PRIVATE CLIENT SERVICES

# PROPERTY OWNERSHIP **IN EUROPE**

2021

BDO

# INTRODUCTION

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The popularity of property as a long term investment asset is long established but continues to increase as families both look for investment opportunities beyond their home country and seek to buy property in holiday locations. The dramatic increase in working from home during the Coronavirus pandemic is also expected to lead to more foreign property ownership in the long term.

The ease of travel and shared citizens' rights across the EU borders mean that foreign property ownership has accelerated and it has not escaped the notice of Government's or tax authorities. As well as affecting prices in local property markets, some Governments are concerned about housing supply issues and the wider economic impact of homes remaining empty much of the time – particularly during the Coronavirus pandemic.

Each Government takes its own approach to tackling and taxing the issue of property ownership by foreign nationals: while a few apply directly legal restrictions, most opt for raising more tax revenue from foreign property owners in some form.

Ownership transparency is also increasing through property registers or specific registers of beneficial ownership where an ownership structure is used. This, combined with the introduction of the Common Reporting Standard (CRS), has greatly increased the level of transparency for families with real estate and bank accounts in many countries throughout the world. Under the CRS financial institutions release information each year to their domestic tax authorities in over 100 countries who share that information with tax authorities in the owners home country.

For families, these developments only add to the complexity of owning a foreign home or property investment so it is vital that prospective owners understand the tax and legal context for any country in which they intend to invest.

This guide provides a summary of the legal and tax rules for foreigners buying real estate in Europe, including in the UK.

**TAMARA PETERS VAN NEIJENHOF**

LEADER OF GLOBAL PRIVATE CLIENT STRATEGY GROUP, EUROPE

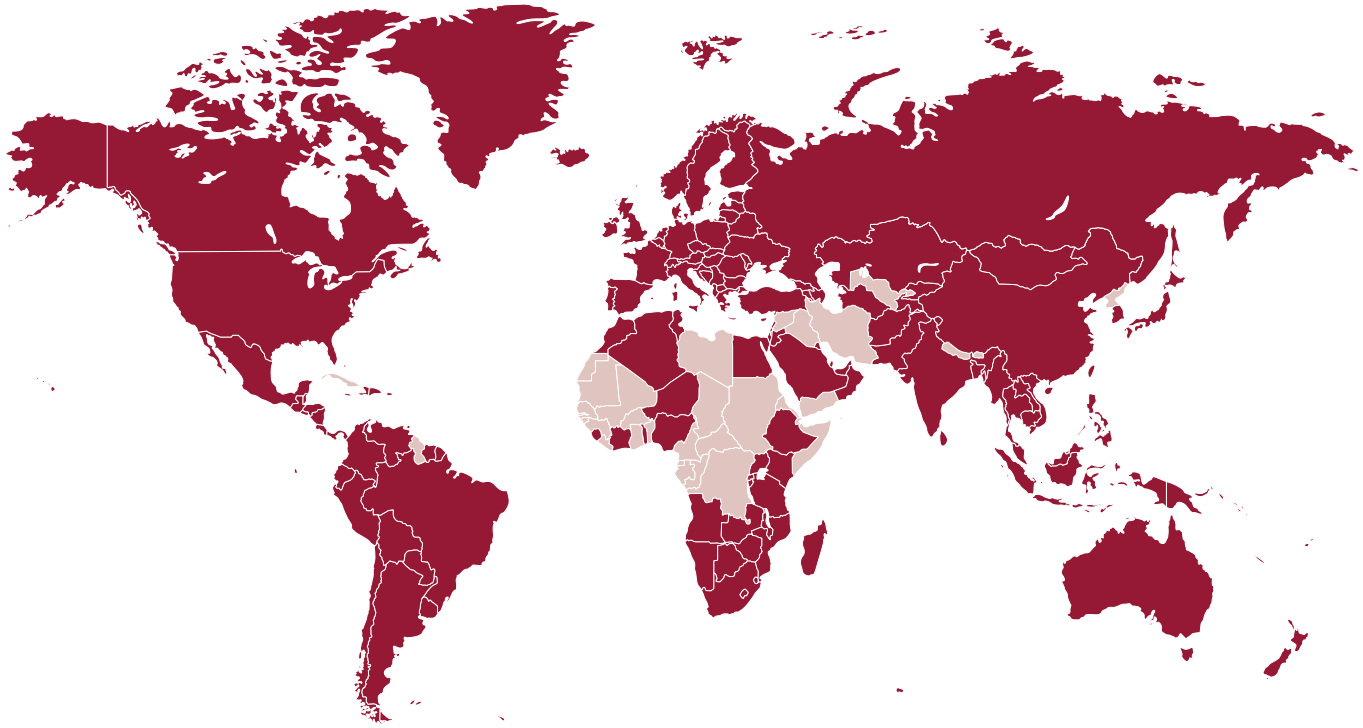
BDO INTERNATIONAL

**US$10.3 billion**
2019/2020 REVENUE

A YEAR ON YEAR INCREASE OF **7.8%**[1]

**167** Countries
**1,600** Offices
**91,000** Staff

1. At constant exchange rate.



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We work with our clients to structure their domestic and international affairs in an efficient and compliant manner. Our goal is to ensure clients' wealth is structured effectively for long-term preservation and in compliance with the demands of regulators.

BDO's Global Private Client Services team is a global network of private client specialists who have a multi-jurisdictional understanding of leading issues and a commitment to exceptional client service. The professionals on our Global Private Client team work together to provide a complete range of tax services to individuals, including:

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- Tax advice on investing money effectively around the globe
- Estate and gift tax planning
- Tax advice on investing in real estate in other jurisdictions.

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Find out more about Private Client Services at BDO at: www.bdo.global/en-gb/services/tax/global-privateclient-services

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BDO Private Client services is a leading advisor to wealthy individuals, their families and their businesses – domestically and internationally. Our goal is to give our clients the reassurance that their wealth is compliant with the demands of regulators and structured effectively for long term preservation.

If you would like to get in touch with a BDO adviser in another country, please see the contact details below:

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# AUSTRIA

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## INTRODUCTION

If foreigners intend to purchase immovable property (or a share in property rights), mandatory approval is required. Citizens of the European Union (EU) or citizens of signatory parties to the Agreement on the European Economic Area (EEA) are exempt from the approval procedure, and enjoy equal status to Austrian citizens. Accordingly, the approval must be obtained by non EU- or EEA-member ("third-countries") state citizens only.

## LEGAL REQUIREMENTS

If a third-country citizen wants to purchase a property (or share in property rights), their request is only approved by the respective provincial authority or the respective district administration authority if the transaction is of cultural, social (including housing needs), or macroeconomic interest, and no national interests are negatively affected.

Citizens of an EU- or an EEA-member state enjoy the same status as Austrian citizens, and therefore do not require mandatory approval in order to purchase a property (or share in property rights).

In order to constitute property rights, an application for constitution must be filed with the competent land register court.

There are also specific restrictions for buyers, regardless of their nationality, when purchasing a second/leisure/holiday home in Austria (especially in Salzburg, Tirol and Vorarlberg). For example, in Tirol the purchase or construction of a property which is only used as a leisure home is restricted. If there is no special permit for the specific property, the usage solely as a leisure home is prohibited. Similar rules apply in Salzburg and Vorarlberg.

## TAX RULES

### INHERITANCE AND GIFT TAXES

Austria abolished inheritance and gift tax in 2008.

### INCOME TAX

From 1 April 2012, capital gains derived from the alienation of real estate are taxable, irrespective of the holding period, at a flat income tax rate of 30% (section 30 and 30a EStG)

This real estate income tax is typically withheld and paid to the relevant authority by the notaries and lawyers conducting transfers of real estate on or after that date. The assessment basis for the flat income tax is the difference between the purchase cost and the sale revenue (section 30 and 30a of the Austrian income tax act). Lower rates may apply for real estate purchased before 1 April 2002. Furthermore, there is also the possibility of applying the regular Austrian progressive income tax rate (0-55%) on real estate sale income, if deemed advantageous.

Capital losses incurred on the sale of real estate can only be set off against rental income, only in Austria.

The maximum amount which may be offset is 60% of the loss incurred on the sale. This reduced loss may be utilised at once in the year of the sale, or allocated to the next 15 years. Regardless of the period, the limitation for offsetting only against rental income applies.

Losses from income sources other than real estate sales may only be offset against positive income from real estate sales, if the regular progressive income tax rate is applied on both of those income sources.

Real estate sales are still exempt from taxation under any of the following conditions:

- The building was used as the principal residence for at least two years since the acquisition
- The building was used as the principal residence for five years within the last 10 years prior to the sale
- The building was self-constructed or expropriated.

The property gains tax is not applicable to corporations subject to the 25% corporation income tax on all of their profits. In such cases, the notary does not have to perform a self-computation of property gains tax, and no special advance payment will have to be made; the sale must be declared (only) in the regular corporation income tax return for the respective year.

## TRANSFER TAX

The transfer of the title to immovable property located in Austria is subject to real estate transfer tax (section 1 of the GrEStG). The term "immovable property" includes land and buildings, as well as building rights and buildings on third party land. It does not include machinery and equipment forming part of an industrial plant, nor industrial or commercial franchises (e.g. mining rights).

Taxable transactions include the sale, exchange and contribution to capital upon formation of a company. The tax is also levied if 95% of the shares of a company owning immovable property are united or taken over by one shareholder alone, or together with other members of the same consolidated tax group (a tax group is a special tax regime for affiliated companies in Austria, which may also include foreign companies). The tax also applies to partnerships owning immovable property if partners with a share in the partnership of at least 95% change within a 5-year period.

*Mortis causa transfers and inter vivos* donations of immovable property located in Austria are also subject to real estate transfer tax.

The taxable base is normally the value of the consideration given for the transfer, including liabilities that have been transferred, but is at least the actual value of the immovable property. If the consideration cannot be determined, or if 95% of the shares in a company owning immovable property are united or taken over by one shareholder, the actual value of the immovable property is used.

Generally, the tax rate is 3.5% (section 7 of the GrEStG). For gratuitous transfers /donations of immovable property, progressive rates from 0.5% to 3.5% apply. In the case of reorganisations, the rate is 0.5%.

## ADDITIONAL REGISTRATION FEES AND OTHER CHARGES

Additional registration fees (1.1%), and other fees and charges which arise in the course of a property purchase in Austria - in total about 2% - should be taken into consideration.

## PROPERTY TAXES

Both national and local governments tax property on an annual basis. The tax is based on a specific assessed and registered value. In most cases, this assessed and registered value is substantially lower than the fair market value. The federal rate is typically 0.2% of this registered value of the property. The tax rate may be increased up to 1%, depending on the area in which the property is located.

## VALUE ADDED TAX (VAT)

Real estate transactions are exempt from value added tax. In certain circumstances, the buyer may opt for VAT, for example if the buyer intends to rent out the property. In this case, the VAT is fully refundable.

## STAMP DUTIES

Generally, the execution of a purchase agreement and the contemplated acquisition of real estate does not trigger stamp duties. Rent or lease contracts might be subject to stamp duties.

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## INTRODUCTION

Belgium's standard of living is high and Belgian property prices are relatively lower than many neighboring countries and capital cities. However, high property transaction costs can offset any short-term benefits. Therefore it's important to be aware of the Belgian real estate market quirks and regulations before buying a property. There are no restrictions to stop foreigners buying property in Belgium or taking out a Belgian mortgage, even if they are non-resident. The use of a Belgian notary is mandatory for all real estate transactions, to draw up and register the purchase deeds. Belgian notaries can provide you with the legal representation required, however you can also choose to enlist the help of a solicitor in Belgium.

## LEGAL REQUIREMENTS

From a legal perspective, the sale of a real estate property is made when the buyer and seller have reached an agreement on the object and the price of the purchase. In principle, even an oral sales agreement can be reached. However, an oral agreement will create difficulty of proof, not only regarding the consent given, but also regarding terms and conditions orally agreed.

To ensure that third parties have knowledge of the sale, the sale of a property must be registered with the Belgian mortgage office, which is the Belgian authority responsible for registering all ownership of estate property, mortgages and real estate rights in rem (such as rights to build or long term leases, etc.).

The Belgian mortgage office only accepts authentic deeds, being a court decision or a notarial deed. Therefore, the sale of a real estate property is traditionally completed by a private agreement, which is confirmed by a notarial deed (within a mandatory period of four months, following the date of the private agreement), or a court decision (in the event of disputes between buyer and seller). Private agreements must be drafted with care, as certain information (such as information on soil, urban planning or building permits) is mandatory for the validity of the private agreement.

Foreign legal entities as well as individuals who do not have Belgian nationality or are not resident in Belgium, are entitled to acquire real estate assets in Belgium. No specific authorisation is required. However, the notary public executing the notarial deed will investigate the legal status of the foreign entity and will request it to comply with the "Ultimate Beneficial Owner" requirements under Belgian Anti-Money Laundering legislation.

# TAX RULES

## INHERITANCE AND GIFT TAXES

### Inheritance tax

If the deceased was, for tax purposes, a resident of Belgium at the date of death, inheritance tax (*droit de succession; successierecht*) is levied on his or her worldwide net property, i.e. the value of all movable and immovable property situated in Belgium and abroad, less the amount of debt on such property, no matter where the beneficiary (transferee) is resident.

If the deceased is a non-resident of Belgium at the time of death, Belgian transfer tax (*droit de mutation par décès; recht van overgang bij overlijden*) upon death is only applicable on transfers of real estate located in Belgium.

This tax is due on the value of the real estate located in Belgium, with a limited deduction of certain debts, but without any deduction for the costs of the funeral. In the Flanders and Brussels region, if the deceased was an inhabitant of the EEA, debts specifically incurred to acquire or preserve the real estate located in Belgium may be deducted from the value of the real estate. In the Walloon region, the above-mentioned debts are always deductible, regardless of the residence of the deceased.

The heirs and legatees, resident or non-resident, are taxable persons for inheritance tax/transfer tax purposes. The liability is incurred at the time of death of the deceased.

The inheritance tax/transfer tax rates are based on the degree of kinship between the deceased and the beneficiary. On inheritances in a straight line, i.e. between spouses and between parents and their children, the rate is calculated on the share each heir has in the legacy, and is applied separately on real estate and movable property.

Brothers and sisters are taxed on their share in the inheritance, but the split between movable property and real estate is not made. On inheritances between other persons, the tax rate is applied on the entirety of the inheritance, without any split between movable property or real estate, nor taking into account one's share in the legacy.

Different rates apply, depending on whether the deceased was resident in the Brussels, Flemish or Walloon region. When the deceased was a non-Belgian resident, the tariffs and regulations of the region in which the real estate is located will apply.

### Gift tax

Gift tax is levied as part of the registration duties on transfers of immovable property by donation of real estate located in Belgium.

Under Belgian civil law, the donation of Belgian immovable property needs to be established in a notarial deed. This notarial deed has to be registered, which makes the gift tax applicable.

In the case of a gift established by a notarial deed, the donee is, in principle, liable to pay the gift tax, but the contract can transfer this liability to the donor.

Gift tax is levied on the fair market value of the immovable property.

The gift tax rates are based on the degree of kinship between the donor and the donee, and on the basis of the donee's share in the estate. Different rates apply depending on whether the donor is resident in the Brussels, Flemish or Walloon region.

When the donor is a non-Belgian resident, the rates and regulations of the region in which the real estate is located will apply.

The donation of shares in a real estate company is subject to the lower tax rates applicable for the donation of movable goods.

## INCOME TAX

This section only deals with real estate income from a Belgian source derived by individual non-resident investors acting in a non-business capacity. If the real estate property is held in a business capacity, the related income, after deduction of allowable business charges, is subject to business income tax rules, and accordingly taxed at progressive tax rates on behalf of the individual, or at the applicable corporate income tax rate (current standard rate is 25%).

Rental income from real estate property is generally taxed by the region where the real estate is located. Such income is, however, only taxable if it exceeds EUR 2,500 per year or, if the non-resident taxpayer also has certain types of income from another income category that are taxable in Belgium, the total Belgian income is aggregated and effectively subject to the individual income tax for non-residents.

