS'. It implements the new approaches developed at international level during the OECD/G20 BEPS Project, now reflected in the 2017 version of the OECD Model Tax Convention, and in the Multilateral Convention to Implement Tax Treaty Related Measures ('the MLI'), signed by both Luxembourg and France in June 2017.

More particularly, several provisions of the DTT are likely to affect many French real estate investments held from Luxembourg, notably those involving French OPCIs. Indeed, the French OPCIs should no longer benefit from the reduced WHT on dividends when more than 10% of the share capital such OPCIs is held by the Luxembourg beneficiary entity. Thus the domestic WHT of 30% (to be progressively reduced until 25% in 2022) will apply to such distributions.

In addition, the new DTT includes a general anti-abuse provision taking the form of a principal purpose test (PPT).

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 €500,000.

The CVAE rate has a progressive rate, which will go from 0.5% for turnover of €500,000 up to 1.5% for turnover exceeding €50 million.

For determination of the progressive rate purposes, a company which is member of a group has to take into account the turnover of this group.

The percentage of revenues and expenses earned in relation to the rental activity and taken into account in order to calculate the value added will be reduced to 10% in 2010, 20% in 2011, 30% in 2012, increasing to 90% in 2018.

Decrease of the standard corporate income tax (CIT) rate

The standard rate of corporate income tax is 33.33%. This rate will progressively be reduced to 25% by 2022, as follows:
- in 2018: profits up to €500,000 are subject to corporate income tax at the rate of 28%. Profits exceeding this threshold remain subject to the standard corporate income tax rate of 33.33%;
- in 2019: profits up to €500,000 will be subject to corporate income tax at the rate of 28%. Profits exceeding this threshold will be subject to a corporate income tax at the rate of 31%;
- in 2020: all profits will be subject to corporate income tax at the rate of 28%;
- in 2021: all profits will be subject to corporate income tax at the rate of 26.5%; and
- in 2022: all profits will be subject to corporate income tax at the rate of 25%.

Decrease of the domestic withholding (WHT)rate on dividends

The WHT will progressively be reduced to 25% by 2022, as follows:
- in 2018 and 2019: 30%;
- in 2020: all profits will be subject to corporate income tax at the rate of 28%;
- in 2021: all profits will be subject to corporate income tax at the rate of 26.5%; and
- in 2022: all profits will be subject to corporate income tax at the rate of 25%.

Net Wealth tax

Article 31 of the 2018 finance bill removed the wealth tax (ISF) in place in France since 1982, and replaces it with a tax on real estate property (IFI) as from January 1st 2018.

The IFI will be based on real estate property which is not attributed to the professional activity of the owner.

The relevant date (January 1st), the threshold for taxation (€1,300,000), the tax brackets and the definition of taxpayers subject to the tax remain unchanged compared to the rules applicable to the ISF. Similarly, the flat 30% reduction applicable to the value of a principal residence is maintained.

The five-year exclusion of assets located outside of France from the taxable base for new French tax residents called 'impatriates' is maintained; similarly to individual taxpayers with a tax domicile outside of France, individual taxpayers who have not been domiciled in France during the five years preceding the transfer of their domicile to France are only taxed on the property located in France, until December 31st of the fifth year following the year of arrival in France.

The applicable range and the taxable base for the IFI are significantly reduced; only non-professional real estate property is taxable, leading to the exemption of financial assets (notably cash, stock and equity) and moveable assets. In parallel, the rules regarding the exemption of professional assets are redefined and focussed on real estate.

Regarding the debt which may be deducted for French wealth tax purposes, debts granted to an intermediary entity should be deducted from the basis for determination of the portion of the shares of the intermediary entity subject to French wealth tax. However, loan granted by the taxpayer, a member of his family or an entity controlled by the taxpayer to the intermediary entity holding the property may not be deducted from the computation of the portion of the shares subject to French wealth tax except if the taxpayer may demonstrate that the financing by debt is not mainly tax driven.

Regarding the loans that are deductible for French wealth tax purposes, there is a limit of deduction when the taxable asset (the value of French real estate) exceeds €5 million. Indeed, in such a case, when 60% of the value of the real estate is financed by debt, only 50% of the portion of the debt in excess of such threshold is deductible for French.

MLI

The Multilateral Instrument (MLI), signed June 7th 2017, and its article 9 (4) provides a new land rich clause for double tax treaties: 'gains derived by a resident of a Contracting Jurisdiction from the alienation of shares or other rights of participation in an entity may be taxed in the other Contracting Jurisdiction provided that these shares or rights derived more than a certain part of their value from immovable property (real property) situated in that other Contracting Jurisdiction, or provided that more than a certain part of the property of the entity consists of such immovable property (real property)'.

France noticed its intention to apply the provisions of article 9 (4) to its double tax treaties in force. In order for such article to apply to a double tax treaty signed by France, the Contracting Jurisdiction should not make any reserve for application of article 9 of the MLI and notice its intention to apply paragraph 4 of article 9 of the MLI.

On July 12th 2018, France ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI), by way of Law No 2018-604, as published in Official Journal No 0160 of July 13th 2018.

8 Germany

Dividend and capital gains tax exemption

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

Capital gains received by corporations upon selling the shares in other corporations are 95% tax exempt. If the shareholder is a foreign resident corporation, the capital gains are 100% tax exempt according to recent case law of the German Federal Fiscal Court. Currently, there is no minimum holding requirement. However, since some years there are discussions to align the capital gain exemption rules with the dividend exemption rules, ie, the 95% capital gains tax exemption would require a minimum holding of 10%.

Consider to restructure shareholding before distributing dividends (and sales of 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 from EU-corporations to its German shareholders may not be qualified as taxable dividends but as repayment of shareholder equity upon application. Such application has to be filed up to the end of the calendar year following the calendar year in which the share capital repayment has been received.

Apply for equity qualification of share capital repayments received in 2017 before December 31st 2018.

Rollover relief

Gains of a German permanent establishment from the sale of land and buildings need not be taken to income immediately, but may be deducted from the cost of purchasing replacement premises in the same or in the previous year. Alternatively, the gain may be carried forward and be deducted from the purchase price of land and buildings acquired during the following four years or from the construction costs of a building erected during the following six years.

For gains from the sale of land and buildings which do not belong to a German permanent establishment no rollover relief is available. However, the taxation of capital gains reinvested in another EU-member state may be deferred and spread over five years. The application for tax deferral has to be made up to the end of the financial year in which the land or building has been sold.

Apply for tax deferral on capital gains for EU land and buildings sold in 2018 before December 31st 2018.

Interest capping rules

Where an entity is not able to limit its net interest to below the €3 million threshold, other escape clauses (non-group escape clause or group escape clause) might be applicable. According to the group escape clause, interest expenses paid in 2019 may be fully deductible only where the equity ratio of the German business equals or is higher than that of the group (2% tolerance) as at December 31st 2018.

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 2019.

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

Losses carried forward

Any direct or indirect transfer of shares/interests (or similar measures, eg, in the course of restructurings) may lead to a partial/total forfeiture of losses and interest carried forward at the German entity's level. Exemptions may apply for tax privileged restructurings and where the entity continues to perform the same business as prior to the share transfer (restrictive requirements).

In 2017, the German Federal Constitutional Court has ruled that the German loss forfeiture rules violate the German constitution to the extent they anticipate a partial forfeiture of a company's losses upon a transfer of more than 25% but less than 50% of its shares. A further decision is pending for share transfers of more than 50%.

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 trade tax permanent establishment, or a preferential trade tax regime under the extended trade tax deduction, must fulfil strict requirements. The requirements of the extended trade tax deduction must be met for a complete fiscal year.

It should be verified whether the requirements are met from January 1st 2019 onwards (if the fiscal year equals the calendar year) in order to mitigate trade tax on income derived in 2019.

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 has to fulfil strict substance requirements in order to benefit from a dividend withholding tax exemption/reduction.

Recently, the ECJ has decided that these substance requirements are not in line with EU law and thus the German fiscal authorities have significantly decreased their substance requirements. A corresponding amendment of the German tax law is expected.

It should be ensured that German substance requirements are met and amendment of German tax law should be monitored. Where German dividend payments have been subject to dividend withholding tax due to a lack of substance, these cases should be kept open.

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.

Permanent Establishment (PE) cross-border transactions

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

Review cross-border transactions between head office and PEs.

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 before December 31st 2018 in order to become effective for the fiscal year 2018. 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

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

Apply for land tax 2018 refund before April 1st 2019.

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%. In Bavaria and Saxony the rate of 3.5% applies. The other federal states have increased their RETT rate: Baden-Wuerttemberg (5%), Berlin (6%), Brandenburg (6.5%), Bremen (5%), Hamburg (4.5%), Hesse (6%), Lower Saxony (5%), Mecklenburg-Hither Pomerania (5%), North-Rhine Westphalia (6.5%), Rhineland-Palatinate (5%), Saarland (6.5%), Saxony-Anhalt (5%), Schleswig-Holstein (6.5%) and Thuringia (6.5%). Further increases are expected.

Monitor potential increase of RETT rates in federal states. Proper timing is necessary to avoid increased RETT rates. SPAs have to be concluded before possible further increase of RETT rates.

Planned tax changes

German tax law is subject to continuous changes.

Currently, there are a number of tax amendment acts in the legislative process which impact taxation of real estate investments.

Amongst others:
- gains from the alienation of shares of foreign companies owning property situated in Germany shall become subject to tax in Germany;
- a special building depreciation of 5% p. a. limited by 4 years for low budget residential properties should be introduced;
- the land tax should be reformed by introducing a tax base reflecting the current fair market value;
- the RETT rules for share deals should be tightened.

Most important are the legislative plans to tighten the RETT rules for share deals. The main planned changes affecting real estate transactions are:
- lowering the 95% threshold to 90%;
- introducing a new rule according to which RETT is triggered if at least 90% of the shares in a corporation have been transferred within ten years;
- extending several RETT holding periods from five to ten years.

According to rumours it is planned to publish a draft RETT law before year-end. Please note that it is expected that the new RETT rules apply to all deals which are closed after this publication date. If signing has taken place before the publication date but closing will be after the date the transaction will likely be subject to the new RETT rules.

Constantly monitor German tax law changes.

9 Ireland

Taxation of Rental Income

Rental income profits are subject to corporation tax at the rate of 25% where the real estate asset is held through an Irish company. The income tax rate on rental profits is 20% where the asset is held directly by a non-resident.

Interest Deductions

A deduction for interest is only allowed in computing the rental profits for the year where the money borrowed has been used on the purchase, improvement or repair of the property which generates the rental income. The interest deduction for a loan used to acquire a residential property is currently restricted to 85% of the interest accrued during the year ended December 31st 2018 (90% in 2019, increasing by 5% per annum until full deductibility is allowed in 2021).

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. On the acquisition of a property, an analysis of the plant and machinery element of the purchase price should be undertaken and documented as evidence of the cost eligible for capital allowances.

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

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

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

Withholding Tax on Rents

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

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

Interest Withholding Tax

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

Investors making interest payments to non-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 20%. A number of exemptions are available under the Irish tax legislation subject to having the appropriate declarations in place.

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

Disposals by Non-Residents

A non-resident will be subject to capital gains tax in Ireland on the disposal of Irish specified assets. Land (including tenements, hereditaments, houses and buildings, land covered by water and any estate, right or interest in or over land) situated in the State is considered to be an Irish specified asset.

Additionally, shares in a company which derives the greater part of its value from land are also considered to be Irish specified assets. A disposal of such shares by a non-resident would also be within the scope of Irish capital gains tax.

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

Tax Filing Obligations

An Irish tax resident company is obliged to pay its corporate income tax liability and file its corporation tax return within 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.

A non-resident is required to pay its income tax liability and file its income tax return by October 31st in the year following the year of assessment. The year of assessment for income tax purposes is between January 1st and December 31st.

Tax Filing Obligations

Stamp duty applies to the conveyance of real estate assets and is payable by the purchaser. The rate of duty is 6% on the acquisition of commercial property and 1% on residential property up to a value of €1 million and 2% on the excess over €1 million.

Furthermore, Finance Bill 2017 introduced anti-avoidance provisions which apply the 6% stamp duty charge (effective from December 6th 2017) 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 6% 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 object 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 new rules will 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.

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

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

Tax Losses Forward

Rental losses can be carried forward and used to offset the tax liability on rental profits which may arise in a future period. There is no time period in which the losses must be used ie, 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 (ie, 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 2018 is calculated based on the market value of the property as at May 1st 2013.

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

Tax Clearance Certificates

Tax Clearance Certificates can now be obtained online through Revenue's Online System (ROS). A request is submitted online and tax clearance can be provided immediately where the 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.

10 Italy

Interest capping rule

For corporate income tax (IRES) purpose, interest expenses are deductible within the limit of interest revenues, and subsequently within the limit of 30% of the EBITDA. The interest expenses that exceed such limits can be carried forward and deducted in the following fiscal years without time limitations, however, only up to the amount of the interest revenues and 30% EBITDA of any following year (the latters net of the interest expenses of the same year). Any 'excess' of 30% EBITDA (ie, the amount exceeding the net interest expenses of that fiscal year) can be carried forward and used to increase the 30% EBITDA of the following fiscal years.

The tax treatment of interest expenses capitalised on assets (to the extent admitted) and of implicit commercial interest is not affected by this interest-capping rule.

Moreover, this rule does not apply to interest expenses that have been generated by loans/debts guaranteed by mortgages on real estate up for lease. Pursuant to law (as amended with effect from the tax period starting after October 7th 2015), the benefit of the exclusion of mortgage loans interest from the EBITDA limitation is applicable only to companies which carry on 'actually' and 'prevalently' real estate activity. This is met if the following conditions are fulfilled:
- the greater part of the total assets are formed by the fair value of properties up for lease;
- at least 2/3 of the revenues derive from building rentals and leases of business which is made prevalently by buildings.

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

With regard to intercompany non-interest bearing loans, pursuant to the amortised cost method, provided also by the national accounting standards, a notional interest cost should be booked in the P/L account. This interest cost is however not tax deductible. Similarly, the correspondent equity reserve is not relevant for ACE (NID) purposes (see below).

Check if there are any interest expenses that can be excluded from the capping rule.

Check if there are any interest expenses from previous years that have been carried forward; if so, check if they can be deducted in the year.

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

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

Check if the P/L includes notional interest booked with respect to intercompany non-interest bearing loans pursuant to the amortised cost method, to be excluded from tax deductible interest expenses.

Implementation of ATAD in the Italian corporate income tax system

It is worth noting that, with effects from fiscal year 2019, the Italian tax system will have to implement the ATAD (Anti-Tax Avoidance Directive, EU Directive 1164/2016). With particular reference to interest expenses, some of the current provisions do not comply with the provisions of article 4 of the Directive. As a result, some important changes to the current rules are expected.

In particular, in light of a law amendment proposal:

- ‘interest expenses’ should now include also interests capitalised on the cost of the assets;
- also ‘unused’ interest income (ie, in excess to interest expenses of the same year) might be now carried forward without any time limitation;
- the ‘unused’ 30% EBITDA (ie, in excess to net interest expenses of the year) might be carried forward for five years (currently, this carry forward is unlimited). In terms of utilisation order, after the 30% EBITDA of the year, the oldest excess should be used as first (ie, FIFO method);
- reference should be to the ‘fiscal’ EBITDA (currently, the rule considers the ‘accounting’ values); specific rules should be provided to handle the switch from accounting to fiscal EBITDA;
- in the context of the Tax Group regime, the deduction of excesses of net interest expenses of one entity (matured during the regime), can consider, in addition to 30% EBITDA excesses, also interest income excesses of the other participating companies (accrued anyway during the regime).

Full deduction should be provided, if stated conditions are met, for financing of public infrastructure projects.

Interest expenses concerning financings executed before June 17th 2016, whose amount or duration has not varied after that, should be deductible pursuant to new rules or using the 30% EBITDA excesses matured from 2010 and not yet used up to 2018.

The proposed law amendment does not consider the current favourable tax regime concerning mortgage financing for real estate companies (as defined). As this kind of exception is not contemplated by the ATAD, its repeal might be supposed; nevertheless, the presently proposed law amendment does not provide for its cancellation. Therefore, in the current framework, the future validity of this exception is unclear.

Tax losses carried forward

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

- tax losses incurred in the first three years of activity (provided that they derive from the launching of a new activity) can be used to entirely offset future taxable income;
- tax losses incurred in subsequent years can be used to offset only 80% of the taxable income of any following year. The remaining 20% must be taxed according to the ordinary rules (IRES rate: 24%), resulting in a kind of a ‘minimum corporate tax‘.

It is possible to combine the use of the two kinds of tax losses to reduce/offset the taxable income as much as possible. For this purpose, the taxable income of a year may be firstly reduced by 80% using the ordinary tax losses and secondly entirely offset by using tax losses generated during the first three periods of activity, if any, and up to the amount available.

The loss carried forward may be limited in the case of transfer of shares representing the majority of voting rights in the company's general meetings, if also the change of the business activity from which such tax losses derived intervenes in the year of transfer or in the preceding or following two years (exceptions exist).

These rules do not apply to tax losses pertaining to partnerships, which can be carried forward for five years (in the hands of partners), except for those produced in the first three fiscal years which remain 'evergreen' (however, some anti-abuse provisions have to be considered also in this case).

The carry-forward of tax losses (as well as of other tax attributes, namely: interest expense and ACE excesses) can meet limitations in case of tax neutral reorganisations (eg, mergers, spin-offs), in light of a specific anti-abuse provision.

The regional tax on production (IRAP) provisions do not allow any tax losses carried forward.

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

Make sure that the combination of different kinds of tax losses is suitable, also to maximise the offsetting of the future taxable income.

Check if the tax losses carried-forward are affected by the 'change of control' limitation or by other anti-abuse provisions.

'Passive' company legislation

The 'Passive' (or 'non-operative') company rule postulates that if an 'expected minimum' amount of revenues (calculated as a percentage of the average value of the fixed assets over a three-year period) is not reached ('operative test') the company is deemed to be 'non-operative', 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 (that cannot be offset by tax losses carried forward), calculated as a percentage of the value of the fixed assets owned. This rule applies also to partnerships.

Other implications for 'non-operative' companies include limitations to the tax losses carried forward and to VAT credit refunds/offsets.

In addition, the tax losses incurred in the years of 'non-operative' status are disregarded.

Moreover, from the tax period current on December 31st 2012, a company may be considered 'non-operative', regardless if its actual proceeds are higher than its expected ones, also in case it is in a 'systematic tax loss' position. A company is intended to be in a 'systematic tax loss' position if it declares a tax loss for five consecutive tax periods (before year 2014 the observation period was three years) or, in a five-year period, it declares a tax loss for four years and in the other year its actual revenues do not reach the 'expected minimum' ones. In this case, the company is deemed to be 'non-operative' in the year following the five-year observation period.

The law provides a list of circumstances in which the application of this legislation is automatically excluded. Out of these cases, if the 'non-operative' status is due to objective circumstances, the non-application of this regulation may be claimed by way of specific ruling. However, from FY 2016, in presence of such valid objective circumstances which did not consent the minimum level of revenues (or lead to a systematic tax loss position), the taxpayer can settle income taxes and fulfil relevant payment and reporting obligations without considering the non operative companies rules. The proper demonstration and related documentation have to be submitted to the Tax Office upon request. However, if this demonstration is deemed not sufficient to objectively justify the deviation from the expected revenues, the taxpayer is exposed to the penalties for untrue tax returns.

For companies which are deemed 'non-operative' the IRES rate is increased by 10.5% (therefore from 24% to 34.5%).

Check if the company satisfies one of the cases of exclusion from 'passive' company legislation provided by law.

Check if the actual revenues allow to comply with the 'operative test'.

If the 'operative test' is not passed or if the company is in 'systematic tax loss' position due to objective circumstances which prevented to reach the 'expected minimum' revenues, ask for the non-application of the 'passive' company regime by ruling duly documented or, alternatively, arrange a proper set of supporting documentation to be submitted to the Tax Office upon request.

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

Losses on receivables

In general, losses on receivables are deductible if they can be proved with 'certain' and 'precise' elements and, in any case, when the debtor is subject to bankruptcy and stated similar proceedings. 'Certain' and 'precise' elements also exist when the credit right is expired or the credit is written-off from the financial statements in compliance with the correct application of the accounting principles. Moreover, losses on receivables may be fully deducted when the following two conditions are met: i) their amounts do not exceed €5,000 (for companies with revenues higher than €100 million) or €2,500 (all the others) and ii) the credit has expired from at least six months.

Check if losses on receivables are supported by 'certain' and 'precise' elements. Check if the losses on receivables refer to debtors which entered into a special eligible proceedings.

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

Allowance for Corporate Equity

The Allowance for Corporate Equity (*Aiuto alla Crescita Economica,* or ACE) is a tax relief (applicable since tax period 2011) aimed to boost business capitalisation. It allows a yearly deduction for IRES purposes, corresponding to the 'notional' interest on net equity increases occurred in respect to the net equity existing at 2010 year end (net of the 2010 profit), computed with rate of 1.5% for FY 2018 and for the following years (the rate was 3% in FYs 2011–2013, 4% in FY 2014, 4.5% in FY 2015, 4.75% in FY 2016 and 1.6% in FY 2017). In each tax period, the ACE basis is capped at the level of the net equity at the end of the same tax period.

Relevant equity increases include: (i) shareholders' contributions in cash; (ii) waivers of shareholders' receivables; (iii) retained profits appropriated to capital reserves (except those allocated to 'unavailable' reserves). Relevant equity decreases include: (i) attributions/distributions to shareholders in any form and for any purpose; (ii) acquisition of interests in already controlled companies; (iii) acquisition of going business concerns or activities from other companies of the same group; (from FY 2016 and for subjects different from banks and insurance companies) increase, with respect to the end of year 2010, of securities, debentures and other financial instruments (other than shareholdings held as investment). To compute the deductible notional interest, in the year of their execution equity increases have to be adjusted pro-rata temporis; for the following years, the full amount of these equity increases is taken into consideration in the computation. Conversely, equity decreases reduce the ACE base since the beginning of the financial year in which they take place.

In connection with the adoption of revised national accounting standards (from FY 2016), specific provisions regulated the impacts on the ACE basis of the consequent variation of the accounting net equity.

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

The Italian tax authorities have implemented certain anti-avoidance provisions to prevent the abuse of the ACE system (namely, duplication of benefits by way of circular operations). For instance, equity contributions deriving from (pursuant to look through analysis) subjects resident in 'black list' countries (ie, tax haven) are not eligible to ACE deduction unless the absence of (actual or potential) duplication of benefit is/can be demonstrated.

As anti-abuse rule, the taxpayer can ask their disapplication by way of ruling, to the extent it can demonstrate that the abuse, which the law is aimed to prevent, does not arise in the concrete case. However from FY 2016, the taxpayer which considers as not abusive equity increases falling into anti-avoidance provisions and does not want to submit the ruling, can settle income taxes and fulfil relevant payment and reporting obligations without considering the anti-abuse rules. The proper demonstration and related documentation have to be submitted to the Tax Office upon request.

Consider if there are eligible net increases in equity in the relevant period.

Check if the eligible net increases in equity do not fall into anti-avoidance provisions.

If the eligible net increases in equity fall into anti-avoidance provisions, ask for the non-application of the anti-abuse rules by ruling duly documented or, alternatively, arrange a proper set of supporting documentation to be submitted to the Tax Office upon request.

Capital dotation of Italian branches of foreign entities

Legislative Decree No 147/2015 has updated the provision of the Italian Income Tax Code concerning the permanent establishment in Italy of foreign entities (eg, branch). In particular, it has been also explicitly stated that an Italian branch must have a 'congruous' capital dotation (free capital) for tax purposes (it may be also a notional dotation, made by way of treating as undetectable the relevant portion of interest accrued on the financing by the head office). Such capital dotation has to be determined according to the OECD guidelines, taking into account the specific features of the branch (ie, business activity and related risks and assets used to perform it).

The quantification capital dotation has direct impact on the calculation of the deductible interest expenses, as well as on the computation of the ACE deduction of the branch.

The new provision is effective from FY 2016, but it may be used by the Tax Office to carry on assessments on previous fiscal years with regard to the redetermination of the 'congruous' capital dotation (however, without penalties for the past).

In case of an Italian branch, check if its capital dotation (also in the form of Head Office's not bearing interest financing) can be considered congruous, in light of assets and risks owned by/attributed to the branch.

Transfer pricing documentary requirements

The setup of a Transfer Pricing (TP) documentation according to certain parameters allows avoidance of tax penalties in case of assessment on transfer pricing matters carried out by Italian tax authority (penalties range from 90% to 180% of the higher tax). The existence of such documentation has to be declared in the annual income tax return. It is worth to note that the Financial Bill 2014 has expressly extended the application of transfer pricing rules also to IRAP.

Map the intra-group transactions and evaluate the tax penalty profile of TP policies not fully compliant with the arm's length criteria, and act accordingly.

Local property tax (IMU) for builders

With effect from the balance payment of local property tax (IMU) for year 2013 onwards, builders are exempt from IMU with regard to buildings built and addressed to be sold (of any kind: residential or commercial/industrial), as long as they are not leased.

Consider the favourable impact of the provision for builders.

Revaluation of buildings – monitoring of recapture period

In previous years several revaluation laws allowed the tax relevant step-up of the investment assets, among which:
- Financial Bill 2014, for the purpose of the fiscal year in course on December 31st 2013 (year 2013, for calendar-year taxpayers);
- Financial Bill 2016, for the purpose of the fiscal year in course on December 31st 2015 (year 2015, for calendar-year taxpayers);
- Financial Bill 2017, for the purpose of the fiscal year in course on December 31st 2016 (year 2016, for calendar-year taxpayers).

However, the higher value was recognised: i) for tax depreciation purpose, from the third year following the one of step-up (thus, for the three provisions stated above from year, respectively, 2016, 2018 and 2019); ii) for capital gain/loss from disposal, from the fourth year following the option (ie, from year, respectively, 2017, 2019 and 2020).

Detect sales of revaluated real estate properties before the tax recognition of their step-up.

Consider that once the increased values are recognised for tax purposes they are relevant for depreciation, but also for 'passive' company legislation.

Shareholders' debt waivers

With regard to shareholders' debt waivers executed after October 6th 2015, the debt waived is taxable for IRES purposes in the hands of the subsidiary to the extent its accounting value, as booked in the subsidiary's general ledger, exceeds its related tax value in the hands of the shareholder.

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

In case of shareholders' debt waiver executed in the year, obtain the shareholder's communication in order to prevent (or limit) taxation of the contingent income.

Shareholders' debt waivers Domestic Tax Group regime extended to 'sister' companies

Italy has introduced the so-called 'horizontal' tax consolidation for corporate income tax (IRES) purpose: the Domestic Tax Group regime can now include also resident 'sister' companies, ie, companies which are not controlled (even indirectly) by the domestic consolidating entity, provided that all the subjects falling in the Tax Group perimeter are subject to the common control of a EU based company.

The change has been enacted by Legislative Decree No 147/2015 and is effective from the tax period in course on October 7th 2015.

In case of non-Italian EU group, if the foreign controlling company does not have a permanent establishment in Italy, it can designate the entity in the Tax Group perimeter which will act as consolidating entity.

In case the group has more Italian companies, consider if the tax consolidation regime is feasible and may allow tax efficiencies or other benefits.

New tax ruling for new relevant investments

Enterprises which intend to make investments in Italy for at least €30 million and with relevant positive effects on employment with regard to the activity object of the investments, will be entitled to submit a ruling to the Tax Office to address: (i) the tax treatment of the investment plan and of any eventual extraordinary operations that may be performed to implement the investment; (ii) eventual abuse of law and/or tax avoidance profiles of the intended investments; (iii) the request of disapplication of anti-avoidance provisions and/or of access to specific tax regimes. For this purpose, the intended investment and related plan have to be disclosed and detailed in the ruling.

The Tax Office replies within 120 days. This term can be extended in case of request of further information/documentation by further 90 days (starting from their submission). In absence of reply within the stated deadline, the tax treatments/conclusions proposed by the applicant are deemed as accepted and applicable (so-called 'silence-acceptance'). The Tax Office's reply (explicit or implicit) is binding till the terms and conditions of the new investment/business disclosed in the ruling remain unchanged.

Ministerial Decree dated April 29th 2016 and Tax Authorities provision dated May 20th 2016 set forth relevant application guidance.

