Hogan Lovells

COVID-19 – Real Estate Tax Issues in Europe

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There are huge challenges for the real estate sector in Europe in the current environment, with tenants looking to re-negotiate leases or unable to pay their rents, property valuations looking very uncertain, affecting loan-to-value covenants on existing real estate loans and funding for new transactions, and construction work coming to a halt in some cases. In light of these factors, we have set out here some of the tax issues around Europe for the real estate sector that we have been addressing recently.

Relieving measures

The phrase "cash is king" has become very popular. European countries have quickly introduced measures to reduce the cash effect of tax payments to provide more liquidity to affected enterprises. These measures include:

- the deferral of income taxes and VAT payments, e.g., an interest-free suspension of taxes due by 31 December 2020, has been granted in Germany upon application, if the taxpayer is directly affected by the COVID-19 pandemic; the UK has announced a deferral of VAT payments due between 20 March and 30 June until 31 March 2021; other European countries have taken comparable actions;
- the rebate or reduction of prepayment of taxes, e.g. in Germany and France;
- the suspension of tax enforcement measures in many European countries, with late payment fees or penalties not being levied by some tax authorities.

Potential problems

Furthermore, the current situation with people working remotely and not able to travel creates uncertainties regarding tax residency of funds and investment vehicles.

- The tax residency of investment vehicles, which usually depends on the place of management, is at risk with directors being unable to travel. The UK has published guidelines indicating that the UK tax authority will not necessarily treat a non-UK company as becoming UK resident because some decisions are taken in the UK over a short period of time. However, for other jurisdictions, until a clear statement from the relevant tax authorities is provided, management activities should be reduced to the extent possible until all directors can safely travel to the relevant jurisdiction;

- In a helpful development, the OECD published guidance on 3 April 2020 which states that it is unlikely that the COVID-19 situation will create any changes to an entity's residence status under a tax treaty, noting that a temporary change in the location of senior executives due to the COVID-19 crisis should not trigger a change in residency.

Remaining tax issues

Although relieving measures have been introduced, there are still many obstacles for the real estate sector from a tax perspective, including:

- a lack of consistency in approach in some countries (e.g., in Germany with the restructuring law and real estate transfer tax);
- European VAT law usually requires landlords to account for VAT, even if no actual rent payment has been received, and a significant time period (e.g. six months in the UK) has to pass until a rebate of VAT can be requested where there is a non-payment of the rent;
- interest payable on loans provided by the government could exceed the threshold for tax deductible finance costs under the interest limitation rule in the EU Anti-Tax Avoidance Directive.

If any of these issues are relevant to your business, then we may be able to share experiences with you that could help you find ways through the tax complexities.

Contacts

Elliot Weston
Partner, London
T +44 20 7296 2658
elliot.weston@hoganlovells.com

Mathias Schönhaus
Counsel, Düsseldorf
T +49 211 1368474
mathias.schoenhaus@hoganlovells.com