Capital gains realised on the sale of developed real estate property ("buildings") within five years of the acquisition, and on the sale of undeveloped real estate property within eight years of the acquisition, are taxable by means of an assessment at a 16.5% rate (plus a municipal charge). If the undeveloped real estate property is sold within five years of the acquisition, the capital gains are taxed at a 33% rate (plus a municipal charge).

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## REGISTRATION DUTIES

Registration duties are due on each sale of a real estate. The situation is different when it is a "new" real estate and VAT is due (see below). The right to levy registration duties is not a Belgian federal, but a regional, competence. Therefore, different registration duties will apply, depending on the location of the real estate in Wallonia, Flanders or the Brussels Capital region.

The registration duties are levied on the sales price (including charges) agreed between parties, which amount cannot be lower than the fair market value of the real estate concerned. For real estate located in Wallonia and the Brussels Capital region, the base rate of the registration duties for the sale of real estate is 12.5%. The base rate for the sale of real estate located in Flanders amounts to 10%. Depending on the location of the real estate, several exemptions and reductions of the base rate apply. For instance, a natural person acquiring his first real estate that will also serve as his residence, can benefit from a reduced rate in Flanders. A beneficial rate of registration duties applies for traders in real estate in all regions. However, the conditions imposed on the traders may vary. Different rates also apply for contributing real estate assets to a company against shares.

## ADDITIONAL REGISTRATION FEES AND OTHER CHARGES

Other than the registration duties or VAT, income tax and property tax, no other federal or regional charges are imposed on the ownership of real estate. The cost for a notarial deed for a sale of real estate is determined by law, and typically amounts to roughly 1% for real estate up to a value of around EUR 250,000. A reduced rate applies for real estate of which the value is in excess of that amount.

## PROPERTY TAXES

An annual property tax is due by all real estate owners. Although called "immovable withholding tax", this tax is levied by assessment, and is a final levy, i.e. the tax is not creditable against other (income) tax due. The levy is computed as a percentage of the cadastral income, i.e. the annual deemed rental value of the real estate property as determined by the federal government. This percentage is a combination of the applicable regional rate (for Brussels Capital, Flanders and Walloon region), increased by provincial and municipal surcharges, all depending on the location of the property.

## VALUE ADDED TAX (VAT)

### Sale of property

When it comes to real estate property, a distinction is made between the sale of land on the one hand and the sale of constructions (e.g. houses, offices, warehouses, but also infrastructure) on the other hand.

The separate supply of land (as such) is by virtue of law exempt from VAT. Instead, registration duties (see separate section) are due.

Whether the supply of buildings (and corresponding land sold simultaneously by the same vendor) is subject to VAT, depends on whether or not the building is considered a "new building" for Belgian VAT purposes. Newly constructed buildings are considered "new buildings" until 31 December of the second calendar year after the first year of use/occupation. Fundamentally transformed or extended buildings can also become *"new again"* for VAT purposes.

If such a new building is sold by a real estate developer (i.e. a professional who regularly sells new buildings), the sale will be subject to mandatory VAT.

On the other hand, if the "new" construction (and corresponding land) is sold by a taxable person (which can be a person for the event of a single transaction – the "occasional" VAT taxable person), a public body or a private individual, the latter vendor has the option to either apply VAT or registration duties to the sales transaction.

Finally, the supply of an old building (i.e. no longer "new" for VAT purposes) is subject to registration duties.

### Rent of immovable property

Generally, the rent of immovable property is exempt from VAT (without the right to recover input VAT for the landlord/ lessor), but various mandatory or optional exceptions are outlined in the Belgian VAT Code.

Depending on the nature of the construction (e.g. warehouse, office, infrastructure, etc.), the duration of the rental agreement (e.g. more or less than six months), the tax status of the tenant and the use (e.g. as a private dwelling or for professional use), the rent/lease of immovable property and the corresponding land may (under certain circumstances) be subject to optional or mandatory VAT.

In order to have a rental agreement withstandable to third parties, the agreement should be registered. In principle, registration duties are due. The registration duties amount to 0.2% of the total amount of the rent and the charges imposed on the tenant for the duration of the lease, but with a minimum that may not be lower than the general fixed fee of EUR 50. Registration of a rental agreement for a property that is exclusively intended for residential purposes by the tenant is free of charge.

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## INTRODUCTION

Cyprus has always been considered to be an attractive property destination by foreign buyers. The relatively low cost of living, high quality of life, hospitality of the Cypriots, fantastic weather and favourable tax regime have all contributed to Cyprus' success in attracting business expats and retirees.

## LEGAL REQUIREMENTS

For non-Cypriots, the process of purchasing property in Cyprus is very simple, especially compared to other countries.

EU citizens who are permanent residents in Cyprus do not require permission to buy immovable property. Non-EU citizens or EU citizens who are not residents in Cyprus require permission from the Council of Ministers, which can normally be obtained within reasonable time after signing the contract of sale.

EU citizens with permanent or temporary residence permits can register as many properties as they wish in their name, provided they have signed a declaration to the government of Cyprus that they will stay in Cyprus for the following five years.

## TAX RULES

### INHERITANCE AND GIFT TAXES

No inheritance or gift tax applies in Cyprus.

### CAPITAL GAINS TAX

Capital Gains Tax (CGT) is imposed at the rate of 20% on:

a. Gains from the disposal of immovable property situated in Cyprus
b. Gains from the disposal of shares in companies that own immovable property in Cyprus and that are not listed on any recognised Stock Exchange
c. Gains from the disposal of shares in companies that directly or indirectly participate in other companies that hold immovable property in Cyprus, provided that at least 50% of the market value of the shares sold is derived from property situated in Cyprus (The disposal proceeds subject to CGT in this case are restricted to the market value of the immovable property held directly or indirectly by the company whose shares are sold)
d. Any profits of a trading nature derived from the sale of shares of companies which directly or indirectly own immovable property in Cyprus, provided that such profit is exempt from taxation under income tax.

The capital gain is calculated after deducting from the selling price, the initial acquisition cost or the market value as at 1 January 1980, whichever is the higher, inflated by the retail price index in Cyprus. Expenses related to acquisition and disposals are deductible for tax purposes.

The following allowances are available to individuals:

- The first EUR 17,086 of gains arising from the first disposal of any property in Cyprus
- The first EUR 85,430 of gains arising from the disposal of a house used by the owner for his/her own habitation.

Each allowance can only be claimed once. An individual claiming a combination of the above-mentioned allowances is only allowed a maximum allowance of 85,430 EUR.

There are several exemptions from CGT, such as: transfers arising on death, gifts made from parent to child or between husband and wife or between up to third-degree relatives, gifts to a company where the company's shareholders are members of the donor's family (and they continue to be shareholders for five years after the day of the transfer), and gifts by a family company to its shareholders.

### Levy on sales of immovable properties

A 0.4% tax is levied on all sales of immovable property situated in Cyprus (either direct sale of the property or sale of the shares of a company owning immovable property in Cyprus or where the transfer of the shares results in the buyer taking control of the company or exploiting the immovable property in question), the proceeds of which will go towards supporting Greek-Cypriot refugees. This levy is payable by the seller of the property.

## TRANSFER TAX

Transfer fees are paid by the purchaser of the land in the Cyprus Land and Registry Department and the rates are determined as a percentage of the property's value as follows:

- Properties worth up to 85,430 EUR – 3 percent
- 85,431 – 170,860 EUR – 5 percent
- 170,861 EUR and over – 8 percent.

Properties that are subject to VAT are exempt from transfer tax.

## IMMOVABLE PROPERTY TAXES

Immovable property taxes are payable only at the Municipality Authority where the property is situated, and the tax is based on a percentage of the value of the property. Rates vary, up to 0.5%.

In addition, sewerage taxes are payable to the local Sewerage Authority, and the rates vary between 0.3% and 0.7%, based on the value of the property.

## VALUE ADDED TAX (VAT)

The standard VAT rate of 19% is payable when buying a new property to be used for residential purposes or when buying plots of land.

A reduced VAT rate of 5% is applicable for the acquisition of new residential properties. For the reduced rate to apply, certain terms and conditions must be met:

- The property must be used as the primary and permanent residence of the applicant (for the next ten years)
- The applicant has not acquired any other residence in Cyprus with a reduced VAT rate
- The applicant must be an individual, over 18 years old, thus legal entities are excluded.

The reduced VAT rate of 5% is applied on the first 200 square metres (building coefficient) of the property as per the architectural plans submitted to the Authorities. On the remaining square metres, the standard rate of 19% is imposed.

## STAMP DUTIES

Contracts for any transactions involving Cypriot properties are subject to stamp duty.

The rate of duty is calculated at 1.5% up to a contract value of EUR 170,000 (first 5,000 EUR is exempt from stamp duty) and 2% thereafter, up to a maximum amount of EUR 20,000 per contract. The stamp duty is payable within 30 days from the execution of the agreement, otherwise penalties and interest are imposed.

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The demand for property is generally high, and thus, finding a property can be difficult, and the process can be lengthy. It is advised to use the help of a real estate agent and solicitor to make the process manageable. The following is based on current statutory regulations as at June 2020.

## LEGAL REQUIREMENTS

Foreign individuals are generally permitted to buy property in Denmark. However, depending on the individual's current place of residency or previous affiliation with Denmark, most purchases require permission from the Ministry of Justice. Stricter rules are especially applied when a non-Danish citizen acquires their primary residence, depending on whether or not the individual is an EU/EEA citizen. In both cases, a personal statement attached to the deed, declaring that the property is to be used as personal and primary residence throughout the year, must be given by the buyer.

### Individuals currently residing in Denmark

Individuals who currently reside in Denmark or have done so for a period of at least five years, do not have to obtain permission from the Ministry of Justice to acquire real estate in Denmark.

If an individual applying for permission to acquire a property already appears to be residing in Denmark, the Ministry will in most cases consider, if the individual fulfils the above-mentioned criteria. Thus, there is no need to apply for permission with the Ministry. If the aforementioned is the case, the final decision is within the scope of the Land Registration Court.

### Residency in Denmark for less than five years

Generally, the above-mentioned rules are the starting point in the assessment of the residency criteria. However, the duration of the length of the stay in Denmark is not decisive. A shorter stay can suffice, if the individual intends to stay here on a permanent basis, and vice versa a longer stay can be inadequate if the individual intends to leave Denmark. Other assessment criteria include:

- Marital status
- If the applicant has children who live at home
- If the applicant is employed in Denmark
- The applicant's linguistic abilities (Danish courses and tests)
- If the applicant has permanent residency.

### Residency in Denmark for five years or more

The assessment of the five-year resident criteria is based on information from the Danish CPR-register. Further, the quantification of the time frame in scope is quite liberal i.e. the period does not have to be concurrent or be within a certain time frame if the periods add up to five years in total.

### Acquisition of primary residences in Denmark

When acquiring a primary residence, the rule-set differentiates depending on where the buyer is a citizen, i.e. within EU/EEA, or somewhere in the rest of the world.

### EU/EEA citizens

EU-(EEA)-Citizens are eligible to acquire a primary residence without the permission of the Ministry of Justice if they meet certain criteria. In addition to the residency criteria, the following must also be present:

- First, the residence must serve as the primary home for the buyer, or the purchase is a prerequisite for the buyer to run his/her business or other services
- Second, if the buyer is eligible to purchase the residence without the permission of The Ministry of Justice, the buyer must submit a statement with the Land Registration Court stating the purpose of the purchase, i.e. the above-mentioned.

### The rest of the world

If the buyer does not fulfil the residency criteria and is looking to buy a primary residence, the buyer must obtain permission from the Ministry of Justice. To process the application, the Ministry requires the following set of information:

- A copy of the purchase agreement or sales presentation material, and information on the expected acquisition date
- A copy of the applicants' Danish residence permit, and
- A statement concerning the use of the property as primary residence.

Provided that the Ministry receives all necessary information to process the application, the case handling time can be expected to be approximately four weeks.

## TAX RULES

### STAMP DUTY

There is no transfer tax on the transfer of property. However, the buyer must pay stamp duty, which from 2020 amounts to DKK 1,750 plus 0.6% of the transfer amount. Further, stamp duty applies to the registration of mortgages. The registration fee itself is, from 2020, DKK 1,730 plus a levy to the state of 1.5 % of the principal amount of the loan. From 2023, the lump sum increases to DKK 1,850 and DKK 1,825 respectfully.

As of 2017 the stamp duty on indemnity insurances was replaced by an annual levy of 1.1% of the insurance premium, assuming the policy is drawn up in Denmark.

### DEDUCTIONS

Real estate taxes are only subject to deduction to the extent that the individual uses the property for business purposes.

### DEPRECIATION

Generally, commercially used buildings can be depreciated. However, buildings used for offices, accommodation (except hotels), health care or for a business in the financial sector - i.e. banking, insurance, stockbroking, etc. - are not depreciable. Installations that solely serve a fully depreciable building are depreciated with that building. Examples include ventilations systems, lifts, etc. Installations in buildings that are used commercially, but which are not depreciable, may be depreciated separately. However, if it is a residential-use rental property, installations may only be depreciated separately if the property comprises of three or more flats.

The depreciation rate is 4% unless the longevity of the building exceptionally is 25 years or less, in which case a higher rate may apply. Buildings and installations are depreciated using the straight-line method.

Buildings that are used commercially may be depreciated if the building is situated on leased land, unless the building is utilised for accommodation purposes. The depreciation rate is 4% using the straight-line method unless the leaseholder is ensured a lease period exceeding 25 years, in which case the rate is reduced to equal instalments over the whole lease period.

### CAPITAL GAINS AND LOSSES

#### Commercial properties

Gains on commercial used properties are subject to income tax.

Losses may only be offset against gains on other properties.

#### Private used properties

Generally, capital gains are subject to income tax, while losses may only be offset against gains on other properties. However, certain exemptions apply to capital gains derived from the sale of an individual's primary home or the sale of a summerhouse.

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The capital gain from the disposal of a primary home is exempted from taxation on two conditions:

- The residence has been utilised as the homeowner's primary home during (a part of) the ownership period
- The plot must be less than 1,400 square metres. If the size of the land surpasses the aforementioned 1,400 square metre restriction, the capital gain can, under certain circumstances, still be exempted from taxation.

Similarly, the sale of a summerhouse is exempted from taxation subject to similar conditions, i.e. used privately as a summerhouse, and the above-mentioned rule on the size of the land.

The capital gain, if taxable, is measured as the difference between the historical acquisition price and the sales price.

If the owner acquired the property before moving to Denmark, the market value on the date of becoming a tax resident in Denmark is the acquisition price, so that only the capital gain applicable to the period of tax residence in Denmark is taxed.

Individuals ceases tax liability to Denmark may be taxed on capital gain from a property situated outside Denmark, although it is not sold in connection with moving from Denmark.

### INHERITANCE TAX

The Danish tax treatment relating to inheritance differs from most countries, as there is no succession for the heir except where the heir is the surviving spouse.

For the estate, this means that the transfer of the property to the heir is treated as a regular sale of the property, which may result in capital gains taxation, see above.

The heir - except a surviving spouse - is subject to inheritance tax imposed on the net value of the estate of a deceased person. The tax rate depends on the relationship between the deceased and the heir.

### REAL ESTATE TAX

Residential property in Denmark that is not commercial is subjected to two types of real estate tax: (i) Land Taxation and (ii) Property Value Tax.

Land Taxation is a levy on the land itself and is based on the value of the land, i.e. not the value of the building. As the levy implies, taxation is collected by the municipality where the land is located. The rate varies, but is generally between 1.8% and 3.4% (2020).

Property Value Tax is calculated on a special basis, based on the public property assessment. The levy is 1% for up to DKK 3,040,000 (2020) and 3% of the rest of the amount, assuming the property value is higher. Political agreement has been reached for new rules to be introduced, expected to be from 2024.

Commercial property is also subject to two types of real estate tax: (i) Land Taxation (see above) and (ii) Municipal Real Estate Tax.

Whether Municipal Real Estate Tax applies depends on the municipality and the commercial use. The rate varies (in 2020, it ranges between 0.0% and 0.1%) and is calculated on the value of the buildings (not land).

### INCOME TAX

A non-resident who does not have any essential ties to Denmark, or stays in Denmark for a longer period, is liable to income tax from current income and capital gains from immovable property situated in Denmark.