Statute of limitation regarding tax assessment

Pursuant to Financial Bill 2016, starting from fiscal year in progress at December 31st 2016, tax assessments (for both Income Taxes and VAT purposes) can be notified within December 31st of the fifth year following the one in which the relevant tax return is filed (eg,: tax year 2016; filing of the tax return in 2017; tax assessment expiry term on December 31st 2022).

The statute of limitation can be extended by further two years in case of omitted filing of the tax return.

In case of filing of an amended tax return pursuant to the self-curing procedure, the aforesaid expiry terms shall run from the date of the amendment itself (eg,: tax year 2016; original filing of the tax return in 2017; filing of the amended tax return in 2018; tax assessment expiry term on December 31st 2023).

For tax years before the one in progress on December 31st 2016 (for both Income Taxes and VAT):

- tax assessments can be notified within December 31st of the fourth year following the one in which the relevant tax return is filed (eg, tax year 2015; filing of the tax return in 2016; tax assessment expiry term on December 31st 2020);
- in case of omitted filing of the tax return, the above term is extended by one further year;
- in case of violations relevant for tax criminal law, reported to the Public Prosecutor within the ordinary statute of limitation, the above term is doubled (ie, in case of timely filed tax return, December 31st of the eight year following the year of filing).

Tax credit for companies without employees

Pursuant to Financial Bill 2015, with effect from fiscal year 2015, labour costs concerning open-ended jobs are fully deductible for IRAP purposes.

In this contest, in order not to disadvantage companies without employees, the latter can benefit from a tax credit, to be used to offset all kind of taxes, equal to 10% of the annual IRAP liability. Such tax credit gives rise to a non-contingent income subject to IRES taxation.

In case of company without employees, check if it may be convenient to take benefit from this rule.

Country-by-Country Reporting (CbCR)

With effect from FY 2016, the Country-by-Country Reporting (CbCR) regulation has been enacted. In particular, multinational groups with global turnover exceeding €750 million and mandatorily drawing-up the consolidated financial statements, have to report specific data in each jurisdiction where they are present.

The Italian entities belonging to a multinational group in the scope of this regulation, has to:
- communicate to the Italian Tax Authority, in its income tax return:
  - its CbCR status (eg, ultimate parent entity, constituent entity);
  - certain information of the ultimate parent entity and of the reporting entity (in principle, apart certain cases, the reporting obligation is in the hands of the ultimate parent entity – ie, the one that prepares the consolidated financial statements);
- file to the Italian Tax Authority the CbCR related to the whole group, within 12 months from the last day of the year subject to reporting, if:
  - the ultimate parent entity is not required to file the CbCR in its jurisdiction, and/or
  - the jurisdiction where the ultimate parent entity is resident for tax purposes, does not have a Qualifying Competent Authority Agreement in force with Italy for the exchange of the CbCR.

Check if the requirements to file the CbCR are met (ie, existence of a multinational group with turnover exceeding €750 million and obliged to draw-up consolidated financial statements).

If in CbCR scope, check the status of the Italian entity (eg, parent entity, constituent entity).

Check if the ultimate parent entity is required to file the CbCR in its jurisdiction. If so, check if this jurisdiction has a Qualifying Competent Authority Agreement with Italy for the exchange of CbCR information.

In case the Italian entity has to file the CbCR for the whole multinational group (this should be if the questions in previous paragraph are negative), collection of all the information to be reported pursuant to the CbCR regulation.

11 Latvia

Changes in 2018 and as of January 2019

On January 1st 2018 Latvia implemented tax reform. The new approach follows the Estonian tax model introducing 0% Corporate income tax (CIT) on re-invested profits and effective 25% on profit distribution including deemed profit distribution.

The Personal income tax (PIT) Act has introduced a progressive PIT rate.

As of January 1st 2019, following the obligation to implement provisions of the Directive 2016/1164, the CIT Act will be supplemented with the CFC rules.

It is also planned that the amendments to the Taxes and Duties Act in respect to transfer pricing requirements shall be introduced in 2019 with the retrospective effect from January 1st 2018, covering related party transactions.

Taxation of dividends

PIT: The new tax reform raised the rate of PIT on dividends to 20%, subject to tax exemption on dividends already subject to PIT or CIT at source. At the same time there is a two-year period of transition during which dividends continue to attract a 10% PIT if paid out of profits generated before January 1st 2018.

CIT: Flow through dividends paid subject to CIT at the effective 25% rate with the possibility to exclude retained earnings received from qualifying companies would not be included in the CIT base.

Review your dividend payment policy in order to benefit from the new tax reform (eg, profits paid out of retained earnings up to December 31st 2017 are not a subject to CIT).

Management fees

As of January 1st 2018 management fees paid to non-residents are subject to a 20% withholding tax (WHT). However, WHT may be eliminated under provisions of the respective tax treaty. In order to apply for a more favourable tax regime, the non-resident has to provide the payer with a residence certificate.

Given the fact that settlements are often made at year end, the Latvian payer should obtain this certificate from the income recipient to ensure income is not taxed before the submission deadline of the last CIT return (ie, January 20th of the following year).

Sale of shares and securities

In line with the new 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 (ie, three years). Mentioned relief is not applicable to the shares held in the companies established in black-listed jurisdictions.

Please note there are specific rules for the sale of real estate company shares by non-residents.

If relevant, please take into account that income gained on disposal of shares held for 3 years or more may be used in order to reduce CIT taxable base.

Sale of real estate/rental income

The sale of property by non-resident directly is subject to 3% WHT. The same applies also to the sale of company shares, if at least 50% of the assets in this company at the beginning of the year of disposal or in the previous year are formed by real estate.

Non-resident from the EU or tax treaty country can choose whether to pay 3% WHT from the sales proceeds or 20% tax from the profit. The same principle applies to income from consulting services.

The change of real estate ownership attracts a stamp duty payable at 2% of the acquisition price. If a real estate is invested in a company's share capital, the stamp duty is 1% of the amount to be invested as share capital.

In case of the sale of real estate EU/tax treaty resident may choose between 3% WHT payment calculated on total income or 20% tax on profit.

Losses carried forward

The New CIT Act does not include the concept of tax losses.

Transitional rules stipulate that the tax losses can be utilised by the companies during five financial years (beginning in 2018) by deducting an amount equal to 15% of the total loss brought forward from CIT calculated on dividends for the financial year. However, such deduction is capped at 50% of the amount of CIT charged on dividend for the financial year.

Review the possibilities to utilise tax losses carried forward in next 5 years.

Deductibility of interest payments

Under the New CIT regime CIT is payable on the increased interest payments. The allowable interest shall be calculated applying following methods:

Method 1: The threshold is applied through calculating the 30% EBITDA of the loan receiver and is applied only if the receiver's annual interest expenses exceed €3 million, including, finance lease interest expenses. In this case the annual interest expenses exceeding the threshold are considered as a taxable item for CIT purposes.

Method 2 anticipates that interest is deductible, if the average liability does not exceed four times shareholders' equity at the beginning of the tax year less any revaluation reserve, excluding, finance lease interest expenses.

In case both methods are applicable, the higher of the two amounts calculated which exceed the afore-described threshold should be added to the CIT taxable base.

Qualifying loans from credit institutions do not fall under the mentioned regulation.

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

Declining method depreciation for fixed assets

The New CIT Act does not provide depreciation for tax purposes.

The deferred tax losses are eliminated as of January 1st 2018.

Exchange of shares

Where a share exchange takes place (one kind of shares being exchanged for another kind without receiving any other type of consideration), no disposal of shares is considered to take place within the meaning of the PIT Act and hence payment of personal income tax is postponed to a future date when the person will sell the shares acquired through exchange.

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

Provision for bad debts

The New CIT Act provides that provisions for bad debts do not become a subject to CIT if debts are repaid during 36 months period.

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.

Consider whether the particular debt complies with these criteria.

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 might result in the non-acceptance of group charges and penalties for tax purposes.

The amendments to the Tax and Duties Act with the retrospective effect to apply as of January 1st 2018 will introduce detailed requirements regarding the obligations in the transfer pricing field. The obligation to submit TP documentation, both Master and Local file or only one of them and submission deadlines will further depend on the amount of the controlled transactions and the respective partners of the transaction.

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.

In accordance with The National Cadastre of Real Estate Act the cadastral values will change once every two years if the property market or factors affecting the value of an area have changed.

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

Value Added Tax (VAT) legislation regarding sale of real estate in Latvia

According to VAT Act sale of unused real estate (RE) and development land attracts the standard VAT rate.

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

Unused RE within the frame of VAT Act means:
- Newly constructed buildings (and an associated land unit or its part) or structures (including any fitted stationary equipment) that are not used after completion;
- Newly constructed buildings (and an associated land unit or its part) or structures (including any fitted stationary equipment) that are used and sold for the first time within a year after completion;
- Buildings (and an associated land unit or its part) or structures that are not used after completion of renovation, reconstruction or restoration (RRR) work;
- Buildings (and an associated land unit or its part) or structures that are used after completion of RRR work and sold for the first time within a year after completion;
- Incomplete construction items (and an associated land unit or its part); and
- Buildings (and an associated land unit or its part) or structures undergoing RRR before completion.

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

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

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

VAT grouping

The VAT grouping facility helps related companies reduce their administrative burden and improve cash flows, as their mutual transactions no longer attract VAT. A single VAT return can be filed covering all group companies. This especially benefits group companies with both taxable and exempt supplies and companies that have extensive sales outside Latvia.

Consider the option of creating a VAT group.

Reverse-charge VAT on construction services

Reverse-charge VAT is applied to construction contracts signed after December 31st 2011.

Make sure that reverse-charge VAT has been applied correctly.

Permanent establishments

If you have not registered a legal entity or a branch in Latvia, consider if your business operations have not created a permanent establishment (PE), which requires a CIT compliance in Latvia.

Consider the requirements for registering a PE in Latvia.

12 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 states or in countries that are the members of OECD, NATO or EEA and receive relevant permissions from local authorities.

Additional restrictions are applied in respect of acquisition of agricultural land. Individuals and companies (both local and foreign) are allowed to buy up to 500 hectares of farmland (or more if the buyer is a stockbreeder and some other conditions are met).

Real estate related transactions are subject to a notary's approval. The notary fee charged in case of a sale and purchase of real estate amounts to 0.45% of the real estate price but not lower than €28.96 and not higher than €5,792.4. Besides, changes in real estate ownership rights must be registered with the Real Estate Register. The amount of the fee charged for the registration of a title to immovable property depends on the type and value of the property.

In case of a share deal the transfer of shares in a real estate holding entity is subject to the notary fee of 0.4–0.5% on the value of transaction (the fee shall not be less than €14.48 or exceed €5,792.40), when:
- ≥25% of limited liability company's shares are sold;
- The sale price of the limited liability company's shares sale exceeds €14,500 except for certain exemptions.

State duties imposed upon the registration of a transfer of real estate are typically not material and vary depending on the real estate value (up to €1,448.10).

It is advised to monitor Lithuanian land law for possible changes.

Group Taxation

Generally, tax grouping is not allowed in Lithuania, thus each company is taxed separately. However, current year operating tax losses can be transferred to another legal entity of the group if certain conditions are met (see section 'Losses Carried Forward' below).

Real Estate Tax (RET)

The real estate tax (RET) is applied both for local and foreign tax residents holding real estate in Lithuania. RET is levied on the value of immovable property owned by legal entities. RET rate ranges from 0.3% to 3% depending on the local municipality.

In Vilnius, the RET rates established for 2018–2019 are:
- 1% – standard RET rate;
- 0.7% – for cultural, leisure, catering, sport, educational or hotel buildings (with some exceptions);
- 3% – for actually used real estate, that is not 100% completed and for real estate that is not used at all or is abandoned or unattended.

Immovable property owned by individuals and used for commercial purposes is also subject to real estate tax.

Residential and other personal premises owned by individuals are exempt from tax where the total value of €220,000 is not exceeded, whereas the excess value is subject to progressive taxation:

- 0.5% RET rate is applied on taxable value exceeding €220,000 but not exceeding €300,000;
- 1% RET rate is applied on taxable value exceeding €300,000 but not exceeding €500,000;
- 2% RET rate is applied on taxable value exceeding €500,000.

Total non-taxable value is increased by 30% to real estate held by families which meet certain criteria.

RET base is the average market 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. 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%.

RET return should be submitted to the Tax Authorities and the tax due should be paid until December 15th of the current tax period.

Real estate tax rates as well as other conditions in specific municipality should be followed in case of possible changes.

Procedure of Filing advance Real Estate Tax Return

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 used for more 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 real estate is also VAT-exempt (with some exceptions).

However, taxable persons are entitled to opt for taxation of sale of buildings older than 24 months or land and buildings' rental services with VAT if such buildings/land are sold or rented to VAT payers. If option is exercised, it has to be applied consistently for 24 months.

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

VAT treatment of services related to Accommodation Services

The official Commentary of the VAT Law on the application of 9% VAT rate to the supply of accommodation services was supplemented with additional explanations based on the decisions of the European Union Court of Justice.

In cases when together with accommodation services secondary services, which make the accommodation services more appealing are provided (without additional fees, eg, access to water entertainment area), the secondary services should be considered to be inseparable from the main services, ie, accommodation services. 9% VAT rate should be applied for such composite supply.

Reverse-charge VAT on construction services

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).

Each case should be analysed separately in order to comply with reverse-charge mechanism correctly.

IT-based tax administration system – i.MAS

The Lithuanian Tax Authority has introduced an IT-based tax administration system (‘i.MAS’). The Tax Authority is collecting data from taxpayers and is using this data for control purposes.

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, with effect from 2017 till 2019, companies established in Lithuania are required to prepare their accounting data in a SAF-T file and upon request provide it to the Tax or other Authority. The Tax Authority is currently implementing the IT solution to check SAF-T files. It is expected that the first requests will be raised in 2019.

Corporate Income Tax

Standard Corporate Income Tax (CIT) rate is 15%. Small entities (ie, entities with fewer than ten employees and less than €300,000 gross annual revenues) can benefit from a reduced corporate income tax rate of 0% for the first tax period and 5% for the consecutive tax periods with certain exceptions.

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

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

Subject to permission from the State Tax Authorities, a taxable period other than the calendar year may also be used by companies. In that case, the payment and declaring terms should be changed accordingly.

Dividends Exemption Rule

Dividends distributed by a Lithuanian company to another Lithuanian company are subject to a 15% 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 and the distributing entity is subject to 5% or 15% Lithuanian CIT rate (except for blacklisted territories).

Dividends distributed by a foreign company are subject to a 15% 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.

As of March 26th 2016, dividend exemption to the taxation of dividends paid to and/or received from foreign legal entities are not applicable to the structure or several structures if the main purpose or one of the main purposes of them is to obtain a tax advantage, which contradicts to the object and purpose of EU Council Directive (2011/96/EU Directive and its partial amendments 2014/86/EU and 2015/121/EU) regarding common tax system, which is applicable for parent and subsidiary companies of various EU member states. The taxation exemption of dividends received from a foreign legal entities, are not applicable to dividends, which were used to reduce the profit of foreign legal entities, which is subject to corporate income tax or an equivalent tax.

Due to the recent initiatives to fight against tax avoidance and aggressive tax planning Lithuanian Tax Authority pays more attention to the substance of holding companies. Therefore, holding companies investing in RE subsidiaries should have an adequate substance in order to benefit from dividend exemption rule.

Procedures of Calculation, Declaring and Paying the advance Corporate Income Tax (CIT)

Advance CIT due can be calculated based on result of the historic tax periods as follows:
- advanced CIT for the first six months of the tax period (I and II quarters) is calculated according to the CIT liability from the tax period which was before the last tax period (advance CIT for the first six months of 2018 is calculated according to the actual amount of CIT paid for the year 2016);
- advanced CIT for the seventh–twelfth month of the tax period (III and IV quarters) – according to the CIT liability of the previous tax period (advance CIT for the second half of 2018 is calculated according to the actual amount of CIT paid for the year 2017).

The annual CIT return should be submitted and tax should be paid until the 15th day of the sixth month of the next tax period.

The advance CIT return when CIT is calculated according to historic CIT liability, should be filed:
- for the first six months of the tax period – not later than on the 15th day of the third month of the tax period;
- for the seventh-twelfth months of the tax period – not later than on 15th day of the ninth month of the tax period.

Alternatively, advance CIT can be calculated based on forecasted annual CIT amount. In such case, the advance CIT return should be submitted and advance CIT should be paid not later than on the 15th day of the third month of the tax period.

Depreciation of fixed Assets

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

Land is not subject to tax depreciation.

Withholding tax on Sale of Real Estate

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

Withholding Tax on Interest

Interest paid from Lithuanian companies to foreign companies established in the EEA 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.

It is highly advised to analyse the facts thoroughly before applying withholding tax exemptions.

Deduction of interest expenses

Interest on the debt in excess of the controlled debt-to-fixed-equity ratio of 4/1 is non-deductible for corporate income tax purposes if the company cannot substantiate that the same loan under the same conditions would be received from a non-associated party. This is applicable in respect of the controlled loans provided and/or third party loans guaranteed by a related party.

As a result of BEPS initiative, new interest limitation rules related to the company's EBITDA (30% EBITDA rule) shall be introduced in 2019. According to the draft law, exceeding borrowing costs shall be deductible in the tax period in which they are incurred only up to 30% of the taxpayer's taxable EBITDA.

Exceeding borrowing costs are calculated as the amount by which the borrowing costs of a taxpayer exceed interest revenues (ie, interest income minus interest expenses). Interest includes interest on all forms of debt (from related as well unrelated parties).

The company in Lithuania is given the right to deduct exceeding borrowing costs up to €3,000,000 (de minimis threshold). This amount shall be considered for the all the entities in Lithuania that belong to the same group.

Where the entity exceeds 30% of taxable EBITDA rule, an additional possibility is provided to calculate the group's ratio of third party borrowing costs to group's taxable EBITDA (where it is higher than 30%). This rule may be applied only where the Lithuanian company is a member of a consolidated group for financial accounting purposes according to Lithuanian laws.

Ensure compliance with thin capitalisation rule. If 4/1 ratio is exceeded, consider repayment of debts or increase of equity. Consider upcoming new interest deductibility restrictions.

Transfer Pricing

All related-party transactions have to comply with the arm's length principle. Legal entities the turnover of which exceeds €2,896,200 should have transfer pricing documentation for the transactions with related parties. Failure to present appropriate documentation to the tax administration may result in additional taxable income and/or non-deductible expenses resulting from controlled transaction for tax purposes.

From January 1st 2017 personal penalties for CEO in the range from €1,400 to €4,300 could be imposed for non-compliance with the transfer pricing documentation requirements. Penalties in the range from €2,900 to €5,800 could be imposed for repeated offences, if any.

Country-by-Country Report (CbCR) Master file/local file documentation

Multinational group the consolidated revenue of which exceeds €750 million shall annually file Country-by-Country Report (CbCR) to the tax authority of the jurisdiction of tax residence of the ultimate parent entity (or a surrogate parent entity in case there are no CbCR requirements in the jurisdiction of the ultimate parent entity). CbCR should include information about the revenues from related and unrelated parties, income tax paid, stated capital, number of employees and other data for each jurisdiction in which Group operates.

Lithuanian rules on the preparation and submission of the CbC report provide that the CbCR notification (ie, information for Lithuanian tax authorities about the legal entity filing the CbC report on behalf of the multinational group of companies) is to be submitted in a free form by the end of the Lithuanian company's financial year.

The new BEPS-based draft transfer pricing rules have been prepared and currently pending in Lithuania, which provide that a global Masterfile covering information relevant to the entire group of companies must be prepared for the following year if the taxpayer’s turnover exceeded €15 million (the draft rules are expected to be applicable starting from the tax year 2018).

A Local file documentation must be prepared for the following year if the turnover of a taxpayer exceeded €3 million.

Domestic transactions under €30,000 may be excluded from the transfer pricing documentation requirement unless the cumulative amount of such transactions exceeds €90,000 or such transactions are closely linked to another transaction in excess of €30,000.

Transfer pricing documentation has to be prepared by the June 15th.

Check if the requirements of CbCR are met. The arm’s length principle and future implementation of the ATAD interest deductibility limitation should be duly followed and documented in order to avoid negative tax consequences.

Loses Carried Forward

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

Check if there are any tax losses that can be carried forward.

Land Tax

Land tax applies on land owned by companies and individuals, except for the forest land. The tax base depends on the full average market value according to the mass valuation, which is performed not rarer than every five 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 tax rates range from 0.01% to 4% depending on local municipalities. In Vilnius, the Land tax rates established for 2018 are:
- 0.08% – tax rate for individuals;
- 0.12% – tax rate for companies;
- 4% – for the land that is not used and for the land with buildings recognised as unauthorised construction.

The taxable period for land tax is the calendar year. Returns are sent by the State Tax Authorities to taxpayers by November 1st of the current year and the tax due has to be paid by November 15th of the current year.

Land tax rates in specific municipality should be followed in case of possible tax rate changes.

Land Lease Tax

Users of state-owned land are subject to land lease tax. The minimum tax rate is 0.1% and the maximum rate is 4% of the value of the land. The actual rate is established by the municipalities.

The taxable period for land lease tax is a calendar year. Tax due has to be paid by November 15th of the current calendar year.

Personal Income Tax

For local and foreign individuals sale of real estate located in Lithuania is subject to 15% PIT. Tax is levied on the capital gains, ie, sales proceeds less acquisition costs (however, a foreign individual can achieve this only by submitting an additional request for re-calculation of tax to the Lithuanian Tax Authority, since initially the tax is calculated on the gross proceeds).

Income from rent of real estate located in Lithuania for local and foreign individuals is subject to 15% PIT on gross income. If rental income is received from registered individual activity, PIT is levied on the profits (income less expenses). Upon certain conditions, individuals can opt to pay a fixed amount of tax on rent of privately owned real estate once a year.

There is no separate gift tax applicable in Lithuania – the gifts received by individuals are subject to personal income taxation. Income received as gift from spouses, children (adopted children), parents (foster parents) brothers, sisters, grandchildren and grandparents, as well as income not exceeding €2,500 during the calendar year received as a gift from other individuals is non-taxable.

Procedure of Tax Return Filing

Taxpayers can submit tax returns only electronically.

13 Luxembourg

Corporate tax rate

The aggregate income tax rate for 2018 is 26.01% for entities registered in Luxembourg City:
- Standard corporate income tax rate is 18% for taxable income exceeding €30,000. Companies with a tax base of less than €25,000 benefit from a reduced rate corporate income tax rate of 15%. Companies with a tax base between €25,000 and €30,001 are subject to a corporate income tax of €3,750 plus 33% of the basis above €25,000;
- Municipal business tax is also levied at rate generally varying from 6.75% to 12.60% 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 1.26% of their taxable income (ie, 7% rate assessed on the 18% income tax).

Losses carried forward

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

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

Tax losses cannot be carried back in Luxembourg.

Net Wealth Tax

Companies resident in Luxembourg are subject to an annual Net Wealth Tax (NWT) 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 €500 million: 0.5%;
- for a unitary value exceeding €500 million: 0.05% on the portion of the unitary value above €500 million and €2.5 million (ie, €500 million at 0.5%).

Some exemptions are available under the Luxembourg participation exemption regime (eg, shares in certain companies) or by virtue of the applicable Double Tax Treaties (eg, 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 and cash at bank (as reported in their commercial accounts presented in the standard Luxembourg form) exceeds 90% of their total gross assets and €350,000, are subject to a minimum NWT charge of €4,815.

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

Withholding Tax

There is no withholding tax on interest.

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

Liquidation proceeds 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.

VAT

VAT Grouping implemented in Luxembourg

The VAT grouping legislation has been introduced in Luxembourg with effect from July 31st 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
  - Organisational 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 July 31st 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 January 1st 2017, directors' fees paid to directors (private individuals) are subject to 17% VAT, based on the Circular issued on September 30th 2016.

Since January 1st 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)

On June 19th 2018, the Luxembourg Government published a draft Bill (No 7318) (the 'Draft Law'), that would implement ATAD in the Luxembourg domestic law. The Draft Law will come into force on January 1st 2019 and covers the following measures:

Interest limitation rules

The Draft 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) €3 million. 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 5 years.

The Draft Law also provides for a grandfathering to be applied to any loans granted to a Luxembourg company before June 17th 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 excluding from the scope of the interest limitation rules.

Controlled foreign company rules (CFC)

The Draft 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.

Intra-EU anti-hybrid rule

The Draft Law includes anti-hybrid provisions covering only intra-EU hybrid instruments and hybrid entity mismatches. Further hybrid mismatches measures based on Hybrid Mismatches with Third Countries Directive (ATAD II), covering a wider range of intra-EU mismatches, but also mismatches with third countries, will be included in a subsequent law expected in the course of 2019, and having effect from January 1st 2020.

Based on the Draft Law, where a hybrid mismatch (ie, difference in the legal characterisation of a financial instrument or entity) or the commercial or financial relations between a taxpayer and an associated enterprise in different Member States give rise to a deduction of the same expenses/losses in both Luxembourg and the Member State where the expenses are originated (double deduction), or deduction in Luxembourg and non-inclusion of the corresponding income in the net revenues in the other Member State (deduction with no inclusion) such advantage will be eliminated either via a denial of deduction in the Member State of the recipient (in case of double deduction) or denial of the deduction in the Member State of the payer (in case of deduction without inclusion). For the purpose of this provision an associated enterprise implies a 25% participation (in case of hybrid financing instruments) and a 50% participation (in case of hybrid entity) threshold in voting rights, capital ownership and profit entitlement.

General anti-abuse rule (GAAR)

Draft Law aims at modernising the existing general anti-abuse rule as provided by the Adaptation Law. Under the Draft Law text, 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 (will come into force on January 1st 2020)

The Draft Law modifies the existing exit taxation rules and amends the existing taxation deferral rules to provide for a payment of tax in instalments over 5 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 instalments over a period of 5 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.

This Draft Law still needs to go through the Luxembourg legislative process, and may be subject to amendments before the final vote by the Luxembourg Parliament.

Transfer Pricing

New disclosure obligations

As from 2017 tax return, the following TP 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. No 56/1–56bis/1 of December 27th 2016).

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

Development concerning Country-by-Country Reporting (CbCR)

On July 10th 2018 a regulation (règlement grand-ducal), was published by the Ministry of Finance, identifying the list of jurisdictions with which the LTA will exchange the CbCR received from the Luxembourg reporting entity in a Multinational Group (MNE). Such regulation amends and replaces the previous règlement published on February 20th 2018.

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 (eg, bookkeeping, phone line, etc). In particular, with respect to the day-today 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.

Intellectual Property (IP) tax regime

The new IP regime adopts the 'nexus approach', to ensure that only activities with enough substance can qualify for beneficial treatment. Under the nexus approach, a ratio should apply, ensuring that the proportion of income that may benefit from the exemption regime is the same as the one existing between qualifying expenditures and overall expenditures.

Similarly to the previous regime, eligible net income from qualifying IP rights would benefit from a 80% income tax exemption. IP assets qualifying for the new regime also benefit from a full exemption from Luxembourg's net wealth tax.

IP income benefiting from the transitional rules under the former IP regime can switch to the new regime, such election being non-cumulative and irrevocable.

The new IP regime is applicable as from January 1st 2018.

14 Malta

Notional interest deduction (NID)

Maltese companies have the option to claim a deduction for notional (deemed) interest (NID) on their risk capital which is calculated by multiplying the deemed notional interest rate by the balance of risk capital that the undertaking has at year-end.

- The notional interest rate is the risk free rate set on Malta Government Stocks with a remaining term of approximately 20 years plus a premium of 5%.
- The risk capital of the undertaking includes mainly share capital, share premium, reserves and interest free loans as at year-end.
- The NID may also be claimed by a Maltese permanent establishment of a non-Maltese resident undertaking. In that case, the risk capital is taken to be the capital attributable to the permanent establishment.
- The NID may be claimed as a deduction by the undertaking against its chargeable income for the year.

The maximum deduction in any given year cannot exceed 90% of chargeable income. Any excess can then be carried forward to the following year. Any remaining chargeable income is subject to tax at the standard rates.

Certain anti-avoidance rules apply to prevent abuses of the NID.

