

**THE LEGAL ASPECTS OF
REAL ESTATE INVESTMENTS
in Slovakia, the Czech Republic
and Ukraine**

Financing Real Estate Markets in CEE and CIS
Bratislava, November 29-30, 2006



PETERKA & PARTNERS

Advokátska kancelária, Law Offices, Cabinet d'avocats

by Ondřej Dušek

PETERKA & PARTNERS

Bratislava, SLOVAK REPUBLIC

A decorative graphic on the left side of the slide, resembling a golden curtain with a wavy, textured pattern.

CONTENTS

- I. Business Environment
- II. Real Estate Taxation
- III. VAT Issues
- IV. Transfer of Capital

I. Business Environment

	SLOVAKIA as of June 30, 2006	CZECH REPUBLIC as of June 30, 2006	UKRAINA 2005
GDP per capita	EUR 7.660*	EUR 10.886*	EUR 1.294
Expected growth	6,70%	6,20%	6,50%
Unemployment	10,40%	7,40%	7,50%
Inflation	4,60%	2,70%	3,00%
Average monthly wage	EUR 509	EUR 695	EUR 153

Source:

www.statstics.sk

www.czso.cz

www.ukrstat.gov.ua

* www.mfcr.cz - Prediction

I. Business Environment

ADVANTAGE OF INVESTING

➤ **SLOVAKIA**

- Pro – investment reform policy
- Low Labour Costs and well-educated population
- Low Taxes - Flat tax rate of 19% (VAT and income taxes)
- State support

➤ **CZECH REPUBLIC**

- Efficient infrastructure
- Skilled and relatively cheap work force
- High credit rating

➤ **UKRAINE**

- Pro – investment reform policy
- Very low Labour Costs and educated population
- Taxes: Corporate income tax of 25%; VAT of 20%
- 1-step registration of legal entities
- Major infrastructural modernization
- Geographical location (cross roads EU-RUS)

I. Business Environment

STATE SUPPORT FOR INVESTORS

➤ SLOVAKIA

- State aid including investment incentives
- Industrial Parks
- Specialized agencies and state authorities
 - Slovak Investment and Trade Development Agency (SARIO) www.sario.sk
 - National Agency for Development of Small and Medium Enterprises www.nadsme.sk
 - Ministry of Economy of the Slovak Republic www.economy.gov.sk

I. Business Environment

STATE SUPPORT FOR INVESTORS

➤ *CZECH REPUBLIC*

- State aid including investment incentives
- Industrial Parks
- Specialized agencies and state authorities
 - Investment and Business Development Agency
www.czechinvest.cz
 - Information and labour server for Small and Medium Enterprises www.ekoinfo.cz
 - Ministry of Industry and Trade of the Czech Republic
www.mpo.cz
 - Czech Trade www.czechtrade.cz

I. Business Environment

STATE SUPPORT FOR INVESTORS

➤ *UKRAINE*

- State aid (including investment incentives)
- Foundation of Industrial Parks, Free economic zones
- Specialized agencies and state authorities
 - Ministry of Economy of Ukraine www.me.gov.ua

II. Real Estate Taxation

1. REAL ESTATE TRANSFER TAX

➤ SLOVAKIA

- Tax rate 0%
(cancelled as of January 1, 2005)

➤ CZECH REPUBLIC

- Tax rate 3%
- The tax base is either the transfer price or the value determined by an expert, if this value is higher than the agreed transfer price

➤ UKRAINE

- State duty (compulsory notary fees) 1%
- Pension fund levy 1%
- VAT 20%

II. Real Estate Taxation

2. INCOME TAX

➤ SLOVAKIA

- The difference between the sale price and the acquisition price is subject to income tax on capital gains
- Flat tax rate: 19%
- Tax depreciation of buildings – 20 years

➤ CZECH REPUBLIC

- The difference between the sale price and the residual price is subject to income tax on capital gains
- Natural persons: tax rate starts at 12% and reaches 32% for income in excess of CZK 331,200
- Legal entities: tax rate 24%
- Tax depreciation of buildings – 30 years / 50 years for administration buildings, hotels, business centres, etc.

