Real Estate Tax Newsletter October 2024

Brought to you by Taxand , Your Global Tax Partner

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INTRODUCTION

We are pleased to share our latest Real Estate Tax Newsletter, covering tax developments in Europe and beyond and how they impact our industry.

According to the latest Market Insights report published by the INREV, the European Association for Investors in Non-Listed Real Estate Vehicles, confidence in European real estate is rising and European transaction volumes showed signs of recovery in the second quarter of 2024, with activity picking up in both the UK and Continental Europe.

The overall consensus seems to be one of cautious optimism.

On the other hand, throughout this year, a number of national elections have taken place, which will bring further changes to the investment and fiscal landscape, some of which are addressed in this newsletter.

If you have any questions on the points raised in this newsletter, then please do get in contact with your Taxand contact or the relevant local experts, whose details are on the following pages.

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FINLAND

BORENIUS

Government proposal on Real Estate Tax Valuation

The proposal aims to annually update land tax valuations based on current market transactions and regional land use patterns. Price ranges for comparable land will be established, and the final taxable value will be calculated at 70% of the assessed land value in accordance with the prudence principle.

For buildings, taxable values will be determined by average regional construction costs, incorporating 50% of that cost for most structures and 45% for detached and semi-detached houses.

Significant changes in real estate tax values are anticipated; early preparation is advisable. Current taxable values for buildings date back to the 1970s, and land values have not been broadly updated in over 15 years, leading to misalignment with present market values.

Government proposal on Taxation in Finland's Exclusive Economic Zone (EEZ)

The proposal aims to exercise Finland's taxation rights in its EEZ, in accordance with the UN Convention on the Law of the Sea, by extending real estate and income taxation to this area. A primary objective is to ensure that the taxation of offshore wind power in the Finnish EEZ is equivalent to that of offshore wind power within Finnish territory.

The proposal will include incorporating buildings and structures in the EEZ into the real estate tax regime, along with recommendations on tax rates and the allocation of tax revenue.

It should be noted that both proposals are subject to parliamentary discussion and may therefore undergo material changes. The government plans to submit both proposals to Parliament in late October 2024.

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FRANCE (1 OF 2)

ARSENE
TAXAND NETWORK

Necessity for a foundation to have a beneficial owner in order to benefit from the 3% tax exemption

The 3% tax applies to all French and foreign legal entities that own, on January 1st, directly or through an intermediary, real estate or real property rights in France. This tax applies to legal entities, organizations, trusts and comparable institutions (trusts, investment funds, etc.). Many exemptions exist and notably for entities that duly file a tax form each year, specifying the value of the assets held, the identity of shareholders holding more than 1% of the shares and the number of shares held by each.

The French Supreme Court (Cour de cassation, 10/05/2024, n° 21-11.230) ruled that a Liechtenstein-based Foundation could not benefit from the exemption because it did not have shareholders, associates, or other members due to the way it was structured. The Foundation was also unable to designate a beneficial owner and had only declared a future beneficiary in its filings, which was deemed to be hypothetical and uncertain due to a legal dispute.

Attention must therefore be paid to the disclosure of the beneficial owner to benefit from the 3% tax exemption.

The Finance Bill for 2025

Following the dissolution of National Assembly by Emmanuel Macron after the European elections, France has a new Prime minister: Michel Barnier.

To date, Michel Barnier has not yet announced his cabinet, but he will present the Finance Bill for 2025 to parliament on October 9th (instead of October 1st as initially fixed).

After France was placed on a formal procedure for violating European Union budgetary rules, Michel Barnier suggested tax rises to help stabilize finances. Gabriel Attal, former Prime Minister and now President of Macron’s party in the National Assembly has said he was firmly opposed to any tax increase. Gerald Darmanin, soon to be ex-Minister of the Interior and future Member of Parliament also came forward to oppose any tax increase.

More to come in the next press release…

FRANCE (2 OF 2)

ARSENE
TAXAND NETWORK

Para-hotel activity criteria for French VAT purposes - the French Tax Administration ("FTA") has published its guidelines

As from January 1st 2024, in order to comply with the 6th Directive, the conditions for applying VAT on rental accommodation supply vary according to the sector concerned:

#1: Rental of accommodation in hotels or sectors with a similar function (short-term rental, with "para-hotel" services): rentals are automatically subject to VAT when (i) less than 30 renewable nights could be proposed to the customers, and (ii) three of the four following services are provided: breakfast, regular cleaning of the premises, supply of household linen and reception of customers.

