

## V. GERMANY, SPAIN, POLAND – INSIGHTS FROM THE INVESTOR & INVESTMENT LOCATION

CARSTEN BOEDECKER – TAXAND GERMANY

SARA ORRIOLS – TAXAND SPAIN

MARCEIJ GRZYMALA – TAXAND POLAND

**Taxand Real Estate Tax Seminar**

> Dealing with distress and recovery from the downturn



# AGENDA - POLAND

- Real estate values & tax free step-ups – still possible tax-wise? still existing value-wise (or should we rather have step-downs)?
- Revaluation of properties – changes in accounting law and its impact on distribution capacity of SPV
- Side-effects of the crisis – tax losses c/f limits vs depreciation optimization
- FXs as a side-effect of the crisis (PLN/EUR was 3.36 on 2008 Sep 15, 4.9 in March 2009 and in 2004, now it is 4.1)
- Bank financing is (was) dead. Long live(d) bank REfinancing !
- Other issues

# REAL ESTATE VALUES

- ❖ Increase of yields together with high level of uncertainty on the market and limited number of deals (comparable data) impact valuations
- ❖ Tax-wise step-ups are still possible for:
  - ❖ investments in progress: in-kind contribution of the enterprise
  - ❖ transfer to partnerships: in-kind contribution of the RE asset
  - ❖ liquidation: in-kind transfer of the RE asset
- ❖ Value-wise:
  - ❖ for number of operating projects with more than 1-2 years of history NTBV still is much lower than FMV => step-up increases depreciation costs and/or tax base at sale of the asset
  - ❖ significant FXs costs may eat-up the step-up on currently completed developments
  - ❖ combination of acquisition of distressed plots, decreased construction costs and FXs (assuming appreciation of PLN) may boost step-ups in the future

# REVALUATION OF PROPERTIES

- ❖ Changes in Polish accounting act effective as of 1/1/2009: revaluation of properties treated as „investments” is now included in the operating costs/revenues (i.e. in P/L)
- ❖ Changes in value of properties are to be reflected in P/L instead of in „revaluation reserve” => the change hits distribution capacity:
  - ❖ rise in RE values => profit is reported and dividends can be paid
  - ❖ decrease in RE values => profits are decreased / loss may occur and dividend capacity is limited
- ❖ „Revaluation reserve” from the past:
  - ❖ can it be re-allocated into profits and used for dividends payments?
  - ❖ can it constitute a cushion against future potential losses due to decreases in RE values?

# TAX LOSSES vs DEPRECIATION

- ❖ Distressed assets (lack of tenants) may generate less revenues than in the past/planned => RECo may have tax losses
- ❖ Losses may be set-off with profits of next 5-years (only 50% of the loss in one year though) => losses generated currently may not be fully utilized if tenants are not found soon and/or at worse rates
- ❖ Depreciation rates may be reduced (changed) at start of each year to reduce tax deductible costs => reduce current loss:
  - ❖ on RE property of EUR 100m approximately EUR 2.5m of tax costs may be shifted to next years
  - ❖ rates may be increased once income is forecasted
  - ❖ easy procedure, limited formalities, controllable optimizing tool

# FXs

- ❖ Changes in PLN values of the EUR financing (bank and internal) may impact tax position:
  - ❖ EUR 10m loan taken in 2008 (before September) has up to PLN 7.4m of negative FXs accrued (tax asset of PLN 1.4m)
  - ❖ EUR 10m loan taken in 2009 (or 2004) has up to PLN 8m of positive FXs accrued (tax liability of PLN 1.5m)
- ❖ Approach of tax authorities may threaten realization of FX costs and allow for non-realization of FXs revenues on repayment/refinancing (if secured by the ruling):
  - ❖ change of currency of the loan into PLN neutralizes FXs
  - ❖ FXs on loans drawn by other entities and taken over by the company (due to debt take over) are deemed by authorities as not deductible/taxable for CIT purposes

# BANK REFINANCING

- ❖ Increased interest in refinancing of the old loans (with low LTVs ratios). Extra cash is used to save other projects abroad or accumulate cash awaiting for acquisition of distressed assets
- ❖ Distribution of refinancing proceeds through dividends and/or redemption proceeds:
  - ❖ deductibility of the interest on refinancing loan financing such distribution may be questioned by tax authorities although solid counter-arguments can be used to defend deductibility
- ❖ Distribution of refinancing proceeds through upstream loan:
  - ❖ may be additionally beneficial with interest revenue taxed in Poland @19% if offers tax deductible costs abroad subject to income tax rate >19%
  - ❖ Polish capital duty (2% on loan value) should be monitored although it can be eliminated

# OTHER IDEAS TO KEEP TAX COSTS DOWN

- ❖ Capital duty paid on increase of share capital may be recovered:
  - ❖ capital duty on the increase of share capital may be viewed as against EU Law, such position was also presented in various administrative courts rulings
  - ❖ under the procedure of request of overpayment recovery of capital duty may be carried out without tax risk
  - ❖ 0.5% of the value of the increase at stake + interest accrued since filing the request and final repayment