

Polish tax developments important for Private Rented Sector (PRS)

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We are pleased to present you an overview of recent Polish tax developments which can be important for PRS: (i) additional transfer taxation imposed on certain transactions and (ii) court verdicts confirming applicability of higher Real Estate Tax ("RET" - local property tax) rates to certain residential properties subject to lease.

> Additional 6% CLAT on acquisition of certain residential properties as per draft amendments to the Civil Law Activities Tax ("CLAT") Act

At this stage the draft amendments cover VAT-able acquisitions of **legally separated residential premises** (units) in the same or different buildings located on the same plot of land.

Simplifying, such units can be subject to **additional 6% CLAT** (kind of a stamp duty) in respect of **sixth and each next unit** acquired by the same buyer. The 6% CLAT will apply on top of any VAT charged on the acquisition. CLAT is imposed on fair market value of transferred assets, payable by a buyer and non-recoverable (but, as a rule, can be deductible for income tax purposes). VAT is payable by a buyer and in some cases can be recoverable (subject to multiple conditions to be analysed case-by-case).

The draft amendments are currently processed by the Senate and are **expected to be in force from 2024**. The wording and entry into force date can be still subject to changes.

Key takeaway: The amendments **can result in the additional CLAT burden for buyers of multiple residential units within the same project / location**. Note, however, that the current wording imposes the 6% CLAT only on specific transactions covering completed and **legally separated residential units**. At the same time, PRS acquisitions can cover e.g. (i) whole buildings (without legally separated units), (ii) buildings or units classified as non-residential, (iii) on-going construction by a developer on land already held by a project SPV (without any transfer of completed buildings / units to the project SPV).

As a result, **impact of the new regulations should be analysed in detail case-by-case** and the additional CLAT should not automatically apply in every new PRS project. Further legislative works should be also observed.

> RET (property tax) rates applicable in PRS

In some cases real estate owners in PRS apply **reduced RET rates** available for residential properties used to **accommodate housing needs of individuals**. It is based on the argument that the final tenant is an individual who accommodates own needs in this respect.

However, practice of tax authorities and administrative courts can be different - we are aware of their multiple standpoints that **higher RET rates** designated for properties used in business activities should be applicable in PRS. They are based on the argument that the property owner (being also the RET-payer) uses it for business activities (i.e. for lease) and the type of use by a final tenant is irrelevant.

Note that the financial difference is substantial (provided figures are statutory maximums for local municipalities which impose RET) - the annual reduced RET rate is currently ca. EUR 0.22 per sqm of a building, while the higher RET rate for business purposes is ca. EUR 6.45 per sqm (i.e. is 29 times higher).

Key takeaway: PRS investors should analyse what RET rates were applied in the past in the existing investments and consider what rates should be modelled for future investments. **Applicability of the reduced rates requires detailed analysis** and may be ultimately disallowed (it can be clarified via an individual tax ruling application).

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