#2: Rental of furnished residential accommodation (long-term rental): rentals are subject to VAT provided that three of the four services are proposed by the operator.

In August, the FTA adjusted the administrative guidelines and notably specified that the additional services must actually be offered to the customer, and the effectiveness of this offer must be demonstrable (for example: display on the premises, provision of a welcome booklet, written exchanges with the customer, mention on the accommodation provider's website, etc.).

The FTA have also provided clarifications on the services:

breakfast is deemed to be provided if it is offered in accordance with professional practice (e.g., simply providing a food and/or drinks dispenser is not sufficient);

cleaning of the premises and supply of household linen (sheets, towels, pillowcases, etc.) are deemed to have taken place if it is carried out before the start of the stay and is offered to customers on a regular basis during their stay; and

customers may be received at a single location other than the rented premises themselves or via an electronic communication system, and reception does not necessarily need to be offered on a permanent basis.

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ITALY (1 OF 3)

Alma LED

Shell companies and VAT deduction: the right to deduct input VAT cannot be denied under the shell companies' legislation if the company carries out an economic activity and uses goods and services purchased to carry out such activity, except for the case of fraud or abuse (Italian Supreme Court decision no. 24416 and 24442 of 2024)

With the decisions no. 24416 and 24442 dated 11 September 2024, the Supreme Court applied the principles ruled by the EU Court of Justice (C-341/22) and stated that the right to deduct input VAT cannot be denied just because the company does not meet the revenues threshold set forth by the shell companies legislation.

According to Art. 30 of the law no. 724/1994 (shell companies legislation), if a company does not meet the "vitality test", it is a shell company. The test is not met if the annual actual revenue is lower than the deemed revenues, calculated as the sum of various items including 6% of the value of real estate assets. The vitality test considers the average value of all the relevant assets in the current and 2 previous years, subject to certain automatic exclusions. Taxpayers may prove that due to economic market conditions, the vitality test is not met, thus the dormant company rule is not applicable by filing a ruling request with the Italian Tax Authority, and such ruling should be filed before the deadline of the CIT return.

From a VAT perspective, a shell company is prevented from: (i) getting a cash refund of the VAT credit resulting from the VAT return; (ii) offsetting the VAT credit resulting from the VAT return with other taxes due; or (iii) selling the VAT credit resulting from the VAT return. In addition, if for three consecutive years the company does not carry out VAT transactions above a certain threshold, the VAT credit resulting from the VAT return will not be able to offset the output VAT of the following years, while the shell company can continue to deduct input VAT.

In March 2024, the EU Court of Justice had been requested to assess whether the limitations to the right to deduct input VAT under the Italian shell companies legislation were in line with the EU law. With Case C-341/22, the EU Court of Justice ruled that (i) the status of taxable person for VAT purposes cannot be denied if a person, during a given tax period, carries out transactions that are subject to VAT and the economic value of which does not reach the threshold prescribed by national legislation, which corresponds to the return that can reasonably be expected from the assets held by that person; (ii) the domestic legislation cannot deny to a taxable person the right to deduct input VAT if the transactions subject to output VAT carried out by that taxable person do not reach a certain threshold. The right to deduct input VAT may be denied only in case of fraud or abuse.

ITALY (2 OF 3)

AlmaLED

The Italian Supreme Court applied such principles and confirmed that the right to deduct input VAT must be granted if:

- the company actually carries out an economic activity;
- the goods and services purchased by the company are used by the company to carry out transactions subject to VAT;
- the transactions do not constitute fraud or an artificial arrangement.

Based on the above, except in the case of fraud or abuse, shell companies must be granted with the right to deduct input VAT.

The recent EU Court of Justice and Supreme Court case law may support a request of refund of the input VAT whose deduction has been denied under the Italian shell companies regime.

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MAISTO E ASSOCIATI

Supreme Court rules on fund manager liability for VAT debts of the fund

Under Italian law, a contractual investment fund is a pool of assets ring-fenced from the other assets of the fund manager. However, VAT law identifies the manager as the only VAT taxable person in charge of VAT compliance for the fund's activities. This created uncertainties in the real estate field because it was unclear whether fund managers could be held responsible, with their own separate resources, for VAT debts originated by real estate funds' transactions.