Investment aid

The Malta Enterprise Corporation (MEC) (the Maltese Government agency focused on attracting FDI in Malta) manages a number of programmes that seek to support entities in various sectors and industries. Such programmes include Investment Aid Tax Credits that are intended to sustain the regional industrial and economic development of Malta. This measure facilitates initial investments by encouraging the setting up of new establishments and the expansion and development of existing businesses. The tax credits are normally based on the level of approved qualifying capital expenditure as well as the allocation of property for industrial purposes. MEC also processes applications for the allocation of property for industrial use.

MEC also supports industrial research or experimental development carried out for the acquisition of knowledge leading to the development of innovative products and solutions.

VAT Grouping

The primary benefit of VAT Grouping is a material simplification of group compliance requirements, arising from the fact that two or more legal persons established in Malta may apply to the Commissioner, to be registered as a single taxable person for the purposes of the VAT Act, subject to the satisfaction of certain specific conditions.

As a result, upon successful registration, transactions taking place between persons who form part of a VAT group are disregarded and fall outside the scope of Maltese Vat legislation.

Two main conditions that need to be satisfied included that:

- At least one of the applicants is a taxable person who is licensed or recognised in terms of the legislation listed in the Schedule to the Legal Notice. This legislation contemplates (but is not limited to) taxable persons who are licensed in terms of the Banking Act, the Financial Institutions Act, the Insurance Business Act, the Gaming Act and the Lotteries and Other Games Act, amongst others; and
- Each of the applicants is bound to each of the others by financial links, organisational links and economic links.

In addition to these two primary conditions, the regulation also establishes other requirements that will need to be satisfied in order to establish a VAT Group.

A formal application form for legal persons established in Malta, which include non Maltese entities which have a fixed establishment in Malta, must be filed by the Commissioner for Revenue to be able to apply for VAT grouping.

Malta Individual Investor Programme

The programme allows for the grant of a certificate of naturalisation as a citizen of Malta to any foreign individuals and their families subject to the satisfaction of the conditions under the programme.

In order to be eligible to apply for the programme, an individual must at least be 18 years of age, commits to provide proof of a residential address in Malta (minimum value of €350,000 or annual rent of €16,000), commits to make an investment (at least €150,000) in securities or bonds listed on the Malta Stock Exchange, be covered by an indefinite global health insurance policy (including his/her dependents), and provides proof of residency in Malta as required by the programme, which will be established on a case by case basis, by demonstrating certain links to Malta, including some period of presence in Malta.

The qualifying investment and qualifying property should be retained for a minimum period of 5 years from the date of issuance of the Maltese passport.

Furthermore, an applicant and his/her dependants will need to undergo a comprehensive due diligence process carried out by the Maltese authorities.

In addition to satisfying the application requirements, the following contributions shall be required to qualify under the programme:

Main applicant: €650,000, of which €10,000 is to be paid at the initial stages of the application, Spouse: €25,000, Children below 18 years of age: €25,000 each, Unmarried children between 18 and 26 years of age: €50,000, Dependant parent above 55 years of age: €50,000.

Government due diligence fees would be due as follows: Main applicant: €7,500, Spouse: €5,000, Children between 13 and 18 years of age: €3,000 each, Unmarried children between 18 and 26 years of age: €5,000, Dependant parent above 55 years of age: €5,000.

Typically the Maltese passport would be issued within 12 to 18 months.

Malta Residence and Visa Programme

This programme allows the applicant and dependants to obtain a residence permit that allows the beneficiaries to reside, settle or stay indefinitely in Malta. Also, beneficiaries and their registered dependants are free to travel within the Schengen Area.

For an individual to qualify as a beneficiary a number of conditions should be fulfilled and include amongst others the payment of a contribution of €30,000. An additional contribution of €5,000 should be paid for parents or grandparents of the main applicant and/or spouse to benefit from the residency rights issued under the Certificate.

Furthermore the following should be satisfied:

- Investment in securities or bonds listed on the Malta Stock Exchange of at least €250,000;
- investment in qualifying property in Malta of a minimum value of €320,000 (or €270,000 for property situated in Gozo or in the South of Malta). Alternatively, applicants may rent property in Malta for at least €12,000 per annum (or €10,000 per annum for property that is situated in Gozo or in the South of Malta). The qualifying investment and qualifying property should be retained for a minimum period of 5 years from the date of issuance of the certificate.
- the applicant should provide an affidavit declaring that the annual income arising outside Malta is not less than €100,000 or is in possession of a capital of at least €500,000.

Furthermore, an applicant and his/her dependants will need to undergo a comprehensive due diligence process carried out by the Maltese authorities.

15 Netherlands

Corporate Income Tax Act

Budget Day 2018

Corporate income tax rate

It is proposed that starting in 2020, the corporate income tax (CIT) rate will be incrementally reduced to 20.5% (compared to 22.5% in the original proposal). The step up rate applicable to taxable profits up to €200,000 will be reduced to 15%.

In 2019 the CIT rate will not be reduced and therefore remains 25% and the step up rate remains 20%.

Fiscal investment institutions

Under the original proposal of Budget 2018, Fiscal Investment Institutions (FII) would no longer be allowed to invest in Dutch real estate directly as from 2020. As a result income from Dutch real estate investments held by listed and non-listed real estate funds (such as Real Estate Investment Trusts – REITS) would have become subject to Dutch CIT at the ordinary rates.

This proposal has now been withdrawn as a result of which the tax position of FII's investing in Dutch real estate will remain unchanged for the time being.

Amongst other requirements, Dutch FIIs have the requirement to distribute all their taxable profits within 8 months from the end of the financial year. It is therefore important to review whether the FII's (8 months) distribution requirements are met.

Earnings stripping rule

As of 2019, an ATAD 1-based new earnings stripping rule will be implemented into Dutch domestic tax law with effect for financial years starting on or after January 1st 2019. The earnings stripping rule is a measure that limits the deductibility of 'excess' interest expenses for Dutch corporate income tax purposes. Net-interest expenses in excess of 30% of taxpayers EBITDA will generally be non-deductible for Dutch corporate income tax purposes. A threshold of €1 million of net-interest expenses will be deductible regardless of the taxpayers EBITDA.

Any non-deductible interest will in principle be available for carry forward indefinitely. Anti-abuse rules, however, ensure that any unused interest carry forward is forfeited in cases of change of control (change in ultimate interest of 30% or more).

The definitions of interest income and interest expenses are broad and, inter alia, include currency exchange results and costs relating to the issuance of the instrument.

The level of EBITDA and net-interest expenses is determined at fiscal unity level. The ATAD provides EU Member States with the option to implement several exceptions to the EBITDA-rule. These options include:

- grandfathering for interest expenses on existing loans,
- a group escape mechanism whereby interest is still deductible if certain group ratios are met,
- an exemption for interest paid in relation to long-term infrastructure projects,
- an exemption for financial institutions. The Dutch government has opted to provide for a grandfathering rule for existing Public Private Partnership projects but has decided not to include any of these other possible exceptions in the Dutch implementation of the EBITDA-rule.

A specific rule has been proposed to include capitalised interest in the scope of the EBITDA-rule.

The earnings stripping rule may have a significant impact for real estate companies, as contrary to current rules, the deduction of interest on third party (bank) loans may be restricted. It is recommended to model the impact of earning stripping rules and where required take necessary measures and the tax consequences thereof. It may for example appear helpful to terminate an existing fiscal unity to make use of the €1 million threshold multiple times. Terminating fiscal unities, however, may have CIT consequences, which should be carefully checked.

Abolition of interest deduction limitations

Concurrent with the implementation of the generic EBITDA interest deduction limitation, several of the specific interest deduction limitation rules included in the Dutch Corporate Income Tax Act will be abolished. These will be the interest deduction limitation for acquisition vehicles (art. 15ad CITA) and the interest deduction limitation for excessive participation debt (art. 13l CITA). Notably the interest deduction limitation with respect to base erosion upon conversion of equity into internal debt (art. 10a CITA) will not be abolished.

Possibility of loss compensation

Currently, losses can be carried back for one year and carried forward for nine years.

On Budget Day 2018 it is proposed that, as of January 1st 2019, the loss carry-forward is reduced from nine to six years for losses incurred in book years commencing on or after January 1st 2019. Losses incurred before 2019 can still be carried forward for nine years. The loss carry-back period remains one year.

It may considered to verify when losses expire and if necessary take measures to avoid loss expiry such as the realisation of hidden reserves.

It has also been proposed on Budget Day 2018 that, as of January 1st 2019, the existing limitation on loss utilisation for holding and/or finance companies (article 20, paragraph 4–6 CITA) will be abolished. Based on this rule, losses incurred by a mere holding or group finance company can only be offset against holding or finance income in preceding and following years, provided that certain strict conditions are met.

Tax depreciation on buildings

On Budget Day 2018 it is proposed that, as of January 1st 2019, the depreciation for tax purposes of buildings used within taxpayer's own business will be limited to the actual (ie, 100%) value as determined by the competent municipality (the so-called 'WOZ-value'). This restriction already applied to investment buildings, but will now be extended to buildings used within a business, such as building used as a hotel by the owner/occupier. The consequence of this change is that companies will, in many cases, no longer be able to depreciate their buildings, because depreciation will no longer be possible on buildings of which the tax book value is lower than the WOZ-value. A grandfathering rule of three years may apply.

The result of the restriction on tax depreciation on buildings used within the own business can be significant. It becomes even more important to closely monitor the WOZ-values of your properties.

As in previous years it is important to distinguish expenses as tax deductible maintenance costs rather than as capitalised investment and review the tax book values of the properties (ultimately upon preparing the CIT return). It needs to be verified whether any impairments must be made or need to be taken back.

Energy Investment Allowance (EIA) & Environment Investment Allowance (MIA)

Investments in assets that qualify as new unused business assets and that comply with the Environmental or Energy List requirements (published annually by the Dutch government) may qualify for CIT incentives. These incentives include the deduction for CIT purposes of the Environment Investment Allowance (Milieu Investeringsaftrek or MIA) and the Energy Investment Allowance (Energie, Investeringsaftrek or EIA).

On Budget Day 2018 it is proposed that the application of these incentives will be extended with another five years, ie, until January 1st 2024. The allowance rate of the EIA will however be lowered from 54.5% to 45% as of 2019.

CFC rules

The ATAD provides two models through which so called Controlled Foreign Company (CFC) rules could be implemented. Model A, whereby undistributed passive income of low-taxed subsidiaries of the taxpayer is included in the taxable base of that taxpayer and Model B, whereby undistributed income from low-taxed subsidiaries of the taxpayer arising from non-genuine transactions is included in the taxable base of that taxpayer.

The Dutch government announced that it will implement Model A with respect to CFCs established in low-taxed jurisdictions. A low-taxed jurisdiction is defined as a jurisdiction which does not levy corporate income tax, a jurisdiction with a statutory corporate income tax rate of less than 7%, or a jurisdiction included on the EU list of non-cooperative jurisdictions in the field of taxation.

Also, if the CFC is set-up on the basis of genuine business reasons which reflect economic reality, the CFC should not be impacted by this rule. In other situations than those mentioned above, Model B will apply. The Dutch government have indicated that no changes to the legislation are required to implement Model B, given that art. 8b CITA already covers this.

The impact of CFC-rule for the RE-sector is likely to be limited given the definition of a low-taxed jurisdiction. Nevertheless, where Dutch based companies have subsidiaries in low-tax jurisdictions it should be carefully analysed whether the CFC-rules apply.

GAAR

ATAD 1 also contains a general anti abuse rule (GAAR). This rule is not included in this proposal because, according to the Dutch Ministry of Finance, the GAAR is in fact already effected in the Netherlands by the 'fraus legis' (anti abuse) concept which is a part of the Dutch tax system.

Hybrid mismatches

ATAD also contains measures against hybrid mismatches. It has been announced on Budget Day 2018 that these will be included in a later legislative proposal (implementation of ATAD 2) that should take effect as from 2020. This legislative proposal is expected early 2019. A hybrid mismatch is a situation in which the differences in (tax) rules between two countries are being used to reduce taxation.

General CITA

No retroactive effect of separation from a fiscal unity

As opposed to the request for formation of a fiscal unity, the separation of a fiscal unity does not have retroactive effect.

If it is desired that one or more companies are separated from a fiscal unity per January 1st 2019 (for example in view of the new earnings stripping rules), the request for separation needs to be filed on December 31st 2018 ultimately.

Dutch fiscal unity per-element approach

The Dutch Government announced several emergency response measures in light of recent EU case law. These measures relate to applying certain provisions within the Dutch CITA and the Dutch Dividend Withholding Tax Act within a fiscal unity as if such fiscal unity was not present. As a result, the existing favourable treatment for domestic situations is intended to be eliminated.

The effective date of the proposed changes in the fiscal unity regime (emergency response measures) is announced to be postponed from October 25th 2017 to January 1st 2018.

Impact of these rules and any adverse tax consequences need to be analysed. Developments need to be closely monitored.

Reinvestment reserve

In case a reinvestment reserve for tax purposes has been formed using profits made with the disposition of a business asset, the imposed three-year period for reinvestment needs to be taken into account. For example, the three-year period may end per December 31st 2018 if you have formed a reinvestment reserve with respect to the disposition of a business asset in 2015 (and the fiscal year of the taxpayer is equal to the calendar year).

If reinvestment does not take place within the three-year period, the amount of the reinvestment reserve is released and subject to taxation.

When the company no longer has the intention to reinvest the reinvestment reserve is released and subject to taxation irrespective of the three-year period. The existence of such an intention is verified at December 31st, but must be present throughout the entire year.

The burden of proof for existence of the intention is with the taxpayer and therefore it is recommended to officially document the reinvestment intention continuously.

Functional currency

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

If the company's fiscal year concurs with the calendar year, the request for application of this provision from 2018 onwards needs to be filed on December 31st 2018, ultimately.

Country-by-Country-Reporting (CbCR)

Notification

A Dutch tax resident entity, for which the CbCR notification rules apply, must notify the Dutch tax authorities by the last day of the reporting period. The notification requires the Dutch taxpayer to, among other things, identify the top company of the group and identify which group company will file the Country Report.

When the reporting period is equal to a calendar year, the last day to submit the notification timely is December 31st 2018 for the reporting year 2018.

The CbCR notification rules apply when your company is a Dutch tax resident entity that part of, or at the top of, a multinational group with a consolidated group turnover of €750 million or more. The 'turnover assessment' is made based on the consolidated group turnover of the year preceding the reporting year. So for the financial year 2018, the assessment is based on the consolidated group turnover of the financial year 2017.

In principle all members of a group that are included in the consolidated accounts, are part of such a group. A 'multinational group' in this context already exists when two companies belonging to the group are resident in different countries.

One notification can be submitted for all Dutch resident group entities. The notification is to be submitted electronically with the Dutch tax authorities.

Country Report

If the ultimate parent company of the multinational group is a Dutch resident entity, or if the Dutch resident entity has elected to submit the Country Report, this company is obliged to submit the Country Report within twelve months after the end of the group's financial year.

This means that the Country Report for the financial year 2017 must be submitted on December 31st 2018 at the latest, when the financial year is equal to the calendar year.

In addition to the general penalty regime with respect to not meeting the requirements regarding tax administration, specific penalties apply for non-compliance with CbCR requirements. These penalties apply where the taxpayer fails to file a notification in the Netherlands and/or to submit the Country Report. A maximum penalty of €820,000 applies for intentionally or due to gross negligence not complying with the CbCR legislation. In addition to administrative penalties, non-compliance with the documentation requirements in the Netherlands can lead to a shift of the burden of proof from the tax authorities to the taxpayer.

Master File and Local File

When CbCR does not apply, an entity taxable in the Netherlands may still be obliged to prepare a Master File and/or Local File.

Dutch tax resident entities that are a part of a multinational group, with a consolidated group turnover between €50 million and €750 million, have to prepare a Master File and Local File as part of the transfer pricing documentation requirements.

The Master File should provide for an overview of the business of the multinational group, including a description of the nature of the business activities, its general transfer pricing policy and the worldwide allocation of income and economic activities. The Local File should include information relevant for the transfer pricing analysis relating to intercompany transactions where the Dutch taxpayer is involved.

For the Master File and the Local File the same deadlines apply as for submitting the corporate income tax return. When the corporate income return is submitted prior to the ultimate deadline however, the taxpayer should already have the Master and/or Local File available. The Local File and the Master File should only be provided to the Dutch tax authorities upon their request.

We recommend Dutch tax resident entities to timely assess whether there is an obligation to prepare a Master and/or Local File for the reporting year 2017 and/or 2018 and if so, prepare the required documents.

Dutch dividend withholding tax

Dutch dividend withholding tax not abolished

The current 15% dividend withholding tax is no longer proposed to be abolished as from January 1st 2020. The main impact of this announcement is that:

- For the time being 15% withholding tax remains due on dividends paid by Dutch entities to shareholders. This mainly affects portfolio shareholders as dividends paid to non-portfolio shareholders in many cases already attract a dividend withholding tax exemption.
- It must be seen to what extent the Dutch Supreme Court and the ECJ consider the current dividend withholding tax in conflict with EU law. Subject to pending litigations, this may result in changes of the Dutch dividend withholding tax rules.

Anti-abuse rules under the current legislation become relevant again. In addition, consequences of recent EU case law needs to be closely monitored. Where possible, it becomes therefore imperative to assess the parent company's position.

The proposal to introduce a new withholding tax for dividend payments to low-tax or non-cooperative jurisdictions has been postponed until further notice. It has been announced that a conditional withholding tax on interest and royalty payments to low-tax or non-cooperative jurisdictions will be introduced as per 2021.

The introduction of the conditional withholding tax may need to be considered by investment funds and private equity funds upon the publication of the proposal of law.

For a further elaboration of the Dutch dividend withholding tax rules, please refer to below.

Dividend withholding tax for Dutch Cooperatives

Dividend distributions made by a so-called holding cooperative, ie, a Dutch cooperative that is usually predominantly (at least for 70%) engaged in passive holding of participations and/or intra-group financing activities, to parties that have a qualifying membership right are, in principle, subject to a 15% dividend withholding tax. For the purpose of this test the activities of the cooperative during the 12 months preceding to the dividend distribution are also taken into account.

Holding cooperatives engaged in the active management of their participations, might not qualify as a 'holding cooperative' in this sense. Specifically cooperatives in private equity structures could potentially remain outside the scope of the dividend withholding tax act.

A party owns a qualifying membership right when it is entitled to at least 5% of the annual profits and/or the liquidation proceeds, alone or together with related parties.

A reduction, refund or exemption of the 15% dividend withholding tax may be available pursuant to either Dutch domestic law (that includes the implementation of the EU Parent Subsidiary Directive) or a double tax treaty.

It is recommended to reassess the dividend withholding tax position of the Dutch cooperative and its members when used in a structure taking into account the 1 year reference period.

Notification form/tax return form

When a Dutch entity distributes a dividend under the so-called broadened dividend withholding tax exemption, a notification of this must be made to the Dutch tax authorities within one month after the distribution. When failed to comply with this obligation in time, the tax inspector may impose a penalty.

The dividend withholding tax exemption, generally, applies if the recipient of the dividends a qualifying interest in a Dutch entity (at least 5%):
- the recipient of the dividends is a resident of the EU, EEA or of a country that has concluded a tax treaty with the Netherlands that includes a dividend article or a state within the Kingdom of the Netherlands; and
- the recipient of the dividends would have been able to apply the Dutch participation exemption or participation credit to the dividends if it would have been a resident of the Netherlands.

Dutch DWHT anti-abuse rules may apply. 15% Dutch DWHT at source may become due if:
- the interest in the participant is held with the main purpose, or one of the main purposes, to avoid the imposition of Dutch DWHT (‘subjective test’); or
- the structure is considered to be part of an artificial arrangement (‘objective test’).

If no dividend withholding tax exemption applies, the distributing entity needs to withhold dividend tax, fill out a regular tax return form and pay any tax due to the Dutch tax authorities within one month after the distribution.

Value added tax

Increase reduced lower VAT rate

The reduced VAT rate is to be increased from 6 to 9%. As a result, items such as hotels, cinemas and museums will become more expensive. The 6% rate continues to apply if an advance payment is received before January 1st 2019 or, in case of services supplied to a VAT entrepreneur, if the invoice is sent before January 1st 2019.

If you are an entrepreneur who provides services or goods which fall under the lower VAT category, you will need to increase your VAT prices in the new year. Services which are invoiced to VAT entrepreneurs in 2018 remain at the 6% rate, even if the work is carried out in 2019. For instance ticket sales in 2018 for a performance in 2019 whereby payment is received only 6% VAT need to be charged or paintwork carried out in 2019, but paid in 2018 can also still carry the 6% rate.

Negative declaration after purchase or sale of immovable property

If seller and purchaser have opted for a VAT taxed transfer of an immovable property, the purchaser has to declare in writing that it will be using the immovable property for purposes for which it is entitled to deduct VAT for at least 90%. If purchaser does not meet this 90%-criterion (ie, should it not use the property for activities for which it is entitled to deduct at least 90% of the input VAT) in the period covering both the financial year of transfer and the subsequent financial year, it must notify the seller in writing within four weeks after the subsequent financial year and provide the Dutch tax authorities with a copy of the notification.

Note, that if an immovable property is transferred while a VAT revision period (ie, the (approx.) ten year period during which the (non) recovery of investment VAT is monitored based on the VAT law) is applicable to the immovable property, it is deemed to be used by the seller for VAT taxed purposes (in case of a VAT taxed transfer) or for VAT exempt purposes (in case of a VAT exempt transfer) for the remaining VAT revision period. Therefore, if parties opt for a VAT taxed transfer, it is deemed that the seller uses the immovable property for VAT taxed purposes for the remaining VAT revision period and seller can deduct the VAT incurred with respect to the acquisition at once for the whole remaining period (insofar not yet deducted). Should parties have opted for a VAT taxed transfer, while the purchaser does not meet the 90%-criterion, the transfer is VAT exempt and the immovable property is deemed to be used by the seller for VAT exempt activities for the remaining VAT revision period. VAT incurred with respect to the acquisition should be paid back to the Dutch tax authorities at once by the seller for the whole remaining VAT revision period.

It is market practice to agree upon a clause in the sale and purchase agreement that if this event occurs Purchaser will compensate Seller for the VAT due in this respect.

We advise sellers to include clauses in their purchase agreements regarding the liability for this VAT loss and purchasers should be aware of a possible compensation for VAT leakage as a result of a VAT exempt transfer.

16 Norway

Rental income

Rental income in a Norwegian corporate investor is subject to the general Norwegian corporate tax rate of 23% (applicable rate as from the income year 2018).

Deduction for costs

All costs related to operation and administration of the property, including depreciation, are as a starting point deductible. This includes interest on loans obtained to acquire, maintain or improve the property (subject to general restrictions).

Depreciation

The acquisition of land and sites is not depreciable for tax purposes, but must be capitalised.

Buildings/assets used for business purposes will normally be depreciable in accordance with the declining balance method. The buildings/assets are allocated to different depreciation groups based on type of asset.

- Office buildings may be depreciated annually at a maximum rate of 2%.
- Buildings (other than office buildings), plants, hotels, rooming houses, restaurants, etc may be depreciated annually at a maximum rate of 4%.
- Buildings with such simple construction that, from the date of its erection are assumed to have a useful life of no more than 20 years may be depreciated according to the declining balance method with a maximum rate of 10% annually.
- In addition unmovable equipment that serves the use of the building (eg, as elevators, cooling plant) may be depreciated annually at a maximum rate of 10%.

Assess the allocation of building/assets within the relevant depreciation groups.

Maintenance costs and improvement costs

Maintenance costs are tax deductible in the year of accrual.

As a starting point, investments made on a property must be capitalised along with the building, building equipment or land to which it refer. The depreciation rate varies significantly depending on the building/asset.

In regard to improvements made for a specific lessee, depreciation depends on the ownership of the relevant improvements. If the lessee is considered the owner of improvements the lessee may depreciate the cost of improvements on a linear basis over the lease period (normally higher than the 2% on business buildings). Ownership of the improvements depend on an assessment of whether the lessor have had an economic advantage of the improvements.

Assess the tax treatment of maintenance costs and ensure proper regulation/treatment of costs related to lessee improvements.

Stamp duty

A 2.5% stamp duty is payable on the transfer of real property in Norway. The stamp duty is calculated on the sales value (ie, the market value) of the property. There is no stamp duty on sublease of property, or on the transfer of shares or parts in limited liability companies or partnerships holding real property.

Tax exemption method

Capital gains on shares owned by a Norwegian limited liability company, which is comprised by the tax exemption method, are 100% tax exempt.

Furthermore, dividend distributions from a Norwegian subsidiary where the Norwegian parent company owns and controls more than 90% of the shares and voting rights, are also 100% tax free. The same applies to dividends from foreign subsidiaries within the EEA if the subsidiary is actually established and carries out genuine economic activity there (substance requirements based on the ECJ ruling in the Cadbury-Schweppes case).

Dividend distributions to a Norwegian parent company that do not meet the conditions mentioned above, will be subject to 23% tax on 3% of the dividends (effective tax rate of 0.69%).

Ensure more than 90% ownership and control in the holding structure within Norway to mitigate tax leakage of 0.69% on distributed dividends.

Property tax

From 2016 municipalities have had the option to levy property tax on real estate within their territory. The tax rate vary from 2‰ to 7‰ of the assessment value (market value) of the property. The assessment value is normally set for 10 years and there are restrictions on appeal against this assessment.

Many existing rent agreements have clauses pertaining to potential property tax. If a municipality introduce property tax, this may have significant impact on the income on properties within the territory.

Budget for property tax if the relevant municipality have introduced or announced an introduction of property tax. Furthermore, review existing rental agreements for possibilities to adjust the rent and the assessment value of the property.

Limitation of interest deduction

Currently, there are no limitation of interest deductions on interest paid to external lenders. There are, however, limitations on deduction of interest on loans from related parties. Furthermore, external debt backed by guarantees or security from related parties may be reclassified as internal debt.

The Norwegian Ministry of Finance is expected to announce new rules limiting interest deductions on both internal and external debt in October 2018 (to take effect from FY 2019).

Under the current rules, interest deductions on loans from affiliated parties are limited to 25% of a specifically defined profit ('taxable EBITDA'). This is the ordinary taxable income of the company after certain adjustments. The restriction on interest expense is calculated separately for each separate taxpayer. Interest on external bank debt not covered by the limitation rules will reduce the capacity to deduct interest. Consequently, an adjustment under these rules is likely to result in additional tax payable. However, current year tax losses may be offset against increased income. Disallowed interest expenses can be carried forward for 10 years.

New, amended rules relating to limitation on interest deductions are not yet public. In 2017 the Ministry of Finance issued a discussion paper suggesting amending the current rules, based on the suggestions of the OECD BEPS project and of the EU. The suggested rules are proposed to apply to Norwegian companies that form part of a group, as defined by rules for financial accounting, with a 10 million NOK net interest cost threshold.

The discussion paper included two alternative escape clauses based on a consolidated debt to equity ratio, whereas a company could completely escape limitation on interest deductions if either i) the debt to equity ratio of the company or ii) the consolidated debt to equity ratio of the Norwegian companies in the group is similar or lower than the consolidated debt to equity ratio of the international group.

The proposed rules were criticised for being too complicated and unintendedly apply to arrangement with no profit shifting motivation. Furthermore, the period before the rules would enter into force was considered too short. As a result, the Ministry of Finance delayed the implementation and have reviewed the proposed rules in 2018. The new proposal is expected to be based on the same principles with some variations.

Note that the current interest limitation rules and the arm's length principle operate alongside one another. The same is expected to apply to the new interest limitation rules.

New rules on limitation on interest deductions are expected to enter into force as from 2019. The specific rules have not yet been announced but are expected to be based on the OECD BEPS/EU proposals. As such, limitations may apply to deductions on interest paid to both intra-group companies and external lenders. Financing structure should be carefully considered as soon as possible.

Transfer pricing

All transactions between related parties have to be at an arm's length. Transactions that do not comply with the arm's length principle may be reclassified for tax purposes and result in penalty tax.

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

Tax consolidation

Norwegian tax law is based on the principle that each company is a separate taxpayer, irrespective of whether it belongs to a Norwegian or international group. However, Norwegian tax law allows for tax consolidation/group relief by way of group contributions.

A group contribution is a gratuitous and unilateral transfer of value from one taxpayer to another within the same group. In short, the group contributions allow a group company to offset its profits against tax losses in another group company.