➤ UKRAINE

- The difference between the sale price and the acquisition price is subject to income tax on capital gains
- Corporate income tax: 25%
- Tax depreciation of buildings: 2% from depreciated cost/quarter

II. Real Estate Taxation

3. PROPERTY TAX

➤ *SLOVAKIA*

- Every owner of real estate (land plot, building, apartment, non-residential premises) pays the tax
- The tax rate depends on a regulatory act of a municipality on the territory of which the real estate is located

➤ *CZECH REPUBLIC*

- Every owner of real estate (land plot, building, apartment, non-residential premises) pays the tax
- The tax rate depends mainly on a regulatory act of a municipality on the territory of which the real estate is located

➤ *UKRAINE*

- Land tax is charged on land yearly
- The land tax is 1% of the land's estimated value
- If the land does not have an estimated value, the tax rate depends on the category and location of land.

II. Real Estate Taxation

4. LEASING

➤ SLOVAKIA

- Accelerated tax depreciation of the leased buildings - 12 years
- The object of lease is depreciated by the tenant (lessee)

➤ CZECH REPUBLIC

- The minimum period of leasing for tax purposes is 20% of the period of depreciation, at minimum 8 years
- The object of lease is depreciated by the tenant (lessor)

III. VAT Issues

1. SALE OF REAL ESTATE

➤ SLOVAKIA

- The sale of real estate is generally exempt from the tax.
- Exemptions to this principle:
 - new buildings (sold earlier than 5 years after the first occupancy permit)
 - building land (land allocated for development by local authorities)
 - cases where the vendor decides to apply the tax
 - the sale of real estate as a part of the sale of the business

➤ CZECH REPUBLIC

- The sale of real estate is generally exempt from the tax.
- Exemptions to this principle:
 - new buildings (sold earlier than 3 years after the first occupancy permit)
 - building land (land allocated for development by local authorities)

III. VAT Issues



UKRAINE

- The sale of real estate is subject to VAT at the rate of 20% charged on the contract price, except when the land is sold separately
- If the value of the land on which a building is constructed is included in the sales value of the building, the entire transaction will be subject to VAT at the rate of 20%

III. VAT Issues

2. LEASE OF REAL ESTATE

➤ SLOVAKIA

- Exempt from VAT, except for:
 - *accommodation services*
 - *the letting of premises and sites for parking vehicles*
 - *the letting of permanently installed equipment and machinery*
- The lessor (VAT payer) may decide to apply VAT when leasing the property to another VAT payer.

➤ CZECH REPUBLIC

- Exempt from VAT, except for:
 - *accommodation services*
 - *the letting of premises and sites for parking vehicles*
 - *the letting of permanently installed equipment and machinery*
 - *short-term lease of apartments and non-residential premises*
- The lessor (VAT payer) may decide to apply VAT when leasing the property to another VAT payer and under the condition that the real estate is used for the performance of economic activity

III. VAT Issues

➤ *UKRAINE*

- The lessor (VAT payer) may decide to apply VAT when leasing the property to another VAT payer.
- Rate is 20%

IV. Transfer of Capital

FREE MOVEMENT OF CAPITAL

➤ SLOVAKIA

- Free movement of capital
- Repatriation of capital of a Slovak company to its foreign shareholders
- 0% dividend taxes for shareholders (both natural persons and legal entities)

➤ CZECH REPUBLIC

- Free movement of capital
- Repatriation of capital of a Czech company to its foreign shareholders
- 15% dividend taxes for shareholders (both natural persons and legal entities)
 - *can be reduced on the basis of a double Taxation Avoidance Treaty*
 - *possibility of tax exemption for parent company and its subsidiary*