In decision 16285/2024, the Supreme Court heard a case in which the tax authorities sought to collect VAT from a fund manager for transactions of a real estate fund that had in the meanwhile been liquidated. The Court held that, because the fund's liabilities are segregated, fund managers are liable to satisfy the fund's VAT debts only to the extent of the fund's assets. This judgment should give more certainty to fund managers when funds are liquidated or appoint a new manager.

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LUXEMBOURG (1 OF 2)

ATOZ
TAX ADVISERS LUXEMBOURG

1% corporate income tax cut to be introduced as from 2025

On 17 July 2024, a draft law was presented to Parliament which reduces by 1% the Luxembourg corporate income tax ("CIT") rate as from tax year 2025.

Taking into consideration the municipal business tax and the solidarity surcharge for the employment fund, the overall CIT rate for companies located in Luxembourg City will be as follows:

- 23.87% (instead of currently 24.94%) if the taxable income exceeds EUR 200,000;
- An intermediary rate varying between 21,73% and 23.87% if the taxable income exceeds EUR 175,000 without exceeding EUR 200,000; and
- 21.73% (instead of currently 22.80%) if the taxable income does not exceed EUR 175,000.

Minimum net wealth tax rules to be amended

Based on the rules currently in force, the minimum NWT ("NWT") due by Luxembourg resident companies is determined based on the type of assets held by the company and the size of its balance sheet.

It amounts to EUR 4,815 if the financial assets, transferable securities, bank deposits and receivables from related parties represent more than 90% of the balance sheet and exceed EUR 350,000; or it varies between EUR 535 and EUR 32,100, depending on the size of the company's total balance sheet.

Following a recent ruling of the Luxembourg Constitutional Court according to which the regime for companies holding predominantly financial assets is unconstitutional, a draft law has been adopted to remove the distinction currently made based on the type of assets and provides that, as from tax year 2025, the minimum NWT will amount to:

- EUR 535 if the total balance sheet of the Luxembourg company is less than or equal to EUR 350,000;
- EUR 1,605 if the total balance sheet is greater than EUR 350,000 and less than or equal to EUR 2,000,000; or
- EUR 4,815 if the total balance sheet is greater than EUR 2,000,000.

Since foreign real estate assets are disregarded (to comply with double tax treaties) when computing the total balance sheet, the minimum NWT liability of Luxembourg property companies holding (directly) only foreign real estate assets will remain unchanged in most cases because they generally hold less than EUR 350,000 of financial assets (e.g. cash).

LUXEMBOURG (2 OF 2)

ATOZ
TAX ADVISERS LUXEMBOURG

Tax treatment of share class redemptions clarified

A recent draft law clarifies the cumulative conditions to be met for a share class redemption or withdrawal to be treated as a partial liquidation which is not subject to Luxembourg dividend withholding tax:

- It relates to an entire class of shares;
- The classes of shares have been implemented upon incorporation or a subsequent capital increase;
- Each class of shares has distinct economic rights defined in the articles of association;
- The redemption price can be determined based on criteria laid down in the articles of association (or in any other document they refer to) and reflects the fair market value of the shares at the time of the redemption or withdrawal.
- The corresponding capital reduction takes place within a period not exceeding six months.

The general anti-abuse rule remains applicable in case of abuse of law. If the class of shares redeemed is held directly by an individual with a significant shareholding, the undertaking has to report information on the individual in its corporate income tax return.

Use of losses carried forward and abuse of law

On 25 April 2024, the Luxembourg Administrative Court ruled on the potential application of the general anti-abuse rule to deny the use of tax losses carried forward generated on a previous shareholding activity to offset a gain realised upon disposal of a Luxembourg real estate property.

While both the tax authorities and the Administrative Tribunal (first instance) had considered the use of the tax losses as abusive, because the company had been dormant for several years, the Court ruled that, absent a change of shareholder, the Luxembourg company was free to choose the least taxed route. Thus, offsetting taxable income against tax losses realised in the past in connection with another business activity is not an abuse of law, irrespective of whether the company has been dormant for some time.

The Court pointed out that according to the Luxembourg income tax law, the right to carry forward losses is not subject to the existence of the identity of the company in terms of economic criteria such as the pursuit of the same economic activity. According to the Court, *"it is the capital company that is the taxpayer and the right to carry forward losses in the hands of a corporate body is conditioned solely by its status as a company within the meaning of company law and by the legal identity of the corporate body".*

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NETHERLANDS (1 OF 5)

Tax Plans: 2025 Key Items:

On Tuesday September 17, 2024 the Dutch Cabinet presented their Tax Plans for 2025. Providing a high-level overview of key items of Tax Plans for 2025. To see full publication click on the link.