There are three main conditions for rendering group contributions with tax effect:

- Both the rendering and the receiving company must be Norwegian limited liability companies (or certain other types of companies mentioned in the Tax Act). If certain conditions are fulfilled, group contributions may be rendered to/from a Norwegian permanent establishment (PE) of a foreign limited liability company tax resident in a state within the EEA area. Provided the conditions are fulfilled, Group contributions may also be rendered between Norwegian PE's of foreign limited liability companies.
- The rendering and receiving taxpayer must be within the same tax group, ie, a common parent (Norwegian or foreign limited liability company) must directly or indirectly own and control more than 90% of the shares and voting rights in both companies. The ownership test is made at December 31st in the income year.
- The group contribution must be lawful, eg, be resolved in accordance with Norwegian Company law and be within the dividend distribution capacity of the rendering company (which sometimes requires careful planning upfront to make sure that the rendering company has sufficient dividend distribution capacity to give away its taxable profits as a group contribution).

If the above-mentioned conditions (and certain other minor conditions) are fulfilled, a group contribution is deducted from the rendering taxpayer's taxable income and is regarded as taxable income for the receiving taxpayer. The group contribution may exceed the rendering company's taxable income in the year in question; however, the part of the group contribution, which exceeds the year's taxable income, is not deductible, nor is it taxable for the receiver if the above-mentioned conditions (and certain other minor conditions) are fulfilled.

Group contributions are normally decided at the annual general meeting of the shareholders in the year following the income year. If the companies within the Norwegian group draw up statutory company accounts according to IFRS, careful long-term planning with respect to the group contribution capacity may be necessary.

Ensure more than 90% ownership and control of subsidiaries at year end to allow for group contributions with tax effect. Careful planning may be required to have distributable reserves available for group contributions.

Voluntary registration for VAT liable letting of premises

The lease of premises is as a starting point VAT exempt (without credit) in Norway. Letting of premises can however be subject to VAT if the lessor is voluntary registered for the lease of premises and the tenant uses the premises in VAT liable activity.

A lessor can either become voluntary registered for the lease of premises by filing an application to the tax authorities or by acknowledging that the company is voluntary registered by invoicing the tenant with VAT. The latter option, with acknowledging the voluntary registration, is only possible if the lessor already registered for VAT.

VAT on transaction costs

The tax authorities have traditionally been very restrictive on accepting deduction of input VAT on transaction costs.

The Directorate of Taxes has previously accepted VAT recovery on costs relating to the purchase of subsidiaries that are directly included in an existing VAT group. Furthermore, the Directorate also accepted VAT recovery on costs related to the sale of a subsidiary that has been part of the same VAT group as the parent company.

In a statement from the Directorate of taxes in December 2016, the above accepted deduction has been withdrawn and the Directorate of Taxes state that their new view is that there is no right for deduction of input VAT on transaction costs related to purchase or sale of shares and/or real estate.

Adjustment obligations/overview/agreement

Adjustment regulations for input VAT apply for capital goods investments. The regulations apply to immovable property where input VAT exceeds 100,000 NOK and machines where input VAT exceeds 50,000 NOK. These rules may also apply to infrastructure.

The adjustment rules imply that there is a lock-in period of 10/5 years for input VAT deducted on investments in respectively immovable property/machines. If the VAT liable use of any premises/machines has changed during a year, such as from VAT liable to VAT exempt, then any liability to adjust VAT should be considered.

Mergers, demergers and acquisitions are deemed as a change in use of the assets and will, as a main rule, trigger an obligation to repay deducted input VAT in accordance with the adjustment regulations.

However, this can be omitted if written agreements on the transfer of adjustment obligations are made with the acquiring company (adjustment agreement). Such an agreement must be in place within the reporting due date for the VAT term when the merger takes place.

According to Norwegian VAT regulations, companies are also required to have an overview of investments subject to the VAT adjustment obligations. Such overviews shall contain certain specific information about the capital goods, VAT deducted, adjustment period, etc

Lease of property – Tenant confirmations

For the lease of property, the lessor is required to collect a tenant confirmation. This confirmation should confirm, to which extent, the leased property is used in VAT liable or VAT exempt activity. This ensures good routines and control of the activity performed in the premises.

Tenant confirmations should be collected for all tenants at year end.

17 Poland

Adopted changes – Minimum CIT

As of January 1st 2018, minimum CIT on commercial buildings for taxpayers holding selected real estate of initial value exceeding 10 million PLN (ca. €2.4 million) was introduced. Tax liability amounts to 0.035% of the tax base for each month and is payable by 20th day of the next month.

The 'minimum tax' may be deducted by the taxpayer from monthly advance payments of 'regular CIT'. The amounts of 'minimum tax' paid for a given year – and not deducted from advance payments paid throughout the tax year – may be deducted from the annual CIT liability.

Tax losses carried forward do not impact calculation of 'minimum tax'.

In July 2018 the amending act covering changes to the minimum tax was adopted. As of 2019:

- minimum tax will apply to all buildings subject to lease regardless of their type (ie, not just office buildings and shopping centres);
- minimum tax will apply only to the buildings (or their parts) that are given for use under a contract of lease, tenancy etc Vacant areas should not be subject to the minimum tax. This change would also apply retroactively to the minimum tax for 2018;
- change in reference to 10 million PLN exemption threshold ie, the threshold will be applicable to the taxpayer regardless of the number of buildings owned (single exemption amount for the taxpayer for whole portfolio of buildings held by the taxpayer). Furthermore, this amount is shared with related parties in certain cases.
- the minimum tax may be reimbursed if the tax authority confirms that there were no irregularities in the amount of 'regular' CIT liability (in particular debt financing costs of the acquisition or construction of the building were in line with market conditions). This change would also apply retroactively to the minimum tax for 2018.

Impact of the discussed changes on your current and future 'minimum tax' settlements should be closely verified – also taking into account retroactive nature of part of the amendments. In particular, it is recommended analysing in details whether a refund of 'minimum tax' paid for 2018 can be available to you in practice.

Consultations on tax treatment of real estate transactions

Historically, property deals were typically structured as asset deals on a piecemeal basis (subject to recoverable VAT at 23%). However, over the last 2 years, the tax authorities started to challenge the above treatment and reclassify such transactions into enterprise deals subject to Civil Law Activities Tax (thus denying recovery of input VAT). The above triggered a lot of confusion and uncertainty among the investors as to how real estate deals should be structured.

In order to eliminate the above doubts, Ministry of Finance recently announced works on guidelines, which should help to classify particular real estate transaction as a sale of assets on a piecemeal basis/sale of an enterprise or an organised part thereof. At the moment it is not clear when exactly the guidelines can be expected in practice as well as in what form they will be issued (in particular, whether they will take the form of a general tax ruling).

Developments in the above area should be closely monitored by all investors considering disposal or purchase of a real estate located in Poland, as they may have a direct impact on structure of the future transaction.

Ongoing legislative works (CIT)

Withholding tax

A completely new mechanism of settlement of WHT in relation to payments exceeding 2 million PLN per annum for each taxpayer is to be introduced. Namely, the general rule for such payments would be that the tax remitters should withhold tax on such payments at a standard rate of 20% (without automatically applying the exemption from WHT/reduced tax rate stipulated in the applicable Double Tax Treaty). Then, a procedure for reclaiming of the originally paid WHT should be available – subject to detailed check of the eligibility for beneficial WHT treatment by the tax authorities (with a waiting period for the refund of up to 6 months).

As an exception to the above general rule, the new mechanism allows the remitters not to withhold tax in relation to payments exceeding 2 million PLN per annum if:
- the remitter submits a statement confirming that (i) he possesses all documents necessary for applying reduced WHT rate/exemption from WHT and (ii) he is not aware of any circumstances which speak against granting tax exemption. The remitter will be held responsible as to the completeness of the documents and correctness of the facts considered during the above process (fines and penalties under the Fiscal-Penal Code may apply). Moreover, an additional tax liability (as a rule – of 10%) may be imposed, if – during a tax audit – the tax authorities question the results of the certification process.
- alternatively, an opinion confirming the eligibility for beneficial WHT treatment is obtained. The opinion shall be issued within 6 months from date of application at the latest and should be valid for 36 months. Application for the opinion shall be subject to fee of 2,000 PLN.

With regard to payments not exceeding 2 million PLN per annum for each taxpayer, the remitter will still be entitled to apply reduced WHT rate or WHT exemption according to the current rules.

Exit tax

It is planned to introduce an exit tax applicable to situations in which a taxpayer moves its tax residence to another state or transfers its assets to a permanent establishment located in a foreign country (as a result of which Poland will typically lose a right to tax unrealised capital gains of the transferred assets). The tax basis would constitute the difference between the fair market value of the assets (assessed at the moment of the transfer) and their value for tax purposes. However, it seems that this change is not likely to have a significant impact on the real estate sector.

Deemed deduction of hypothetical interest

It is proposed to introduce deemed deduction of hypothetical interest (notional deduction – maximum of 250,000 PLN in a tax year) on certain categories of equity used for re-investment purposes.

Beneficial owner clause

The proposed amendment defines the beneficial owner more precisely as compared to the current wording of the CIT Law. Namely according to the draft bill, the beneficial owner is an entity, that jointly fulfils the following conditions:

- it benefits from received payments (having power to independently decide how they are used);
- it bears the economic risks connected with the loss of the payment in whole or in part;
- it is not an intermediary, representative, trustee, or another entity obliged to transfer the payment in whole or in part to another entity;
- it runs an actual business activity in a state of its residence (if the payments are obtained in connection with undertaken business activity).

Restrictions on exemption for dividends and interest

The amendment restricts the conditions for exemption for dividend/interest payments. The exemption will not apply if benefit from the exemption would be contrary to the aim of the regulations/would be the main or one of key goal of the transaction and the actions of the taxpayer were artificial.

Although the discussed CIT amendments are still at relatively early stage of legislative process, these are intended to enter into force as of January 1st 2019. For this purpose, these would need to be officially published until the end of November 2018. Thus, the legislative process should be closely monitored, in order to assess whether and how these changes may impact your operations in Poland.

Ongoing legislative works (VAT)

First occupation

The contemplated amendment to the VAT Law are aimed at modifying the conditions based on which a supply of buildings, constructions and their parts may be subject to VAT exemption. Namely, the condition that the 'first occupation' of such objects took place in the course of a taxable activity will be eliminated. The above change is the implementation of the judgment of the Court of Justice of the European Union of November 16th 2017 on C-308/16 Kozuba Premium Selection Sp. z o.o.

Although the said VAT amendment is still at the very early stage of legislative process, this is intended to enter into force as of January 1st 2019. Thus, the legislative process should be closely monitored as it may affect the taxation of future real estate deals (if structured as VAT-able sale of assets on a piecemeal basis).

Ongoing legislative works (Polish Tax Code)

Mandatory Disclosure

The amendments propose to introduce so-called 'mandatory disclosure rules' ie, the obligation to notify the Ministry of Finance on tax schemes, having certain features/hallmarks specified in the draft bill. Depending on a given situation, the notification burden may rest either with the advisors or with the taxpayer himself. In their current version, the proposed changes regarding mandatory disclosure are very complex and trigger significant doubts as to how they should be interpreted in practice.

GAAR

Moreover, the amendments are aimed at introducing the possibility to impose additional tax liability if the arm's length of settlements with related entities or transactions is challenged by the tax authorities or if the transactions are considered to be tax avoidance on the basis of the general anti avoidance rule. In principle, the penalty rates will be 40%/10%, but in certain circumstances can be multiplied. Similarly as above, the proposed changes in this area are also very complex and trigger significant doubts as to how they should be interpreted in practice.

The said Tax Code amendments are still at relatively early stage of legislative process, but are generally intended to enter into force as of January 1st 2019. Also, mandatory disclosure procedure is planned to apply to tax schemes 'implemented' – within the meaning of the amendments – after June 25th 2018. The legislative process should be closely monitored, in order to assess whether and how these changes may impact your operations in Poland.

REITs

It is planned to introduce the concept of Real Estate Investment Trust into Polish tax and legal system. As proposed, Polish REITs should be able to benefit from certain tax preferences. However, their scope of investments will be limited to residential properties.

The legislative works are at relatively early stage and should be closely monitored. On one hand, REITs may constitute attractive investment vehicles. On the other hand, taking into account the limitation to residential properties only, their presence on Polish real estate market may be not significant (especially given that the sector of commercial residential properties is not as developed in Poland as eg, the sector of commercial office buildings or shopping centres).

Change of tax year

If the taxpayer currently has tax year in line with the calendar year and would like to adopt a different tax year, the required procedures comprise change of the articles of association of the company and notification of the tax authorities, generally, until January 30th 2019. It should be noted that there is practice, according to which the change of the company's tax year is legally effective, provided that the change of the article of association was registered in the commercial register prior to the end of its last year prior to the change.

If you are planning to change the tax year, you should ensure that changes to the articles of association are made and registered, as well as the notification to the tax authorities is filed in time to meet the deadline.

Simplified corporate income tax advance payments

Some taxpayers may opt for the 'simplified method' of making advance CIT payments. As such, the taxpayer pays monthly advances equivalent to 1/12 of the tax liability, generally, resulting from the annual CIT reconciliation filed in the previous year rather than advances based on actual income for the given tax year. This simplifies the monthly CIT reconciliation process, and may optimise cash flows during the year.

If the simplified monthly CIT reconciliation method is chosen, the taxpayer is obliged to notify the local tax office by 20th day of the second month of its tax year, ie, generally by February 20th 2019.

Method of recognising foreign exchange differences

Polish tax law recognises foreign exchange differences differently than accounting regulations. However, some taxpayers are entitled to choose the accounting regulations as the basis for tax, under certain conditions.

Taxpayers should assess which method of recognising foreign exchange differences is more suitable. If the 'accounting' method is to be chosen, the tax authorities must be notified, generally, by the end of the first month of the tax year.

Certificates of tax residence

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

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

Transfer pricing

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

As of January 1st 2017 the Polish transfer pricing rules were substantially changed and the deadline for filing a statement on the preparation of local transfer pricing documentation for FY 2017 expired on September 30th 2018.

Moreover, as of 2019 further changes to transfer pricing rules are intended to be introduced. The new law, once enacted, will grant the tax authorities additional tools. Namely, they will be able to re-characterise or even disregard related party transactions if they conclude that unrelated entities would not enter into transaction declared by the taxpayer or would conclude different transaction. Consequently, when assessing the arm's length level of remuneration in a given transaction, the tax authorities could refer to other transactions or terms that in their opinion could have been applied by unrelated parties.

Safe harbours will be introduced for two transaction types, ie, loans meeting specific requirements and low-value-adding services.

Also, obligation of documenting certain domestic transaction will be limited. If none of the parties to the transaction – both having its seat in Poland – benefit from exemptions and incurred losses in a given year, the TP documentation for transaction between such entities will not be required (if not requested in connection with a tax audit).

New transactional materiality thresholds applicable for TP documentation (local file) will be introduced, ie

- 10 million PLN (approx. €2,3 million for transactions concerning tangible assets and financing), and
- 2 million PLN (approx. €0,5 million for other transactions).

The new thresholds will, in practice, result in reducing the scope of documentation requirements, especially for small and medium-sized taxpayers.

Materiality threshold for master file will be set at 200 million PLN of consolidated revenue. Taxpayers submitting the CbCR (those achieving consolidated revenues exceeding €750 million and meeting other specific requirements) will also be obliged to submit the master file to the Head of the National Revenue Administration.

According to the new regulations, the master file may be prepared in English. Translation into Polish will only be required at the explicit request of the tax authorities.

The deadline for filing a statement on the preparation of local transfer pricing documentation will be permanently extended to 9 months after the end of the tax year for local documentation. The deadline for preparing the master file will be 12 months after the end of the tax year.

Given the very dynamic nature of changes in the area of TP, it is highly recommended to monitor them closely in order to ensure that you comply with all the new obligations and requirements.

18 Portugal

Losses carried forward

Tax losses can be used to offset taxable profits arising in the following 5 years. No carry back is allowed. Deduction of tax losses is limited to 70% of the taxable profit of the year, with the possibility of carrying forward the remaining 30% within the carry forward period. Furthermore, rules regarding the utilisation of carry forward tax losses under the FIFO method were revoked.

No losses carry forward is allowed for the purpose of assessing the local and state surtaxes.

Any direct transfer of more than 50% of the share capital or of the majority of voting rights may lead to a total forfeiture of tax losses carried forward at the Portuguese entity's level. Exemptions apply in the case of intra-group corporate restructurings. Otherwise, waiver of such forfeiture may be available (restrictive requirements).

Within 30 days following the transfer of shares, transfer of the majority of voting rights, it may be necessary to file a request with the Portuguese Ministry of Finance.

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

Dividends Distribution

Dividends 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 State, (ii) in other EEA Member State (provided such EEA 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 CIT (for non-EU cases) and it cannot be 60% lower of the CIT rate, ie, currently, 12.6%;
- The entity that pays the dividends cannot be resident in an blacklisted jurisdiction;
- Minimum shareholding held for a consecutive period of 1 year; and
- Shareholding threshold of at least 10%.

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

Transfer Pricing

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

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

Interest Capping Rules

The Net Financial Expenses (NFE)'s deduction is capped at the higher of a fixed cap of €1 million or a variable cap of 30% of the fiscal EBITDA. This rule covers indebtedness with both related parties and independent parties, as well as between resident and non-resident entities.

The part of the NFE that are not deductible can be carried forward over a period of five tax years, as long as the capping rules are 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.

In case of fiscal unities, the parent company can elect for this rule to be applicable on a group basis, that should be kept for a period of 3 tax years.

There should be in place a control of the amounts of non-deductible NFE and unused 30% that can be carry forward for 5 years.

Cross-border financing

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

Financing , is also subject to stamp tax, although some stamp tax-exemptions are available.

Some alternatives may be structured to mitigate the WHT and/or the stamp tax issues on cross-border financing.

Careful analysis of the tax impact of the various financing alternatives should be sought beforehand.

Real Estate Municipal Taxes (IMI)

IMI is due by the real estate owner on December 31st of each year (and paid in the following year). IMI rates range between 0.3% and 0.45%.

IMI rate for real estate held by corporations resident in blacklisted jurisdictions is 7.5%.

In case a direct investment is completed before the end of 2018, 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 December 31st 2018. The IMI impact will increase in case the owner of the real estate (corporation) of the real estate is resident in blacklisted jurisdiction.

Real Estate Taxes

Additional to the IMI (AIMI) is also due on certain types of urban properties, dwellings and plots of land for construction, with the exception of commercial, industrial and other properties.

The owners, usufructuaries, surface rights or undivided inheritances of dwellings and plots of land for construction as at January 1st of each year, are liable to the payment of AIMI.

For corporations, the AIMI rate is of 0.4% of the sum of the tax registration value of all applicable urban properties held by each taxpayer, reported as at January 1st of each year.

Properties that benefited from IMI exemption in the previous year are excluded from the taxable basis.

CIT tax credit

Taxpayers have the option of deduct the AIMI paid, limited to the fraction of the tax corresponding to the income generated by properties subject to AIMI, in the scope of lease or accommodation activities. This deduction option (deduction to the CIT fraction) jeopardises the deduction of AIMI in the determination of CIT taxable income.

AIMI is assessed by the Portuguese tax authorities in June of each year, being the respective payment made in September.

AIMI rate for real estate held by corporations resident in blacklisted jurisdictions is 7.5%.

AIMI is due in case of owing plots of land for construction or dwellings. The tax base is the same as per IMI, ie, the tax registration value.

Value Added Tax (VAT) claw-back rules

In the case of recovery of input VAT related to real estate construction or acquisition of real estate, and where a subsequent VAT-exempt transaction is entered into (eg, 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 5 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

From 2018, capital gains shall be liable to tax in Portugal, 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.

19 Slovakia

Real estate transfer tax

There is no real estate transfer tax in Slovakia.

Capital gains on the sale of real estate

There is no specific capital gains tax.

Slovak tax resident corporate owners of real estate are subject to tax on profits realised on the sale of real estate at the flat corporate income tax rate of 21%. Losses realised on the sale of buildings, are generally tax-deductible for corporate income tax purposes. However, losses from sale of land and real estate depreciated for tax purposes in 6th depreciation group (this limitation does not apply to technical improvement of real estate done by tenant) are not tax deductible.

Profits of individuals from sale of real estate may be exempted from personal income taxation, where certain conditions are met (ie, holding period, way in which the ownership title was obtained, etc). Otherwise, the profits are included into individual's tax base which is subject to progressive tax rate (19%/25% depending on the level of the tax base).

Other alternatives for disposal of real estate should be considered.

Capital gains on the sale of shares

Income of a Slovak tax resident company from the sale of shares in Slovak and foreign joint-stock companies, ownership interests in limited liability companies, or limited partnerships (hereafter 'participation') may be exempt from corporate income tax if certain conditions are met. In particular, the following criteria should be met:

- direct holding of at least 10% of shares or ownership interests for at least 24 months (in cases where the criterion was already met before January 1st 2018, the 24 month period would be calculated from January 1st 2018); and
- Slovak tax resident company seller performs substantial functions in Slovakia, bears and manages risks associated with the participation ownership and has adequate personnel resources and material equipment to perform these functions.

However, the above tax exemption does not apply to taxpayers who trade in securities, to the sale of companies in liquidation, bankruptcy or restructuring, or to taxpayers in liquidation.

Capital gain of Slovak tax resident individual from the sale of shares is generally subject to tax at 19%/25% (depending on the level of tax base). However, capital gain from sale of shares listed on recognised stock exchange may be exempted from tax, subject to certain conditions (eg, 1 year holding period, etc).

In case of real estate acquisition, a careful structuring is required in order to reach tax neutral exit from investment.

Rental income

Rental income is part of the corporate income tax base of Slovak tax resident and is taxed as an ordinary income. It is subject to the standard corporate tax rate, which is 21%. Rent paid to legal entities or individuals is tax-deductible on a cash (paid) basis. Nevertheless, rental payments are tax-deductible up to the amount, which actually relates to the particular tax period.

Rental income of individuals is subject to progressive tax rate (19%/25% depending on the level of the tax base).

The cash flow model should be reviewed in order to assess the level of tax burden.

Tax depreciation

Real estate, as other fixed assets, is subject to tax depreciation on an annual basis. There are six tax depreciation groups for assets, with depreciation periods ranging from 4 to 40 years. Most buildings of a permanent nature fall into the fifth and sixth group, and are depreciated 20 or 40 years respectively using a straight-line method of tax depreciation.

In case that an asset is rented, the annual tax depreciation costs on leased fixed asset (including real estate) cannot exceed the annual rental income on such asset. The unclaimed tax depreciation costs on leased assets due to the above limit can be claimed after the end of statutory tax depreciation period.

The taxpayer can decide to interrupt (defer) tax depreciation of tangible assets for one or several tax periods. The depreciation period is then prolonged by the number of taxable periods in which the asset was not depreciated.

Tenants can depreciate technical enhancements done in rented premises in certain cases.

Land cannot be depreciated.

The company's fixed assets register should be reviewed to ensure correct depreciation. Interruption (deferring) of tax depreciation may provide the possibility to utilise tax losses which would be lost otherwise.

Tax losses carried forward

A company may carry forward and utilise a tax loss equally over a period of four years following the year in which the loss arose (25% per year max). If a taxpayer is not able to utilise the full portion of the tax loss available for deduction in that respective period, such unutilised part of the loss is lost for deduction permanently.

Carry back of losses is not available in the Slovak Republic.

Optimise the tax base by maximum utilisation of the tax losses from previous years.

Tax-deductible costs

A company owning property in Slovakia can deduct interest expenses and property-related costs, eg, tax depreciation (with exceptions as stated above), repairs, maintenance and utilities, from its taxable rental income, subject to the general conditions in the Slovak Tax Act. Property management fees can also generally be treated as tax-deductible.
Interest expenses on loans from a related party may be deducted for tax purposes, provided the following conditions are met:

- Loan principal is used to generate, secure or maintain taxable income and it is properly documented.
- The level of interest and related expenses is at arm's length level (which would be supported by proper transfer pricing documentation).
- The deduction of interest and related expenses is allowed by Slovak thin capitalisation rules (ie, limited up to 25% of an adjusted current year EBITDA of the debtor).

From January 1st 2018, interest expenses under an intercompany loan (as well as any other expenses incurred in respect of a related party) would not be tax deductible in portion corresponding to the amount:

1. double deduction is achieved;
2. of a non-taxable income (income not subject to tax);
3. of funds if the funds are used (directly/indirectly) by a related party to repay (fully/partially) the expenses as stated above under points 1. or 2.

In case of individuals owning a property in Slovakia and receiving rental income, the type of deductible expenses depends on the treatment of property.

The costs of the company should be properly documented in order to support its relation to taxable income generating activity of the company and its tax deductibility.

Thin capitalisation

The limit for the maximum amount of tax deductible interest and related fees on credits and loans between related parties is established as 25% of the adjusted earnings before interest costs, tax, depreciation, and amortisation (EBITDA).

In general, thin capitalisation provisions do not apply to financial institutions, some real estate companies, collective investment schemes, and leasing companies. Other exceptions or restrictions may apply.

Financing structure should be properly analysed in order to avoid negative tax implications or trapped cash.

Transfer pricing

Under Slovak legislation the transaction of Slovak corporate taxpayer with its foreign and Slovak related parties are subject to transfer pricing control. The tax legislation reflects the transfer pricing methods commonly used in OECD member countries. These transfer pricing methods include comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin methods. The legislation provides local tax authorities with the flexibility to use these methods, or a combination thereof, when reviewing related party transactions.

Taxpayers are obliged to keep transfer pricing documentation supporting the arm's length level of prices used in transactions with their foreign and Slovak related parties.

The arm's length principle should be followed and the appropriate documentation should be in place for tax assessment. Proper transfer pricing review and planning is crucial.

Business combinations

There are following alternatives for the business combinations:
- Sale of business as a going concern (further 'BGC').
- Contribution of the BGC to share capital.
- Sale of individual assets and liabilities.
- Contribution of individual assets to share capital.
- Mergers and demergers.

Application of different options may allow for recognition of a step up in values of assets for tax purposes, recognition of goodwill, etc

From Value Added Tax (VAT) point of view, sale of company's shares is VAT exempt in Slovakia. In case of mergers and acquisitions when the taxpayer dissolves without liquidation, such a business transfer should be out of scope of Slovak VAT if certain formal conditions are fulfilled. Similarly, transfer of a set of assets/obligations which meets the conditions for transfer of going concern should be also out of scope of Slovak VAT.

The effectiveness of each option depends on the particular situations in hands. Therefore, a detailed analyses is required to choose the best option.

Anti-avoidance rules

General: according to the Slovak tax law, in principle, the tax authorities have the right to reclassify the transaction(s) based on its substance and not formal view in cases where the transaction does not have economic justification and where at least one of the reasons was to avoid tax payments, to reduce the tax base or to obtain tax advantages, which the taxpayer would otherwise not be able to obtain ('GAAR').

Dividends: Slovak tax law states that dividends should be subject to tax in Slovakia if received by taxpayer

(i) as a result of a measure or multiple measures which cannot be considered as based on proper business reasons corresponding to the economic reality, and
(ii) where the main or one of the main purpose of such measure(s) was obtaining of benefits which would not be granted otherwise.

Changes in Double tax treaty (DTT) network: In June 2017 Slovakia signed the Multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (MLI). It may be expected that ratification of MLI would be completed by Slovakia till the end of 2018, and MLI provisions would be in force in 2019. MLI among others may restrict application of DTT benefits.

Exit tax and CFC rules: Based on the Amendment of Slovak tax law, exit taxation (valid from January 1st 2018) and CFC rules (valid from January 1st 2019) have been introduced to the Slovak tax law.

The new and existing structures should be reviewed in order to assess the impact of Slovak anti-tax avoidance rules. The changes in the legislation should be monitored in order to assess the impact on the business.

Slovak source income

Generally, the gain from disposal of real estate located in Slovakia or the rental income from the real estate located in Slovakia is subject to Slovak taxation if paid to foreign tax resident under Slovak tax legislation.

Income of non-residents from transfer of shares in a Slovak company is also considered as a taxable income from a source in the Slovak Republic (regardless whether it is a Slovak real estate rich company or not) and is subject to Slovak taxation.