Rental income is subject to Danish income tax, and must be reported to the Danish Tax Authorities and filed in the individual's annual tax return. The taxable amount is not subject to a standard flat rate, as taxation depends on the total income after deductions for cost relating to the rental of the property.

If an individual rents out a privately-used residential property (house, apartment or summerhouse), beneficial rules may apply. If you rent out a summerhouse through a registered agent, an allowance of DKK 41,800 (2020) is granted, and only 60% of the remaining income is taxed. For rental income on other privately used property, the allowance is DKK 29,300 (2020).

## VALUE ADDED TAX (VAT)

### Letting of immovable property

Generally, the letting of immovable property is exempt from VAT (without the right to deduct input VAT for the landlord/lessor), but various mandatory or optional exceptions are outlined in the Danish VAT Act.

The VAT treatment in some selected areas is described below. Please note that this is not an exhaustive description.

- Rental income from residential property is exempt from VAT and not subject to the option to tax
- Rental income from commercial property is exempt from VAT, but subject to an option to tax under certain circumstances. The option to tax converts rental income from VAT-exempt to standard-rated, and allows the landlord to recover VAT incurred on the property
- Accommodation in hotels, motels, hostels etc. is subject to VAT.

### Sale of property

For real estate property, a distinction is made between the sale of land on the one hand, and the sale of constructions (e.g. houses, offices, warehouses, but also infrastructure) on the other hand.

The separate supply of land is subject to VAT if the land is classified as a site on which it is possible to place a construction as described above, and the supply is made by a taxable person who acts in this capacity.

Whether the supply of buildings (and corresponding land sold simultaneously by the same vendor) is subject to VAT depends on whether the building is considered a "new building" in the terms of the Danish VAT Act:

- The supply of a "new buildings" is subject to VAT if the supply is made by a taxable person who acts in this capacity
- The supply of an old building (i.e. no longer "new" for VAT purposes) is VAT-exempt.

Please note that this is a legally difficult area to navigate, and proper analysis and advice are recommended.

# FRANCE

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## INTRODUCTION

Foreign investments in French real estate for both individuals and companies are not subject to any approval or authorisation. If the investment exceeds EUR 15 million, it must be reported to the Banque de France for statistical purposes only.

However, the French property law and tax system is quite complex, and each purchase or sale may have many direct and indirect implications that need to be anticipated.

The use of a French Notaire (notary) is **mandatory** for all real estate transactions, to draw up and register the deeds.

Depending on the project considered, advice from a qualified tax and legal adviser is also recommended.

## LEGAL METHOD OF PROPERTY HOLDING

Investments in real estate can be held either directly, by purchasing directly the property ("asset deals"), or indirectly, by way of taking stake in companies, partnerships or other legal structures that own property assets ("share deals").

The most common structures used to carry out real estate investments in France ("share deals") include:

a. Special private property partnerships (SCI – *Société Civile Immobilière*) that are usually transparent for French tax purposes. (However, a SCI company may be subject to corporate tax in some cases)

b. Traditional private companies, such as the simplified joint-stock company (SAS) or the general limited liability company (SARL), that are by default subject to corporate tax on real estate profits (less common, except for professional purposes)

c. Regulated real estate vehicles that can be listed, in a corporate form (SIIC – *Société d'Investissement Immobilier Cotée*), or non-listed, in a corporate form (SCPI – *Société Civile de Placement Immobilier*), or in the form of collective investment funds (OPCI – *Organisme de Placement Collectif en Immobilier*) that benefit from a tax exemption at the corporate level for real estate profits.

Under French property law, there are several forms of ownership:

d. Freehold ownership (*"Pleine propriété"*), i.e. the full ownership of land and buildings

e. Co-ownership (*"Indivision"*), when the full ownership of the asset, is vested in several persons, who jointly exercise the same right over the same property considered as a whole, and not over a distinct unit of the jointly-owned asset

f. Bare ownership (*"Nue-propriété"*) vs life tenancy (*"Usufruit"*), i.e. the split of title between a bare owner, who has the legal ownership of the asset but no rights to enjoy it for the holder's lifetime, and a lifetime usufruct holder, who has the right to enjoy the property (i.e. to use it and earn income from it) for his lifetime, but no power to sell it. This mechanism is usually used to anticipate an inheritance, e.g. through a donation of the bare ownership from parents to children.

Under this mechanism, the holder, who receives a limited right of enjoyment of the asset, meaning the right to live in and rent it out, is the person liable for all taxes on property (wealth tax, local property tax). On the other hand, after his death, the full ownership of the asset is carried over to the bare owner, without any liability for inheritance tax (gift tax already paid when the bare ownership is donated).

As per the transaction process, the deed of sale, in whatever situation it may occur (asset deals, share deals), **is necessarily drafted and executed by a Notaire**. During negotiations, the buyer and seller often enter into preliminary agreements that are legally binding for one party only (unilateral commitment of sale, call option, pre-emption agreement), or for both (bilateral commitment of sale, agreement for sale). After signing the deed of sale, **the notaire carries out all formalities for the registration of the transfer of title at the local mortgage office, in order to make it enforceable towards third parties.**

## TAX RULES

### INHERITANCE AND GIFT TAXES

French taxes called *"Droits de Mutation à Titre Gratuits"* are due on all free transfers of property resulting from a death (inheritance tax) or a lifetime gift (gift tax).

Based on French tax law, the territoriality rules are as follows:

- If the deceased is domiciled in France, French taxes are due on worldwide assets
- If the deceased is domiciled outside France, only the assets located in France are subject to French taxes. However, if the heir is domiciled in France, and has been domiciled in France for at least six years during the ten years preceding the death, the heir will be subject to French taxes on all assets received, whether located in France or outside France.

France has signed many treaties relating to inheritance, and a few treaties relating to gift tax, that may significantly modify these rules of territoriality.

**In most cases, French real estate properties owned directly or indirectly by a French resident or a non-resident, are subject to French Inheritance and Gift Taxes.**

The Inheritance/Gift tax is assessed on the net share received by each heir (or beneficiary), determined on the market value of the assets on the date of death (or donation), after deduction of the liabilities related to the taxable assets. For transfers of the life tenancy or bare ownership only - the bare ownership is donated (see iii. above) - the taxable basis is reduced by a specific allowance set by an official tax scale according to the age of the lifetime usufruct holder.

A tax allowance **depending on the degree of kinship** between the deceased (or the donor) and the beneficiary is applicable on the part received by the beneficiary.

In case of direct-line transfers to children or parents (inheritances or gifts), the allowance is EUR 100,000 (for each child and each parent). Other allowances are available, notably for inheritances and gifts to disabled people, inheritance between siblings, and gifts between spouses or to grandchildren.

Spouses and PACS partners (*"pacte civil de solidarité"*) are exempt from inheritance tax.

The current Inheritance/Gift Tax rates in direct-line (or for gifts between spouses) vary from 5% (up EUR to 8,072) to 45% (above EUR 1,805,678). In collateral-line, the rate vary from 35% to 55%. Transfers between non-related parties are taxed at a fixed 60% rate.

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## WEALTH TAX

Since 1 January 2018, the former French wealth tax (*"Impôt de solidarité sur la fortune"* or "ISF") has been replaced by a new tax on real estate (*"Impôt sur la Fortune Immobilière"* or "IFI").

Based on French tax law (subject to the application of possible treaty provisions), French tax residents are liable to French real estate wealth tax if the net value of their worldwide real estate assets exceeds EUR 1.3 million. Non-residents are only liable to French real estate wealth tax if the net value of their real estate asset located in France exceeds EUR 1.3 million.

The taxable basis includes all real estate assets and property rights owned by the taxpayer either directly or indirectly, including shares in companies and entities held by the taxpayer (up to the fraction of value representing real estate property). It also includes real estate property held through investment structures such as a life insurance or investment fund. The assets on which the taxpayer holds the legal usufruct are also included.

The IFI is based on the tax household, i.e. the taxable basis include the assets of the couple (including common-law partners) and of minor children.

The taxable value is assessed on 1 January of each year, after deduction of the debt related to the taxable assets (related to acquisition, repairs, maintenance etc., loans, and property tax).

Please note that new rules which limit the deductibility of loans (bullet/"in fine" loans, loans financing assets of EUR 5 million, family loans, shareholder loans, etc.) have been introduced since 2018.

For French tax residents, the principal residence benefits from a 30% discount on its market value.

The following rates and tax bands were applicable for 2020:

| Band of net taxable value of the assets | Tax rate |
|---|---|
| EUR 0 - 800,000 | 0% |
| EUR 800,000 - 1,300,000 | 0.5% |
| EUR 1,300,000 - 2,570,000 | 0.7% |
| EUR 2,570,000 - 5,000,000 | 1% |
| EUR 5,000,000 - 10,000,000 | 1.25% |
| EUR 10,000,000+ | 1.5% |

## PERSONAL INCOME TAX

### Rental income

Rental income from properties situated in France is subject to French personal income tax under the same rules for both French and non-French tax residents:

**Unfurnished rental income**

The taxable net income is equal to the gross rental income less deductible expenses such as repairs, maintenance, improvements, mortgage interest, local taxes, management fees and insurance costs.

When the gross rental income does not exceed EUR 15,000 for the tax year, the *"micro-foncier"* regime generally applies by default: the tax administration will apply a 30% flat allowance supposed to be representative of the charges, instead of the deduction of actual expenses.

**Furnished rental income**

The activity is considered as a commercial activity, and the income is therefore taxable as business income (*"Bénéfices Industriels et Commerciaux"*) and not as rental income (*"Revenus fonciers"*).

If the gross rental income does not exceed EUR 72,600 (for 2021), the business income is de facto taxed under the "Micro-BIC" regime: a 50% lump sum allowance is applied on the annual gross income to determine the net taxable business income.

If the gross income exceeds the threshold, the taxpayer will be subject to the actual tax regime (*"Régime réel simplifié"*). The net taxable income will be calculated after deduction of expenses and costs, including the amortisation of the property and of the furniture.

Please note that renting a furnished property in France will require registering the business and fulfilling specific accounting and tax obligations. Short-term rentals are subject to strict legal regulations and may require pre-authorisation, at both the national level and local level.

Rental income is subject to personal income tax at progressive rates up to 45%.

For non-residents, personal income tax will be calculated at a minimum tax rate of 20% (up to EUR 25,710), and a minimum tax rate of 30% over that limit.

Social contributions will also be due at the rate of 17.2% for both residents and non-residents, or 7.5% for taxpayers who are affiliated to the compulsory social security system of another EU or EEA country or in Switzerland.

An exceptional contribution of 3% and/or 4% on high income earners ("CEHR") may also be due where the income of reference exceeds EUR 250,000 for a single taxpayer and EUR 500,000 for a married taxpayer.

### Capital gain on sale

Gains derived from the sale of real property or shares in a real estate company are subject to capital gains tax in France.

The gain derived from the sale of the taxpayer's principal residence may benefit from total exemption.

Some former French tax residents may benefit from a partial exemption (up to EUR 150,000 per owner) on the sale of French real estate under certain conditions.

Otherwise, capital gains resulting from the disposal of French real estate (directly or indirectly, e.g. through a transparent SCI) are taxed at a flat rate of 19%, plus 17.2% of social contributions (7.5% for taxpayer affiliated to a compulsory social security system other than French within an EEA country and Switzerland).

An additional tax at progressive rates (from 2% to 6%) is also levied on capital gains exceeding EUR 50 000.

Depending on the total amount of French annual income of the taxpayer, an exceptional contribution on high earners' income (CEHR) at 3% or 4% rate may be due.

Taxable gains are determined as the difference between the sale price and the purchase price (or the value stated in the act of gift/deed of inheritance, when the property was received by gift or inheritance), minus allowances based on the holding period.

For the calculation of the capital gain, flat-rate allowances or actual expenses are also deductible against the purchase price for transaction fees and improvement costs.

The capital gain is then reduced by a progressive taper relief based on years of ownership, as follows:

The capital gains therefore benefit from an exemption of income tax after 22 years and of social contributions after 30 years.

| Ownership period | Capital gains tax allowance for each year of ownership | |
|---|---|---|
| | Income tax | Social contributions |
| Less than 6 years | 0% | 0% |
| Between 6 and 21 years | 6% per year | 1.65% per year |
| 22 years | 4% per year | 1.60% per year |
| Over 22 years | Exempt | 9% |
| Over 30 years | Exempt | Exempt |

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The capital gain and the tax due will be computed by the Notaire, who will withhold the tax from the sale proceeds and pay it to the French Tax Administration. The notaire also takes care of the formalities of declarations and land publicity. For non-resident sellers outside the EEA, the appointment of a tax representative (*"Représentant fiscal"*) is also required.

### 3% tax on the market value of real estate held through a legal entity

A specific 3% anti-evasion tax is provided by French tax law on the market value of French real estate properties owned by legal entities.

This tax applies to any French or foreign entity (with or without legal personality, including trusts and similar vehicles) which owns directly or indirectly (and whatever the number of companies interposed between the property and the ultimate shareholder) real estate properties in France that are not assigned to any professional activity.

This tax is levied annually and is assessed on the market value of the French real estate property on 1 January of each year.

However, the French tax code provides several exemptions from this tax. In some cases, the exemption will be automatic if the conditions are satisfied (international organisations, sovereign States, listed companies, etc.). In other cases, the exemption is subject to specific filings and /or to the disclosure (or an undertaking to disclose) by the entity to the French tax administration of the list of the real estate assets as well as the identities and addresses of its shareholders.

## STAMP TAXES/REGISTRATION COSTS

Except when they give rise to VAT (see below), all transactions on property assets directly owned for valuable consideration are subject to a real estate registration tax (*"Taxe de publicité foncière"*) at a 5.80% rate. Some reductions may apply, depending on the location of the property or the type of transfer.

Additional registration fees at 0.1% of the value of the asset are due for any sale of real estate property in France.

The transfer tax is computed at the purchase price or, if higher, at the fair market value (FMV) of the real estate transferred.

Stamp taxes are due by the purchaser, unless provided otherwise in the agreement of sale. Payment is made by the notaire along with the registration of the deed with the territorially competent mortgage office (*service de la publicité foncière*). The amounts are collected by the notaire performing the transaction when the deed is signed.

The total costs (notary fees + registration costs) represent approximately 7% of the purchase price.

## VALUE ADDED TAX (VAT)

Private real estate transactions generally trigger stamp duties and are not in the scope of VAT.

However, in some cases - for example a new property under five years old or an off-plan property (*"Vente en l'état futur d'achèvement"* or "VEFA") sold by a registered real estate professional - the transaction may be subject to VAT at 20%. In this case, the registration costs will be due at reduced rates (2 to 3%) instead of the standard rate detailed above.

## LOCAL REAL ESTATE TAXES

Local authorities levy different taxes on property on an annual basis:

a. **A property tax (*"Taxe foncière"*)** is due by the **owner** of real estate located in France (whether or not he/she occupies the property). The tax is assessed on the situation on 1 January of the year, based on the cadastral rental value (*"Valeur locative cadastrale"*) of the property (which may vary from the actual rental value). The tax rate is fixed each year by local authorities (municipalities, departments, and regions), according to their needs. Therefore, the amount of tax may vary significantly depending on the locality of the property. The 2020 rate in Paris was 13.5% of the notional rental value

b. **A residence tax (*"Taxe d'habitation"*)** is due by the person who **occupies** the property on January 1 of the tax year, for payment at the end of the tax year (generally in November). As with the property tax, the residence tax is assessed on the cadastral rental value. Such tax is currently being abolished on main homes, starting with taxpayers below maximum income thresholds. The ongoing abolition process, which began in 2018, is expected to end in 2023 for all households. Vacant properties and second/holiday homes will remain liable to this tax. The 2020 rate in Paris was 13.38%.

The local real estate taxes are directly assessed by French tax authorities, with no need to submit a specific declaration.

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## INTRODUCTION

Germany has established itself as an international investment location, especially alongside the United Kingdom and France. Globally active investors have discovered the German market for themselves and expanded their commitments. In Germany, real estate investment traditionally has a good reputation with regard to current yields, possible increases in value, security and volatility.