Note that all matters are still proposals and subject to parliamentary discussions. Hence, these proposals may see some (material) changes. Final voting into law is expected early December 2024.

2025 Tax Rates

Corporate income tax rates: no changes.

Year	2024	2025
Step-up rate	19% for <€200,000	19% for <€200,000
Top Rate	25.8% for <€200,000	25.8% for <€200,000

Personal income tax rates: change to Box 1 (income from work and residence), Box 2 (substantial interest taxation) and Box 3 (passive income).

Year	2024	2025
Box 1(including social premiums)	€0 - €75,518: 36.97% €75,518 and up: 49.5%	€0 -€38,441:35.82% €38,441 - €76,817: 37.48% €76,817 and up: 49.5%
Box 2	33% with 24.5 % and step-up rate for income <€67,000	31% with 24.5 % step-up rate for income <€67,000
Box 3	36%	36%

Corporate Changes

Amendments to earnings stripping rule

- The earnings stripping measure is a general interest deduction limitation in corporate income tax. Interest is not deductible to the extent that it exceeds the higher of €1,000,000 or 20% of the EBITDA. This threshold applies per taxpayer.
- Two changes are announced per 2025:
  - The limit will increase to 25% of EBITDA
  - The €1,000,000 threshold will be abolished for real estate entities, whose assets comprise for 70% or more of real estate leased to third parties. This is to prevent splitting up leveraged real estate investments over different entities, each benefiting from the threshold.

Codification General Anti-abuse Rule

A general anti-abuse measure will be codified in the Dutch corporate income tax act as of 2025. This will allow the tax inspector to intervene if an arrangement is used whose main purpose, or one of its main purposes, is to obtain a tax advantage, but which undermines the purpose of the applicable tax law.

This concerns the implementation of the "general anti-abuse rule" from the European Anti-Tax Avoidance Directive (ATAD). The Netherlands was initially of the opinion that the general anti-abuse measure did not need to be introduced because the Netherlands already have a similar measure in the form of "fraus legis".

However, the introduction of the general anti-abuse rule does not envisage a material change compared to "fraus legis".

NETHERLANDS (2 OF 5)

Withholding tax changes

New Group Concept in Conditional Withholding Tax

- Since 2021, the Netherlands have had a conditional withholding tax on interest and royalty payments made by a Dutch entity to an affiliated entity in a low-tax jurisdiction. From 2024, a conditional withholding tax on dividends has been added.
- A condition for levying conditional withholding tax is that the beneficial owner has a qualifying interest. This qualifying interest can also be determined when there is a cooperating group. In practice, the concept of cooperating group is unclear. As from 2025, the concept of cooperating group will be replaced with the concept of *qualifying unit*.
- A *qualifying unit* exists if (i) entities are acting together **and** (ii) the main objective or one of the main objectives for this acting together is to avoid conditional withholding tax.

Preservation Share Repurchase Facility

- The dividend withholding tax act provides for an exemption in the case of a repurchase of listed shares. This allows, under certain conditions and up to certain limits, the levying of dividend withholding tax to be exempt when companies on the stock exchange repurchase their own shares.
- Given the adverse impact of the abolition of the dividend withholding tax repurchase facility on the competitive position of Dutch companies and thus also on the Dutch business climate, the government intends to retain this facility in the dividend withholding tax.
- The abolition of the repurchase facility, which was foreseen as of 1 January 2025, will not go ahead.

Indirect Tax Changes

VAT - Revision period for Real Estate Services

- From the 1st of January 2026, a version period (herzieningsregime) is introduced for “capital real estate services” over EUR 30k. This for example regards renovation works.
- VAT reclaimed for services in scope of this regime is subject to revision if the use of the services (VATable or exempt) changes during the revision period. This is reviewed annually.
- Under the current rules, the VAT on (e.g.) renovation works can be fully reclaimed if a real estate asset is rented out subject to VAT in the year following the renovation. The revision rule was introduced to spread VAT recovery over multiple years and to prevent short-term VATable use solely for VAT savings.
- A similar revision period already applies to VAT incurred in relation to the construction or supply of real estate. That revision period applies for 10 years and remains unchanged.