A tax securement of 19% applies to rent and sales price paid by a Slovak entity or individual to a non-EU/EEA entity/individual for real estate/shares located in Slovakia. A 35% securement tax rate applies on payments to taxpayers from 'non-contracting states' (ie, states that did not either conclude a double tax treaty or tax information exchange agreement with the Slovak Republic or where a Slovak tax payer is not able to prove the beneficial ownership status of income recipient).

No tax securement is required for rental payments/income from transfer of shares paid to EU/EEA-resident entities, assuming such non-resident is beneficial owner of received income.

The tax securement is considered a tax advance. The entity/individual receiving the rental income should file a Slovak tax return, and calculate its Slovak tax base (ie, income less tax-deductible costs attributable to earning the income under Slovak tax law). If the tax return is not filed, the tax authorities can consider the tax securement to be a final tax.

The gain of non-resident from disposal of shares in a Slovak company is generally subject to 21% corporate income tax. In practice, some double tax treaties may provide protection from Slovak taxation of non-resident capital gain from disposal of shares in Slovak companies.

In general, dividends distributed from profits generated after January 1st 2017 in favour of non-residents are subject to:

- 7% WHT, if paid to an individual (35% WHT in case of an individual from a 'non-contracting state');
- 0% WHT, if paid to a company or a tax resident of a 'contracting state' (there is a double tax treaty (DTT) or tax information exchange agreement in place), provided such company is the beneficial owner of income; and
- 35% WHT, if paid to a company or tax resident of a 'non-contracting state', or where Slovak payer of income cannot prove the beneficial ownership status of income recipient.

The WHT, if any, may be decreased by the provisions of the effective DTT.

Generally, there is no withholding tax on dividends paid by Slovak entities out of profits arising in 2004–2016, unless GAAR apply.

If interest is paid by a Slovak entity to a foreign entity, it is subject to withholding tax of 19%/35% (in case of taxpayers from non-contracting states or where Slovak taxpayer is not able to prove the beneficial owner status of income recipient) under Slovak domestic law. However, most DTTs reduce the withholding tax on interest to nil. Moreover, as a result of implementation of the interest provisions of the EU Interest and Royalty Directive into Slovak tax law, interest paid by a Slovak entity to a related company seated in another EU Member State that is the beneficial owner of the interest income, is not subject to Slovak tax, provided certain conditions are met.

Slovak withholding tax is not levied on non-resident's income sourced from Slovakia in case, the foreign company receiving the income has a Slovak permanent establishment (PE) to which the gain can be attributed.

There are options to reduce Slovak WHT burden.

Real estate tax (local tax)

Slovakia levies a real estate tax on companies and individuals owning land, buildings, flats or apartments, and non-residential premises in residential buildings, such as blocks of flats or apartments.

Generally, the real estate tax is payable by the registered owner of the land, building, or owner of the apartment. If the taxpayer cannot be determined, the tax is payable by the user of the land, individual or legal entity who uses the building. The real estate tax is governed by the Act on Local Taxes and includes the basic annual rates.

Generally, the tax liability depends on the area of ground occupied by the real estate in square metres, the number of floors, the nature and purpose of the building and its geographical location.

Budget for additional payments in relation to the real estate tax (local tax) should be considered.

Local development fee

From 2017, the municipality may establish in its territory or part of cadastral area a local one-off development fee. The development fee may vary from €3 to €35 per each square meter of ground space occupied by the finished building. The municipality can set the fee rate for various buildings differently. The municipality issues decision on application of the development fee once building permit is valid and the development fee is due within 15 days after the decision became valid.

Constructor should check if the local development fee for a building applies in its area and consider a budget for additional payments in relation to this fee.

Value added tax (VAT)

Transactions with real estate (sale or lease) can be either subject to 20% VAT or exempt from VAT in Slovakia. Supply of real estate or part thereof with related construction land is generally subject to 20% VAT if supply is made within first five years from the first building approval or putting it into operation for the first time.

After this five year period supply of real estate is normally VAT exempt without a right to deduct related input VAT. However, the supplier can decide not to apply the VAT exemption. In this case, VAT reverse-charge should apply for supplies to the Slovak VAT payers. In all other cases not specified below, VAT should be charged by the supplier.

Supply of land is VAT-exempt, except for construction land which is subject to Slovak VAT.

Lease of real estate is generally VAT exempt without a right to deduct related input VAT. However, leasing real estate to another taxable person, a taxpayer can decide whether to exempt it or not. At the same time, certain transactions such as eg, letting of accommodation facilities (accommodation services) or parking premises, should be always taxable.

The following transactions in the construction sphere falling under the Section F of CPA Statistical classification of products performed between two Slovak VAT payers are subject to VAT reverse-charge:

- supply of construction works;
- supply of building or parts of buildings under the framework of the construction or similar agreements;
- supply of goods along with assembly and installation, if assembly and installation can be considered as construction works.

Slovak established taxable person not registered for VAT supplying a building, part of building or construction land automatically becomes a Slovak VAT payer upon such a supply and will have to charge VAT on it if upon its performance they reach VAT registration turnover threshold of €49,790.

A taxpayer is obliged to adjust the tax deduction, if during a 20 year period from acquisition/construction of real estate, he changes the purpose of its use (from VATable to VAT exempt and vice versa, or from business to non-business and vice versa). The period for archiving invoices received in relation to immovable property is 20 years.

Currently, there is an amendment of Slovak VAT Act in draft. The major points related to real estate are following:
- If the building or its residential part undergone reconstruction and costs are more than 40% of the value of building or its residential part before reconstruction, the supply of such a building is subject of 20% VAT for next five years after building approval relates to this reconstruction;
- A VAT payer will have to exempt the sale of residential buildings, flats, apartment after five year period (the option to charge VAT on such a supply after five years after building approval will be no longer available);
- A VAT payer will have to exempt the lease of flats, residential houses or apartments (the option to charge VAT on such a supply to taxable person will be no longer available).

The amendment should be valid from January 1st 2019. However, it is still in draft therefore the final wording of provision might change.

In many cases, Slovak VAT payers can decide whether to charge VAT on lease or sale of real estate or not. In certain cases for VATable supplies of real estate between two Slovak VAT payers VAT reverse-charge should apply.

VAT group

It is possible to create a VAT group in Slovakia that enables those persons connected economically, organisationally and financially, with their seat, place of business or fixed establishment in Slovakia to register for Slovak VAT as a single VAT payer. As a result, the transactions within the VAT group are not subjected to VAT.

VAT grouping makes sense when VAT group members are performing VATable supplies within the group and supply recipients are not entitled to full deduction of related input VAT.

20 Spain

Corporate Income Tax (CIT)

A new CIT Act came into force for tax periods starting 2015. The standard tax rate were reduced from 30% to 28% in 2015, and to 25% in 2016 onwards.

Other rules such as the disallowance of real estate impairments, the new definition of mere holding entities, the new domestic-participation exemption regime, the restrictions on the utilisation of carry-forward tax losses, financial expenses capping-rule, etc may be relevant for real estate investors.

Taxpayers shall pay special attention to these rules as well as to the interpretation made by the Tax Authorities by means of binding tax rulings.

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

CIT Payments on account

New CIT payments on account rules has come into force. According to these new rules the rate for payments on account for companies with a turnover of €10 million or over is increased to 24% with effect from the payment on account for October 2016 (2nd CIT payment on account) and a minimum payment on account rate of 23% of accounting profits is reintroduced for companies which exceed this threshold.

We highly recommend to plan when to carry out operations which generate tax-exempt income (distributions of dividends, sales of shares, etc) as payments on account are made over these types of income.

Domestic withholding tax rate

Domestic withholding taxes applicable in 2016 onwards is 19%. It will be due unless an exemption or reduced rates are applicable to the case at hand.

Tax losses carried forward

Tax losses may be carried forward with no time limitation. However a general restriction has been introduced for 2017 onwards:

- Companies with a turnover below €20 million during the previous 12 months should be entitled to offset 70% of the taxable profits.
- Companies with a turnover of €20 million or more but below €60 million during the previous 12 months should only be entitled to offset 50% of the taxable profits.
- Companies with a turnover of at least €60 million during the previous 12 months should only be entitled to offset 25% of the taxable profits.
- €1 million of losses will be compensated in any event.

These limits would not be applicable in the period in which the company is wound up.

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 a new tax form (No 232) has been approved by the end of August 2017 to declare transactions carried out between related parties.

The tax return should 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 December 31st 2016 the tax return should be filed between November 1st and November 30th 2017. Temporarily, for financial years commencing in 2016 and ending before December 31st 2016 (short fiscal year), the tax return should be filed also between November 1st and November 30th 2017.

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 new 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 must 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 and Local Files that will need to be 'at the disposal' of the Tax Administration, the CbCR has to be filed every year.

We recommend to analyse 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 and management fees.

Request and collect the corresponding residence certificates.

Real estate investment trust

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

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

Value Added Tax (VAT) – Immediate supply of information

From July 1st 2017, large companies (whose turnover for the prior year will have exceeded €6 million) 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 new obligation, which implies that companies will need to adapt their accounting and invoicing systems accordingly, has multiplied the information, which the Spanish Tax Authorities will have access to.

Tax on the Increase of Urban Land

The sale of urban lands is subject to the Tax on the Increase in Value of Urban Land (TIVUL). The taxable income is the deemed increase of value of urban land generated during the years of possession of the urban land. The taxpayer will be the seller.

The taxable quota is calculated on the cadastral value of the land applying the coefficients and rates applicable in the municipality where the asset is located. This tax is deductible for CIT purposes.

The Spanish Constitutional Court, in a judgement dated May 11th 2017, has ruled the unconstitutionality of the TIVUL tax base calculation method. Thus, no IVULT should arise in case of a loss-making disposal.

Based on the latest judgement from the Spanish Supreme Court, dated July 9th 2018, the IVULT would be due unless the taxpayer is able to prove that the disposal has been done in a loss position. The reason behind this argument is that the Spanish Supreme Court understands that the unconstitutional character of the Law regulating the IVULT is only partial, thus, it would be unconstitutional only if the IVULT is levied on transfers or disposals in which there are no actual increase of the land's value.

Currently, there is a draft law proposal which provides: i) a change on the way in which the taxable basis is calculated; and ii) a confirmation excluding the IVULT in case the transaction does not effectively generate a capital gain.

It is expected that a modification of the TIVUL legislation will take place. It is not clear if a new tax base calculation method will be introduced or the former rules will be modified to address the situation in which capital losses exist.

21 Sweden

Limitation of deductions on capital loss

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

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

Group taxation

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

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

Losses carried forward

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

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

Tax allocation reserve

Companies can delay tax payments for up to six years on 25% of the annual profit by means of a tax allocation reserve. This can benefit liquidity and balance out occasional annual losses since the latent tax debts can be used against future losses for the upcoming six years. Companies using this reserve are taxed annually on a hypothetical income/interest. The income/interest is calculated by multiplying the reserve by 72% of the interest rate on governmental loans. The rate on governmental loans (government bond yield) is normally between 2% and 5%, but since 2014 the governmental bond yield has been below 1%. However, for financial years starting after December 31st 2016, the government bond yield, can never be lower than 0.5% for the purpose of this calculation.

Cash flow models and profit forecasts should be checked to assess the situation. As tax allocation reserves have to be recognised in the accounts, make sure to discuss the possibilities before closing the accounts.

Capitalisation of investments

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

Consider carefully what kind of investments that has been made and what asset types the investment should relate to.

Transfer pricing

Cross-border transactions between related parties have to be carried out in accordance with the arm's length principle, which means that prices should be set as if the transactions are carried out between two independent parties. If this principle is not complied with, or if one fails to present appropriate documentation to the Swedish tax authority, the taxable income can be reassessed to the taxpayer's disadvantage. Other penalties may also be incurred.

Duly follow the arm's length principle, monitor applied prices on intragroup charges and transactions and ensure documentation of cross-border activities.

Limitation of interest deduction

Sweden has certain rules limiting interest deductions between affiliated entities.

Interest payments on loans between affiliated parties are not deductible, whatever the purpose of the loan arrangement, unless certain conditions are met.

A minimum 10% tax test (measured as if the interest had been the sole income) at the true creditor level, ie, the person entitled to the interest, will still allow interest deduction, however not if the achievement of considerable tax benefits for the group was the main reason behind the debt structuring.

Commercial reasons for the loan is still also an alternative test for allowing an interest deduction, but only if the creditor is a resident within the EEA or in a tax treaty jurisdiction with which Sweden has a full tax treaty.

If the debt refers to an acquisition of shares from a company included in the affiliated group or in a company which after the acquisition is included in the affiliated group, both the share transfer and the debt need to be based on commercial reasons.

Deductibility of interest on loans between affiliated parties should be evaluated. Since the wording in the proposed legislation is somewhat complex, it is at this stage a bit difficult to foresee how the Tax Agency would act in these situations. Thus, it cannot be excluded that tax deductions for interest payments on any group internal loan may be refused by the Tax Agency. Open disclosures should always be considered.

New rules limiting interest deductions will be presented as from 2019 (please see below under 'Major and significant upcoming changes'). In short though, the new rules will be based on a so-called EBITDA (Earnings Before Interest, Tax, Deprecations and Amortisations) model. This means that net interest expenses are deductible up to 30% of the taxable EBITDA-result (not the same as the EBITDA according to the accounts).

We strongly recommend to calculate the impact of the new rules well before 2019 in order to be able to make necessary adjustment to the financing structure and thus optimise it to the new rules.

Value Added Tax (VAT) regarding letting of premises

Letting of premises can be subject to voluntary VAT liability if the tenant is invoiced with VAT. Please note that the following requirements must be met;

1. the premises must be used for VAT-able purposes or by a tenant that can have the VAT refunded such as the Government, county councils etc, and
2. the letting must be for a continuous period of time.

It is recommended to not conclude a lease agreement for a shorter period than 12 months since short term leases may disqualify the letting from voluntary VAT liability. In case a short term lease is contemplated it is recommended to analyse the potential VAT effects this will have before the agreement is concluded.

The voluntary VAT liability commences once the tenant has moved in and is charged with VAT. Input VAT incurred prior to the optional VAT liability is as a starting point not recoverable.

However, in case of new construction, reconstruction or extension works it is possible to apply for so called voluntary VAT liability during the construction phase and thereby become subject to voluntary VAT even if there are no tenants which can be charged with VAT yet. Also, it is possible to recover VAT on construction costs that occurred before the property was subject to voluntary VAT liability retroactively. The right to deduct such VAT will occur once the tenants move in and are charged with VAT. The retroactive VAT recovery only covers costs for new construction, reconstruction and extension works, ie, capitalised expenditures. Operational expenses invoiced before the voluntary VAT liability commenced are not recoverable.

VAT adjustments

If a property during any of the last 10 years has been subject to new construction, reconstruction or extension works and the total input VAT on such measures during the year amounts to 100,000 SEK or more, the property is considered as capital goods. If the VATable usage of any such property covered by the capital goods scheme has changed during the year, such as from VATable to non-VATable, the property owner is obliged to adjust the previously reported input VAT, ie, to repay previously recovered VAT or to recover previously non-deducted input VAT.

Any adjustment should be submitted to the Tax Agency the first reporting period the years after the change of use of the premises occurred.

Check the VATable status of the premises at year end.

Simplification of rules regarding letting of premises

As from January 1st 2014, it is no longer required to apply for voluntary VAT registration for letting of premises. Instead, let areas that are invoiced including VAT are covered by voluntary VAT registration. All other requirements remains the same ie, the premises must be used for VAT-able purposes and the letting must be for a continuous period of time.

Voluntary VAT liability during the construction phase can still only be obtained by applying to the Tax Agency.

Letting of space for equipment on a mast or antenna to a mobile phone operator will be subject to mandatory VAT.

Pop-up stores

The Supreme Administrative Court has ruled that a property owner can be subject to voluntary VAT in case of short term letting to tenants operating pop-up stores. According to the Tax Agency's interpretation, the ruling does not apply to short term leasing of other types of business where the tenant is more likely to conduct a VAT exempt business, for instance in case of ordinary office space.

Major and significant upcoming changes

Interest deductions

On June 21st 2016, the European Commission agreed on a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market (Anti Tax Avoidance Directive, or ATAD).

As a result of the EU regulation, on March 21st 2018, the Swedish government presented its proposal for new tax regulations for the corporate sector to the Council on Legislation. The new regulations have been approved by the Swedish government as of June 2018 and will be introduced with effect from January 1st 2019.

A new general limitation on the right of deduction will be introduced for negative net interest in the corporate sector. This includes interest costs to external lenders as well as on interest costs on intra-group debt and is thus a change compared to prior legislation only limiting deduction of intra-group interest costs.

The right of deduction will be based on a so-called EBITDA (Earnings Before Interest, Tax, Deprecations and Amortisations) model. This means that net interest expenses are deductible up to 30% of the taxable EBITDA-result (not the same as the EBITDA according to the accounts).

An allowance of 5 million SEK, which implies that negative net interest up to that amount will not be covered by the EBITDA-rule. Should the company be part of a group, the entire group must not apply the same rule, but if one company in the group uses the allowance the total deduction of the entire group may not exceed 5 million SEK.

The current interest deduction limitation rules regarding intra-group interest costs will be narrowed in scope, which according to the government mean that a deduction would be available in more cases than under the 2013 rules currently in place.

Interest expenses on loans from related companies are from January 1st 2019 deductible if the company being the beneficial owner of the corresponding interest income:

- is resident in the European Economic Area, or
- is resident in a country with which Sweden has a full double tax treaty and the company is resident in that country under the treaty, or
- is taxed at a rate of at least 10% if the interest income had been the only income for the company.

A deduction will however still not be available if the debt relationship arose exclusively, or almost exclusively, in order to create a substantial tax benefit for the group. The expression 'exclusively or almost exclusively', means 90–95%.

Other upcoming changes

New Tax Rules in the Corporate Sector also include a number of other upcoming changes with effect from January 1st 2019:

- The corporate tax rate will be decreased in two stages. From the current 22% to 21.4% in 2019 and to 20.6% in 2021.
- A so-called primary deduction will be introduced 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 a depreciation 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 a share 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.
- The standardised income attributable to deduction for provision to the tax allocation reserve is increased. This also implies an increase of the cost of financing with the tax allocation reserve. In this case, the standard income will correspond to the government bond yield multiplied by the sum of deductions made for provisions to the tax allocation reserve (instead of multiplying the tax allocation reserve by 72% of the government bond yield). The government bond yield should, in this instance, never be lower than 0.5%.
- Reversals of provision to the tax allocation reserve performed within a financial year beginning before January 1st 2019 shall be made with 103% of the deduction, if the reversal is performed by a legal person with a financial year beginning after December 31st 2018 but before January 1st 2021 and with 106% of the deduction if the reversal is performed within a financial year beginning after December 31st 2020. When applying the same regulation reversals of provision to the tax allocation reserve performed within a financial year beginning after December 31st 2019 but before January 1st 2021 shall be made with 104% of the deduction, if the reversal is performed by a legal person with a financial year beginning after December 31st 2020.
- General rules will be introduced for calculating the interest part in financial leasing agreements. In case the interest part is not specified in the leasing agreement, or if it is not market-based, the interest part is to be determined by a special calculation model.
- A prohibition on the deduction of interest costs in certain cross-border transactions will be introduced. In short, the intention is to have rules that limit the possibility of deducting interest costs in Sweden to situations where no taxable income is reported abroad or where a deduction of the same interest expense would otherwise have been granted to companies in two different countries.

Group commissioned to review tax rules for the real estate sector

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

On March 30th 2017 the commissioned group issued the report 'Certain issues within the real estate and stamp duty area'. In brief, this proposal can be summarised as follows:

- When real estate is sold in a packaged form (in the form of a company), the real estate company is considered as having disposed of the property and then acquired it for market value, thus being forced to pay taxes on a fictive transaction (market value – tax residual value = taxable gain). This is not meant to be applied on intra-group transfers/reorganisations, only external transactions. According to the proposal, the fictive tax is triggered if the controlling influence over the real estate company ceases.
- The real estate company will also need to report a standardised amount of income to compensate for not having to pay stamp duties ('RETT'), as would have been the case if the property was directly disposed.
- The previous exemption from stamp duties applying to the sale of real estate involving certain types of land amalgamation procedures will no longer be in effect.
- Stamp duty should no longer be levied on intra-group property transactions.
- The stamp duty tax rate for legal entities will be lowered from 4.25% to 2%.
- The classification of real estate as either inventory or capital assets will be eliminated from the corporate sector and all real estate will be treated as capital assets.
- Intra-group real estate transactions of land and buildings that can be carried out below market value are to support continuity in terms of acquisition values, accumulated depreciation and the tax residual value.
- An adaptation of the tax legislation based on the EU Merger Directive to prevent the tax avoidance. The amendment is an adaption to the Directive's wording through new rules on the maximum reimbursement that can be paid in cash in such a restructuring.

The proposal received heavy criticism once published. Since then, although the Government has not stated that the proposal is abolished, there has been no firm proposals presented, or indicated to be presented, to the Parliament since the proposal was issued in 2017.

New case law regarding purchaser's obligation to adjust input VAT on investments

Following the ECJ case C-622/11, Pactor Vastgoed, a case regarding a purchaser's obligation to adjust input VAT on investments made by the previous seller, the Swedish Administrative Court of Appeal has ruled that the VAT directive has direct effect and that a purchaser of a property should not be obliged to adjust input VAT on investments made by the previous owner. The case has been appealed by the Swedish Tax Agency to the Supreme Administrative Court, which has granted leave to appeal, but as of September 2018 not yet issued its ruling.

22 Switzerland

Increased focus on substance

In previous court cases, treaty benefits were denied due to treaty abuse to foreign holding companies upon the sale of a Swiss real estate company. Accordingly, Swiss tax authorities pay particular attention to substance requirements.

Based on Swiss domestic law, the sale of the majority of a real estate company is generally treated as the sale of its underlying Swiss real estate asset ('*wirtschaftliche Handänderung*') and is therefore subject to real estate capital gains tax and real estate transfer tax in selected cantons. In case of an international constellation, certain double tax treaties, eg, Luxembourg, allocate the right of taxation of the gain of the share deal holding Swiss real estate to the other state. In this case, Switzerland does not have the right of taxation for real estate gains.

However, the treaty benefits can be denied on the grounds of treaty abuse. Even if the double tax treaty includes no written tax abuse provisions, the Swiss federal court recognise an inherent, unwritten tax abuse reservation for all double tax treaties.

In case (i) the only purpose of the holding is to benefit from the advantageous provision in the applicable double tax treaty regarding the allocation resulting in a double non-taxation of the real estate gain, (ii) not sufficient substance is available at the holding level and (iii) the beneficial owners are non-eligible persons, the structure as such is considered to be abusive in the opinion of the court and therefore treaty benefits are denied.

The Swiss tax authorities review the substance requirements at the level of foreign companies regularly. Hence, a robust structure is key.

Tax Proposal 17

In February 2017 the Swiss Corporate Tax Reform III (CTR III) was rejected by the Swiss public vote. Whereas the Tax Proposal 17 (TP17) is supported by the State and the National Council and the Parliament, the reform is still subject to a potential referendum which would take place in May 2019. At this stage it cannot be foreseen whether a referendum or a subsequent people voting will approve TP17.

The overall objectives of the reform improve the attractiveness of Switzerland as a business location, maintain and create jobs and adjust the corporate tax law to the new international standards.

The consultation on Tax Proposal 17 contains the following core elements:
- Patent box: introduction of a mandatory patent box in accordance with the OECD standard at cantonal level;
- Research and development deductions: the additional deduction for R&D costs may not exceed 50% of the actual costs. The deductions should focus primarily on personnel expenses;
- Maximum burden: the tax relief on profits arising from the two aforementioned instruments may not exceed 70%. The relief leeway is thus restricted relative to the third series of corporate tax reforms;
- Partial taxation of dividends: the partial taxation of dividends from qualified participations (minimum stake of 10%) held by individuals should be 70% at the federal and at least 70% at cantonal and communal level.

The Federal Council has decided not to include the introduction of a tax deduction on a reasonable level of interest on surplus equity companies in the message, despite the importance of this measure and its direct impact on the attractiveness of Switzerland as a business location. Nevertheless, some cantons are lobbying in this matter.

The earliest anticipated entry into force would be 2020.

With regards to the real estate business in Switzerland it is expected that these measures will only have a limited effect.

As an accompanying measure to the Tax Proposal 17 some cantons have already announced to reduce their corporate income tax rates. While real estate companies generally did not particularly benefit from these tax regimes the reduction of the cantonal tax rates will result in a reduction of the current tax charge on real estate income. With regards to capital gains taxation, a reduction of the tax rate would reduce the deferred taxes on such gain provided the gain is subject to income tax instead of real estate gains tax (depends on the canton where the real estate is located).

23 Turkey

Corporate tax

Resident companies in Turkey are subject to corporation tax on their worldwide income. The standard corporate tax rate was increased to 22% from 20% for FY 2018–2020 for tax period that begin on or after January 1st 2018. Corporate income tax law states exemptions which can be beneficially utilised 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, 50% of capital gains derived from the sale of property 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 Corporate income tax 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.

It should be ensured that Turkish transfer pricing documentation requirements are met.

Thin capitalisation rule

If the ratio of the borrowings from related parties exceeds three times the shareholders' equity of the borrower company, the exceeding portion of the borrowing will be considered as thin capital. Interest and other payments relating to thin capital and the related foreign exchange losses are non-deductible expenses while calculating the corporate tax base. 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 capitalisation analysis should be made by the taxpayer during the preparation of the corporate tax return if companies receive related party loans.

Controlled foreign corporation (CFC)

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

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

Depreciation

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

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

Foreign currency revaluation

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

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

Prepaid income

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

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

Doubtful receivables

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

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

Value Added Tax (VAT) rate for the residential units

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

The determination of the VAT rate to be applied (1%, 8% or 18%) on the deliveries of houses starting from the year 2013 will vary based on several different factors such as;

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

In accordance with the Cabinet Decrees numbered 2018/11674 changes had been made in the VAT rate to be applied on the delivery of residential units. Within the scope of the latest update in the legislation, VAT implementation for the houses and the workplaces which are subject to 18% VAT is updated and decreased to 8% until October 31st 2018.

Turkish tax authorities have recently introduced new legislation regarding 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.

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. In accordance with the Cabinet Decree 2018/11674, title deed fee is reduced from 4% to 3%. These changes are valid until October 31st 2018.

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.

The corresponding agreements are;
- Officially drafted construction agreements on flat for land basis or revenue sharing
- Construction and contracting agreements drafted among building contractors and sub-contractors within the scope of officially drafted construction agreements on flat for land basis or revenue sharing
- Advisory service agreements with respect to the construction work on flat for land basis or revenue sharing
- Service agreements of building inspection
- Preliminary sale agreements in relation with residential units
- Officially drafted promise to sell agreements in relation with immovable.

Stamp tax is capped at 2,135,949.30 TRY (approximately €305,000 under the current foreign exchange rate, subject to annual revaluation) for the year 2018. All signatory parties are jointly held liable for the stamp tax payment. In practice, the parties come to a mutual agreement regarding the stamp tax payment.

For Turkish corporate income tax purposes, stamp tax that relates to real property can either be deducted as an expense, or capitalised with the real estate and depreciated. If the stamp tax is not related to the real estate, it has to be deducted as an expense.

Resource Utilisation 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.

Before March 15th 2017, RUSF was applicable at 3% over the interest amount for Turkish Liras dominated loans regardless of the maturity of the loan. With the latest amendment announced on March 15th 2017 by the Council of Ministers Decision, RUSF rates for Turkish Liras dominated loans has been changed to 1% on the interest amount whose average maturity does not exceed one year and 0% on the interest amount whose average maturity period exceeds one year. Therefore, Companies should evaluate their financing situation according to the RUSF rates.

Deductibility of finance expenses

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

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

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

Deemed interest deduction on cash injection as capital

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

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

The Council of Ministers has been authorised to decrease the rate to 0% or increase to 100%. By the new Council of Minister Decree No 2015/7910 dated June 30th 2015, cash capital increase rate has been re-determined between 0% – 100% for various situations.

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

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

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

Revaluation of immovable property

Law No 7144 published in May 2018 added a temporary provision to the tax code, which establishes an optional tax regime for the revaluation of immovable properties. The revaluation option is intended to address and partially correct distortions in taxpayers' financial statements caused by inflation. Under this new provision, Turkish taxpayers are given the option to update the tax base of their immovable property and to utilise a higher amortisation deduction for the remaining useful life of the asset.