## LEGAL REQUIREMENTS

Generally, there are no restrictions on the acquisition of property by foreigners in Germany. The origin and citizenship of a person are not relevant. Both natural persons and legal entities are permitted to purchase German real estate. However, entry in the German land register is subject to certain restrictions, particularly in connection with foreign companies. These must generally have legal capacity. The assessment of the legal capacity of a foreign legal entity (and thus the assessment of the land register capacity) is generally governed by the law of the country in which the legal entity in question has its actual administrative headquarters.

Anyone intending to acquire real estate in Germany is confronted with the peculiarities of the German legal system, in particular the German Civil Code ("BGB"). The German Civil Code distinguishes between the contract under the law of obligations and the change of the legal allocation. Both legal transactions are independent of each other in their legal effectiveness. Contracts under the law of obligations concerning the sale/purchase of real estate require notarisation in accordance with § 311b (1) sentence 1 BGB.

That is because the sale and acquisition of real estate are often transactions of outstanding economic significance for the parties involved. The notarisation therefore particularly fulfils an advisory and protective function. § 873 (1) BGB stipulates that the (in rem) agreement and the entry in the land register is required to bring about the desired legal change with regard to ownership. Furthermore, § 925 BGB prescribes the form of the declaration before the notary public when both parties to the contract are present at the same time as a special regulation for the agreement on the transfer of ownership of real estate ("conveyance").

## TAX RULES

The real estate-related topics of German tax law can hardly be summarised in a short overview according to subject areas, in particular in connection with foreign investments in the domestic real estate market. The article therefore does not claim to be exhaustive, but rather focuses on thematic priorities and remarkable peculiarities.

### REAL ESTATE TRANSFER TAX

The acquisition of real estate in Germany is generally subject to the real estate transfer tax, regulated in the Land Transfer Tax Act (GrEStG).

As transaction tax, the real estate transfer tax is bound to the transfer of domestic real estate.

The transfer of 95% of the shares in a company which holds immovable property, the transfer of shares in such a company which leads to a 95% shareholding (directly or indirectly), and a substantial change in the partners of a real estate holding partnership (a change of 95% in the partners is always regarded as substantial) if the change in the partners occurred over the last five years, may result in property transfer taxes as well. However, the legislator plans to lower the participation limit from 95% to 90%, and to extend the period from five to ten years, in mid-2020. These legislative changes are intended to restrict the scope for action and thus the abusive avoidance of the tax.

On the one hand, the amount of tax is based on the value of the property. On the other hand, the federal states are now free to determine the land transfer tax for the transfer of real estate in their respective territories. Therefore, the originally uniform tax rate of 3.5% (§ 11 (1) GrEStG) today varies from country to country. Currently, the highest real estate transfer tax rate is 6.5 %, for example in North Rhine-Westphalia or Brandenburg. The lowest is in Bavaria and Saxony, at 3.5%. According to § 13 No. 1 GrEStG, the persons involved in the acquisition process are usually tax debtors, i.e. both buyers and sellers of the property.

The GrEStG exempts certain transfers from real estate transfer tax, e.g. the transfer between linearly related persons or the acquisition of real estate by inheritance, as well as the donation of real estate among living persons. In addition, §§ 3, 4 GrEStG regulate further exceptions from taxation.

## INHERITANCE AND GIFT TAX

In Germany, there is still an inheritance and gift tax, regulated in the German Inheritance and Gift Tax Act (ErbStG). Inheritance and gift taxes can be due in numerous cases in connection with transfers of real estate. Directly held real estate by foreign investors is at least subject to a limited inheritance and gift tax liability, even if both donator/descendant and donee/heir are resident abroad.

The tax is linked to the free-of-charge transfer of real estate in cases of inheritance and other acquisitions due to death (§ 3 ErbStG), as well as donations among living persons (§ 7 ErbStG). In the case of part-paid acquisitions, there is an inheritance and gift tax obligation with regard to the free-of-charge component.

However, § 16 ErbStG provides for personal allowances, such as a tax-free acquisition by the spouse of up to EUR 500,000, or by the children of up to EUR 400,000. The personal allowance is at least EUR 20,000. There are also objective tax exemptions for real estate. Under certain conditions, the acquisition of a so-called family home is exempt from inheritance and gift tax (§ 13 (1) No. 4a to 4c ErbStG). A family home is a real estate located in Germany, the EU or the European Economic Area (EEA), which is used for one's own residential purposes. A family home in that sense must be the centre of family cohabitation. The ErbStG grants another - moderate - tax exemption for the free-of-charge acquisition of real estate rented for residential purposes. Only 90% of the actual value of the acquisition is subject to tax (§ 13d (1) ErbStG). Besides, real estate is exempted from taxation to the extent of 85%, or 100% if its preservation is in the public interest because of its importance for art, history or science (cultural goods, § 13 (1) No. 2 ErbStG).

It is noteworthy that the German legislation provides for generous tax exemptions for land in companies' assets used for business purposes (up to and including complete tax exemption). However, within the scope of the so-called business assets exemption, land, parts of land, rights equivalent to land, and buildings which are part of the business assets but are leased to third parties for use, are generally regarded as "harmful" administrative assets and are not exempt from inheritance and gift tax, or only to a limited extent. However, larger portfolios, as well as structures with additional services, can be structured tax-free under certain conditions.

For foreign investments in German real estate, the investment structure should be carefully planned, and perhaps made through a foreign entity in order to avoid limited tax liability.

## INCOME TAX/TRADE TAX

In the context of current taxation, income tax (regulated in the Income Tax Act (EStG)) deserves special mention. Income tax includes, in particular, income from the letting and leasing of land, buildings and parts of buildings (§ 21 (1) sentence 1 No. 1 EStG). When it is not a matter of simple rental activity or asset management, a business enterprise and thus commercial income may also be concerned, in which case trade tax applies. However, a change into a commercial activity presupposes special circumstances besides the letting of property, which characterise the activity of the owner as a whole as an independent, profit-orientated, sustainable participation in general economic transactions.

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## PRIVATE SALES TRANSACTIONS

The profit from the sale of an undeveloped property, the sale of a house, condominium, rights equivalent to real property (e.g. heritable building right), and shares in closed-end real estate funds, is generally taxable, and a sale is tax-relevant if the period between acquisition and sale is not more than ten years (§ 23 (1) Sentence 1 No. 1 EStG).

The prerequisite for the tax liability is that the property was used as follows before the sale: rented, transferred free of charge to third parties (also to dependent relatives or to a child for whom there was no entitlement to child benefit/free child allowance), commercial (office) or professional (study), vacant, due to a reserved right of residence, or as undeveloped property.

Acquisition is a purchase of the property from a third party against payment, either in cash or as a real estate exchange transaction. Only if there were acquisition costs, possible capital gains are subject to tax.

The sale is also tax-exempt in itself if the real estate has been transferred by way of gift or inheritance, without acquisition costs. This does not apply if there is a period of less than ten years between the paid acquisition by the legal predecessor (donor, testator) and the sale by the legal successor (donee, heir).

A real estate used for own residential purposes can be sold tax-free, if the exception regulation of § 23 (1) No. 1 EStG applies: Only insofar as buildings, flats or parts of buildings were used for your own residential purposes before the sale (occupied by you or given free of charge to a child for whom you were entitled to child benefit/free child allowance) the capital gain is tax-free. If a property is only partially used for residential purposes, the capital gain is only partially tax-exempt.

Limited use in connection with carrying out construction measures and other renovation work is not sufficient.

If you have owned the apartment or house for some time, the capital gain is only tax-free if you have used the property for your own residential purposes in the year of the sale (the calendar year in which economic ownership passes to the new owner) and in the two preceding calendar years in a continuous period, which can also be shorter than 36 months.

If you sell at least four properties within five years - also previously used for your own residential purposes - under certain conditions you are regarded as a "commercial property dealer" and generate retroactive income from business operations that are subject to trade tax. The limit of three objects applies per person.

## LIMITED TAXABLE INCOME: LETTING AND LEASING OR DISPOSAL OF IMMOVABLE PROPERTY, INCLUDING PROPERTY ITEMS OR RIGHTS

Income from business operations exists under the conditions specified in §§ 15, 16 EStG or § 17 EStG. In addition, the income from business operations must have a domestic connection. § 49 (1) No. 2 (f) EStG is a kind of catch-all provision. § 49 (1) No. 2 (f) (aa) EStG covers the letting and leasing of domestic immovable property, property items or rights which are located in Germany or entered in a domestic public book or register, or the realisation of which takes place in a domestic permanent establishment or other establishment.

The precondition is that the letting/leasing is a commercial activity in accordance with domestic standards (§ 15 (2) EStG in conjunction with § 21 (3) EStG). For foreign corporations managing assets, the commercial fiction of § 49 (1) No. 2 (f) (3) EStG must be observed. In contrast to § 49 (1) No. 2 (f) (aa) EStG, § 49 (1) No. 2

(f) (bb) EStG records income from business operations which are generated by "the sale of domestic immovable property, tangible assets or rights which are located in Germany or entered in a domestic public book or register, or the realisation of which takes place in a domestic permanent establishment or other establishment". Foreign sales of real estate must also be considered when examining whether commercial real estate trading exists. Pursuant to § 49 (1) No. 2 (f) (3) EStG, which refers to § 23 (1) (4) EStG, indirect sales transactions are also included with effect from 2017.

Income is subject to withholding tax only under the conditions of § 50a (1) No. 3 EStG; otherwise, the tax is levied by way of assessment.

The letting and leasing as well as the sale of domestic real estate are generally taxed in Germany in accordance with the DTA, cf. Art. 6 (1) and Art. 13 para. 1 OECD-MA. Other capital gains (Art. 13 (2) OECD-MA) and income from rental and leasing of property and rights are generally not subject to domestic taxation if a Double Tax Agreement exists, cf. Art. 7 OECD-MA.

## VALUE ADDED TAX (VAT)

Landlords of flats generally do not have to calculate and pay sales tax.

Landlords of business premises can choose whether or not they want to be treated as business persons (entrepreneurs). For long-term rentals, you can therefore choose the option of letting with or without VAT. The prerequisite, however, is that the tenant to whom the lease is made is a company subject to turnover tax. If a private landlord wants to be treated as an entrepreneur for tax purposes, he has some additional obligations associated with administrative expenses, but also a big advantage: if, for example, costs are incurred for renovations in commercially rented units, he can claim the VAT amounts shown on the craftsman's invoices in his advance VAT return. The standard VAT rate is currently 19%.

## PROPERTY TAX

Another tax that arises during the use phase of real estate is property tax. The property tax is a real estate tax which is levied independently of the personal and/or economic circumstances of the taxpayer. Domestic real estate is subject to taxation. The assessment basis for property tax is primarily the unit value of the property. However, property tax is a municipal tax determined in cooperation with the tax authorities of the federal states. The municipalities are responsible for determining and levying the property tax.

With effect from January 1, 2020, the legislator passed a land tax reform. In future, the land value will no longer be used to determine the amount of property tax, but income such as rental income will also be considered. An opening clause is planned for the federal states so that they can levy property tax with an amended valuation procedure. The newly calculated property tax will have to be paid from 1 January 2025.

The future amount of the individual property tax cannot yet be determined, as the values of the properties and statistical rent levels must first be determined.

In the future, only a few comparatively simple parameters will be included in the calculation of the property tax.

The calculation of property tax for residential properties is based on five specific parameters:

- Land area
- Soil reference value
- Type of real estate
- Age of the building
- Rent level.

### Special features of commercial properties

Unlike residential properties, rented commercial properties do not have statistical data that could be used for valuation purposes. For this reason, property tax here is to be based on the simplified real value method, based on the usual production costs for the respective type of building and the standard land value.

### Special features of agriculture and forestry businesses

The valuation of an agricultural and forestry business (property tax A) remains based on the capitalised earnings value method, which is, however, simplified and typified. The determination of land tax for agricultural and forestry enterprises will in future be carried out by means of a standardised evaluation of the areas and farm buildings.

## SCOPE OF TAX LIABILITY

In the context of tax liability, the German legislation makes a distinction between unlimited and limited tax liability for some of the taxes mentioned above. The unlimited tax liability of the ErbStG applies especially to residents, i.e. natural persons who have a domicile or habitual residence in Germany, or to corporations or partnerships that have their management or registered office in Germany. The unlimited income tax liability also applies in particular to natural persons who have a domicile or habitual residence in Germany. Legal entities are generally not subject to income tax.

The terms "domicile" and "habitual residence" are defined in §§ 8, 9 AO (Tax code). A person has a domicile where he has an apartment under circumstances which suggest that he will maintain and use the apartment. According to the German interpretation, a taxpayer can be domiciled in more than one country.

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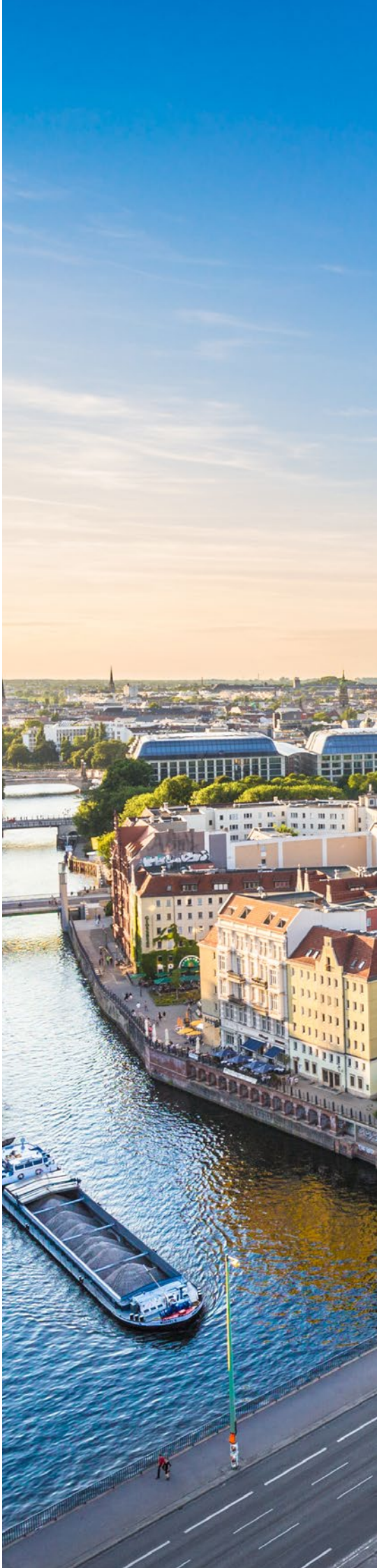
A taxpayer's usual residence is where he is, under circumstances which indicate that he is not only staying temporarily. Unlike domicile, habitual residence can only be in one place. Residence of more than six consecutive months always leads to habitual residence.

In addition, there is the limited tax liability, which is important with regard to inheritance and gift tax as well as income tax. Where none of the persons involved in a gift or inheritance is a German resident, the acquisition is only subject to the limited tax liability to the extent that it consists of domestic assets (§ 2 (1) No. 3 ErbStG). The tax-free transfer of domestic real estate from one non-resident to another is therefore subject to limited tax liability. § 49 EStG regulates domestic income in the sense of limited income tax liability. This includes, in particular, domestic income from letting and leasing of property (§ 49 (1) No. 6 EStG).

The Land Transfer Tax Act does not provide different treatment for domestic and foreign persons. Acquisitions by foreign legal entities are also subject to land transfer tax. The same applies to the property tax law. The subject of the tax is domestic real estate, regardless of the person who owns it.



# IRELAND

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## INTRODUCTION

Ireland is an open economy and this extends to the purchase of property by non-residents. Non-residents may buy property in Ireland without approval procedures and in a similar manner to Irish residents.

## LEGAL REQUIREMENTS

Under Irish property law, ownership of property is held either freehold or long leasehold. Title to property can only pass by written contract and the payment of the consideration by the purchaser to the vendor. Usually, there is a comprehensive due diligence performed by the purchaser in advance of closing. This will cover:

- Tenancies, and
- Warranties from the developer's insurance.

At the signing of the contract, the purchaser is required to pay a deposit to the seller. This may or may not be refundable if the contract does not complete. On the closing of the contract, the remainder of the consideration becomes payable. The buyer usually takes out new insurance on closing, as appropriate. The date of completion of contract becomes the tax point (and the date of acquisition) for capital gains tax purposes. The vendor is usually responsible for discharging any outstanding debt on the property at the time of closing.