➤ UKRAINE

- Free movement of capital
- Repatriation of capital of an Ukrainian company to its foreign shareholders is subject to 15% tax
- Dividend tax for natural persons is 13%

V. Acquiring and Transfer of Real Estate

OBJECTS OF ACQUISITION

➤ *SLOVAKIA and CZECH REPUBLIC*

- Lands
- Buildings (owner of the building may be different from the owner of the land plot, upon which the building stands)
- Apartments buildings
- Non-residential premises buildings

➤ *UKRAINE*

- Lands (except agricultural land)
- Buildings (owner of the building may be different from the owner of the land plot on which the building stands)
- Apartments
- Non-residential premises

V. Acquiring and Transfer of Real Estate

WHO MAY ACQUIRE REAL ESTATE?

➤ SLOVAKIA

- Slovak persons
- Slovak companies owned by foreign persons
- Foreign persons (not only from EU member states)
 - Exemptions:
 - *Agricultural and land funds located outside the built-up territory of the commune*
 - *Real estate necessarily owned by the State (rivers, natural resources, etc.)*

➤ CZECH REPUBLIC

- Czech persons
- Czech companies owned by foreign persons Foreign persons from EU member states
 - Exemptions:
 - *Agricultural and forest lands*
 - *Real estate necessarily owned by the State (rivers, natural resources, etc.)*
 - *Foreign persons not from EU member states – there is a limitation*

V. Acquiring and Transfer of Real Estate

➤ UKRAINE

- Ukrainian natural persons
- Ukrainian legal entities owned by foreign natural persons or legal entities
- Foreign natural persons and legal entities
- Exemptions:
 - *Agricultural land (only Ukrainian natural persons or legal entities, with limitations)*
 - *Real estate necessary for the Ukrainian State (airports, railways, military bases)*
- Real estate in common property of the Ukrainian people (lands and buildings in national or cultural heritage)

The right of foreign natural persons to acquire non-agricultural land:

- Within the boundaries of urbanized settlements
- Outside the boundaries of urbanized settlements, if a building in their ownership is located on the given land plot

V. Acquiring and Transfer of Real Estate

The right of foreign legal entities to acquire non-agricultural land:

- Within the boundaries of urbanized settlements, provided that they acquire a building located on the land plot or intend to construct on the land plot a building for the exercise of their commercial activities
- Outside the boundaries of urbanized settlements, if a building in their ownership is located on the given land plot

Acquisition of State or municipal land by foreign legal entities or natural persons:

- Such acquisition must result from an auction or a competitive tender
- The buyer must obtain the approval of the Parliament (for state land) or of local Council (for municipal land)

NB: *A foreign legal entity must first establish a commercial company under Ukrainian law in order to be able to acquire State or municipal land.*

A Ukrainian company with more than 10% of foreign capital is deemed to be foreigner corporation.

V. Acquiring and Transfer of Real Estate

TRANSFER OF REAL ESTATE - 2 PHASES

➤ *SLOVAKIA and CZECH REPUBLIC*

- Conclusion of the written agreement
- Registration in the Land Register

➤ *UKRAINE*

- Conclusion of the written agreement (must be notarized)
- Registration in the State Land Register

V. Acquiring and Transfer of Real Estate

RISKS

➤ *SLOVAKIA and CZECH REPUBLIC*

- Information in the Land Register may not correspond to the real situation – Land decision
- Rights of third persons may not be registered in the Land Register
- Many co-owners of real estate, in particular land plots (historic reasons)
- Pending restitution claims
- Environmental burdens (brownfields)

➤ *UKRAINE*

- Information in the Land Register is in practice not freely accessible and does not always correspond to the real situation
- Rights of third persons may not be registered
- Pending restitution claims
- Difficulties for conducting Due Diligences
- Environmental risks
- Market value estimation of real estate



PETERKA & PARTNERS

Advokátska kancelária, Law Offices, Cabinet d'avocats

www.peterkapartners.com

PRAGUE



BRATISLAVA



KYIV