NETHERLANDS (3 OF 5)

RETT - Rate for Residential Properties to 8% per 2026

- The RETT rate for non-owner-occupied residential properties is reduced from 10.4% to 8% per 2026.
- Application of the reduced rate will solely depend on the type of property acquired. The actual usage of the property is not relevant. It is therefore expected that also residential properties that are acquired to be demolished or that are used as office (but originally built as residence) will be in scope of the reduced rate.
- The rate decrease is announced but not yet incorporated into a legislative proposal. The former proposal will likely be part of the Tax Plan 2026.

RETT - Concurrence Exemption Share Transactions

As of 1 January 2025, the RETT concurrence exemption will no longer apply for the acquisition of newly built real estate or building plots via share transactions, in so far as these assets are used >10% for VAT exempt activities (e.g. residential real estate).

A new rate of 4% is introduced for transactions that are out of scope of the concurrence exemption due to this change.

The concurrence exemption remains in place for the acquisition of newly built real estate or building plots via share transactions, in so far as these assets are used >90% for VAT taxed activities.

This changed was already included in the 2024 Tax Plan.

Transitional law is provided for ongoing transactions.

Employment Taxes

Wage Taxes 30% Ruling

- Following the 2024 Tax Plan, the 30% ruling for reimbursement of extraterritorial expenses has been scaled back with effect from 1 January 2024. During the total period of the 30% ruling of 60 months, the percentage for the reimbursement for extraterritorial expenses will be scaled back from 30% in the first 20 months, to 20% in the next 20 months and ultimately 10% in the last 20 months.
- Based on the 2025 Tax Plan, the planned scaling down will be reversed. From 2027, a fixed percentage of 27% will apply for the entire period of the 30% ruling. For the years 2025 and 2026, the percentage of 30% will apply.
- The salary norm is increased from €46,107 to €50,436 (for incoming employee under 30 with a master’s degree from €35,048 to €38,338). For employees for whom 30% ruling applied before 2024, the previous salary norm (indexed) and the percentage of 30% remain applicable.

NETHERLANDS (4 OF 5)

Other Changes per 2025

Entity Tax Classification: Overhaul

- Per 2025, the Dutch limited partnership (CV) and foreign similar entities will classify as tax transparent by default. This will apply to the Dutch CV, and foreign similar LP entities like SCSp, LP and KG.
- The default classification as tax transparent implies that the current "unanimous consent" requirement on LP admissions and transfers (currently relevant to classify as tax transparent) will no longer be a requirement to qualify as tax transparent as of 2025.
- One important exception has been announced: Dutch and foreign partnership entities that classify as an 'investment fund' for purposes of local securities legislation, will remain non-transparent. An exception applies to (i) funds with one participant, (ii) funds with redemption-only liquidity and (iii) funds that conduct a business enterprise e.g. PE/VC main fund entities. Questions have been raised in parliament, so it is to be seen if this remains as it is when 2025 comes.
- The Dutch tax classification of foreign entities incomparable to a Dutch legal entity (e.g. UK LLP, Irish ULC, German KgAA, French SCPI) will align with the entity's tax treatment in the foreign jurisdiction (symmetry approach). An exception applies if the foreign entity is resident in the Netherlands, which will result in a non-transparent classification (fixed approach).
- A deemed disposal rule will apply to Dutch foreign entities switching their Dutch entity classification from non-transparent to tax-transparent, both at entity and investor level. Certain transitional rules and roll-over relief will be available, subject to meeting certain conditions.

Dutch FGF Fund Entity : Overhaul Entity Tax Classification

Wage Taxes 30% Ruling

- Under current law, the Dutch entity tax classification of a Dutch FGR fund entity can either be tax transparent or non-transparent. The choice depends on the liquidity mechanism.
- As of 1 January 2025:
    - A Dutch FGR can (continue to) qualify as a non-transparent entity, provided that:

      (i) it classifies as an AIF or UCITs under the Dutch Final Supervision Act,

      (ii) its units are tradeable.
- In all other cases the FGR will be deemed tax transparent. In case units of an FGR can only be sold to the FGR (i.e. a redemption only mechanism) it is also considered non-tradeable even when it is regulated.
- Certain transitional rules apply during 2024 for FGRs switching tax classification as a result of this change.

NETHERLANDS (5 OF 5)

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Dutch FBI REIT Fund Regime: Exclusion for Real Estate

- As of 1 January 2025, Dutch Funds benefiting from the FBI-regime (also: REIT regime) will be restricted from directly holding real estate in the Netherlands.
- An FBI can still hold real estate indirectly through e.g. a regularly taxed company.
- Transitional rules will apply during 2024, allowing a RETT-neutral conversion of existing FBIs into tax-transparent fund structures.
- The FBI-regime continues to be available for other (i.e. non Dutch real estate) investments.