### STRUCTURES

The possible structures for the acquisition of Irish property are:

a. Direct ownership by a:
   - foreign individual
   - foreign partnership
   - foreign company or
   - foreign fund.

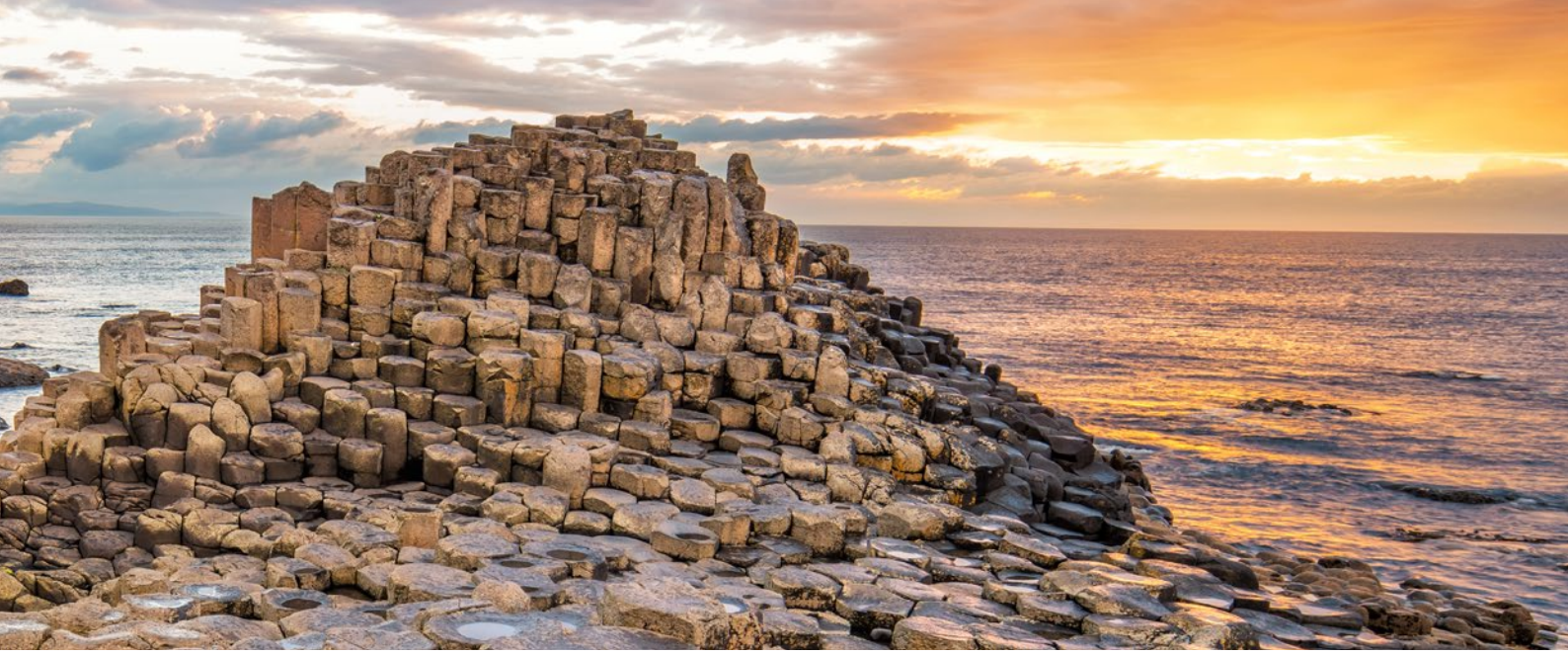
b. Ownership of the property in a non-resident company

c. Ownership of the property in Irish tax resident company

d. Ownership of the property in an Irish regulated fund.

In addition, in the case of larger-scale property, there may be joint venture parties, and these can affect the chosen structure.

The selection of the appropriate structure for an Irish property investment should be heavily influenced by a consideration of the tax issues that are likely to be relevant to that investment, such as the rate of tax applying to Irish profits, the tax rules applying in the investor's home country, the investor's plans in relation to the repatriation of profits generated in Ireland, and also the tax rules in the event of a future sale of the property.



Ownership of property through the use of a regulated fund structure can be complex in nature, and there is specific tax legislation pertaining to such ownership structures.

## TAX RULES

### GENERAL

In general, Ireland retains taxing rights on income from, and gains on, Irish-situated property. These charges are not usually relieved, even if the owner is tax-resident in a country with which Ireland has a double tax agreement.

It is necessary to consider the facts and circumstances of the property purchase in order to determine the tax treatment. Broadly, property is either held on trading account or capital account for Irish tax purposes. This distinction is important, as different tax heads apply to trading (income tax, corporation tax) and capital (CGT), and the present tax rates are different. The taxpayer cannot elect into one of the categories. The facts that would support holding on a capital account are the purchase of fully developed property and letting of property for a medium (five years) to long-term hold. The property would be capable of servicing the interest cost of financing the purchase from rental income of the property. The facts that would support holding on a trading account are the purchase of land with the intention of developing and selling completed properties on the land after construction is completed. There are many possible scenarios between these ends of the spectrum.

### OWNERSHIP BY COMPANIES

#### Corporation tax

Resident and non-resident companies are widely used to buy Irish property.

Income from the development of property for resale, carried out by the company (i.e. where the property is held on a trading account), qualifies for the 12.5% corporation tax rate.

Rental income after allowable expenses is taxed at 25% in a resident company and 20% in a non-resident company. The net rental income liable to tax is based on net profit as determined under normal accounting principles, with some small differences, particularly with regard to expenditure incurred before the letting of a property, interest expenses, and specific rules in relation to relief for capital expenditure. The same deductions generally apply for resident and non-resident companies.

If an Irish resident company is regarded as being a 'close company', the after-tax rental surplus is liable to a further tax of 20%. This however, does not apply to a non-resident company. Irish tax-resident companies are within dividend withholding tax rules on dividends (there are exemptions), whereas non-resident companies are not. Interest paid by an Irish tax-resident company to a connected company may not be tax-deductible.

Where rents are paid by a tenant to a landlord which is a non-resident company, withholding tax at 20% may apply in the absence of the appointment of a rent collection agent. This is discussed in further detail below.

#### Tax Depreciation

A common question is whether there is any relief for tax on income for the purchase price of the property. The general rule is no; Irish land and buildings do not qualify for Irish tax depreciation.

However, the integral plant content within a building may be eligible for tax depreciation against the related rental income, provided the property is on capital account. Tax depreciation does not apply to property held on trading account (even if it rented). The tax depreciation requires the lease to be reviewed by a tax professional, and the purchase price to be reviewed by a chartered surveyor, in order to determine the cost of physical plant in the building. The rate of tax depreciation is 12.5% over eight years. The subsequent sale of the building will give rise to a recapture of the tax depreciation claimed.

#### Transfer pricing

Where property is bought and sold with connected parties, market value rules apply in capital transactions. Transfer pricing rules can apply in trading transactions where the overall group is considered 'large'. Usually, the purchase of a property will be financed by a combination of senior debt from an unconnected financial institution, and subordinated interest-bearing debt and equity from a connected party. The rate of interest charged by connected third parties should be evaluated as to whether it meets an arm's length rate, and documentation of this by way of a benchmarking study would be common in larger transactions.

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## OWNERSHIP BY INDIVIDUALS

### Income tax

Non-residents owning Irish property are liable to pay taxes on any rental income being earned on that property.

The standard rate of income tax is 20%, with a higher rate of 41% applied to income amounts received by individuals in excess of the standard rate band. Social insurance payments and the Universal Social Charge can also apply. In computing rental income for tax purposes, deductions are allowed for several payments, including rent payable to a superior landlord, the cost of annual maintenance, repairs, insurance and management, and interest paid on borrowings incurred in the purchase, improvement or repair of the property.

Where rent is payable to a non-resident landlord, withholding applies if it is paid directly to the non-resident landlord. The rate of withholding is 20% of the payment. Where the rents are collected by an Irish agent on behalf of the non-resident landlord, this withholding obligation does not arise. In its place, the Irish agent becomes personally liable for the tax due on the rent, and so effectively will not hand over or utilise the rent on the landlord's behalf without being satisfied that he has funds available to discharge any tax obligation on the rents passing through his hands.

### Capital gains tax (CGT)

Capital Gains Tax (CGT) applies to gains on the disposal of Irish property, and it applies to disposals by individuals and companies, whether resident or non-resident.

Non-residents are liable to pay CGT on gains realised from the sale of property in Ireland. CGT is imposed at a rate of 33%, and taxable capital gains are generally computed as selling price less acquisition costs, adjusted for inflation, and improvement costs.

Non-residents earning capital gains exceeding EUR 500,000 from the sale of Irish property are liable to pay withholding tax at the rate of 15%, which is levied on the selling price/fair market value of the property. This tax is then credited against the non-residents CGT liability.

### Capital acquisitions tax (CAT)

Capital Acquisitions Tax (CAT) applies to gifts and inheritances. The rate of tax is 33%. There are exempt limits, depending on the relationship between the donor and donee. The tax does not apply to arm's length transfers of property where full market value consideration is paid between related parties. A gift or inheritance of Irish situated property owned by individuals and trusts can give rise to Irish CAT. The tax is payable by the donee. This is the case even where the donor and donee of the property transferred are not tax-resident in Ireland.

## OTHER TAXES

### Stamp duty

In most cases, the stamp duty aspects of the purchase of Irish property will be the same, regardless of the ownership structure used. The rates of stamp duty vary depending on the type of property acquired.

The current rates of stamp duty on Irish property are:

- **Residential property:** 1% on transfers up to EUR 1m, 2% on the excess
- **Commercial property:** 7.5% on the entire consideration.

### Property taxation - local property tax (LPT)

Local property tax (LPT) is levied on all Irish residential properties, regardless of the ownership structure used to purchase the property. LPT is applied at different rates, depending on the market value of the property. There is no LPT on Irish commercial property.

The tax is based on the chargeable value of the residential property on the valuation date. The chargeable value is defined as the market value that the property could reasonably be expected to be sold for on the open market on the valuation date. The valuation date is 1 May 2013. **This valuation applies until 1 November 2020.**

### Value added tax (VAT)

The VAT aspects of Irish-situated property usually depend on the status of the property, and are the usually the same, regardless of the ownership structure used.

A new VAT regime applies to property transactions since 1 July 2008. Under the new regime, there is a distinction between the acquisition of a freehold or "freehold equivalent" interest (i.e. a long leasehold at a nominal rent) and lesser interests (which mostly comprise leasehold interests at market rents). The matter of VAT arising should be addressed in the contract between the seller and purchaser. In the case of a freehold or "freehold equivalent" interest, VAT applies at the rate of 13.5% if the property is considered to be "new", or if the seller and the purchaser agree that VAT should apply. "New" in this context generally means that the property is less than five years old. In the case of property which is not "new", a seller would be expected to want VAT to apply if they had incurred and recovered VAT when they acquired the property, or on development costs incurred subsequent to acquisition. Otherwise, they would face a partial claw-back of the VAT recovered. If VAT is incurred on the purchase or development, it can be recovered if the property is used for the purpose of a Vatable activity.

# ITALY

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## INTRODUCTION

Italy has established itself as an attractive international investment country with regard to current yields and increases in value of properties. Affordable prices in specific regions together with incentives for new homers has sustained the property market and made Italy a convenient place for investment. Strong "refurbishment subsidies" are granted from the Government to individuals that need to perform refurbishment works on their properties giving opportunities for convenient deals.

## LEGAL REQUIREMENTS

Foreigners who are non-resident can buy property in Italy if there is an *international treaty* that permits a material condition of reciprocity between their Country of origin and Italy. This restriction does not apply to EU citizens.

## TAX RULES

### INHERITANCE AND GIFT TAXES

Under current legislation, the inheritance and gift tax applies as follows (per beneficiary):

- Transfers to the spouse and direct descendants or ascendants are subject to tax at a rate of 4% on the value of the inheritance or gift exceeding EUR 1 million
- Transfers to brothers and sisters are subject to tax at a rate of 6% on the value of the inheritance or gift exceeding EUR 100,000
- Transfers to all other relatives up to the fourth degree, or relatives-in-law up to the third degree, are subject to tax at a rate of 6% on the entire value of the inheritance or gift, and
- Transfers to any other beneficiary are subject to tax at a rate of 8% on the entire value of the inheritance or gift.

Inheritance and gift taxes are calculated on the cadastral value of the property.

The transfer of a going concern within the family circle which is realised through a contribution of assets to a trust is exempt from inheritance and gift tax, provided that certain specific conditions are met. There is still some uncertainty on this point, since the position of the Italian tax authority is that the taxable event is the transfer of the property from the settlor to the Trustee, while Tax Courts have a different interpretation of the Law.

### INCOME FROM PROPERTIES

Income from immovable property is taxable, and determined on the basis of the cadastral value. A deduction up to the cadastral value may be claimed from aggregate taxable income derived from owner-occupied properties. If the property is rented, the taxable basis is the higher of (i) its cadastral value or (ii) its rental value reduced by the maintenance expenses up to a maximum of 5% of the rental value.

A further flat deduction of 30% of the taxable income as determined above is provided for rentals of dwellings located in major cities, if rents are those that have been agreed upon between the landlords' and tenants' associations.

Alternatively, the taxpayer may opt for income derived from property rented out for use as a property dwelling to be subject to a substitute tax (*cedolare secca*), which is levied at a rate of 21%. A reduced rate of 10% applies on income derived from residential properties (i) rented for use as dwelling and (ii) located in qualifying areas, i.e. with a shortage of housing, or densely populated. The option is also available to individuals concluding contracts for residential short-term rentals, i.e. rentals not exceeding 30 days, and can be concluded directly between the parties or through intermediaries, including those operating through online platforms.

### TRANSFER TAX

A registration tax is usually levied on the transfer of immovable property located in Italy. The rates vary according to the property transferred. The standard rate is 9%.

A reduced rate of 2% applies to transfers of immovable properties qualifying as first dwelling, and a 15% rate applies on transfers of agricultural land, except for transfers to agricultural entrepreneurs. In all cases, the minimum registration tax levied is EUR 1,000.

However, if the transaction is subject to VAT, registration, mortgage and cadastral taxes are levied at a lump sum of EUR 200 each.

Capital gains derived (other than in the course of a business or profession) by individuals on the disposal of immovable property situated in Italy are taxed as miscellaneous income. However, such gains are exempt from tax if the seller has held the property for more than five years. Gains on land zoned for construction do not qualify for this exemption.

Capital gains on residential buildings that have been mainly used as the principal dwelling of the owner, or of a member of his family, are not subject to tax. Also, capital gains acquired by way of inheritance or donation are exempt.

### PROPERTY TAXES

Property owners, whether resident or not in Italy, are liable for property tax (IMU) on land and buildings owned as investments. This tax is not applied if the real estate is used as the primary place of living (in this case, the owner must be resident according to the civil law at that property). The basic rate is 0.76% of the taxable value of the property, but the competent municipality can provide for an increase or reduction of up 0.3%.

In addition to property tax, owners are liable to tax for municipal services.

### STAMP DUTIES

The status of the seller (individual or building company) generally determines the taxes (registration tax or VAT) and the amount due arising from the transaction.

If the seller is a building or refurbishment company:

- VAT: at 10%-22% rate, depending on the characteristics of the property (luxury or non-luxury property,) and 4% if it is the first home purchased for living
- Registration tax: a fixed amount equal to EUR 200
- Mortgage tax: a fixed amount equal to EUR 200
- Cadastral tax: a fixed amount equal to EUR 200.

If the seller is an individual or a company different from the ones mentioned above:

- VAT: not applicable
- Registration tax: 9% (2% if it is the first home purchased for living)
- Mortgage tax: a fixed amount equal to EUR 50
- Cadastral tax: a fixed amount equal to EUR 50.

# NETHERLANDS

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## INTRODUCTION

In the Netherlands the option of buying a house is open to all. There are no restrictions or limitations regarding expats or foreign visitors and it does not matter whether they become residents or live remotely. However, some municipalities demand a residence permit.

