Snapshot Public Affairs

Tax Briefing

- Updated Tax and Regulations Guide available online
- Major changes in tax regulation adopted in 2017
- Other far-reaching measures still under consideration

Review of changes in tax treatment of non-listed real estate funds

The European non-listed real estate industry is under ever closer scrutiny by policy makers and tax authorities. New rules regarding the tax treatment of non-listed real estate investments were introduced in many European countries in 2017. In other countries, potentially far-reaching changes are still being discussed.

‘All EU Member States obliged to adopt minimal requirements of OECD BEPS’

The INREV Tax and Regulations Guide, updated in February 2018, gives an up-to-date picture of the tax rules impacting the treatment of non-listed real estate investment. The guide helps INREV members improve their knowledge and awareness of existing tax and regulatory issues affecting the non-listed real estate industry in 18 European countries.

The Tax and Regulations Guide can be found at: inrev.org/tax-regulations

Highlights of tax changes adopted in 2017

EU

Under the Anti-Tax Avoidance Directive adopted by the EU, all 28 EU Member States are obliged to adopt the minimal requirements of most OECD BEPS Action Plan recommendations. These new measures include interest deduction limitations (Action 4), country-by-country reporting (Action 13), and others.

The OECD’s BEPS Action Plan 6 on Tax Treaty Abuse, implemented via the Multilateral Instrument (signed by most Members) and the updated Model Tax Treaty Commentary (notably example M) contain language favourable for non-listed real estate funds using special purpose vehicle (‘SPV’) structures.

Germany

The German Supreme Court of Finance ruled that disposal gains of non-resident corporate shareholders on the sale of shares in German corporations are fully exempt from German Corporate Income Tax if certain conditions are met.

Poland

Following years in which anti avoidance legislation was adopted, the Polish 2018 tax reform brought further tax restrictions including a minimum CIT for real estate companies, limited use of carry forward losses, limited interest tax deductions and limited deductibility of cost of intangible services.

Tax changes still being actively considered

Germany

Discussion of expanding the scope of the German RETT Act to include sales of 95% or less of the company’s share capital continues, but has not yet been resolved. Formation of the new government has refueled the debate as RETT law reform intentions have been announced.

Netherlands

The Dutch coalition government agreement includes a plan to abolish the FBI *('fiscale beleggingsinstelling')* status for real estate funds that directly invest in real estate. The FBI limits taxation to the shareholder level, while the FBI funds themselves benefit from a reduced 0% CIT rate on their real estate income provided they distribute all profits to their shareholders.

Sweden

A special legislative proposal suggested treating real estate share deals sales the same as asset deal sales. The debate of this controversial idea continues and a parliamentary debate may follow this year.

UK

The UK government intends to tax capital gains realised by non-UK resident investors in UK property, effective from April 2019, with property values being re-based on the same date. The proposal would include gains on UK commercial property and 'property rich' vehicles.

The INREV Tax Committee continues to monitor all tax developments closely. Updates are provided regularly through the INREV News and the monthly Tax & Regulatory Briefing Calls that take place on the last Thursday of each month.

Get up-to-date on rules impacting non-listed real estate investment at inrev. org/tax-regulations