Other Key Proposed Tax Legislation

Item	Date
Wage Taxes: The NLTA will actively enforce the DBA Act on false self-employment of independent contractors and will impose retroactive correction obligations, additional tax assessments where necessary. NLTA will be reluctant in imposing penalties for 2025 if one can demonstrate that measures were taken in limiting false self-employments.	01 January 2025
RETT demerger exemption : tighten conditions for transfers to third parties	Expected: 2025
Individual income tax "box3" : capital growth tax for liquid investments and capital gains tax for illiquid investments (including real estate and shares in listed companies >5%.	Expected: 2027

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CRIDO

Reconstruction of the Polish Real Estate Tax

Current provisions triggered multiple interpretation issues and uncertainties, in particular in determining what kind of real estate objects are subject to tax. This resulted in a verdict of the Polish Constitutional Tribunal which derogated some of the rules and ordered the changes to the underlying statute. The amendment to the new Polish real estate tax act is currently in process. Changes will come into force as of 1 January 2025.

Among many changes, the legislation introduces a new definition of structures (5 categories) and buildings. Real estate investors will need to determine which constructions will be subject to RET under the new law and recalculate the taxable base as of 2025. Review a RET position and its impact on the cash flow position is inevitable.

Increased aggressiveness of the tax authorities in interpretations and tax audits related to WHT

Polish tax authorities became very aggressive (tension has been steadily growing since 2022) in applying the EU Directives WHT exemptions / DTT rates. Even financial centres / holdings with a strong business substance are challenged on their WHT position within tax audits. Administrative courts in part share the approach of the tax administration, but most of the rulings were so far issued by first-tier courts. Simultaneously, by the end of Q2, the Ministry of Finance initiated the public consultations / working groups aimed at working out the potential ways of resolving the current situation – still work in progress, but some outcome is expected in Q4. Potentially, it may trigger follow up changes in the underlying legislation.

In the current tax environment in Poland, a challenge from the tax authorities on the WHT exemption in any structure cannot be excluded, regardless of the substance position of the foreign taxpayer. The key elements additionally increasing the risk are intermediary holding companies (in another country than UBO, especially if UBO is non-EU based), lack of or low effective taxation, limited personnel or extensive use of external service providers for administrative tasks, limited activities/assets, non-EU ultimate group entity.

At the same time, legislative works are carried out at the Ministry of Finance on 3 separate topics aimed at producing some guidelines / reference points for the taxpayers in the most "grey areas" which are most sensitive to interpretation, like beneficial owner, subject to tax rule, look through approach. Works are expected to result in some clarification of the current controversies.

In summary, the existing holding / financing structures require due diligence and the gathering of defence files prior to making any significant payments up the chain in order to mitigate the potential sanctions. Any new structures must be carefully assessed prior to implementation.

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ROMANIA (1 OF 2)

TAXHOUSE
TAXAND

Emergency Ordinance no. 107/2024 was published on 6 September 2024 and it introduces a series of tax facilities (tax amnesty) applicable to all categories of debtors (companies and individuals) which can benefit of cancelation of the late payment interest, penalties and all accessory charges related to the tax obligations which were due on August 31st, 2024 inclusively.

Rules applicable to companies

Example of taxes which are considered outstanding on August 31st, 2024 and may benefit from the tax amnesty:

a) tax obligations due on/or before August 31st, 2024;

b) tax obligations owed by an insolvent debtor and which were due up to and including August 31st, 2024;

c) additional tax liabilities established by tax assessment decisions communicated by the tax administration up to August 31st, 2024;

d) additional tax liabilities declared by the taxpayers through rectifying tax returns for the periods up to August 31st, 2024;

e) tax liabilities already settled with delay for periods up to August 31st, 2024 for which the late payment charges were not settled;

f) tax liabilities for periods up to August 31st, 2024 which will be established following the tax audits which were ongoing when the Emergency Ordinance came into force;

g) tax liabilities for periods up to August 31st, 2024 which benefit from payment deferrals may enjoy the cancelation of late payment charges in certain conditions.

Late payment interests, penalties and other accessories related to the tax obligations falling due on/or before August 31st, 2024 may be cancelled if certain conditions are met. For instance:

- all the outstanding tax obligations are settled by 25 November 2024;
- all the tax fillings are made to date;
- the taxpayer files a specific request by 25 November 2024.

