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# Tax optimization of development projects under Slovak law



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# 1. Introduction

## Development projects in SR:

- ❖ Asset deal - transfer of the ownership right to a real estate asset by means of a sale-purchase contract.
- ❖ Share deal - indirect transfer of real estate ownership by means of the acquisition of
  - shares (limited liability company),
  - stocks (joint-stock company)in a company owning the respective assets.

## 2. Tax aspects of asset deal

### Real estate transfer tax

- ❖ Not applied since 1<sup>st</sup> January 2005.

### Real estate tax

- ❖ Land, buildings and housing tax.
- ❖ Paid by the owner of the real estate on 1<sup>st</sup> January of the respective calendar year.
- ❖ Tax rate depends on the region where the real estate is situated.

## 2. Tax aspects of asset deal

### Corporate income tax

#### 1. Seller is a Slovak tax resident

- ❖ Tax base = income from sale reduced by the residual price (i.e. purchase price/acquisition cost reduced by tax depreciations).
- ❖ Tax losses from the sale are tax relevant (except for tax losses from the sale of land).
- ❖ Tax rate 19 %.
- ❖ Non-resident purchaser - Application of the respective Double Taxation Treaty (DTT).

## 2. Tax aspects of asset deal

### Corporate income tax

#### 2. Seller is a Slovak tax non-resident

- ❖ Generally, income from Slovak tax residents from the sale of real estate in SR is considered as income from sources in SR.
- ❖ Analogous taxation rules as for Slovak tax residents.
- ❖ Tax securement of 19% of the purchase price.
- ❖ Application of the DTT.

## 2. Tax aspects of asset deal

### Value added tax (VAT)

- ❖ Taxable supply with the place of supply in SR.
- ❖ Generally, supply of buildings is subject to VAT, supply of land is VAT exempt; exceptions:
  - supply of “older” buildings (i.e. 5 years after the first Use Permit) including the respective building land,
  - supply of building land.
- ❖ VAT rate 19 %.

# 3. Tax aspects of share deal

## Corporate income tax

### 1. Parent company is a Slovak tax resident

- ❖ Tax base = income from the sale reduced by the purchase price of share/stock.
- ❖ Sale loss is not tax relevant; whereas profits and losses from transactions with different
  - shares may not be compensated (shares considered individually),
  - stocks may be compensated within one tax period.
- ❖ Tax rate 19 %.
- ❖ Non-resident purchaser - DTT

# 3. Tax aspects of share deal

## Corporate income tax

### 2. Parent company is a Slovak tax non-resident

- ❖ Generally, income from Slovak tax residents for the sale of shares/stocks in entities seated in SR is considered as income from sources in SR.
- ❖ Application of the DTT.

# 3. Tax aspects of share deal

## Corporate income tax

### 2. Parent company is a Slovak non-resident

#### ❖ Alternatives in DTT:

- income is taxable in the residence state of the parent company - majority of DTT's,
- income is taxable in SR
  - tax securement of 19 % of sale price,
  - parent company is obliged to submit corporate income tax return (tax securement credited) in SR.

# 3. Tax aspects of share deal

## VAT

- ❖ Supply of a VAT exempt financial service under the Slovak legislation.
- ❖ Reverse-charge mechanism.

# 3. Tax aspects of share deal

## VAT

### 1. Parent company seated in SR

#### ❖ Alternatives:

- Purchaser seated in SR – VAT exemption for financial services applied,
  - Purchaser seated outside SR – place of supply in the purchaser's residence state, VAT legislation of this state applied.
- ❖ Generally, parent company is not entitled to claim the input VAT deduction with respect to the acquisition or administration of share/stock.

# 3. Tax aspects of share deal

## VAT

### 2. Parent company seated outside SR

#### ❖ Alternatives:

- Purchaser seated in SR – application of the Slovak legislation (VAT exempt financial service, no entitlement to input VAT deduction).
- Purchaser seated outside SR – Slovak legislation not applied.

## 4. Comparison of tax aspects of both models

### Seller's/developer's viewpoint – Asset deal

#### ❖ Advantages:

- Tax loss is tax relevant (except for tax loss from the sale of land).
- Entitlement to the input VAT deduction (except for VAT exempt supplies).

#### ❖ Disadvantages:

- Risk of double taxation of the sale income.

## 4. Comparison of tax aspects of both models

### Seller's/developer's viewpoint – Share deal

#### ❖ Advantages:

- Transfer of the whole project with all its past and future liabilities and risks.
- Income from the sale taxed only once.

#### ❖ Disadvantages:

- Tax loss is not tax relevant.
- Transfer is generally VAT exempt without entitlement to claim the related input VAT deduction.

## 4. Comparison of tax aspects of both models

### Purchaser's viewpoint – Asset deal

#### ❖ Advantages:

- Purchase price of real estate may be included in tax expenses in form of depreciations (except for land).
- Input VAT deduction with regard to non-exempt supplies.

#### ❖ Disadvantages:

- No input VAT deduction if the real estate used for supplies, which are VAT exempt.

## 4. Comparison of tax aspects of both models

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### Purchaser's viewpoint – Share deal

#### ❖ Advantages:

- If purchaser seated in SR, the sale of share/stock is VAT exempt.

#### ❖ Disadvantages:

- Purchaser acquires the whole company with its past and future risks and liabilities.
- Purchase price is included into tax expenses only in the case of a future sale of share/stock.



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