In addition, revaluation reduces the capital gains tax when revalued assets are sold. Taxpayers who choose to revalue their immovable property will be subject to a special tax of 5%, which will be levied on the surplus calculated as a result of the revaluation. On July 6th 2018, the Turkish tax authority released a Communiqué, addressing further details on implementation of the revaluation option.

The new provision is available to both individuals and companies. However, – banks and financial institutions, – insurance and reinsurance companies, – pension companies and private pension funds, – those exclusively engaged in purchase and sale of gold and silver, – those who have been permitted to keep their legal books in foreign currency, – those who keeps their accounts using the simplified method, – non-residents, cannot benefit from the revaluation option.

Distribution of the revaluation surplus to shareholders, if the amounts recorded in the revaluation reserve account are withdrawn from the company or transferred to an account other than the share capital account, they will be subject to income or corporate tax.

Taxpayers who would like to take this option must apply the revaluation by September 30th 2018 at the latest.

In making their decision to use the revaluation option or not, taxpayers need to compare the future tax benefits with the current tax payment of 5%. In addition, the improvement on the equity should also be taken into consideration.

Tax reduction for compliant taxpayers

Income Tax Law numbered 193 had been re-arranged last year to provide 5% discount for eligible taxpayers who are consistent in filing their tax returns on time and have no outstanding tax liability.

To qualify, taxpayers must meet the following conditions:
1. All tax returns belonging to the year the tax discount will be applied, and to the previous two years, must be submitted within the statutory period. In addition, the related due taxes must be paid within the statutory period. (The years 2015, 2016 and 2017 will be taken into account for evaluating eligibility for the discount to be applied in 2018.)
2. The taxpayer should not be subject to any additional tax assessment by Turkish tax authorities in the year the discount is applied and in the two preceding years. (The years 2015, 2016 and 2017 will be taken into account for evaluating eligibility for the discount to be applied in the year 2018.) Tax returns declared for correction or voluntary disclosure purposes are not regarded as a violation of the condition.
3. The taxpayer should not have unpaid tax debt exceeding 1,000 TRY.

The discount will be 5% of corporate income tax (income tax for individuals) liability declared on the annual tax return (the discount cannot exceed 1 million TRY).

The discount is applicable for annual corporate and income tax returns to be submitted after January 1st 2018.

Please note that, taxpayers who committed tax evasion in the year of discount application and in the four preceding calendar years are not allowed to benefit from the discount.

Taxpayers should pay attention to the utilisation of this tax reduction opportunity during the CIT declaration process.

24 United Kingdom

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

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

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

Arm's length nature of financing

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

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

Capital allowances

Capital allowances provide tax relief for capital expenditure on UK properties.

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

Accounting changes

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

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

Residential property

The taxation of residential property in the UK has changed significantly over the last number of years.

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

Individual non-resident owners of residential property in the UK have from April 2017 been subject to restrictions in relief for finance costs against their higher (40%) and additional rate (45%) income tax liabilities. Between 2017 and 2020, current reliefs are being phased out and replaced with a basic rate (20%) tax reduction.

Landlords of fully furnished residential properties have historically been able to claim an annual 'wear and tear' allowance of 10% of the rental income. From April 2016, the wear and tear allowance has been replaced by relief for the actual cost of replacement furniture, furnishings, appliances and kitchenware provided for the tenant's use.

Other changes

It is proposed that capital gains on non-resident disposals of all UK immovable property will be brought within the scope of UK tax from April 2019. This will apply to gains on direct and certain indirect disposals.

In addition, it is proposed that from April 2020 income that non-resident companies receive from UK property will be chargeable to corporation tax (rather than income tax).

These changes are not yet enacted and therefore the following is only an indication of the potential implications, which may be subject to amendment.

Restrictions introduced for UK companies from April 2017 in respect of interest relief and carried forward losses are expected to apply to non-resident landlords from April 2020.

The interest relief restrictions were introduced in accordance with the OECD's BEPS project and, broadly, restrict finance cost deductions to 30% of tax EBITDA. There is also a £2 million de minimis and the option of using an alternative group ratio or a public infrastructure exemption (if applicable) if this will provide a better result.

The loss restriction limits to 50% the amount of profit against which brought forward losses in excess of £5 million can be offset. However the loss restriction will only apply to losses accruing from April 2020. Losses arising before April 2020 are expected to be available for carry forward in full against future UK property business profits of the non-UK resident company.

Asia Pacific

1 Australia

Tax on distribution of trust income to non-residents

Withholding managed investment trust

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

The Government has introduced draft legislation into Parliament aimed at increasing the supply of 'affordable housing' in Australia. These measures were previously announced in the 2017/2018 Federal Budget, and include an increased capital gains tax (CGT) discount for Australian resident individuals investing in affordable housing and the introduction an Affordable Housing MIT. The draft legislation is currently before the Parliament, and as drafted, will take effect for CGT events happening on and after January 1st 2018.

The MIT rules are a current focus area for the Australian Taxation Office (ATO). It is therefore critical that taxpayers confirm MIT eligibility prior to an acquisition of property.

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

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

Distributions by trusts that are not withholding MITs

Trusts that are not withholding MITs must carefully manage their distributions from year to year in accordance with the trust deed and the tax legislation. If not managed properly it could cause the trustee to be taxed at 45% (to the extent non-resident investors hold units in the trust).

It is strongly recommended that the trust deed is considered in detail and the process of the distribution must be managed properly in order to avoid the trustee being taxed at 45%.

Basis of distributing trust income

Attributable Managed Investment Trust (AMIT)

The Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016 introduced a new system of taxation for MITs, referred to as AMITs, which applies by election from July 1st 2016.

Broadly, the new AMIT regime applies an attribution model to the taxation of unitholders rather than the current system of present entitlement. Any trusts that are AMITs will also be deemed fixed trusts for Australian income tax purposes.

Some other important features of the AMIT regime are the introduction of cost base adjustments that increase and decrease the cost base of membership interests where the taxable distribution is greater or less than the cash distribution, and the introduction of 'multiple classes' of membership interests that can be issued by AMITs, where each class can be treated as a separate AMIT.

The pros and cons of electing into the AMIT regime must be carefully considered as there are likely to be changes required to systems, documentation (including trust deeds) and processes.

New investment vehicle

New CIV Regime

The 2016 Australian Federal Budget announced the introduction of two new collective investment vehicles (CIV) which may impact on fund structuring in Australia, a corporate CIV (CCIV) and a limited partnership CIV. The CCIV is designed to meet the requirements of the Asia Region Funds Passport regime which is due to launch on January 1st 2019.

The Government released exposure draft legislation on December 21st 2017 setting out the tax framework for a CCIV. The tax framework proposes a new group of attribution entities, referred to as an Attribution Investment Vehicle (AIV) which is defined to include both an AMIT and an Attribution CIV (ACCIV). When introduced, the legislation is also expected to cover attribution limited partnerships. Amendments will be made to the AMIT provisions to incorporate the new terminology, which effectively will replicate most of the current AMIT features into the new ACCIV.

The potential application of this new regime for future investments into Australia should be considered.

Investors should consider these new rules when structuring investments into Australia.

Taxation of trading income

Public trading trust

Generally, Australian real estate is held by trusts in order to access certain tax advantages, eg, flow-through tax treatment. However, a trust is taxed in a similar manner to a company under Division 6C of the tax law if it is classified as a 'public trading trust' for a year of income. A public trading trust is a trust that is a public unit trust (ie, 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.

Division 6C Working Group

The ATO has formed a 'Division 6C' working group with industry representatives. Division 6C of the Income Tax Assessment Act (ITAA) 1936 is relevant not only to determining whether a trust is a public trading trust, but also whether it can qualify as a MIT. This is because a key requirement for a trust to qualify as a MIT is that it cannot be a 'trading trust', which is a defined term in Division 6C. The objective of the ATO is to issue tailored public advice and guidance (including examples) on Division 6C matters (such as Taxation Rulings, Taxation Determinations and/or Practical Compliance Guidelines). To date, there has been no guidance issued.

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

New integrity measures regarding staple structures and agricultural/residential property

The Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018 (the Bill) was introduced into Parliament on September 20th 2018, and is expected to be enacted later this year.

The Bill gives effect to the Government's proposal to reform the tax treatment applicable to stapled structures and certain foreign investors. In respect of managed investment trusts, the Bill introduces measures that seek to:

- subject converted trading income to MIT withholding at the corporate tax rate of 30% (instead of the concessional MIT withholding tax rate of 15%); and
- ensure investments in agricultural land and residential property, including student accommodation (other than affordable housing), are subject to MIT withholding at the corporate tax rate.

The above measures to increase the MIT withholding tax rate to 30% are not targeted at traditional property stapled structures that have little to no cross staple lease arrangements. This is because the trust side of traditional property stapled structures generally hold portfolios in land assets that derive passive rental income from third party tenants. A lower tax rate on this income is an intended outcome of the MIT regime. Trading activities (such as property development) are undertaken by the company side of the staple, which continues to pay corporate tax. There is no conversion of active income into passive income in this case.

Taxpayers will need to revisit their investment structures for Australian investments, and consider the impact of these new integrity measures.

Taxation of foreign tax exempt investors

Restriction of withholding tax exemption for foreign superannuation funds

The Bill noted above regarding stapled structures also includes a measure to restrict the dividend and withholding tax exemption for foreign superannuation funds to portfolio like investments (ie, less than 10%) as from July 1st 2019 (subject to transitional rules). Specified additional conditions also need to be satisfied before the exemption can be applied.

Foreign pension funds that have established captive trusts to house their Australian real estate investments will need to consider the impact of these measures.

Restriction of access to sovereign immunity exemptions

The Bill noted above regarding stapled structures also codifies the tax treatment of sovereign wealth funds by inserting new Division 880 into the Income Tax Assessment Act 1997. 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. This measure takes effect from July 1st 2019 (subject to transitional rules). 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 (including gathering information on investments held by other group members).

Debt deductions

Thin capitalisation

The Australian thin capitalisation rules can restrict the deductibility of interest expense in an income year. The thin capitalisation rules generally apply to Australian inbound and outbound investments. The maximum allowable level of debt is broadly equal to 60% of the net assets (ie, 1.5/1 debt-to-equity ratio) of the entity. Only where this condition is satisfied, interest expenses may be fully deductible.

It is critical that the thin capitalisation rules are considered in some detail in order to determine whether there are any adverse tax consequences under those rules. Taxpayers should also ensure that the interest rate on related-party loans satisfies transfer pricing requirements (where relevant).

Thin capitalisation reform

Under draft legislation introduced into Parliament, the thin capitalisation rules will be modified to prevent 'double gearing structures' that enable foreign investors to generate debt deductions that are greater than the prescribed thin capitalisation limits. These new rules will take effect from July 1st 2018.

Double gearing structures involve multiple layers of flow-through entities (trusts or partnerships) that each issue debt against the same underlying asset. Under current rules, associate entities are grouped together for the purposes of calculating each entity's debt limits under the thin capitalisation rules. Under the current rules, entities are associated where there is a controlling interest of 50% or more. Under the proposed rules, entities will be associated where there is a controlling interest of 10% or more. In addition, a principal purpose test will be introduced to prevent entities from circumventing the new 10% threshold. If a trust is a partner in a partnership, a beneficiary of the trust will be treated as though it was a partner in the partnership under the associate entity rules.

Draft legislation has been introduced into Parliament which will require an entity to use the value of assets, liabilities (including debts) and equity capital that are used in the financial statements in compliance with the accounting standards. When enacted, these amendments will take effect from May 8th 2018. A transitional rule will allow an entity to rely on revaluations of assets supported by the entity's most recent valuation made prior to the time of the announcement of the measure on May 8th 2018. These revaluations can be used until the last day before the start of the income year commencing on or after July 1st 2019.

Taxpayers will need to revisit their investment structures for Australian investments, and consider whether debt deductions will be denied under the proposed rules.

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.

For income years commencing on or after July 1st 2015, increased penalties are applicable to Australian and foreign multinationals with a global income of more than AU$1 billion in respect of any adjustments made by the Commissioner in transfer pricing and anti-avoidance cases. The penalties applied may be up to 100% of the tax shortfall from the adjustment. Such penalties may be mitigated to some extent where a taxpayer has established a RAP through preparation of compliant Australian transfer pricing documentation (as noted above).

The ATO also finalised Practical Compliance Guideline PCG 2017/4 in December 2017 (and which has since been updated).

The PCG sets out the framework used by the ATO to assess the risk of whether related party financing arrangements are entered into on arm's length basis. By using the guidance in the PCG, a taxpayer can self-assess the risk level of whether their related party debt funding will be considered by the ATO to be arm's length for transfer pricing purposes.

Where the ATO undertakes a compliance review of a taxpayer's related party debt funding, the ATO may request and check a taxpayer's self- assessment of their risk. If a taxpayer is unable to provide sufficient evidence to support their risk assessment, this is likely to prompt further compliance activity by the ATO.

The ATO has publicised its increased activity in this area and note that detailed questions regarding intra-group finance arrangements are being requested as part of Foreign Investment Review Board (FIRB) 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.

In addition, taxpayers should undertake a self-assessment of their related party debt under the PCG framework, and in particular if they wish to fit within the green 'low risk' zone.

Hybrid mismatch rules

The Treasury Laws Amendment (Tax Integrity and Other Measures No 2) Act 2018 (the Act) was enacted on August 24th 2018.

The legislation amends the Income Tax Assessment Act 1997 by incorporating a new Division 832 – Hybrid mismatch rules.

The Act implements the OECD's recommended hybrid mismatch rules to prevent entities obtaining a tax benefit from hybrid mismatch arrangements. In addition, the Act introduces a new integrity measure, a unilateral low tax rate (10% or less) lender rule.

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 business 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 (ie, Australia), but the corresponding income is not included in the assessable income in the recipient country).

The rules will generally take effect for income years commencing on or after January 1st 2019.

The hybrid mismatch rules are amongst the most complex set of tax rules enacted in recent years. There will be no transitional periods or 'grandfathering' under the provisions, meaning no concessions will be granted for existing structures. There is also no 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 inter-action with other areas of the business (accounting, operational and legal/regulatory issues).

Tax Losses

Tax losses

Any change in direct or indirect interests in an entity (eg, in the course of restructurings) may lead to a partial/total forfeiture of tax losses at the Australian entity level.

Broadly, a trust must maintain a more than 50% continuity of ownership in order to recoup prior year losses. Certain listed trusts can also rely on the same business test.

The tax loss rules must be considered prior to the recoupment of prior year and current year losses. Also, the tax loss rules must be considered in light of transactions that result in significant changes to ownership.

Companies in Australia must similarly consider whether they satisfy the relevant loss recoupment tests prior to recouping tax losses in any income year. Broadly, a company must maintain 50% of more continuity of ownership, or failing that, satisfy the same business test in order to recoup its tax or capital losses.

Reporting requirements

Country-by-Country Reporting (CbCR)

The Australian Government has implemented the OECD's new CbCR transfer pricing reporting standards, meaning that Australian taxpayers part of a multinational group with annual turnover greater than AU$1 billion are required to provide certain additional information to the Australian Taxation Office on an annual basis.

Australian CbCR rules apply to income years starting on or after January 1st 2016.

Under CbCR, applicable entities are required to lodge with the ATO a transfer pricing 'global master file' covering information on the global group's operations and related party dealings, and a transfer pricing 'local file' covering more detailed information on the group's Australian operations and related party dealings. The requirements for the global master file are similar to those outlined in the OECD CbCR guidance. However, the Australian local file is different in form and content from an OECD local file.

The Australian local file must be filed in a specific electronic format and will require detailed disclosures on the Australian business and related party dealings, as well as requiring copies of intercompany agreements and financial statements to be provided to the ATO. The Australian local file will be more in the nature of a transfer pricing disclosure form/information return than a transfer pricing report, and there is no requirement for a taxpayer's transfer pricing analysis to be included in the local file submitted to the ATO other than the transfer pricing methods applied and level of documentary support.

Importantly, the preparation of an Australian local file under CbCR is in addition to the existing transfer pricing documentation rules. The local file will not constitute a RAP for Australian transfer pricing documentation purposes or provide related penalty mitigation benefits.

Taxpayers will be required to lodge the relevant CbCR documents with the ATO within 12 months of their income tax year-end. As from July 1st 2017, the maximum penalties for failing to lodge documents (including failure to lodge CbCR documents) have been increased from AU$5,250 to AU$525,000.

The CbCR rules should be considered to determine whether the reporting obligations should apply and whether the obligation can be met by the entity's current reporting systems.

Foreign Account Tax Compliance Act (FATCA)/Common Reporting Standard (CRS)

Australia has implemented FATCA by entering into an inter-governmental agreement with the US and introducing legislation in 2014. Broadly, the rules require Australian financial institutions to collect information in relation to certain accounts held by US persons and provide this information to the Australian Taxation Office.

In addition, Australia has implemented the Organisation for Economic Cooperation and Development's approach for the automatic exchange of tax information (the Common Reporting Standard or CRS) which is also known as 'global FATCA'. The CRS requires Australian financial institutions to collect information in relation to certain foreign persons and provide this information to the ATO. The CRS applies to Australian financial institutions from July 1st, with a first reporting deadline of July 31st 2018.

You should consider the impact of FATCA and the CRS on your Australian entities.

Penalties

Significant Global Entity (SGE)

A SGE for a period is defined as a global parent entity whose annual global income is $1 billion or more, or a member of a group of entities consolidated (for accounting purposes) where the global parent entity has an annual global income of $1billion or more. A SGE is impacted by a number of measures, including the CbCR rules noted above.

Draft legislation has been introduced into Parliament which will expand the scope of the concept of a SGE so that it also applies to groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company. This measure will ensure that the definition applies consistently to all types of entities, rather than potentially excluding members of large multinational groups headed by private companies, trusts or investment entities.

Amendments will also be made to the CbCR rules so that reporting is undertaken by CbCR entities rather than all SGEs. A similar amendment will be made to the requirement for a corporate tax entity to lodge general purpose financial statements.

The new definition of an SGE should be considered carefully, as significant penalties (as noted above) can be levied on SGE's that fail to comply with their Australian tax obligations on time.

2 India

Tax on distribution of trust income to non-residents

Foreign investment framework in real estate sector in India

Direct investment by foreign investors in property situated in India

A foreign investor is not permitted to own immovable property directly in India. However, this restriction does not apply to a Non-resident Indian, Person of Indian Origin (other than for agricultural land, plantation property, farm house) and a foreign company acquiring immovable property (through a branch or project office or other place of business in India) for carrying out its business activities.

Investment in securities of Indian Company engaged in construction and development and other real estate related activities

A foreign investor can invest in permitted securities of an Indian company undertaking construction and development of real estate projects, Special Economic Zones (SEZs), industrial parks, business centres, townships, hotels, etc, including leasing of stabilised assets subject to certain conditions provided under the Foreign Direct Investment (FDI) policy of the Government of India.

Corporate tax

The profits of an Indian company are generally subject to a corporate tax rate of 30% or 25%[1] (plus applicable surcharge and health and education cess) as may be applicable.

The manner of taxation for an Indian company engaged in real estate sector depends on the nature of the activity carried out by the company.

Construct and sell model

Indian companies engaged in development and construction of residential projects, typically, follow a 'construct and sell' model.

Income from sale of property under this 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.

Construct/Purchase and lease model

Indian companies engaged in development of office space eg, Commercial Park, SEZ development follow 'construct/purchase and lease' model. Certain Indian companies also follow hybrid models eg, retail mall assets, where it could be combination of fixed lease and revenue share of the tenants.

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[1] If turnover or gross receipt of the company in FY 2016–2017 ie, April to March is less than 2,500 million INR.

The taxability under '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 other than the fact that, in this case, the borrowing cost incurred to develop the property is usually capitalised and depreciation allowance can be claimed by the company in that respect.

In case, the company earns rental income only from leasing (without provision of related facilities/amenities), such rental income is characterised as income from house property. There is a specific tax computation mechanism prescribed to determine the quantum of income taxable under the head income from house property.

A standard deduction of 30% of rental income, in addition to deduction for interest expenses and property taxes paid at actuals is provided for before arriving at taxable income under this head.

Characterisation of income earned by a company engaged in earning rental income from leasing activity has been a matter of debate and been subject to protracted litigation with the tax authorities. The taxability is a function of systematic/organised activities carried out by the taxpayer to provide services to the lessees.

Change in Accounting policy

Generally, Indian Company engaged in real estate sector has been recognising income and accruing expenses based on Percentage Of Completion Method (POCM) as against Project Completion Method (PCM).

Now, Indian Accounting Standards (IndAS) has been made mandatorily applicable for listed companies and companies with prescribed quantum of net-worth.

As per IndAS 115 which became effective from April 1st 2018, Company can recognise revenue based on POCM provided the following conditions are fulfilled:

- Customer receipt and consumes the benefit of Company's performance;
- Customer controls the asset as it is created or enhanced; and
- Company's performance does not create an asset with an alternative use

Indian Company required to follow IndAS would adopt POCM or PCM for revenue recognition based on fulfilment of above criteria. Most of the listed companies engaged in real estate sector have adopted PCM basis from April 1st 2018.

In the absence of any particular method prescribed under Income-tax Act, 1961 for recognition of revenue, the taxability of Indian Companies engaged in real estate sector would be linked with the accounting method generally deployed by respective taxpayers.

However, Indian Company may continue to follow different method for the purpose of Income-tax Act, 1961 which has been followed consistently over the years and accepted by the tax authorities subject to any specific method under the newly introduced Income Computation and Disclosure Standards.

Taxation of notional rental income

Notional rental income, in respect of building and land appurtenant thereto should be considered to be nil for a period up to one year from the end of the FY in which the construction completion certificate is obtained from the relevant authority if the following conditions are fulfilled:

- The building and land appurtenant thereto is held as stock-in-trade; and
- The building and land appurtenant thereto is not let out during the whole (or any part) of the year.

Thus, post one year from the said date, notional rental income would be chargeable to tax under the head income from house property in respect of stock-in-trade which is not let during the whole or a part of the year. For Illustration, refer to Annexure 1 (page 169).

However, if the building and land appurtenant thereto is not held as stock –in-trade, notional rent could be chargeable to tax from the date construction completion certificate is obtained.

Joint development agreement (JDA)

Execution of JDA between the owner of immovable property and the developer triggers either business income or capital gains tax liability in the hands of the owner based on the fact that whether such immovable property has been held as stock in trade or capital asset.

In case of business income in the hands of property owners, tax would be chargeable on the date on which possession of property is transferred.

However, in case of capital gains tax liability in the hands of the property owners, there are divergent views and practices as regards the timing and computation.

Generally, the capital gains tax liability is triggered in the hands of the land owner in the year in which the possession of immovable property is handed over to the developer for development of a project. This has been the cause of undue hardship for the land owners, where the arrangement provides that the consideration is realisable only when the project has been completed (land owners are usually remunerated by way of an area/revenue sharing arrangement on the completion of the project).

With a view to clarify and minimise the sufferings caused due to timing difference in the hands of Individual and Hindu Undivided Family, tax provisions relating to capital gains from JDA's were introduced covering situations where consideration to the property owner is in the form of an area/revenue share in the project. Provided below are the key provisions:

- Type of tax payer – Individual or Hindu Undivided Family (HUF)
- Timing of taxability – Year in which the completion certificate for the project (whole or part) is issued by the relevant authority. If the share in the project is sold prior to the receipt of the completion certificate, taxability in the year of actual sale
- Deemed consideration for levying tax on share in the project – Aggregate of the stamp duty value of the relevant share of project on the date of issue of the completion certificate and cash consideration received
- Tax cost base for eventual sale of built up area – Deemed consideration to be treated as cost of acquisition for computing taxable income on subsequent transfer of share in the project
- Tax deduction at source – Tax deduction at the rate of 10% on the portion of cash consideration.

However, the timing of capital gains tax liability in the hands of taxpayer other than Individual and HUF continue to be subject matter of dispute with tax authorities. For Illustration, refer to Annexure 2 (page 169).

Please refer to 'Indirect taxes' section for implications of JDA under Goods and Service Tax Act, 2017 (GST).

Conversion of nature of properties held as 'inventory' to 'capital asset'

Any profit or gains arising from conversion of nature or treatment of immovable property held as inventory into a capital asset shall be chargeable to tax as business income based on the FMV (determined in a prescribed manner) of the inventory on the date of such conversion.

Further, for computing capital gains arising on the transfer of such converted capital assets, the aforesaid FMV shall be the cost of acquisition thereof and the period of holding shall be reckoned from the date of such conversion.

Sale of properties

Sale of properties held as capital assets (ie, not held for trading purposes) – Long-term capital gains are generally taxable at 20% (plus applicable surcharge and education cess) and short-term capital gains are taxable at 30% (plus applicable surcharge and education cess).

Anti-abuse provision

Sale of properties without consideration or for inadequate consideration is subject to taxation at a deemed value (usually determined based on the values imputed for stamp duty purposes).

However, in order to minimise hardship in case of transactions in the real estate sector, where the variation can occur in respect of similar properties in the same area because of a variety of factors, safe harbour provisions were introduced. Thus, from April 1st 2019 onwards no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than 5% of the sale consideration.

Corporate restructuring

Transfer of properties which may occur by way of corporate restructuring (such as amalgamations, demergers, etc) could be tax neutral subject to conditions.

Tax incentives

Investment linked tax incentives

Investment linked tax incentives are available for certain asset classes (such as certain slum redevelopment projects, etc meeting certain criteria).

Slum redevelopment projects/Hotels

Indian company is eligible to claim deduction of any capital expenditure incurred in the year of expenditure subject to certain conditions for any specified business such as:

- developing and building a housing project under a scheme for slum redevelopment or rehabilitation; or
- building and operating a new hotel of two star or above category;
- building and operating a new hospital with at least one hundred beds for patients; etc

Profit linked tax incentives

a. SEZ related:
   Profit linked tax incentives are provided, amongst others, to companies, (i) engaged in development of a SEZ; (ii) developing and building affordable housing projects; (iii) SEZ units, subject to conditions.

However, the profit linked incentive for SEZ developers has been withdrawn for cases where the development is not commenced by April 1st. Similarly, profit linked incentives to SEZ units has been phased out for units not commencing activities by April 1st 2020.

b. Affordable Housing projects related:
With a view to provide affordable housing as part of the larger objective of 'Housing for all', tax incentive is provided in form of 100% profit-linked deduction to the tax payer engaged in developing and building affordable housing projects, if such housing project is approved by competent authority after June 1st 2016 but before March 31st 2019 subject to certain conditions.

Minimum Alternative Tax (MAT)

Where the tax liability of an Indian company (computed in the manner prescribed) is less than 18.5% of its adjusted book profits, tax at 18.5% (plus applicable surcharge and education cess) on such adjusted book profits is payable by it.

MAT credit is available to be carried forward for 15 years.

Real Estate Investment Trusts (REITs)

REIT is an investment vehicle launched by a Sponsor in the form of a trust duly registered with the Securities and Exchange Board of India (SEBI). REITs are required to list and hold completed and rent-generating properties in India either directly or through holding company (Hold Co) or Special Purpose Vehicles (SPVs) that hold rent-generating properties in India.

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

Conditions associated with REIT, inter-alia, include the following:
- REITs must distribute at least 90% of its net distributable cash flows to the unit holders
- REITs are prohibited from investing in vacant land or agricultural land or mortgages (with certain exceptions)
- At least 80% of the value of a REIT to be in completed and rent generating assets. Such property to be held for not less than 3 years from the date of acquisition of property by REIT/Hold Co/SPVs.

REITs have been accorded effective tax pass through status, whereby certain specified income of the REITs are taxable in the hands of the unitholders of the REIT – for non-residents, relief under the applicable tax treaty is available, if any. There is, however, no specific pass through for distributions of gains from disposal of property or shares.

Dividend income[2] received by the REIT from SPVs should be exempt from tax in the hands of the REIT. However, where the total income of the REIT includes dividend income received from Indian companies, in excess of 1 million INR, such excess dividends would be taxed at the rate of 10% (plus applicable surcharge and health and education cess).

Sale of units of the REIT is subject to a preferential tax regime ie, long-term capital gains is taxable at the rate of 10% and short-term capital gains is taxable at 15% (plus applicable surcharge and health and education cess). These preferential rates are however applicable subject to payment of Securities Transaction Tax (STT) on the sale transaction.