Payers of corporate income tax / tax on micro-enterprises income may benefit from a 3% rebate from the annual corporate tax / tax on micro-enterprise income due for 2024. The 3% reduction can be used to offset other tax liabilities, if:

a) they have filed all returns / declarations;

b) they have paid the 2024 annual corporate income tax / micro-enterprise income tax in full and on time;

c) they have no outstanding tax liabilities at the due date for filing the tax returns.

ROMANIA (2 OF 2)

TAXHOUSE
TAXAND

Rules applicable for individuals

Individuals with outstanding tax liabilities which were due up to August 31st, 2024 inclusive, of less than RON 5,000 inclusive, may benefit from:

a) cancellation of 50% of those tax liabilities, if they are settled to the extent of 50% by the date of submission of the request for cancellation but not later than November 25th, 2024;

b) the cancellation of interest, penalties and all auxiliary charges relating to the tax liabilities outstanding on August 31st, 2024 inclusive.

Individuals with outstanding tax liabilities which were due up to August 31st, 2024 inclusive, of over RON 5,000, may benefit from:

a) cancellation of 25% of those tax liabilities, if they are settled to an extent of 75% by the date of submission of the request for cancellation but not later than November 25th, 2024;

b) the cancellation of interest, penalties and all auxiliary charges relating to the tax liabilities outstanding on August 31st, 2024 inclusive.

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Subcontracting the management of the property rental activity to a specialized third party may be enough to consider it as an economic activity for tax purposes

The Law 27/2014 on Corporate Income Tax (CIT) establishes that in order for the property rental to be considered an economic activity for tax purposes, the company must have a full-time employee with an employment contract. However, economic reality reveals business situations in which the hiring requirement is replaced by subcontracting to third party companies specialized in real estate management. In relation to these cases, the General Directorate of Taxation has concluded (in its binding consultations V0090-24, V1325-24 and V1377-24) that an entity carries out an economic activity even though the material and human resources necessary to operate on the market are not its own but are subcontracted to an entity outside the business group (if these resources are really needed to manage the rental activity). The existence of an economic activity is a key requirement for the application of certain special regimes and rebates in the Spanish CIT.

The Spanish government is considering harmonising the Inheritance and Gift Tax at the state level

Inheritance and Gift Tax is a tax on the transfer of assets and rights between individuals, whether as a result of death or a donation during their lifetime. It is a state tax which is ceded to the Autonomous Communities, which are responsible for its management and collection. Moreover, each Autonomous Community establishes its own tax rates, reductions or rebates, which means that taxation in each territory is different.

In this scenario, the Spanish Government is considering harmonising the tax by establishing a common minimum tax rate for all Autonomous Communities. This measure would mainly affect those Autonomous Communities that currently have established tax reductions or rebates of 100% or 99% of the tax liability (like Madrid, Galicia or Andalusia).

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SWITZERLAND (1 OF 2)

Taxpartner Taxand

Pension funds and investment foundations now benefit from the tax exemption on long-term real estate capital gains in the canton of Geneva

According to a recent Federal Supreme Court ruling, capital gains realized by tax-exempt pension fund vehicles from the sale of real estate in the canton of Geneva are subject to real estate capital gains tax and not to corporate income tax. The long-standing practice of the cantonal tax authority taxed such real estate capital gains with the corporate income tax. The concerned pension fund vehicle challenged this practice in view of the fact that taxpayers not subject to corporate income tax are subject to real estate capital gains tax. Since the cantonal real estate capital gains tax decreases with the holding period, until after 25 years no tax is levied at all, the application of the real estate capital gains tax was preferable, in the disputed case. Depending on the holding period, this new rule can also result in a higher tax than the previous practice.

Read more in our blog: New Federal Supreme Court decision: Tax-exempt pension fund schemes are subject to real estate capital gains tax rates in the canton of Geneva (taxpartner.ch)

Right to tax in case of the sale of a majority stake in a real estate company under tax treaties without a land-rich company clause

The Zurich Tax Appeals Court has issued an important ruling, determining that under international double tax treaties, Switzerland may not levy income tax on the transfer of a majority interest in real estate companies holding Swiss properties, unless the applicable double tax treaty explicitly provides for such taxation.

The case involved the sale of a majority stake in a real estate company with Swiss real property by a German resident seller.