## LEGAL REQUIREMENTS

The conditions of a transaction (between the seller and the buyer of a house) are laid down in a preliminary purchase contract with contingencies. Please note, a verbal agreement is not binding. Despite the word 'preliminary', one is only able to withdraw from the transaction if certain contingencies have been included in the contract (for example a financing clause). When these contingencies have not been included in the contract, but the buyer or seller still wants to withdraw from the purchase, normally a 'fine' of 10% of the purchase price has to be payed to the other party.

Dutch law requires real estate purchases to be handled by a notary. Real estate is transferred by a designated notarial deed. A civil law notary is therefore involved in each (execution of a) sale (the transfer of title) of Dutch real estate. The notary will arrange the payment for the house and will prepare the transfer deed (and, if necessary, a mortgage deed). Besides preparing the deeds, the notary will check if all legal requirements have been fulfilled.

## TAX RULES

### INHERITANCE AND GIFT TAXES

No inheritance or gift tax is levied on the transfer of Dutch real estate from a foreign citizen to his/her heirs/recipients.

Inheritance tax and/or gift tax is only levied on all assets (worldwide) of the deceased/donor who was (deemed to be) a resident of the Netherlands at the time of death/the gift. Persons who have the Dutch nationality are deemed to be resident in the Netherlands for inheritance and gift tax purposes during a period of ten years after having emigrated from the Netherlands.

### INCOME TAX

The Dutch income tax is levied on three categories ('boxes') of income. Each box has its own tax rates and exemptions. We will address each of the boxes in short below.

In box 1 tax is levied on employment income, business profits and income from a primary residence. Box two includes profits from a substantial shareholding, which is a shareholding of at least 5% of a certain class of shares of a company. In box three income from savings and investments is taxed.

The Dutch income tax makes a distinction between one's primary residence and other residences.

### Primary residence

The owner of a primary residence is taxed on the deemed rental value of the residence (*'eigenwoningforfait'*). The deemed rental value is based on the 'WOZ-value' of the residence, which is calculated annually by the municipality and refers to the estimated market value of the residence. The deemed rental value is approximately 0,50% of the WOZ-value (2021).

When the primary residence is mortgaged, the interest paid can be deductible in box one, provided that certain conditions are met:

- Mortgage interest is deductible over a maximum period of 30 years
- The mortgage must provide monthly redemption payments (either straight line or annuity)
- The maximum mortgage, over which one can claim interest deduction, may not exceed the value of the residence
- The acquisition of a primary residence cannot be fully financed by a mortgage if a capital gain on the previous primary residence was realized
- The maximum rate of deductibility is currently decreasing to 37,05% in 2023 (43% in 2021). Please note that the income in box 1 is levied at a maximum rate of 49,5% (2021).

### Other residences

A second residence is taxed in box three. Income tax is levied on the WOZ-value, which can be decreased when the residence is rented out. For regular, non-entrepreneurial, individual tax payers, capital gains are generally not separately taxable, but may be included in the taxable base for box three. Normal asset management activities are regarded as box three-activities. However, if one is making the assets profitable in a manner that exceeds normal asset management, the (rental) income and the growth in value will be taxed progressively in box one.

The tax rate in box three depends on the amount of the net value of savings, investments, etc. In 2021 the taxpayer's net value is deemed to yield income at a rate between 0,59% and 1,76%. A general exemption of EUR 50.000 (2021) applies for each taxpayer.

The State Secretary recently announced the intent to change the way assets are taxed in box three. The proposal suggests dividing box three into three sections. Each of the sections will have an individual fixed return:

| | |
|---|---|
| Savings: | 0,09% |
| Other assets (i.e. a second residence): | 5,33% |
| Debts (i.e. a mortgage for a second residence): | 3,03% |

A tax-free income of EUR 400 for each tax partner applies to the total income of one's assets. The tax rate will increase from 31% (2021) to approximately 33% (2022).

Please note that the proposal is indicative and will probably change in 2022.

## TRANSFER TAX

When one becomes the owner of immovable property and/or rights to immovable property in the Netherlands, property transfer tax will be levied. The taxable basis is, in general, the fair market value of the acquired property.

The property transfer tax is 2% for homes and other immovable properties on a residential premises. The property transfer tax for other immovable properties (for example business premises) is 8%.

The acquisition of shares in an entity that owns real estate may also be subject to transfer tax if that entity is characterized as a so-called real estate entity. An entity is characterized as a real estate entity when more than 50% of the assets consist of real estate and at least 30% consist of Dutch immovable property.

In some situations one can opt for an exemption from property transfer tax, for example when transferring a business to a relative or transferring immovable property into a private limited company.

In addition, a property transfer tax exemption may apply when buying immovable property that is charged with VAT.

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### VALUE ADDED TAX (VAT)

In general, the acquisition of immovable property will be exempt from VAT. There are some exceptions to this general rule, in which VAT of 21% applies:

- A (part of a) building with land within two years after its first occupation
- Building sites
- An immovable property whereby seller and purchaser submit a claim together not to apply the exemption (this is only possible if the buyer can deduct at least 90% of the VAT over the sale).

### STAMP DUTIES

There are no stamp duties in the Netherlands.

### CAPITAL GAIN TAX

In the Netherlands in principle no capital tax is due regarding the sale of someone (secondary) residence.

### MUNICIPAL TAXES

- **Property tax:** Municipalities impose an annual immovable property tax on those who own immovable property. The tax rates vary among the municipalities. The taxable basis is the WOZ-value of the immovable property
- **Waste collection tax:** The waste collection tax is levied to cover the costs of collecting and processing household waste. The tax rates vary among the municipalities
- **Sewerage charges:** Sewerage charges are used to cover the costs of maintaining the municipal sewage system in the Netherlands. The tax rates vary among the municipalities
- **Water tax:** Water taxes (water board tax and water purification levy) are levied to contribute to regional water system management (maintenance of dykes and control of water levels) and to contribute to purification processes used for waste water. The tax rates vary among the municipalities.

# PORTUGAL

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## INTRODUCTION

A non-resident is able to own immovable property in Portugal. There are no approval procedures for EU residents or third country residents, as they enjoy the same rights as a Portuguese resident to purchase or rent properties in Portugal.

## LEGAL REQUIREMENTS

There are no further legal requirements, compared with Portuguese residents, for foreign individuals when purchasing or renting immovable properties in Portugal. They only require a local tax number.

## TAX RULES

### GIFT AND INHERITANCE TAXES

In Portugal there is no specific taxation on transfers by death. Thus, the real estate assets transmitted by the death of the holder are not subject to taxation, if the transmission is for the spouse, descendants or ascendants.

In respect to transfers inter vivos (i.e. free acquisition of goods by individuals - inheritance and gifts) these are, in a general rule, subject to stamp duty at a 10% rate, with the exception of transactions between spouses, descendants or ascendants, which are exempt from this tax (however, there is an effective stamp duty tax of 0.8%).

### INCOME TAX

#### Corporate Income Tax (IRC) and Personal Income Tax (IRS)

**Residents**

Property income of companies (IRC) is taxable at the rate of 21% on the taxable profit.

If applicable, state surtax accrues at a rate which currently varies between 3% and 9%.

Municipal surtax accrues at a rate of up to a maximum of 1.5%.

**Individuals** are subject to Income Tax (IRS) at the autonomous rate of 28%, or may opt to aggregate income, in which case income will become subject to progressive rates. In the case of aggregation of income, all costs effectively borne and paid by the taxable person to obtain or guarantee this income will be deducted from the value of the rents, namely the costs borne and paid in the 24 months preceding the beginning of the lease, and relating to the property's maintenance and upkeep, provided that in the meantime the property has not been used for any purpose other than the lease.

Expenditure of a financial nature and costs relating to depreciation and furniture, household appliances, comfort and decoration articles are excluded from deductible expenses.

**Non-residents**

Property income obtained in Portugal by non-resident natural or legal persons is taxable at the special rate of 28% and 25% respectively, corresponding to the value of the final tax due. If the property income is obtained by a non-resident legal person through a local PE (Permanent Establishment), the IRC rate may be 21%.

Non-resident investors must file with the Portuguese tax authorities a declaration at the start of activities (prior to initiating the property rental activity), as well as their respective income tax returns, in the same way as resident investors.

Synthesising rented real estate:

- **Resident Individuals:** rental income can either be included in their respective general base for calculating the IRS, or be liberated via a 28% tax, whichever the taxpayer deems more convenient. Several costs may be deducted (repairs, property tax, service charges)
- **Resident Companies:** rental income must be included in their respective general base for calculating the IRC, but all costs may be deducted (repairs, property tax, service charges, interest payments, etc.). The IRC rate is 21%
- **Non-Portuguese individual residents:** rental income is declared on a local return delivered on annual basis. Several costs may be deducted (repairs, property tax, service charges). The applicable rate is 28%
- **Non-resident companies with a local Permanent Establishment:** the tax assessment procedure is similar to local companies, thus they need to have organised accounting. Rental income is included in their respective general base for calculating the IRC. The rate is 21%
- **Non-Portuguese individual resident with a local Permanent Establishment:** the tax rate is 25%. Tax assessment derives from organised accountancy
- **Indirect taxation:** Rentals from residential assets are exempt from VAT. If the rental includes services analogous to hotel lodging, the corresponding amount is subject to a 6% tax rate (for instance, if the price includes Internet and TV services, the corresponding amount is subject to the said VAT rate)
- Rent agreements and changes involving an increase in the rent value are liable to stamp duty. The rate is 10%, based on one month's rent or the increase.

## Capital gains

### Residents

Capital Gains on the sale of real estate located in Portugal by resident companies are subject to "IRC" under the general provisions of the law at the customary rate of 21% on the taxable income.

A Municipal surcharge of up to 1.5% accrues, and a State surcharge of between 3% and 9% may also accrue.

On capital gains reinvested in tangible fixed assets, intangible assets or biological assets that are not consumables, only 50% of their value is considered, provided that the reinvestment takes place by the end of the second financial year following that of the sale.

On the other hand, 50% of a capital gains obtained by a resident individual is taxed based on the positive difference between:

a. the purchase price of the property, corrected by the applicable currency devaluation rates, plus the duly proven expenses incurred in making improvements to the property over the last 12 years, as well as the necessary costs actually disbursed for the purchase and sale of the property, and compensation paid for the onerous waiver of contractual positions or other rights inherent to contracts relating to the property, and
b. the corresponding selling price, and is subject to progressive rates.

Capital gains derived from the sale of a property that is the permanent residence of such person are not subject to taxation in certain cases, namely:

- Reinvestment of the value of the sale, minus the repayment of a loan contracted to purchase the property in the purchase of another property, land for the construction of a building and/or the construction thereof, or for the enlargement or improvement of another property to be used exclusively for the same purpose
- The property in which the investment is made must be located in Portuguese territory, in any Member State of the European Union, or in the European Economic Area - in the last case, provided there is exchange of tax information
- The reinvestment must be made between the 24 months before and the 36 months after the sale; and

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- The taxable person must state an intention to make the investment, even if only in part, setting out the relevant amount in the tax return for the year the sale took place.

The said exemption ceases to be applicable where the taxpayer:

a. reinvests in the purchase of another property, but neither he or his family uses it as their permanent abode within 12 months of any such purchase, or
b. in all other cases, fails to apply for the registration with the tax department of the property or the alterations within 24 months of the date of the sale, as required to use the property for himself or his family as their permanent abode, by the end of the fifth year following that of the sale.

**Non-residents**

Capital Gains obtained by non-resident companies are subject to a 25% tax on the positive difference between:

a. the purchase price of the property, corrected by the applicable currency devaluation rate, plus the expenses incurred to make improvements to the property over the last 12 years, the necessary costs actually disbursed for the purchase and sale of the property, and the compensation paid for the onerous waiver of contractual positions or other rights inherent to contracts relating to the property, and
b. the corresponding price.

Capital gains obtained by non-resident individuals are subject to a 28% tax on the same value. Non-resident individual investors must declare these capital gains on property under the same terms and within the same time limits; companies must declare capital gains within 30 days of the transfer.

## ACQUISITION OF REAL ESTATE ASSETS

### Transfer tax

Property transfers are subject to the Municipal Tax on the Transfer of Property (IMT) at a rate of 6.5% on urban property or land for construction, and 5% on rural property. The taxable value is levied on the property price or its tax registered value, whichever is higher.

For a residential property, the applicable rate may vary between 0% and 7.5%, depending on the value of the property. No IMT is due on the indirect acquisition of property through the purchase of equity interests in joint stock companies, or up to 75% of interests in private limited companies by "quotas".

### Stamp Duty

Property transfers are also subject to Stamp Duty (IS) at a rate of 0.8%, on the taxable value calculated for IMT purposes. The financing of real estate and the respective guarantees, notably of mortgages, are also subject to IS.

However, no stamp duty will be due on a guarantee which is simultaneous and accessory to a taxed financing contract.

### VAT

As a rule, the transfer of property is exempt from Value Added Tax (VAT). However, the "exemption waiver" of VAT is possible and may be useful if construction has been carried out on the property, and VAT borne thereon is to be recovered by the respective developer.

## TAX ON OWNERSHIP

### Municipal Tax on Property (IMI)

Property ownership is subject to the Municipal Tax on Property (IMI).

IMI is an annual tax levied on the property's tax registered value, and is payable by the respective property owners, usufructuaries or people entitled to use the property, on 31 December of each year. IMI is generally paid in three instalments, in May, August and November.

IMI rates currently vary between 0.3% and 0.45% for urban property and land for construction. The rate on rural properties is 0.8%.

These rates are annually increased to six times their amount for an urban property that has been vacant for more than two years, or buildings in ruins.

The IMI rate on buildings owned by residents in a listed tax haven is 7.5%. The taxable value is the tax registered value (VPT) indicated in the cadastre.

### Additional IMI tax

In 2017 an additional IMI tax was approved (AIMI).

The owners, superficiaries or usufructuaries of urban buildings in Portugal (natural or legal persons) are subject to this tax if those buildings are residential buildings or land for construction.

The tax is levied on the tax registered value (VPT) of the urban buildings owned by each taxable person on 1 January of each year. Single individuals subject to this tax (and only they) can deduct either EUR 600,000 of the taxable value, or EUR 1,200,000 in the case of a couple.

AIMI rates currently are 0.7% for individuals, 0.4% for companies and 7.5% for residents in a listed tax haven.

Buildings that have been exempted from IMI in the previous year are exempt from AIMI.

The tax assessment period is in June, and the payment is due in September.

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## INTRODUCTION

Third-country citizens and citizens of an EU- or an EEA-member state enjoy equal status as local citizens. However, foreigners will need to apply for a tax identification number to meet the Spanish legal and tax provisions.

## LEGAL REQUIREMENTS

Third-country citizens and citizens of member states of the European Union (EU) or citizens of signatory parties to the Agreement on the European Economic Area (EEA) enjoy the same status as Spanish citizens, and therefore do not require mandatory approval in order to purchase a right to a property or an apartment.

A tax identification number is required to purchase a right to a property or an apartment.

## TAX RULES

### INHERITANCE AND GIFT TAXES

Beneficiaries of Spanish assets are liable to Inheritance Tax in Spain (i) only for Spanish assets, if they are non-residents, or (ii) for their worldwide assets, if they are Spanish tax residents/Beckham Law individuals.

Mortgages are deductible, but not all loans used for the acquisition of real estate are deductible (appropriate advice is required).

Inheritance Tax in Spain can be mitigated with appropriate and qualifying tax planning.

### WEALTH TAX

Non-resident individuals owning Spanish properties (directly or indirectly -except treaty protection-) are liable to wealth tax in Spain. The first EUR 700,000 are exempt from taxation but the exceeding portion is taxable.

Mortgages are deductible but not all loans used for the acquisition of real estate are deductible (proper advice is required).

The Madrid region allows a 100% tax relief under its regional rules. EU resident foreigners may qualify for their application if certain requirements are met.

Corporate real estate structures for private use of the beneficial owners are more and more on the loop of Spanish tax authority. Appropriate advice is recommendable to opt to further tax reliefs applicable and/or mitigate any wealth tax risk.

### INCOME TAX

Capital gains are taxable from 19% to 26% (by Spanish tax residents) and at a flat tax rate of 19% by non-residents.