Where, however, STT is not paid on sale of REIT units, the long-term capital gains would be taxable at 20% and short-term capital-gains at 30%.

[2] The company declaring dividend is liable to pay dividend distribution tax (DDT) at the rate of 15% to be grossed up, plus surcharge at 12% and education cess at 4% on tax and surcharge. Further, an exemption has been provided from the levy of DDT in respect of dividend declared, distributed or paid by the company to the REIT, subject to the REIT holding 100% of the equity share capital of the company and the dividend declared being out of current income.

Tax on repatriation to non-residents

Income earned on investments made by non-residents in an Indian company is typically in the form of capital gains, interest and dividends.

Ordinarily, long-term capital gains on sale of unlisted shares are taxable at 10% (without giving any relaxation for inflation). Further, short-term capital gains on sale of other securities are usually taxable at 40% (plus applicable surcharge and education cess) in case of transferor being foreign companies.

In case of sale of listed equity shares after April 1st 2018, long-term capital gains is taxable at 10% and short-term capital gains is taxable at 15% (plus applicable surcharge and education cess), subject to payment of STT both at the time of acquisition and disposal. In computing the long term capital gains on sale of listed equity shares acquired prior to January 31st 2018, cost of acquisition can be increased to the extent of market value of such shares as on January 31st 2018, if any. Similar capital gains tax treatment on listed shares is extended in case of foreign institutional investors as well.

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

Interest income is generally taxable at 40% (plus applicable surcharge and education cess) in the hands of foreign companies. However, in certain specified cases, interest income could be subject to concessional tax rate of 5% (plus applicable surcharge and education cess), subject to conditions. Further, non-residents are also eligible for certain relief under the applicable tax treaty, subject to conditions.

Transfer pricing

The Income-tax Act 1961 provides that the price of any international transaction between associated enterprises is to be computed with regard to the arm's length principle. However, such transfer pricing legislation is not applicable when the computation of the arm's length price has the effect of reducing income chargeable to tax or increasing losses in India. This is aligned with the legislative intent to protect the Indian tax base.

Further, the provisions relating to domestic transactions have been rationalised so as to reduce compliance burden and ensure effective reporting.

Thin Capitalisation Norms

Where an Indian company or a permanent establishment of a foreign company incurs expense by way of interest or similar consideration exceeding 10 million INR, in respect of any debt from a non-resident Associated Enterprise (AE), any excess interest as defined shall not be deductible in computation of income from business.

Excess interest is defined as the (i) total interest in excess of 30% earnings before interest, tax, depreciation and amortisation (EBITDA) or (ii) interest paid to AEs, whichever is lower.

The excess interest, which is disallowed can be carried forward to the following FY and allowed as a deduction against profits of the subsequent years, subject to the maximum allowable interest expenditure stated above.

The excess interest can be carried forward for a period of 8 assessment years immediately succeeding the FY in which excess interest is computed. For Illustration, refer to Annexure 3 (page 170).

Losses carried forward

Losses under the Income-tax Act 1961 are typically allowed to be carried forward for eight years, subject to conditions. There are no time limits for carrying forward unabsorbed depreciation. Where there is a change in ownership or control of closely held companies beyond 49%, unexpired losses (but not unabsorbed depreciation) should lapse.

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

Reorganisation of SEZ units/developers

Any reorganisation of SEZ units can be undertaken only with the prior approval of SEZ authorities subject to the condition that the developer/co-developer shall not opt out or exit out of the SEZ and continues to operate as a going concern. Following are certain examples of reorganisation:

- Change in shareholding pattern;
- Business transfer arrangements/merger/demerger;
- Change of constitutions; etc

Further, the authorities has clarified that prior approval is required before the SEZ entity/unit is recognised by the new name/arrangement in all the records.

General Anti-Avoidance Rule (GAAR)

GAAR provisions could be invoked by the Indian income-tax authorities in case an arrangement are found to be 'impermissible avoidance arrangement'.

GAAR provisions are effective from FY 2017–2018. The guidelines for application of the provisions of GAAR have also been prescribed.

The onus to prove that the main purpose of an arrangement was to obtain any tax benefit is on the income-tax authorities. The tax payer can approach the Authority of Advance Rulings for a ruling to determine whether an arrangement can be regarded as an impermissible avoidance arrangement.

However, GAAR applies to impermissible avoidance arrangements, irrespective of the date on which they have been entered into, in respect of tax benefits obtained from the arrangements on or after April 1st 2017.

Stamp duty

Stamp duty is generally applicable on document of sale of immovable property. The rate of stamp duty varies from state to state. Typically, the stamp duty ranges from 5% to 15%. Corporate restructurings/transfer of shares (other than shares held in electronic form) also attract stamp duty.

Municipal tax

Municipal corporations or other local bodies are entitled to recover property taxes from buildings constructed in cities and towns. The property taxes are levied on 'rateable values', fixed on the basis of market value of the property or the rental returns, which the property owners derive from the property.

Indirect taxes

Prior to introduction of GST, the indirect tax framework had challenges of multiplicity and cascading of taxes, apart from other issues/complexities, both technical as well as from the perspective of ground-level practices. The implementation of GST from July 1st 2017 was a very significant step in the field of indirect tax reforms which amalgamated a large number of separate Central and State taxes into a single tax in addition to stamp duties applicable, therefore bringing uniformity in taxation across the country.

GST is expected to bring much-needed transparency, compliance and corporate governance into the system.

Taxability under GST law

GST does not apply on sale or purchase of land, or constructed building, or on the value of land in any construction project. However, 'construction of building', 'works contracts', 'leasing of land or building' and any other 'construction-related activities' have been classified as 'supply of service' and are therefore taxable under the GST law.

GST would apply on sale of under-construction of residential and commercial properties ie, prior to the receipt of 'Occupancy Certificate' from governmental authorities. The GST rate has been pegged at 18% (12% in case of specified affordable housing projects or slum rehabilitation projects), with a flat 33% abatement being provided towards the value of the land.

GST applies on services such as construction, property management and maintenance, leasing of land, renting of immovable property for commercial purposes, services of real estate agents, architects, etc However, GST is not applicable on the following services which are specifically exempted:

- Renting of immovable property for residential use; and
- Lumpsum payment for long term leasing of land (30 plus years) for industrial purpose from a government functionary

GST law covers the concept of a composite supply consisting of two or more goods or services or a combination of both which are naturally bundled and supplied in conjunction with each other in the ordinary course of business.

In case of composite supply, the supply is taxed as per the GST rate applicable on the principal supply. Additional charges recovered by the developer in form of preferential location, car parking, interior construction charges etc are typically treated to be a part of a composite supply whereby it is taxed at par with a principal supply, ie, works contract/construction services.

Input tax credit

The GST law allows utilisation of input tax credit (ITC) of GST paid on inputs, input services and capital goods against taxes payable on construction or works contract services provided by developers. However, the GST law restricts ITC of GST paid on (i) goods and services procured for construction of a building which is used on own account; and (ii) works contract services when used in creation of an immovable property.

Accordingly, credit restrictions would apply to commercial constructions developed for leasing/rental purposes or immovable property constructed for self-use. However, credit is allowed on plant and machinery. This segregation in some situations may result in debate, especially for commercial/industrial developments.

Joint Development Agreement

JDA, land owners and developer jointly develop a property. The land owner transfers the development rights in the land to the developer and are usually remunerated by way of an area or revenue sharing arrangement.

The taxability of development rights remains an area of concern considering that ambiguity prevails on its classification as 'land' (which is outside the ambit of GST). However, a recent notification issued under GST law assumes that the transfer of development rights from a land owner to developer is taxable.

Currently, there are divergent views as regards the timing and valuation for computation of GST on the supply of development rights.

Supplies to SEZ developers and units

Goods and/or services provided to SEZ developers and SEZ units are zero rated under the GST law. Thus, a person supplying goods and/or services to an SEZ developer or SEZ unit may make such supplies without payment of GST; also, as a consequence of zero rating, such supplier will 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 continues to be GST free.

Anti-profiteering

Anti-profiteering is as a transitionary provision in force for 2 years, as per which businesses are required to mandatorily pass on benefits derived from reduction in rate or benefit from input tax credits to its customers. The industry is grappling to determine the actual benefit on account of GST as there is lack of clarity on how the benefit (if any), is to be calculated. The government has been very aggressive, especially with the real estate sector, to investigate businesses for non-compliance under anti-profiteering provisions and had issued the first administrative instruction on this issue for the real estate sector. Recently, a ruling by anti-profiteering authority on a developer's case being investigated has resulted in debate.

Real Estate (Regulation and Development) Act 2016 (RERA)

The Real Estate (Regulation and Development) Act 2016, that seeks to protect the interests of buyers and to promote transparency, accountability and efficiency in the sector has become effective from May 1st 2016 and seeks to put in place an effective regulatory mechanism for orderly growth of the sector.

There are 43 projects registered in the state of Gujarat, 569 in Maharashtra, 227 in Gujarat, 492 in Karnataka, 151 in Madhya Pradesh as on September 27th 2018[3].

As on April 27th 2018, of the 28 states in India (it is not applicable in Jammu & Kashmir where it is yet to be enforced), 3 have appointed a permanent regulator, 14 states have functional web portals, and 20 have notified the rules[4].

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[3] Source: http://apnarera.com/rera-approved-projects-and-agents/projects/.
[4] Source: https://timesofindia.indiatimes.com/india/one-year-of-rera-14-states-still-have-no-portals/articleshow/63932769.cms.

3 Japan

Reduction of corporate tax rates and local corporate tax

The effective corporate tax rate for small and medium corporations is approximately 34.59% for tax years beginning on or after April 1st 2018 once local taxes are taken into account. A small and medium sized company is a company (i) whose paid in capital is no more than 100 million JPY and (ii) that does not have a parent company whose paid in capital of 500 million JPY or more. This rate will change to 34.60% for tax years beginning on or after October 1st 2019 (depending on location, paid-in capital and other factors). Different rates apply to large corporations.

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

Large corporations can offset up to 50% of their taxable income against tax losses for tax years beginning on or after April 1st 2018. The tax loss carry forward period is currently nine years but will change to 10 years for losses incurred in tax years beginning on or after April 1st 2018. For small and medium sized enterprises, the loss limitation percentage does not apply.

New invoice system rules – Consumption tax

The current consumption tax rate is 8%, which is scheduled to increase to 10% starting October 1st 2019. Some items, for example fresh food, will remain subject to consumption tax at 8%. To cope with the multiple consumption tax rates, an invoicing method will be introduced, although not until April 1st 2023, with transitional measures in place for the three-year and six months interim.

Amendments to the definition of permanent establishment (PE)

As part of a wider OECD blueprint for reforming the principles of international taxation, the definition of a permanent establishment (PE) will be modified to align domestic Japanese tax law with the OECD's BEPS Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status) and related discussion papers.

The reforms broaden the incidence of when an Agent PE arises whilst at the same time narrowing the scope of when an independent agent exception can apply.

Under the 2018 tax reform, the scope of what falls within an Agent PE will be expanded by including an additional classification of where an Agent PE may arise through the activities of a person in Japan who habitually acts in the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the foreign taxpayer, and these contracts are for the transfer of the ownership of assets owned by that foreign taxpayer, etc

The 2018 tax reform also narrows the scope of when an independent agent exception can apply.

Under the 2018 tax reform, notwithstanding the existing criteria, a person will be excluded from qualifying under the independent agent exception where that person acts exclusively or almost exclusively for one or more foreign taxpayer(s) to which it is closely related.

These amendments will be applicable on or after January 1st 2019 for individual income tax and for the fiscal years beginning on or after January 1st 2019 for corporation tax.

Changes to determining when a real estate holding company arises

Capital gains derived by a non-resident, without a PE in Japan, from the transfer of shares in either a listed or unlisted corporation (including certain defined trusts) are subject to tax in Japan where the corporation predominantly holds real estate in Japan, and the non-resident (including by aggregation any special related persons) owns more than 5% of the shares if the corporation is listed or more than 2% if a private corporation at the prior fiscal year-end in which the shares are sold unless relief applies under a double tax treaty.

Under current law, a corporation is treated as predominantly holding real estate if 50% or more of its assets, consist of real estate in Japan (inclusive of land, buildings, shares in other corporations or specified trusts that predominantly hold real estate, etc).

The 2018 tax reform expands the scope of when a real estate holding company is attested from the date of transfer to any day preceding one year from that date.

This amendment will be applicable on or after January 1st 2019 for individual income tax and for the fiscal years beginning on or after April 1st 2018 for corporation tax.

Tax administration procedures – e-filing requirement

Large corporations need to file their corporate, consumption, and local tax returns electronically from fiscal years beginning on or after April 1st 2020.

TMKs (*tokutei mokuteki kaisha*) would be required to file tax returns electronically from fiscal years beginning on or after April 1st 2020 regardless of whether it is a large corporation or not.

MLI will enter into force for Japan on January 1st 2019

On September 26th 2018, Japan deposited its instrument of acceptance of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) with the OECD. As a result of this, the MLI will enter into force in Japan on January 1st 2019.

Under the MLI, the principal purpose test (PPT) will now apply to all Covered Tax Agreements under the MLI and corporate groups should evaluate the impact of this provision on existing investment structures and operating models.

4 New Zealand

Non-resident investment in New Zealand

Non-residents may invest in New Zealand (NZ) property directly or through a local company, non-resident company, trust or partnership.

Investments in New Zealand real property by non-residents may require government approval in some cases. The Overseas Investment Office assesses applications for consent from foreigners who intend to make substantial investments (more than NZ$100 million) or investments in sensitive land (as defined in Schedule 1 of the Overseas Investment Act (OIA) 2005) in New Zealand. In order to receive consent to acquire sensitive land under the OIA, the acquisition must benefit New Zealand or the foreign person must intend to reside in New Zealand indefinitely. There are different consent requirements for different types of land.

Residential property taxation

Net rental income derived from NZ real property is taxable –
- At the owner's personal marginal tax rate if the owner is an individual (the highest marginal tax rate in NZ is currently 33%);
- At a flat rate of 33% if the owner is a trust (ie, trustee tax rate) and the income is not distributed to beneficiaries within a specific tax year;
- At a flat rate of 28% of the owner is a company.

Expenses incurred in deriving rental income are generally deductible. These include interest on loans used to acquire the property (subject to the NZ thin capitalisation rules, the hybrid rules and transfer pricing requirements) as well as other property costs including repairs and maintenance, insurance, rates, administration costs and depreciation. Capital expenditure on the property is not deductible but may be included in the acquisition cost of the property and depreciated (provided it is not capitalised to the building structure which has a depreciation rate of 0%).

Tax depreciation

The depreciation rate for buildings with an estimated useful life of 50 years or more was reduced to 0% from the 2011/2012 income year.

While the depreciation rate for most buildings is 0%, certain components of buildings (such as fixtures and fittings that constitute plant and equipment) are eligible for higher depreciation rates. Non-structural items such as internal non-load-bearing walls and wiring are depreciable at rates relevant to their estimated useful life. The components of a building eligible for a higher depreciation rate are different depending on whether the building is residential or non-residential.

Taxpayers who acquired a commercial building before the 2010/2011 income year and did not separately identify and depreciate the fit-out of the building at the time of acquisition may be entitled to depreciate a fit-out pool of up to 15% of the building's tax book value at 2% straight line per year until they dispose of the building. This concession is only available if taxpayers established the pool in their 2011/2012 income year.

If assets that have been depreciated are sold at a value in excess of the depreciated value, the depreciation previously claimed may be recovered, resulting in taxable income in the year of sale. Rental property is deemed to have been sold if the use of the property is changed from business to private. The sale is deemed to take place on the first day of the tax year following the change in use.

A taxpayer can claim a tax deduction for a loss made on the disposal of a building in limited circumstances only. These circumstances are where a building has been rendered useless for the purpose of deriving income and has been demolished (or abandoned for later demolition) as a result of this damage. The damage must have been caused by a natural event outside the control of the taxpayer, agent or associate and must not be the result of the taxpayer's failure to act. A tax loss can be claimed on disposal of building fit-out.

Note that certain items which are expensed for accounting purposes should be capitalised for tax purposes and depreciated over the useful life of the asset at specific depreciation rates that are prescribed by Inland Revenue. In the year the asset is acquired, the difference between the tax depreciation deduction claimable for that year and the cost of the asset that is expensed for accounting purposes should be added back for tax purposes at the end of the year.

Tax losses

Generally, tax losses incurred by both residents and non-resident taxpayers may be carried forward and used to offset income of any future year. In the case of companies, trusts and partnerships, a loss can be carried forward only if there is at least a 49% continuity in the ultimate individual ownership at all times from the year in which the loss was incurred to the year in which it is used to offset profits. Losses cannot be carried back.

In March 2018, the NZ Inland Revenue released a discussion document proposing that tax losses arising from residential properties (eg, rental losses) should be 'ring fenced'. If the changes go ahead, taxpayers will only be able to offset residential rental property tax losses against other residential property related income (and not against other income such as salary or non-property related business income). No legislation including these changes has been introduced to NZ Parliament yet.

Goods and service tax (VAT)

Goods and service tax (GST) registration is required if income from non-residential rental income is, or is expected to be, over NZ$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. However, there is no GST imposed on residential rental property.

From April 1st 2011 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 (ie, 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.

Transfer pricing

The key issues in NZ relating to cross-border financing include the setting of interest rates and guarantee fees at market rates under transfer pricing rules, and capital structuring through debt financing under the thin-capitalisation rules (see below).

In accordance with NZ and the parent jurisdictions TP rules all cross-border associated party transactions between an NZ business and an offshore business must be priced on an arms-length basis (regardless of quantum).

This means that shareholder financing which is used for an NZ property investment business should be provided on an arms-length terms (interest rate) in order to comply with NZ transfer pricing rules in order for the interest costs to be fully deductible

The Inland Revenue have stated that they are paying close attention to the following transactions –
- All inbound loans > NZ$10 million
- Outbound loans of all sizes
- Appropriateness of non-investment grade credit ratings
- Cash pooling arrangements

The Inland Revenue has also stated that they will be paying close attention to ‘exotic financings, such as hybrid instruments and long-term subordinated debt facilities.’

At present there are no compulsory disclosure requirements in New Zealand relating to associated party transactions. However, recent legislative changes mean that the onus is on the taxpayer to demonstrate to the NZ Inland Revenue in the event of a review that consideration paid between associated entities is consistent with the arm’s length principle. In the event that the IR requests a transfer pricing questionnaire to be completed, it is important that sufficient transfer pricing documentation has been prepared by the entity.

Thin capitalisation rules

Inbound thin capitalisation rules apply to non-residents who invest in NZ to limit interest deductions where debt exceeds certain levels.

From the 2016 tax year –
- trusts where 50% or more of the settlements are made by non-residents or an associate of the non-resident; and
- where a New Zealand entity is controlled by non-residents who ‘act together’.

The aim of the legislation is to restrict interest deductibility on excessively geared assets. An apportionment of deductible interest is required where an entity’s debt percentages (calculated as total group debt/total group assets) exceeds both of the following
- 60% from the 2011/2012 income year for ‘inbound’ investments (previously 75%), or 75% for ‘outbound’ investments; or
- 110% of the worldwide group’s debt percentage (or from income years beginning after July 1st 2018, where non-resident shareholders are considered to be acting together, 100% of the worldwide group’s debt percentage).

For the purposes of calculating the debt percentage, only interest-bearing debt and assets producing income are taken into account. Use of the debt-to asset percentage differs from most thin capitalisation models, which tend to monitor an entity’s debt-to-equity ratio.

Changes have recently been made to the NZ thin capitalisation rules which apply from income years beginning on or after July 1st 2018. The key changes include –
1. That the calculation of the debt percentage will be calculated as total group debt/ total group assets less non-debt liabilities);
2. The introduction of a ‘restricted transfer pricing rule’, which may require an increase in credit rating of the NZ borrower and apply to potentially limit the interest rate that can be applied on cross border loans over NZ$10 million. This rule may apply even if a taxpayer is within the thin-cap threshold.

However, the new rules may not apply where the taxpayer’s interest deductions are less than NZ$1 million, provided the debt is from an unrelated third party.

We note that the thin capitalisation changes also introduced special concessions for certain infrastructure projects which allow the debt percentage to exceed 60%.

Resource Management Act

The Resource Management Act 1991 (the RMA) has the potential to be a significant issue for businesses. The RMA aims to promote the sustainable management of New Zealand's physical and natural resources.

Resource consents under the RMA are required before undertaking certain activities that might impact on the natural character of the environment or where a use inconsistent with a site's underlying zoning is being sought. Depending on the nature of the consent required, this can be a public process (notified) or non-public process (non-notified). The consent authorities are empowered to impose conditions on the grant of consents. The conditions can range from financial contributions to the need to obtain specific permits or submit to certain discharge restrictions.

The imposition of conditions is a complicated system and details are often embedded in the local authority plans, and are specific to the proposed activity. For uses consistent with the underlying zoning, the consenting process is normally straightforward, albeit local authorities have a certain amount of power over whether or not they impose conditions.

5 South Korea

Hybrid Mismatch Rules

In a commitment to implement the hybrid mismatch rules recommended by the OECD (BEPS Action 2), a new rule has been introduced to limit expense deductions for hybrid mismatch arrangements.

- The rule applies to cross-border transactions of hybrid financial instruments between a domestic company (including a Korean permanent establishment of a foreign corporation) and its foreign related party.
- Hybrid financial instruments includes financial instruments which have debt or equity positions at the same time but are treated as a debt in Korea but treated as an equity in the other country (eg, participating bonds) with exceptions for those which are issued by financial institutions for the purpose of capital increase according to related regulations.
- The rule applies where deductible payment is partially or entirely not taxed in a counterpart jurisdiction for a certain period (ie, until the end of the recipient's fiscal year commencing within 12 months after the end of the payer's fiscal year).
- Expense deduction will be denied only for the amount of payment which is not taxed in a counterpart jurisdiction.

The rule applies for the fiscal year beginning on or after January 1st 2018.

OIV (Overseas Investment Vehicle) Rule

According to proposed tax amendment announced by the Korean government on July 31st 2018, a new provision is proposed to address situations where an Overseas Investment Vehicle (OIV) should be deemed as the beneficial owner of Korean source income, provided that any of the three conditions described below are met.

- An OIV shall be subject to tax in the country of residence of that OIV, and the OIV shall not be established with the purpose of unfairly reducing the individual income tax or corporate income tax on Korean source income;
- An OIV does not provide a list of investors (it will be limited to the undisclosed investors in case a list of investors is partially disclosed); Note that even if an OIV is regarded as the beneficial owner, it will be taxed according to the domestic tax laws (and will not be eligible for benefits of the income tax treaty between Korea and the OIV's country of residence);
- An OIV is recognised as the beneficial owner in accordance with an applicable income tax treaty

The new proposed changes in respect of OIV will be applicable from the fiscal year beginning on or after January 1st 2020.

Extension of Waiver of Heavy Acquisition Tax

Under the currently available local tax law, heavy acquisition tax of 9.4% (instead of 4.6%), which is generally imposed on acquisition of real estate in the Seoul metropolitan area, does not apply to certain special purpose vehicles (eg, collective investment vehicles under the Capital Market Act, REIT under the Real Estate Investment Trust Act, or Project Financing Vehicle under the Corporate Income Tax Act) acquiring real estate by December 31st 2018.

According to a proposal to the tax amendment on August 10th 2018, the waiver of heavy acquisition tax is going to be extended to 2021 for another 3 years.

America

1 Argentina

Sale of Stock by non-residents and dividend distributions

The transfer of Argentine shares made between non-residents that occurred after September 23rd 2013, is subject to tax. 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.

Prior to the tax reform introduced by Law 27430 that became effective on January 1st 2018, the rules required the buyer to withhold tax on capital gain. However, in practice, taxes were not withheld on sales between non-residents because there was no legal mechanism to do so. In April 2018, the Argentine tax authorities issued Resolution No 4227-E, establishing the mechanism for paying the capital gains due by non-residents. The tax reform now provides that the seller, and not the buyer, should be responsible for withholding the tax for transactions made since January 2018.

Non-residents are now exempt from tax on capital gains realised from the sales of shares in publicly-traded companies, but only to the extent that the shares are sold through the local Stock Exchange. Furthermore, non-residents continue to be exempt from tax on capital gains from the sale of sovereign bonds and 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. Only yields and capital gains derived from specific securities issued by the Argentine Central Bank (so-called LEBACs) do not benefit from this exemption. In these cases, both the income and the capital gains are subject to a 5% tax. If the tax cost cannot be determined in the case of a sale, the tax is levied at a rate of 4.5% of the sales proceeds.

Indirect transfer of Argentine assets (including shares) are now taxable under the tax reform 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 are acquired after January 1st 2018. Furthermore, indirect transfers of Argentine assets within the same economic group do not trigger taxation provided the requirements (which will be set by regulations) are met.

A new withholding tax on dividend distributions was established. The current withholding tax rate is 7% and it will be increased to 13% for profits generated in taxable years started on or after January 1st 2020.

The tax reform has also abolished the so-called equalisation tax for profits generated in taxable years started on or after January 1st 2018. However, the equalisation tax still applies to dividend distributions made out of earnings accumulated prior to January 1st 2018 that exceeded tax earnings as of the year-end prior to the relevant distribution.

It is important to analyse the new impact that these measures may have in structuring projects.

Rollover of fixed assets

Income Tax Law establishes that in the event of disposal and replacement of fixed assets, the gain obtained from that disposal may be applied to the cost of the new fixed asset. Therefore, the result is charged in the following years, through the computation of lower amortisation and/or cost of a possible future sale of new goods.

It is important to consider the implications of applying of the roll-over mechanism in the income tax return.

The use of real estate trust

The use of real estate trusts is regulated by the Civil and Commercial Code, which provides a very flexible legal framework. It has been the preferred vehicle for real estate projects in Argentina and is commonly used in building construction, especially in structures where small and medium-sized investors are involved. There are no major taxation differences compared to other corporate entities.

A recently enacted law (Law 27440) 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.

Real estate investment trusts should be examined as an alternative to structure real estate projects in Argentina.

Transfer Pricing

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

The tax reform introduced a detailed definition of a permanent establishment (PE). The term 'PE' comprises: 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.

The arm's length principle should be duly followed and documented. The existence of a PE should be analysed.

Tax prepayments

In the case of declining profits, an application can be made to reduce current tax prepayments.

Cash flow models and profit forecast should be checked in order to improve liquidity by applying for tax prepayment reductions and/or refunds.

Tax Treaty Network

Argentina has concluded tax treaties for the avoidance of double taxation with various countries, under which reduced withholding tax rates can generally be applied on dividends, interest, royalties and certain capital gains. Currently, there are more than 20 double tax treaties signed by Argentina.

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

Tax losses carried forward

Losses may be used to offset Argentinean profits arising in the same company. Any amount of tax losses that could not be used in the year in which they were incurred can be carried forward for five years. Tax losses cannot be carried back. Losses in transfers of shares generate specific tax loss carry-forwards and may only be used to compensate profits of the same origin.

It is important to monitor taxable profits and losses during the project and when you intend to reorganise your investment structure.

Thin capitalisation rule

The deduction on interest expense and foreign exchange losses with local and foreign related parties is limited to 30% of the taxpayer's taxable income before interest, foreign exchange losses and depreciation. The taxpayer is entitled to carry forward excess non-deductible interest for five years and unutilised deduction capacity for three years.

It is important to monitor this subject.

Foreign exchange control regulations

From December 2015, the Argentine Central Bank (BCRA) and other institutes, such as the Ministry of Economy and Public Finance and the Federal Administration of Public Revenue (AFIP) among others, have been introducing important amendments to the Free Foreign Exchange Market (MLC). In this sense, regarding incoming flows of currency (as financial loans or capital contributions), the minimum permanence term for keeping in Argentina the inflow of funds was removed. Thus, resident entities can obtain access to the MLC for cancelling the principal of a financial loan in any term and non-resident investors can repatriate their investment in any term as well. Also, the requirement to place a non-interest bearing deposit equivalent to 30% of the inflow of funds (the so-called *'Encaje'*) was repealed.

Another topic that has been significantly modified, relates to the option granted to residents to form foreign assets. It should be mentioned that prior to the introduction of the new set of regulations this alternative was cancelled. Nowadays, resident individuals and corporations and local governments may access the MLC to purchase foreign currency without the prior approval of the BCRA.