The double tax treaty between Switzerland and Germany does not include a so-called “land-rich company clause”, akin to Article 13, Paragraph 4 of the OECD Model Convention. According to the Zurich tax authorities, the right to levy the real estate capital gains tax lies with the state where the property is located, regardless of whether the tax treaty contains such a clause. The court ruled otherwise and held that in the absence of a land-rich company clause, the right to tax such capital gains belongs to the country of residence of the seller – in this case, Germany.

This ruling confirms the long-standing practice of the Swiss tax authorities with regard to the sale of real estate companies and aligns with prevailing legal doctrine. It also minimizes the risk of an actual double taxation for the concerned parties. The decision is important, as many international real estate structures have been set up in view of such a tax treatment, i.e. with holding entities in Germany, Luxembourg and Denmark.

An appeal against this decision is currently pending before the Zurich Administrative Court.

SWITZERLAND (2 OF 2)

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Interest-free loans from parent companies to subsidiaries

The Zurich tax authority has published a new practice concerning interest-free loans from parent companies to subsidiaries. Traditionally, such loans have been tolerated in practice, even though all loans by non-private lenders have to earn an interest, for tax purposes. Only in the case of a sale of the borrowing subsidiary, the participation exemption relief was reduced by the uncharged interest.

The Zurich tax authority has stated, it will impute such uncharged interest immediately at the level of the parent company, unless there is deemed equity at the level of the subsidiary which would oppose an interest charge by the parent company.

With regard to real estate structures, this may result in additional tax cost. Therefore, this practice should be taken into account when setting up real estate structures.

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UNITED KINGDOM

A&M TAX
MEMBER OF TAXAND GLOBAL

Overview

The UK had a fiscal event – the Spring Budget – on 6 March 2024 and this introduced a number of tax changes.

Since then, there has been a General Election and change of government. The new Labour government will be holding their fiscal event on 30 October 2024 to set out business and individual taxation for the next year and beyond. The new government promised not to increase taxes on working people or corporation tax. That said, a number of the taxation measures are expected to impact real estate.

The government intends to make the UK a more business and investment-friendly jurisdiction and is currently consulting on a roadmap for business taxation. We are actively involved in this process.

Capital Gains Tax

There is an expectation that the rate of Capital Gains Tax (CGT) for individuals will increase.

It is not yet known what the changes will be and anything from an alignment of CGT to Income Tax is possible. Income Tax is currently charged at progressive rates up to 45% for individuals and this would be a significant increase, if applied to capital gains.

More likely is an effective rate in between the current rates of 10/20% for commercial property or 18/28% for residential property, and this could well be tied to length of period of ownership.

It is worth noting that companies are subject to corporation tax on capital gains and this should remain at 25%.

Carried interest

Another area is the taxation of carried interest for private equity executives. This is taxed favourably at present but widely expected to change.

The change may be tied to an increase in the rate (see above for CGT) or an alignment to Income Tax rates. If carried interest remains taxed at a lower rate than earned income it is expected that the qualifying conditions will be tightened.

Business rates

Some changes to business rates – currently paid for by occupiers of commercial buildings – were introduced earlier this year. From 2025 the revaluation cycle will decrease with the intention of ensuring the liability more accurately reflects business conditions.

That said, there are various proposals to completely redesign the basis of taxation for business rates; as this is a tax that raises significant amounts of money in the UK, it is unlikely that the government will agree to anything that may impact overall collections.

Incentives

As part of the intention to make the UK more attractive and invite investment into infrastructure and real estate, existing incentives (such as full expensing for capital expenditure on certain items) will remain. The fiscal event on 30 October 2024 is likely to extend this to other areas.

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ABOUT TAXAND

Taxand is a global organisation comprising top tier local independent tax advisory firms who together provide high quality, integrated tax advice to clients worldwide.

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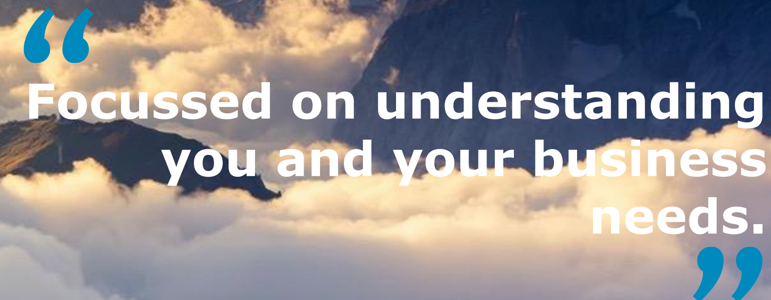

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