Capital losses incurred on the sale of real estate can be set off against other capital gains and can be carried forward for at least four tax years by Spanish tax residents, but not by non-residents.

Spanish properties held by EU resident individuals are subject to income tax whether the properties are rented out or not. For days without a rental, deemed income (1.1-2% of Cadastral value) will be taxable at 19%. For days in which the property has been rented out, the difference between the gross rental income and expenses related will be taxable at 19%.

Non-EU resident individuals are taxable in the same way but the tax rate is 24% and they are not allowed to deduct expenses on

the gross rental income, so the taxation is 24% on the gross rental income received.

Spanish properties held by EU resident individuals are subject to income tax whether the properties are rented out or not. For days without a rental, deemed income (1.1-2% of Cadastral value) will be taxable at 19%. For days in which the property has been rented out, the difference between the gross rental income and expenses related will be taxable at 19%.

Non-EU resident individuals are taxable in the same way but the tax rate is 24% and they are not allowed to deduct expenses on the gross rental income, so the taxation is 24% on the gross rental income received.

### TRANSFER TAX

The transfer of the title to immovable property located in Spain is subject to transfer tax.

Taxable transactions include the sale, exchange and contributions to capital upon formation of a company.

Transfer tax may also be levied if more than 50% of the shares of a company owning immovable property are united or taken over by one shareholder, alone or together with other members of the same consolidated tax group. If the immovable property is subject to a proper business activity, the transaction may be exempt from transfer tax. In addition, transfers derived from a restructuring may not be liable to transfer tax under certain conditions.

*Mortis causa* and *inter vivos* transfers of immovable property located in Spain are not subject to transfer tax.

The taxable income is normally the value of the consideration given for the transfer, including liabilities that are transferred. For the determination of the price, there is always a minimal value for tax purposes, based on the cadastral value and a coefficient specified for the town where the property is located.

The tax rate differs in every region of Spain. However, the most common range runs from 9% to 11%.

Real estate companies buying, refurbishing and selling properties within a five year-maximum period can be entitled to a 70% tax relief on transfer tax.

### CORPORATE INCOME TAX

There are different special tax regimes/ structures for renting out properties that can offer attractive tax reliefs, such as an 85% relief on rental income, and reduced CIT rates. Appropriate advice is required.

### PROPERTY TAXES

There are two local taxes linked to real estate matters. Local tax for holding urban properties (*"impuesto sobre bienes inmuebles"*) is payable annually, based on a percentage (that varies for every town) applicable to the cadastral value of the property.

The other local tax (*"plusvalía municipal"*) is payable when urban land is transferred (whether on a purchase or mortis causa/ inter vivos transfers).

Tax is calculated based on the cadastral value and the holding period. If certain requirements are met, this tax can be avoided.

### VALUE ADDED TAX (VAT)

First real estate transactions are subject to VAT. Second and following transactions are exempt from VAT, and therefore liable to transfer tax. In certain circumstances, a business buyer may opt for VAT, for example if the buyer wishes to rent out the property by offering certain additional services. In that case, the VAT would be fully refundable.

### STAMP DUTIES

Mortgages are subject to a 1.5% stamp duty. However, based on recent legislation, tax will be payable by the issuer of the mortgage (usually banks).

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## INTRODUCTION

A non-resident is able to own immovable property in Sweden. There are no approval procedures for EU residents or third country residents, as they enjoy the same rights as Swedish residents to purchase or rent properties in Sweden.

## LEGAL REQUIREMENTS

There are no further legal requirements, comparing with Swedish residents, for foreign individuals when purchasing or renting immovable properties in Sweden.

## TAX RULES

### GIFT, INHERITANCE AND WEALTH TAXES

Sweden does not impose any gift, inheritance or wealth taxes.

The recipient of the gift of a property takes over the donor's fiscal position in relation to the property. Although consideration has been paid for the property, the transfer is seen as a gift if the amount paid is lower than the assessed taxable value. According to this principle, the whole transfer is a gift and no capital gains tax is levied. However, if the consideration exceeds 85% of the assessed taxable value, stamp duty is levied.

No tax is levied on a transfer of a property on the death of an owner. The beneficiary takes over the deceased's fiscal position in respect of the property.

### INCOME TAX

A non-resident who does not have any essential ties to Sweden, or stays in Sweden permanently, is, according to Swedish internal tax law, liable to income tax from current income and capital gains from immovable property situated in Sweden.

An individual's income from immovable property is taxed as capital income at a flat rate tax of 30%. Income that a company receives from immovable property is taxed as corporate income at a tax rate of 20.6% corporate tax.

In order to make more housing available, there are in some cases beneficial rules for individuals renting out their properties. If an individual rents out a *private residential property* or a *private residence* (an apartment or house that is intended to be the individual's, or a person's related to the individual, permanent home or holiday residence) the income is taxed at 30%, as stated above. Rental costs are not allowed to be deducted - instead, a standard deduction of SEK 40 000 (approximately USD 4400) is made. If an immovable property (if it is a private residence) is rented out, further deductions of 20% of the rental revenue can be made. If an apartment (if it is a private residence) is rented out, a deduction of the individual's own rental costs or fees can be made instead. The standard deduction must in no case be higher than the income.

These beneficial deduction rules cannot be applied when an individual rents out a private residence to his/her employer or a person related to the employer. The rules cannot be applied when renting out a *business residential property* or *business residence* (a residence which is not a private residence).

## CAPITAL GAINS

Capital gains are also taxed at the flat rate of 30%. However, if an individual sells his/her private residence, only 22/30 of the gain is subject to tax. The effective tax rate is thus 22%. When there is a capital loss, only 50% of the loss is deductible.

A person who sells his/her private residential property or private residence and acquires another may, under certain circumstances, apply for deferment of taxation on all or part of the capital gain arising from the sale of the first residence.

If a business residence is sold, 90% of the capital gain is subject to tax, while 63% of a capital loss is deductible.

If a real estate property is not used for a company's own production or office purposes, a loss on sale of the immovable property cannot be set off against other income, only against corresponding gains, i.e. gains on alienation of immovable property. If there are no such gains to set off against, such a loss is instead carried forward. The loss is treated as a new capital loss on properties in the following tax year.

## TRANSFER TAX

### Registration fees and other charges

An application for registration of title should be made to the authorities no later than three months after acquisition of an immovable property or a leasehold site. The registration of title is subject to a fee of SEK 825 (2021). This land registration cost is borne by the acquirer of the immovable property or leasehold site.

A sale of a housing cooperative apartment, which is the most common way of owning apartments in Sweden, is not a sale of immovable property, as the housing cooperative is in fact the owner. Instead, it is a sale of the right to the apartment. No registration fee linked to registration of title has to be paid. However, some housing cooperatives charge a fee for the change of ownership.

### Stamp duties

In conjunction with the registration of title, stamp duty is levied when immovable property or a leasehold site is acquired, and on mortgage 2.0%. The stamp duty is calculated on the higher of the assessed taxable value or the consideration. For individuals, the stamp duty is 1.5%, and for legal entities, it is 4.25% of the consideration, or assessed taxable value if this is higher. Machinery and industrial equipment should be added to the value of the immovable property.

In accordance with the above details, stamp duty is not levied on sales of housing cooperative apartments.

## PROPERTY TAXES

There is a *municipal property fee* for real estate with housing. The fee is the lowest of either SEK 8,524 (2021) or 0.75% of the taxable value assessed the previous year.

There is also a state property tax for types of immovable property referred to as housing, condominiums, blocks of flats, certain industry components, power generation units and certain agricultural units. The state property tax varies between 0.2% and 1% of the tax value, depending on the type of property.

## VALUE ADDED TAX (VAT)

The sale of real estate and immovable property, as well as housing cooperative apartments, etc is exempted from VAT, with some exceptions.

The letting of immovable property is, in general, VAT exempt. Under certain circumstances it is possible to use the option to tax (VAT at 25%) on the rent for premises. Renting out a private residential property or private residence to several different tenants (temporary accommodation) for more than 16 weeks per year is taxable (VAT at 12%) if the turnover exceeds SEK 50,000 (approximately USD 5,300).

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## INTRODUCTION

The direct or indirect acquisition of real estate for residential purposes by foreign individuals and legal entities is restricted by the so-called Federal Act on the Acquisition of Real Estate by Persons Abroad (BewG), also known as "*Lex Koller*" or "*Lex Friedrich*". On the other hand, the acquisition of real estate for commercial purposes is not subject to any restrictions. Prohibited acquisitions by the BewG are legally invalid.

In addition, the Second Homes Act (SHA) led to a general shortage in the supply of secondary residences and to the complication of corresponding construction projects in mountain tourist areas.

## LEGAL REQUIREMENTS

### LEX KOLLER OR LEX FRIEDRICH (BEWG)

The BewG-Rules make the acquisition of real estate for residential purposes by foreign buyers subject to an authorisation requirement. Authorisation is given by the cantonal authority where the real estate is located.

A legal transaction is subject to the authorisation requirement, if three conditions are met cumulatively:

#### 1. Person abroad in the sense of the BewG

a. Natural persons living abroad are (a) foreigners resident abroad or (b) foreigners resident in Switzerland who are neither EU nor EFTA citizens and who do not have a valid settlement permit.

b. Legal entities domiciled abroad are also considered to be persons abroad. Companies domiciled in Switzerland but controlled by individuals abroad are also deemed to be persons domiciled abroad.

c. Authorisations are also required for the fiduciary acquisition of real estate, i.e. acquisition for the account of a person abroad.

#### 2. Property for residential purposes

Authorisations are required for the acquisition of real estate for residential purposes, i.e. single-family dwellings and apartment houses, owner-occupied flats, and building land intended for constructing such accommodation.

The acquisition of main residences, secondary residences for cross-border commuters from EC or EFTA Member States, and dwellings that may be purchased in exceptional circumstances in conjunction with commercial real estate, is exempted from the authorisation requirement.

On the other hand, real estate used for commercial purposes (permanent business establishments, e.g. manufacturing premises, warehouse facilities, offices, shopping centres, retail premises, hotels, restaurants, workshops, and doctors' surgeries) can generally be acquired without authorisation.

## 3. Acquisition of a property

The authorisation requirements apply not only to Land Register entries of real estate ownership, building rights, residential rights or usufruct, but to any transaction that gives a non-resident actual control – from a financial viewpoint – of real estate, i.e. the acquisition of shares in a legal entity, the real purpose of which is the acquisition or real estate, except where these shares are listed on a stock exchange in Switzerland.

Ultimately, whether the land is already in foreign ownership and how exactly the land is acquired, is irrelevant for the purposes of the authorisation requirement.

### EXCEPTIONS

Even if these three conditions are fulfilled, there are still some exceptions to the authorisation requirement. For example, close relatives and legal heirs within the meaning of Swiss law are exempt from the authorisation requirement.

### REASONS FOR APPROVAL

If a legal transaction involving the acquisition of real estate is subject to authorisation, and none of the other exceptions exists, no Land Register entry or any purchase can take place without legal authorisation.

The BewG provides grounds for authorisation for banks and insurance companies, for employee benefits and charitable purposes, for appointed heirs and legatees, and in cases of hardship. Finally, cantonal law may provide further grounds for authorisation, i.e. the acquisition of holiday homes and accommodation units in apartment hotels, secondary residences and social housing construction.

### SECOND HOMES ACT

Secondary residences are common in Switzerland, especially in the tourist regions of the cantons of Grisons, Valais, Ticino, Vaud and Berne. In 2012, the Swiss electorate adopted the so-called second home referendum initiative. The aim of this legislative project was to prevent oversized and frequently vacant buildings in mountain tourist areas and to counteract rising land and housing prices to the detriment of the local population. In particular, the initiative calls for the proportion of second homes in a municipality to be kept at 20% or lower.

The implementing law, the Second Homes Act (SHA), defines the term "second home". According to the SHA, a second home exists if it is used by someone who has his principal home elsewhere. The term "second home" is based on the use of the apartment in question, and not on ownership.

If the proportion of second homes in a municipality exceeds 20%, this generally leads to a ban on further second home projects. However, the SHA provides for far-reaching exceptions. For example, new second homes may be authorised even in communes with a proportion in excess of 20% within protected buildings, or if the second home is to be operated as permanently offered managed tourist accommodation.

From the point of view of foreign prospective buyers, the restrictions of the SHA have led to a general shortage of available second homes and made it more difficult to build them. However, in contrast to the BewG described above, the SHA does not contain any foreign-specific restrictions on the acquisition of residential property.

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# TAX RULES

In Switzerland, taxes are levied at the federal, cantonal and communal level. Individual persons or corporations having their fiscal domicile abroad but own real estate in Switzerland found a limited tax liability in Switzerland. The scope of this tax liability is limited to the income and the value of the respective real estate.

The tax rates of most cantons have a progressive nature, depending on the amount of income generated. The same applies at the federal level.

## INCOME TAX FOR INDIVIDUALS AND CORPORATIONS

### Rental income

At the federal, cantonal and communal level, income tax will be levied on any rental income. Effective value-preserving expenses can be deducted from the rental income. For individuals it is furthermore possible to deduct lump sum expenses instead of the effective value-preserving expenses. Additional expenses, such as depreciation and amortizations may be deducted if the property is held through a corporation or as a business asset.

### Imputed rental income

If a property of an individual is not rented to tenants but is used for private purposes only, an imputed rental income is calculated and subject to individual income tax at the federal, cantonal and communal level. Effective value-preserving expenses can be deducted from the rental income. It is furthermore possible to deduct lump sum expenses instead of the effective value-preserving expenses.

### Disposal

The gain derived from the disposal of privately held properties is generally tax-free at the federal, cantonal and communal income tax level. The gain is, however, subject to a separate communal properties gains tax ('Grundstückgewinnsteuer'). Tax rates vary from canton to canton and from commune to commune.

On a corporate level or if the property is held as business asset, Switzerland has two different taxation systems for capital gains. The cantons are free to choose the system. Under the so-called 'dualistic' system, capital gains from the disposal of a property (held through a corporation or as business asset) are subject to the ordinary corporate income tax on the federal, cantonal and communal level. Under the so-called 'monistic' system, any capital gain from the disposal of a property is subject to the separate capital gains tax on a cantonal and communal level. On the federal level, such capital gains are subject to the ordinary corporate income tax.

Additionally, certain cantons levy a property transfer tax, if the owner of the real estate changes.

## WEALTH AND EQUITY TAX

At the cantonal and communal level, wealth tax is levied on the fair market value of the real estate (for privately held properties); respectively equity tax on the net book value of the real estate in case the property is held through a corporation.

## INHERITANCE AND GIFT TAX

Switzerland doesn't levy any gift/inheritance tax on a national level, but on a cantonal level. However there are also cantons who don't levy any inheritance and/or gift tax at all. Also, the transfer of assets between spouses and to direct descendants are in most of the cantons not subject to gift/ inheritance tax. So, for foreign residents inheritance/gift tax might apply on the transfer by death/gif, but it t depends on the canton where the real estate is located.

## LAND AND BUILDING TAX

Certain cantons levy a land and building tax on all land and/or buildings. Tax rates vary from canton to canton and from commune to commune. In addition, notary and land registration fees are levied on the acquisition of real estates.

## VALUE ADDED TAX

No value added tax (VAT) is levied on the income derived from the rental of real estates for private purposes. However, VAT should be levied on the rental income derived from the accommodation of guests as well as of rooms in the hotel and tourist sector. Furthermore, if the property is rented to business tenants, one could freely chose to have the income subject to VAT. Proper analysis and advice is recommended.

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## INTRODUCTION

Foreigners are able to buy property in the UK, and most nationalities are eligible for investment loans, although there are fewer banks offering them.

## LEGAL REQUIREMENTS

The Government is currently in the process of legislating to create a register of beneficial ownership information for overseas companies or other legal entities that own or buy UK property or participate in UK central government procurement. The intention is that overseas entities will not be able to buy, sell or take a lease of longer than seven years on a property in the UK, unless they have provided information about their beneficial owners for the new register. Trusts will not be included – HMRC's Trust Registration Service includes details of trust beneficiaries, and law enforcement agencies can access this data. After a transitional period (not yet specified), all overseas entities that already own UK property will have to register and update their details every two years. The register is to be established from 2021.