As to payments of debts arising from imports of goods, all existing requirements about documentation, amount limits or specific terms for having access to the MLC to make payments abroad were removed. In line with this, the provisions related to advanced payments have also been repealed, ie, the access to the MLC for these transactions has not any special requirements anymore.

For the payment of services rendered by non-residents, the formal prior approval of the BCRA was eliminated for payments exceeding the equivalent of US$100,000 in the calendar year for debtor and when the cancellation is to be made to a related company abroad or to beneficiaries and/or accounts established in countries not considered cooperative with fiscal transparency. The obligation to register the import of service through the Advanced Services Sworn Statement (DJAS) has been abolished and all existing requirements about documentation for having access to the MLC to pay abroad were removed.

As far as exports of services is concerned, the obligation to bring in and settle the foreign currency arising from these operations is no longer in force.

The obligation of inflow and negotiation of funds arising from collections of exports of goods, advanced collections and pre-financing operations was also removed. Besides this, there are no formal restrictions on the payment abroad of interest, dividends or profits, royalties and other commercial payments.

The Exchange Control Regime, even when it has been mitigated, by the softening of strict international trade controls and the abrogation of informal restrictions, is still in sight. Consequently, in each project a careful analysis should be performed.

Corporate Law Impacts

In case the purchaser of land is a foreign company, the purchase of real estate may either be treated as either an 'isolated act' or as an act evidencing some degree of continuous presence in Argentina. Recent administrative precedents and judicial case law tend to treat the purchase of real estate property by foreign companies under the second view and, hence, a permanent representation of the company in the country (eg, a subsidiary or a branch) may be required by the local Office of Corporations.

A local presence in the country may be needed in other to acquire real estate property.

Rural land ownership law

Pursuant to Law 26737, enacted in December 2011, foreigners shall not hold more than 15% of the total amount of land in the whole country, or in any province or municipality. An additional restriction prevents foreigners of a unique nationality from owning more than 30% within the previously referred cap of 15%. The law specifically prevents any foreigner from owning more than 1,000 hectares (approx. 2,500 acres) of rural land in the Argentine 'zona núcleo', or an equivalent area determined in view of its location; and from owning rural lands containing or bordering significant and permanent water bodies, such as seas, rivers, streams, lakes and glaciers.

Decree 820/2016 recently issued by the Federal Government has introduced certain interpretation criteria in order to not over restrict foreign investment in rural land.

According to Section 3 of Law 26737, the following persons will be considered as foreigners:
- individuals with foreign nationality, despite of having their domicile in Argentina or abroad;
- legal persons with 51% of foreigner holding or being entitled with enough votes to control corporate will, or
- legal persons with 25% of indirect foreigner holding or having enough votes to control corporate will.

Said regulation does not affect those rights acquired before the above-mentioned Law 26737 came into force.

Finally, any person acquiring frontier land (either local or foreigner) must obtain the corresponding governmental authorisation.

It is necessary to review hypothetical effects of this law in real estate investment with foreign investors.

Surface Right in the new Civil and Commercial Code

A surface right involves a temporary property right on real property not personally owned, which allows its holder to use, enjoy and dispose the property subject to the right to build (or the right on what is built) in relation to the 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.

The surface right terminates upon completion of the established term (or by operation of law), or by express resignation, occurrence of a condition, consolidation, or upon 10 years from the last use in cases of construction.

The landowner owns what is built by the surface right holder and thus, the landowner must compensate the surface right holder unless otherwise provided by agreement.

It is worth noting that this new legal mechanism is available for real estate projects in Argentina.

Simplified Companies

Law 27349 provide different new tools for developing entrepreneurial capital. Among other legal mechanisms a trust for developing and financing such capital (FONDCE) has been created, as well as a new legal corporate type: Simplified Companies. The referred Simplified Companies has been created for providing every entrepreneur the possibility of incorporating a company, obtaining it 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 in order to adopt the Simplified Companies legal type.

It is worth noting that this new legal mechanism is available for any kind of projects in Argentina.

Limits to the Property Right in the new Civil and Commercial Code

The new Civil and Commercial Code establishes that the exercise of individual rights over goods must be compatible with the Collective influence rights. Such exercise must meet national and local administrative laws passed upon the public interest and must affect neither the performance nor the sustainability of flora and fauna ecosystems, biodiversity, water, cultural values, landscape, among others, according to the criteria foreseen in the particular legislation. This broad limitation over the exercise of property rights in Argentina is still to be interpreted and applied by local courts.

This a current legal concern when exercising property rights.

2 Brazil

Investment in Brazilian property

Corporate and individual investors (mainly foreign investors that could apply for certain tax benefits) have different options for better structuring their investments in Brazil.

The choice of the best alternative for structuring investments in the property sector will depend on the characteristics of the investment to be proceeded.

Acquisition of urban/rural real property

Non-residents may invest in property through direct ownership from abroad, or through resident companies or partnerships.

The acquisition of real property by foreign individuals or companies observes the same procedures imposed on Brazilian citizens. Therefore, the acquisition must be formalised through a contract of purchase and sale, as well as through a public deed.

According to Brazilian law, foreign individuals resident in Brazil and foreign companies may invest in rural properties, but there are several restrictions regarding the size of the area to be acquired and the interest to be held by the investors (ie, there might be limitation to control in the rural real property by foreign investors). There a few alternatives to invest via Investment Funds in regard to this restriction of holding control.

Rural properties acquired by foreign companies must be destined for the implementation of agricultural, industrial or settlement projects and these activities must be related to the companies' purposes.

Rental income

Brazilian income tax is a federal tax levied on income and proceeds of any nature received by individuals or corporations. The taxable event is considered to be the acquisition of the right to dispose, economically or legally, of either, both or one of the following:

- Income, derived from capital, labour or a combination of both.
- Proceeds of any nature (not included in the above), which imply an increase in the individual's net equity.

According to Brazilian legislation, payment of income tax may be required from whoever is legally or economically entitled to dispose of it, including rental income.

Individual taxation

Individual taxation in Brazil varies according to the taxpayer's status (resident or non-resident). Resident taxpayers include Brazilian natural citizens, naturalised foreigners and others under specific conditions. Brazilian-resident taxpayers are taxed on their worldwide income, being subject to a progressive rate, ranging from 0% to 27.5%. Non-resident individuals are taxed as per the general rules of non-resident investors.

Corporate Taxation

Brazilian tax legislation considers all legal entities, including branches, agencies or representatives associated with companies headquartered abroad, as subject to taxation.

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

Additionally, revenues of legal entities are subject to PIS (Employees' Profit Participation Program or *Programa de Integração Social*) and COFINS (Contribuition for Social Security Financing or *Contribuição para o Financiamento da Seguridade Social*) at a 1.65% and 7.6% rate, respectively, being allowed offsetting credits from certain inputs. Depending on certain conditions, such as the total company revenues and the corporate tax regime elected, the PIS and COFINS rates can be reduced to 0.65% and 3% over gross proceeds (this will bring impacts on corporate income taxes, which will vary from 2.88% to 10.88% over gross proceeds). In this case, no deductions are allowed.

Non-residents

Non-resident taxpayers (both individuals and corporations) are subject to tax on their Brazilian-source income at a rate of 15% (25%; rate applies for tax haven residents). Brazilian-source income is considered to be all income paid by Brazilian-sourced payers, regardless of the nature, or which period it relates to.

Note that 'Portfolio Investment', investments made in the Brazilian financial and capital markets which are regulated by Resolution 4373/14 of National Monetary Council (CMN) could trigger different taxation.

Capital gains on the sale of property

Individuals

Capital gains arising from the disposal of real estate property by Brazilian individuals are currently taxed at 15% rate. As from 2017 gains it is subject to a progressive 15% to 22.5% rate, based on the amount on the total capital gains received.

Capital gain earned by a resident individual on the sale of residential real estate is exempt of such tax, provided the seller, within 180 days from the sale, uses the earnings to buy a new house in the country. This rule is only applicable for determined individuals after a gap of five years between the transactions.

Corporations

Capital gains arising from the sale or exchange of fixed assets are treated as ordinary income and taxed at the regular rates (ie, IRPJ and CSLL rate 34%) plus PIS/COFINS at a combined 9.25% rate (3.65% if the taxpayer is under the cumulative method) if the real estate is a non-fixed asset.

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

Non-residents

Disposal of real estate properties by non-resident individuals is subject to withholding tax at a rate of 15%. As of 2017, gains recognised by non-resident investors on the sale of real estate property is subject to 15% to 22.5%, based on the amount of capital gain received.

If the disposal is made by a beneficiary domiciled in a tax haven country/territory, capital gains will be subject to 25% withholding tax.

Capital gains realised by non-residents is generally determined as being the difference between the sales price and the cost basis of the asset or right sold.

Note that 'Portfolio Investment', investments made in the Brazilian financial and capital markets which are regulated by Resolution 4373/14 of National Monetary Council (CMN) could trigger different taxation.

Real estate transfer tax (ITBI)

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

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

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

Other relevant taxes – IOF, IPTU, ITR and ITCMD

Inflow and outflow of resources related to Foreign Direct Investment (eg, direct acquisition of real estate or incorporation of a Brazilian company) is subject to *Imposto sobre Operações Financeiras* (IOF) at 0.38% rate.

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

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

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

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

Other real estate investment structures

Other alternatives for investing into real estate assets or real estate companies are also available for both, local and non-resident investors.

Certain alternatives, such as Investing into Real Estate Funds (*Fundo de Investimento Imobiliário* – FII) or Private Equity Funds (*Fundo de Investimento em Participações* – FIP) may provide for a more tax efficient scenario, especially for non-resident investors.

For instance, gains arising from the disposal of FIP quotas, provided certain conditions are met, may be tax exempt. A case by case analysis should be carried to verify the most tax efficient scenario.

3 Canada

Investment structures

Foreign investors may invest in property in Canada using a Canadian legal entity (corporation, partnership or trust) or may acquire property directly.

Corporations resident in Canada are subject to Canadian tax on worldwide income. Non-resident corporations are subject to tax on income derived from carrying on a business in Canada (generally through a permanent establishment located in Canada) and on capital gains from the disposition of taxable Canadian property.

Partnership income is determined at the partnership level and the partners are taxed on their share of the partnership income, whether or not such income is distributed.

Income of a trust resident in Canada that is paid or payable to a beneficiary is generally deductible in computing the trust's taxable income and is included in the beneficiary's taxable income.

Compare the various structures that can be used to invest in property in Canada.

Corporate income tax rates

The combined federal and provincial/territorial income tax rates for the 2018 taxation year range from 26.5% to 31.0%, depending on the province or territory. The combined rates include the 15% federal rate plus the provincial or territorial rate which is applied when income is earned in one of Canada's ten provinces and three territories.

Corporate income tax rates have been stable, except for the provinces of British Columbia and Saskatchewan, which increased by 1% and 0.5%, respectively effective January 1st 2018. Corporate income tax rate for the province of Quebec reduced from 11.8% to 11.7% effective January 1st 2018 (with further annual reductions of 0.1% to reach 11.5% in 2020).

Compare corporate income tax rates for different jurisdictions.

Capital cost allowance (tax depreciation)

Capital cost allowance (CCA) may be claimed on buildings and other structures at rates which range from 4% to 10% depending on the age and use of the property (ie, commercial, residential, manufacturing, etc). Enhancements have been made to the CCA rates for newly constructed assets acquired after March 18th 2007, generally resulting in a 6% CCA rate for non-residential buildings.

CCA is calculated on a pool basis, with separate tax classes provided for various types of property. The deduction for CCA is calculated on the tax cost of the entire pool. Most rental properties (ie, buildings costing more than C$50,000) are required to have separate tax pools so that CCA is claimed on a property by property basis and not on a combined pool of properties.

CCA is a discretionary deduction and cannot be claimed on a rental property to create or increase a tax loss unless the CCA claim is being made by a corporation, the principal business of which is the leasing, rental, development or sale of real property, or a partnership, the partners of which are all such corporations.

Ensure additions to a CCA class include the original acquisition price plus related transaction costs incurred to acquire the asset.

Thin capitalisation rules

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

The thin capitalisation rules will apply to debts owed by a partnership in which a Canadian-resident corporation is a member, as well as to Canadian-resident trusts and to non-resident corporations and trusts that operate in Canada, including when these entities are members of partnerships.

Disallowed interest under the thin capitalisation rules will be deemed to be a dividend for Canadian withholding tax purposes that will be subject to dividend withholding tax of 25%, which may be reduced under a tax treaty.

Recent changes to the Canadian thin capitalisation rules can apply in respect of certain situations that involve secured guarantee arrangements in respect of third-party debts that would otherwise not be subject to the thin capitalisation limitations. In general terms, the changes apply where a non-resident person that does not deal at arm's length (i) pledges property to secure the debt, and the lender has at that time the right to use, invest or dispose of the property (ii) holds limited recourse debt of the third party lender; or (iii) makes a loan to the third party lender on condition that the loan be made to a Canadian corporation or trust.

The new legislation relies on the use of various defined terms and may create significant uncertainty due to many interpretive issues. Careful consideration of all financing arrangements is required.

Consider whether the thin capitalisation rules limit the deduction of interest on debt and trigger a withholding tax liability.

Disposition of property by non-residents

A non-resident that disposes of taxable Canadian property (TCP) that is held as capital property is subject to Canadian tax on any resulting taxable capital gain, ie, 50% of the gain (proceeds of disposition less capital cost of the property). TCP generally includes real property situated in Canada. TCP also includes shares of the capital stock of an unlisted corporation, 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 real property situated in Canada.

In addition, to the extent that the proceeds of disposition of Canadian situs depreciable property (ie, a building) exceed the property's undepreciated capital cost, the excess (up to the property's capital cost) is taxable to the non-resident as recaptured depreciation, at the tax rate that would apply if the non-resident were a resident of Canada.

Generally, a non-resident vendor must report the disposition to the Canada Revenue Agency (CRA) and obtain a clearance certificate in respect of the disposition. If no certificate is obtained, the purchaser is required to withhold and remit to the CRA either 25% (in the case of sale of land that is capital property) or 50% (in the case of land that is not capital property, a building or other depreciable property) of the 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, a non-resident vendor must separately report the disposition of real property to the provincial authorities where the real property is situated in the province of Quebec. If no certificate is obtained from Revenu Quebec, the purchaser is required to withhold and remit 12.875% of the gross sales proceeds. Non-residents must obtain a certificate even if the transaction results in a capital loss. Relief from the reporting and withholding requirements may be available in certain cases.

When the disposition is on income account rather than on capital account, ie, inventory, the non-resident will be taxed at full tax rates on the resulting profit less applicable expenses, subject to possible relief by tax treaty.

Ensure the tax consequences of property dispositions are calculated properly and any withholding and reporting requirements are met.

Losses carried forward

Losses incurred in a taxation year from a business carried on in Canada are deductible from income, other than income from property. If these losses are not used in the year they are incurred, they can be carried back three years and forward twenty years. However, losses of a non-resident from a business carried on outside Canada are not deductible in Canada.

Capital losses, resulting from the disposition of taxable Canadian property of a capital nature, can be carried back three years, and forward indefinitely, to reduce taxable capital gains realised on the disposition of taxable Canadian property in those years.

Ensure a loss utilisation plan is in place for losses set to expire.

Withholding tax

Certain payments by a Canadian resident entity to non-residents are subject to withholding tax of 25% of the gross amount of the payment. These payments may include interest paid to related parties, dividends, rents, or royalties. The withholding tax rate may be lower when the payment is made to a resident of a country with which Canada has a tax treaty.

Interest paid to arm's length non-resident lenders is generally exempt from Canadian withholding tax, unless paid in respect of a participating debt arrangement.

Planning may be available to minimise withholding taxes.

Transfer pricing

Canadian transfer pricing legislation and administrative guidelines are generally consistent with OECD Guidelines, and require that transactions between related parties be carried out under arm's-length terms and conditions.

Penalties may be imposed when contemporaneous documentation requirements are not met.

Ensure all transfer-pricing documentation meets the requirements imposed by the Canadian transfer-pricing rules and by the rules of the foreign country.

Land transfer tax, registration fees, and property tax

All provinces and territories and some Canadian municipalities levy a land transfer tax or registrations fees on the purchaser of real property (land and building) within their boundaries. The tax is expressed as a percentage, usually on a sliding scale, of the sales price or the assessed value of the property purchased.

Rates may be up to 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 Toronto and Vancouver, 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). If the property transfer is registered on or before February 20th 2018 in the Greater Vancouver Regional District in the Province of British Columbia and on or before April 21st 2017 in the Greater Golden Horseshoe in the province of Ontario, the tax amount is 15% of the property value. If the property is registered on or after February 21st 2018 and is within specified areas in the Province of British Columbia, the tax amount is 20% of the property value. In addition to the above noted transfer tax, the City of Vancouver has also introduced a vacancy tax. A residential property which is not either i) used as a principal residence, ii) rented out for more than 6 months out of a calendar year, or iii) meets certain exemptions, will be subject to an additional 1% tax based on the property's value.

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.

Take into account the land transfer tax and additional tax costs when acquiring real property.

Principal Residence Exemption

Historically, a gain realised on the sale of an individual's 'principal residence' has been exempt from tax in most instances. In certain circumstances, non-residents have structured their investments in Canada to take advantage of the principal residence exemption.

A change in CRA's administrative position means that if an individual sells their principal residence in 2016 or later years, they will be required to report the sale, and the principal residence exemption on their income tax return to claim the full principal residence exemption (this was previously not a requirement).

Furthermore, the Department of Finance has issued new rules for taxation years beginning after 2016 that limits the type of trusts that can claim the principal residence exemption and extends the period during which CRA can assess taxpayers that do not report the sale of real or immovable property. The new rules also have implications for non-residents who acquire residential properties, and may limit the availability of the principal residence exemption to non-residents.

Be aware of the legislative changes and administrative changes to the principal residence exemption and consider any impacts.

Sales tax

The 5% federal Goods and Services Tax (GST) will apply on the purchase of real property and on certain expenses incurred in connection with the operation of the property, although the GST paid is usually recoverable (subject to significant restrictions in respect of residential rental properties). In most cases, a landlord is required to collect and remit GST on commercial rents received. However, a non resident vendor of real property is not generally required to collect GST on the sale of real property.

In addition, some provinces have harmonised their sales taxes with the GST. The harmonised sales taxes function as the GST, described above.

If a non-resident owns a property in a province that imposes a sales tax that is not harmonised with the GST, the non-harmonised sales tax will be a non-recoverable additional cost on certain expenses incurred in connection with the operation of the property.

Take into account sales tax when acquiring or collecting rents on real property.

4 Mexico

Books vs. tax depreciation

For book purposes, assets can be depreciated using different methods. For income tax purposes, fixed assets are depreciated on a straight-line basis applying the rates established by law. In addition, tax depreciation is adjusted for inflation, resulting in differences with the amount of the book depreciation.

Review book and tax depreciation, including the adjustment for inflation in the latter, and determine whether the tax depreciation rates are the highest allowed. For taxpayers in a tax loss position, a decrease in the depreciation rates could be analysed.

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.

Classification of real estate acquisition

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

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

Thin capitalisation rules

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

Review the thin capitalisation position of the company and also the computation to determine the non-deductible interest, if this is the case.

Informative returns

Taxpayers are obliged to file informative returns related to several different matters. In general, the deadline to file said informative returns is February 15th of the following year, except for the informative return of transactions with related parties, which is filed together with the annual tax return. All taxpayers are subject to reporting relevant transactions on a quarterly basis. Relevant transactions are defined as share acquisitions or dispositions, extraordinary transactions with related parties, and corporate reorganisations, among others on form 76.

Prepare the documentation and ensure that the informative returns are duly filed, as it is a deductibility requirement for expenses and acquisitions made.

Transfer pricing

Mexican income tax regulations require that taxpayers conducting transactions with related parties (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), local legislation aimed to comply with such reporting obligations has entered into force. In this regard, Mexican local entities with taxable income of 755,898,920 MXN (ie, approximately US$40 million) are obliged to file Local and Master Files, and Country-by-Country filing if worldwide consolidated revenues are equal or greater than 12 billion MXN (ie, US$640 million) on December 31st of the following year in which the obligation is triggered. Penalty for non-filing is 220,400 MXN and may lead to disqualification from entering into contracts with Mexican public sector and cancelation of the taxpayer importer registry. Note that 2018 filing obligations must be complied with at the latest on December 31st of the current year.

Prepare a transfer pricing study covering each transaction carried out with related parties, including the Country-by-Country Reporting requirements.

Analyse if the mark up currently used can be adjusted based on the transfer pricing study.

Pension fund exemption

Mexican tax law establishes a tax exempt regime for foreign pension and retirement funds investing in Mexican real estate. Such tax exempt regime on interest, leasing income and capital gains, if certain rules are complied with. Please note that income tax exemptions for foreign pension funds in connection with the sale of real estate or shares (which value is comprised in more than 50% of immovable property located in Mexico), should be available to the extent the real estate property was leased for at least a minimum period of four years before the transaction takes place.

Specific analysis of the structures involving foreign pension funds should be carried out in order to apply the tax exemption granted by the Mexican Income Tax Law. 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 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.

Review the applicable tax benefits for Mexican REITs.

Creditable VAT for specific business transactions

VAT paid on costs and expenses should only be creditable when the taxpayer carries out taxable activities. For VAT purposes, for example, the sale of land, houses and dwellings is VAT-exempt. Therefore, VAT may be a cost for those real estate companies performing VAT-exempt activities.

Specific review of VAT-able and non-VAT-able activities of Mexican real estate companies should be carried out.

Tax incentive for real estate developers

Taxpayers engaged in construction and sale of immovable property projects may elect to take a deduction for income tax purposes on the acquisition cost of land in the fiscal year that the land is acquired to the extent that this option is applied for a minimum period of five years for all the land being part of its inventory.

Review all requirements for the exercise of this option.

5 United States of America

U.S. Economy and Tax Reform

The U.S. economy had real GDP growth of 2.3% in 2017. The labor market remained steady marking the seventh straight year of continued job growth while the unemployment rate sustained a 17-year low of 4.1%. The Federal Reserve benchmark interest rate was raised three times in 2017 due to the improving economy and labor market. Compared to historical levels, interest rates continue to remain low. Congress enacted the most sweeping rewrite of the U.S. tax code in over 30 years with tax cuts for businesses and individuals beginning in 2018 – most notably the U.S. corporate tax rate was reduced to 21% from 35%.

Corporate/FIRPTA tax rate reduction

The 2017 tax reform reconciliation act changed the corporate tax rate from a graduated tax rates with a maximum rate of 35% to a flat 21%.

Any transaction that is subject to the 35% withholding tax rate under the Foreign Investment in Real Property Act (FIRPTA), including capital gain dividends and liquidating distributions paid by REITs, will now be subject to a 21% withholding rate.

Qualified Business Deduction

The 2017 tax reform reconciliation act provides a new deduction of 20% of business income from partnerships, REIT dividends, and income from publicly traded partnerships for individual, estates, and trusts. The ability to take a deduction for business income is limited for taxpayers above a certain thresholds to the extent of W-2 wages and tax basis of the assets of the assets used in the business. The deduction will be limited to the greater of (i) 50% of the partner's share of the W-2 wages, elective deferrals and deferred compensation of the partnership made to the business' employees or (ii) half of the amount included in (i) plus 2.5% of the unadjusted tax basis of the depreciable assets used in the business.

The limitation described above does not apply to the REIT dividends or income from publicly traded partnerships. Business income does not include income from an activity involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, investing, trading or any trade or business where the principal asset of the trade or business is the reputation or skill of one or more employees including businesses that deals in securities, partnership interests, or commodities.

Repatriation Toll Charge

The 2017 tax reform reconciliation act moved the U.S. taxation regime from taxing corporate taxpayers on its worldwide income to income generated from U.S. sources. As a result of the transition, non-U.S. corporate taxpayers is subject to a one-time repatriation toll charge. The repatriation toll charge applies to any non-U.S. corporation that is a controlled foreign corporation (CFC) or that has a U.S. corporation which has a 10% U.S. shareholder. The toll charge applies to a REIT's (or any other U.S. shareholder's) pro rata share of its foreign subsidiaries' post-1986 undistributed Earnings & Profits (E&P) as of November 2nd 2017 or December 31st 2017, whichever is higher.

Opportunity Zones

The 2017 tax reform reconciliation act, enacted December 22nd 2017, includes a new tax incentive program, Internal Revenue Code Subchapter Z – Opportunity Zones, aiming to promote investments in certain economically distressed communities. Investors may receive significant tax benefits that include (i) tax deferral for capital gains invested in a qualified opportunity fund, (ii) elimination of up to 15% of the tax on the capital gain that is invested in the qualified opportunity fund, and (iii) potential elimination of tax when exiting a qualified opportunity fund investment.

Annexure – India

Annexure 1 – Notional rent

Assumptions
- Date of receipt of completion certificate – April 2017
- Annual notional rental value –1,000

FY 2017–18 and onwards			
	Potential tax liability		
Particulars	FY 2017–18	FY 2018–19	FY 2019–20
Annual letting value	Nil	Nil	1,000
Less: Standard deduction at the rate of 30%	Nil	Nil	–300
Income from house property	Nil	Nil	700
Tax on above at the rate of 34.608%	Nil	Nil	245
Total tax		**245**	

Annexure 2 – Capital gains on JDAs

Assumptions	
Particulars	Amount (INR)
Indexed cost of acquisition of land on the date of grant of possession of land (eg, Year 1)	200
FMV of the share in the property to be received as consideration in Year 1	1,000
Stamp duty value of share in the property to be received as consideration (on the date of obtaining Occupancy Certificate [OC]) (eg, Year 5)	800
Sale consideration of share in the property (fair market value (FMV) of share in the property on the date of transfer) (eg, Year 3)	1,000

Scenario 1 – Share of constructed property retained by land owner (being individual and HUF)

Upto FY 2016–17 – Capital gains in the year of grant of possession of land (Year 1)	
Particulars	Amount (INR)
Sale consideration (FMV of the share of property)[1]	1,000
Less: Indexed cost of acquisition of land	–200
Long term capital gains	800
Tax on capital gains at the rate of 23.69% – payable in Year 1	**190**

[1] The sale consideration shall be adopted as the cost of acquisition of the share of the property (on subsequent transfer).

FY 2018–19 and onwards – Capital gains in the year of obtaining OC (Year 5)	
Particulars	Amount (INR)
Sale consideration (stamp duty value of share of property)[1]	800
Less: Indexed cost of acquisition of land[2]	–300
Long term capital gains	500
Tax on capital gains at the rate of 23.69% – payable in Year 1	**120**

[1] The sale consideration shall be adopted as the cost of acquisition of the share of the property (on subsequent transfer).
[2] Increase in indexed cost of acquisition due to deferral of taxable event.

Scenario 2 – Share of constructed property transferred prior to receipt of OC

Upto FY 2016–17 – Capital gains in the year of grant of possession of land (Year 1)	
Particulars	Amount (INR)
Sale consideration (FMV of the share of property)	1,000
Less: Indexed cost of acquisition of land	–200
Long term capital gains	800
Tax on capital gains at the rate of 23.69% – payable in Year 1	**190**

Upto FY 2016–17 – Capital gains on sale of share of property (Year 3)	
Particulars	Amount (INR)
Sale consideration (FMV)	1,000
Less: Cost of acquisition of land (sale consideration taken in Year 1)	–1,000
Long term capital gains	**Nil**

Annexure 2 – Capital gains on JDAs (Contd.)

FY 2018–19 and onwards – Capital gains in the year of transfer of share of property (Year 3)	
Particulars	Amount (INR)
Sale consideration (FMV of share of property)	1,000
Less: Indexed cost of acquisition of land[1]	–250
Long term capital gains	750
Tax on capital gains at the rate of 23.92% – payable in Year 3	**180**

[1] Increase in indexed cost of acquisition due to deferral of taxable event.

Annexure 3 – Thin capitalisation norms

Particulars	Scenario 1 Amount (INR)	Scenario 2 Amount (INR)	Scenario 3 Amount (INR)
EBIDTA	100	100	100
Interest paid to AE	–	50	40
Interest paid to third party	60	20	–
Maximum interest deduction allowable	**60**	**30**	**30**
Disallowed interest carried forward	–	40	10
Interest income to the AE	–	50	40

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