Taxand Real Estate Webinar
Thursday 15th May 2024
15:00 – 16:30 PM CET

TAXAND WEBINAR
TAX DEVELOPMENTS RELEVANT FOR THE EUROPEAN REAL ESTATE INDUSTRY

Participating Jurisdictions

- **Luxembourg** (Christina Leomy-Voigt, Atoz, Christina.Leomy-Voigt@atoz.lu)
- **Spain** (Carla Daniels, Garrigues, carla.daniels@garrigues.com)
- **Germany** (Torsten Engers, Flick Gocke Schaumburg, torsten.engers@fgs.de)
- **United Kingdom** (Aimee Hutchinson, Travers Smith, aimee.hutchinson@traverssmith.com)
- **Netherlands** (Evert-Jan Spoelder, Borgen Tax, evert-jan.spoelder@taxand.nl)

Highlights by Country

LUXEMBOURG

- **Redemption of Share Classes**: Codified as capital gains (no WHT) from 1 Jan 2025, in line with already existing administrative practice of the tax authorities. Must meet strict conditions (timing, economic rights, fair value, cancellation within 6 months).
- **CIT Rate**: Slight reduction to just below 24%.
- **Opt-out from the Participation Exemption for dividends and capital gains**: Now available and reversible annually, asset-by-asset.
- **Impatriate Regime**: Enhanced 50% tax exemption for qualifying professionals starting an employment in Luxembourg.
- **Interest-Free Loans**: Case law confirms requalification as hidden equity in thin-cap situation —implications for net wealth tax and WHT, but case was based on very specific and bad facts, and it remains to be seen if this case law is used by the tax authorities as a precedent to challenge intra-group debt in thin-cap situations more systematically.

SPAIN

- **PE vs Non-PE Structures**: Relevant distinction impacting tax rates and deductibility of expenses. PE triggers higher taxation and broader rules.
- **Directive Anti-Abuse Rules**: Recent case-law and administrative rulings on the beneficial ownership requirements to apply EU exemptions (PSD, IRD) (and new judgements expected in this regard).
- **Capital Gains**: Non-residents generally taxable at 19% on real estate company shares.
- **Intra-Group Financing**: Increased scrutiny by tax authorities not only on pricing but also on behavior).

GERMANY

- **Coalition Agreement Outlook**: Plans for reduced CIT (down to 10% by 2028), trade tax regime reforms, and infrastructure fund rules under review.
- **Trade Tax Planning**: PE status under threat for foreign investors aiming to avoid trade tax; audit pressure increasing.
- **Audit Trends**: Transfer pricing on intra-group loans (often challenged if >3% interest) and PE risk assessments are top audit issues.

UNITED KINGDOM

- **New Reserved Investor Fund (RIF)**: Launched March 2024; sometimes referred to as the "onshore JPUT" due to its tax treatment (being transparent for income and opaque for gains). Transfer of units in the RIF are exempt from stamp duty and stamp duty land tax. Various regulatory, ownership and restriction conditions need to be met to access the beneficial tax treatment.
- **Carried Interest Regime Reform**: From April 2026, all carried interest treated as deemed trading income. If carry is "qualifying" it should be subject to a ≈34% discounted rate. The rules relating to what constitutes "qualifying" carried interest are still under consultation though we expect draft legislation this summer.
- **Private REITs**: Since the introduction of private REIT in 2022, the UK government has relaxed the rules to make it easier for institutional investors to meet certain conditions. The market has seen general increase in institutional investors wanting to use the private REIT.

NETHERLANDS

- **Entity Classification Reform (2024)**: Aligns Dutch rules with international standards. Most foreign partnerships are now transparent.
- **Fund Priority Rule**: Carves out fund-like partnerships (e.g. SCSp) from transparency—hybrid mismatch concerns remain. Currently under government review following industry backlash.