## TAX RULES

### STAMP DUTY

Stamp duty is due at the rate of 0.5% on the purchase of shares in a UK company, or the purchase in the UK of shares in a foreign company.

### STAMP DUTY LAND TAX (SDLT)

In England and Northern Ireland, SDLT on the consideration for the purchase of a property is payable by the purchaser. SDLT on wholly residential freehold property purchases, or on the premium paid for grant or assignment of a residential property lease, is levied at rates on a sliding scale.

SDLT on wholly residential freehold property purchases, or on the premium paid for grant or assignment of a residential property lease, is levied at rates on a sliding scale.

Until 30 June 2021, this is from 5% on properties above £500,000 to 12% on properties above £1.5m. From 1 July 2021, this will be from 5% on properties above £250,000 to 12% on properties above £1.5m and from 1 October 2021, this will be from 2% on properties above £125,000 to 12% on properties above £1.5m. Reduced rates for first time home buyers should apply from 1 July 2021.

A higher rate of 15% applies on certain purchases by non-natural persons of properties over £500,000.

An additional 3% is charged on top of the main residential rate in each band for purchases of a residential property costing over £40,000 by:

- People buying an additional residential property, unless the additional property replaces a main residence sold within the last 36 months (this applies even if the first residential property is outside the UK), and
- Non-natural persons buying a residential property, where the 15% rate does not apply.

An additional 2% surcharge applies to purchases of UK residential property by non-UK residents and by UK companies owned by non UK residents.

This charge is in addition to the 3% surcharge and 15% rate where applicable.

SDLT on commercial or mixed use freehold property purchases, or on the premium paid for grant or assignment of a lease on such a property, is levied at rates on a sliding scale on slices from 2% on properties between £150,001 - £250,000 and 5% on properties over £250,000.

SDLT on the rental element on grant of a lease is charged at 1% on the net present value (NPV) of the rent for residential leases over £125,000, and for commercial leases at 1% from £150,001 - £5 million, and 2% over £5 million.

There is currently no SDLT on buying shares in property companies.

### SCOTTISH LAND AND BUILDINGS TRANSACTIONS TAX (LBTT)

In Scotland, LBTT on the consideration for the purchase of a property is payable by the purchaser. LBTT on wholly residential freehold property purchases and on the capital element of premiums for residential leases is levied at rates on a sliding scale from 2% on properties over £145,000 to 12% on properties over £750,000.

An additional 4% is charged on top of the main residential rate in each band for purchases of a dwelling costing over £40,000 by:

- An individual buying an additional dwelling, unless the additional property replaces a main dwelling sold within the last 18 months (this applies even if the first residential property is outside the UK)
- An individual who makes the acquisition in the course of a business carried on, alone or in partnership, the sole or main activity of which is investing or dealing in chargeable interests
- An individual who is the trustee of a trust, and there is no beneficiary entitled to occupy the dwelling for life, or entitled to the income from the dwelling, or
- A buyer who is not an individual.

LBTT on commercial freehold property purchases, or on the premium paid for grant or assignment of a commercial property lease, is levied at rates on a sliding scale from 1% on properties between £150,000 - £250,000 and 5% on properties over £250,000.

LBTT on the rental element on grant of a lease on commercial property purchases is charged at 1% on properties between £150,000 and £2m, and at 2% on properties over £2m. Generally, leases of residential property are exempt from LBTT.

Further LBTT returns are required every three years and, where the terms of the lease have changed (e.g. a rent increase), a further payment of LBTT may be needed.

### WELSH LAND TRANSACTIONS TAX (LTT)

In Wales, LTT on the consideration for the purchase of a property is payable by the purchaser.

LTT on wholly residential freehold property purchases is levied at rates on a sliding scale from 3.5% on properties above £180,000 to 12% on properties above £1.5m.

For those purchasing an additional residential property (which applies even if the first residential property is outside the UK), separate rates apply where the purchase consideration exceeds £40,000. These are from 3% on properties above £40,000 to on properties 15% above £1.5m.

LTT on commercial freehold property purchases is levied at rates on a sliding scale from 1% on properties above £225,000 to 6% on properties over £1 million.

LTT on the rental element on grant of a lease on commercial property purchases is charged at 1% on the net present value (NPV) of the rent for leases between £225,001 - £2 million, and at 2% on NPV over £2 million.

### ANNUAL TAX ON ENVELOPED DWELLINGS (ATED)

ATED is payable annually by companies, partnerships with a company member, and collective investment schemes which own a UK residential property valued at more than £500,000 on or after 1 April 2017, or on the date of acquisition, if later.

There are various reliefs and exemptions for certain types of businesses and properties, including:

- Property development businesses
- Property rental businesses
- Property trading business
- Financial institutions acquiring dwellings in the course of lending
- Charitable companies and providers of social housing
- Public bodies and bodies established for national purposes
- Accommodation provided to employees
- Farmhouses, as defined for this purpose
- Dwellings open to the public
- Dwellings conditionally exempt from inheritance tax.

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It is important to note that the above reliefs must be claimed in an ATED return.

ATED is charged at rates on a sliding scale: for 2021/22 rates range from £3,700 for properties valued between £500,001 - £1m to £237,400 for properties over £20m, depending on the value of the property on 1 April 2017 if then held, or on a later acquisition or revaluation date. Properties must be revalued every five years.

The normal filing and payment deadlines for properties held at the start of each year are 30 April in the tax year in question. Late filing of ATED returns, even when Nil payable (e.g. because a property is commercially let) results in penalties.

## RENTAL INCOME

### Income Tax

Where received by individuals and trusts, net rental income after allowable expenses, including repair costs, is chargeable to UK income tax and calculated on an accruals basis where annual rents exceed GBP 150,000, or on a cash basis where rents are lower.

Deductions can be made in certain restricted circumstances for tax depreciation (see below). Interest is not deductible, but instead basic rate tax relief (20%) is given for interest incurred in the personal income tax calculation of the landlord.

Progressive income tax rates apply up to 45%. In general, unless properties are held in more than one capacity, rents from all sources are considered a single business, so rental profits and losses across properties are offset. Where there are excess losses in any year, these are carried forward and set against future profits of the rental business.

An annual tax return is required to be prepared assessing net rental profits for the period to 5 April each year (Tax Year). This return is required to be submitted by 31 January following the year of assessment.

Tenants will have a withholding tax obligation in respect of rents paid to a landlord who has not registered to file tax returns.

Income tax is settled in three instalments, on 31 January during the relevant Tax Year and on 31 July and 31 January following the Tax Year. The first two instalments are each based on half the tax liability for the previous Tax Year. The third instalment is the balancing amount. Following submission of the annual tax return, any overpayment of UK tax can be reclaimed. Interest and, in some cases, penalties can arise on the late payment of tax.

### Corporation tax

Non-UK resident companies undertaking a trade in UK land or which are in receipt of net rental income are chargeable to corporation tax on their trading or rental profits. Currently this is at a rate of 19% but from April 2023 this will increase to 25% for companies with profits over £250,000. Non–UK resident companies making capital gains on the disposal of UK investment property or on shares deriving their value from UK property are also chargeable to UK corporation tax.

There are significant differences in the tax rules between income tax and corporation tax. In particular, companies and groups chargeable to corporation tax are subject to a restriction in the deductibility of interest. Subject to a public infrastructure benefit exemption, the rule will apply for groups on an aggregated UK basis to restrict net interest deductions to the higher of:

- £2m net interest
- 30% of 'tax-EBITDA'
- 'Tax-EBITDA' multiplied by the group's ratio of external interest to EBITDA.

Companies in a real estate investment group could be 'qualifying companies' able to elect for the exemption if they meet the following conditions:

- All of the company's profits and gains are fully chargeable to UK tax
- The company, along with any other associated qualifying companies, does not have significantly more debt than other comparable companies in the group
- The debt for which exemption is sought must be secured only on the 'qualifying exempt assets' or shares of the company or the qualifying assets or shares of other qualifying companies (the 'recourse' condition)
- Other than to an insignificant extent, the assets and income of the company must relate to qualifying activities.

For a real estate investment group, qualifying activities are most likely to be:

- Holding UK property which is let, or which is to be let, to an unrelated party for a term of less than 50 years
- Holding shares in qualifying companies (for example shares in a subsidiary letting property to an unrelated party)
- Making loans to qualifying companies (for example lending down to a subsidiary letting property to an unrelated party).

### Tax Depreciation

In general, capital expenditure and related expenditure, such as land and acquisition costs, are not deductible.

The cost of replacing soft furnishings and moveable furniture in residential properties may be claimed against the rental income on the letting of a furnished residential property.

An annual deduction of 3% is given for the original cost of construction and/or enhancement of commercial buildings.

An annual deduction at rates of either 6% or 18% is given for specific fixtures, plant and machinery in commercial properties.

### Withholding Tax

A non-resident landlord's UK lettings agent, or in the absence of an agent, the tenant, is obliged to withhold 20% of the rent payment and pay this to the Tax Authorities. However, under the non-resident landlord scheme, the UK Tax Authorities can agree to gross payment of rents (without tax withholding), providing annual returns are prepared and tax paid by the landlord.

### Value-Added Tax (VAT)

Rental income from residential property is exempt from VAT and not subject to the option to tax. However, the first rental payment arising from the grant of a long lease (more than 21 years) by a developer of new residential property may be zero-rated. In general, residential landlords cannot recover VAT incurred on expenditure related to their properties.

Rental income from commercial property is exempt from VAT, but subject to an option to tax. The option to tax converts rental income from exempt to standard rated and allows the landlord to recover VAT incurred on the property. The use of the option to tax is particularly important where a landlord has incurred expenditure on the development or refurbishment of a property. In certain circumstances (for example letting to some charities or to connected parties that cannot recover all of their VAT), the option to tax can be disapplied from rents, and this can result in a loss of input tax to the landlord.

## DISPOSAL OF A PROPERTY

### Non-UK Resident Individuals and Trusts

Capital gains tax (CGT) is charged at rates of up to 28% for gains accrued on or after 6 April 2015 arising on the disposal of UK residential property by non-UK resident individuals and trusts.

Principal private residence (PPR) relief will be available where a property has been an individual's main residence during its ownership, to fully or partly relieve the gain.

However, PPR relief will not apply for a tax year during which the person (or their spouse/civil partner) did not spend at least 90 midnights in that property (or other properties in the UK).

CGT will also be charged at rates of up to 20% on gains accrued on or after 6 April 2019 arising on the disposal of: UK commercial property; holdings in collective investment vehicles deriving 75% or more of their value from UK property, and shares in narrowly controlled companies which derive 75% or more of their value from UK property.

An annual exemption from gains is available to individuals (£12,300 for 2021/22) and trusts (£6,150 for 2021/22).

Vendors must report disposals to HMRC, claim any PPR relief, and pay any tax due within 30 days of completion, unless they already submit annual self-assessment returns to HMRC, in which case they must still report disposals within 30 days on those returns, but can pay tax on the normal self-assessment due date.

### Non-UK Resident Companies

CoCompanies are chargeable to UK corporation tax (currently at a rate of 19% but will increase to 25% from 1 April 2023 for companies with profits over £250,000) on gains arising from: the disposal of UK property held for the purposes of investment; the disposal of holdings in collective investment vehicles deriving 75% or more of their value from UK property, and the disposal of shares in narrowly controlled companies which derive 75% or more of their value from UK property.

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Historically, non-resident companies were not chargeable to UK tax on gains. The extension of UK tax to the gains of non-residents has been phased in since 6 April 2013. Accordingly, the chargeable gain actually chargeable on disposals is calculated by reference to the market value on the date on which a charge to tax on the asset in question first applied, or the acquisition cost if later. For most residential properties the valuation date for this purpose will be 6 April 2015, but in some cases could be 6 April 2013 (for example properties within the scope of the ATED) or 6 April 2019 (for example care homes and properties held by collective investment schemes with diverse ownership).

It will generally be necessary for companies to register for corporation tax within three months of the date of sale of the property/shares, if not already registered for corporation tax in respect of rental income derived from the property. The due date of payment for the tax is linked to the company's accounting period (the date to which it makes up its tax return which in most cases is the date to which it makes up its accounts but can be earlier, for example in circumstances where the only exposure to UK corporation tax is a gain on the disposal of a property). Generally, corporation tax is due nine months and one day after the end of the accounting period, but could be payable in instalments if certain thresholds linked to the level of taxable profit and the number of associated companies are exceeded.

### Dealing in or developing UK land

Profits of resident and non-resident companies and individuals from disposals of land derived from a trade of dealing in or developing UK land, including disposals of assets such as shares deriving their value from land which has been developed) are chargeable to UK corporation tax or income tax, irrespective of the residence status of the landowner, and regardless of whether or not the activity is conducted through a permanent establishment.

The legislation is detailed, but amounts are treated as profits of a trade of dealing in or developing UK land where one or more of the following conditions are met:

- The main purpose, or one of the main purposes, of acquiring the land was to realise a profit or gain from disposing of the land
- The main purpose, or one of the main purposes, of acquiring any property deriving its value from the land (e.g. shares in a property development company) was to realise a profit or gain from its disposal
- The land is held as trading stock
- (Where the land has been developed) the main purpose or one of the main purposes of developing the land was to realise a profit or gain from disposing of the land.

These rules can apply to assets deriving their value from land, such as shares, in which case any gain on the disposal of the shares would be taxable as an income receipt instead of as a capital receipt. In the case of non-residents, this would mean that the tax base of the shares would be the market value on 6 April 2016 (or the date of acquisition if later), rather than the revaluation dates considered above in respect of assets held for the purposes of investment.

### VALUE ADDED TAX (VAT)

The standard VAT rate is currently 20%, and for 2021/22 registration for VAT is required where taxable supplies (standard rated, reduced rated or zero-rated) exceed £85,000. Sales and lettings of property are generally exempt from VAT, but where an option to tax has been made on commercial property, VAT is charged at the standard rate.

The first sale of a freehold or the first grant of a long lease in new residential property by the person constructing (or converting from commercial) that property is zero-rated. Other sales or letting of residential property are exempt from VAT. Where a property disposal or letting is exempt, no VAT is chargeable on the rent or disposal consideration, although VAT suffered on associated costs cannot be reclaimed.

The freehold sale of new commercial property (less than three years old) is subject to VAT at the standard rate. Other sales or lettings of commercial property are exempt from VAT, subject to the option to tax. When making an option to tax, consideration needs to be given both to the impact on the seller/landlord's VAT recovery position and to the buyer/tenant's VAT position. Certain disposals of commercial investment property can qualify as business transfers (TOGC) and will be free of VAT.

### TAX-ADVANTAGED PROPERTY INVESTMENT FUND STRUCTURES

There are four types of tax-advantaged property investment structures:

a. Real Estate Investment Trusts (REITs)
b. Property Authorised Investment Funds (PAIFs)
c. Collective Investment Vehicles which have made an exemption election (CIVs)
d. Investment Trust Companies (ITCs)

The main advantage of these structures is that these entities are not liable to corporation tax on investment property income (REITs and PAIFs) or investment property gains (REITs, PAIFs, ITCs and CIVs), and the point of taxation is thereby shifted.

### INHERITANCE TAX

On death, non-UK domiciled individuals are liable to IHT at a rate of 40% on the value of their UK-sited assets in excess of £325,000 (the nil-rate band (NRB)). An additional nil-rate band is available when a residence is passed on death to a direct descendant, or when a person downsizes or ceases to own a home and assets of an equivalent value, up to the value of the additional nil-rate band, are passed on death to direct descendants. The additional nil-rate band is £175,000.

There is a tapered withdrawal of the additional nil-rate band for estates with a net value of more than £2 million, at a withdrawal rate of £1 for every £2 over this threshold.

Surviving spouses and civil partners can claim the proportion of the NRB and additional NRB that was not utilised by the deceased spouse or civil partner. Transfers between spouses/civil partners may be exempt from IHT, depending on their domicile status.

Companies are not subject to IHT. Therefore, many non-UK investors have in the past used offshore holding companies to avoid IHT. However, since April 2017, all UK residential property held directly or indirectly by foreign domiciled persons is subject to IHT. This applies even when the property is owned through an indirect structure, such as an offshore company or partnership.

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