

Breaking Tax News Tackling taxes



Stability Act 2012: Introduction of Real Estate Income Tax ("ImmoESt")

Your Deloitte Tax Advisor will be happy to answer your questions.

In our Breaking Tax News No. 2 of 15 February 2012 we already reported on measures announced by the government for implementing the Stability Act 2012. Now the first draft of the tax law amendments for reducing the budget deficit has been published by the Ministry of Finance for legal appraisal. In addition to our BTN No. 2, we would like to sum up the most important changes with regard to taxation of capital gains from transfer of real estate ("ImmoESt"):

As already stated in our BTN No. 2, capital gains from selling real estate shall be subject to a **flat tax amounting to 25 %**. The speculation period of 10 years, after which real estate could be sold tax freely, will be abolished.

Furthermore, capital gains from selling **old real estate** (acquisition before 1 April 2002) shall be calculated as a lump-sum charge of 14 % of the sales revenues (**effective tax on sales revenues of 3.5 %**). In case there has been a **rededication to land for building** after 31 December 1987 the capital gains from selling the property will be raised to 60 % of the sales revenues (**effective tax on sales revenues of 15 %**).

As before, the new rules shall not apply to buildings erected by the tax payer himself, condemnations and real estate which had been used as a principal residence for at least 2 years since acquisitions. However, the exemption for buildings erected by the tax payer himself does not apply to the extent that buildings were used for generating income (e.g. rental fees). The exemption for using the real estate as a principal residence for 5 years within the last 10 years before sale is new.

The first draft of the stability act now provides further details:

- **Inflation discount:** capital gains on real estate, which has been owned for over 10 years, shall be reduced by an inflation discount. This discount amounts to a lump-sum charge of 2 % per year. The inflation discount will

only be deducted from year 11 onwards (e.g. inflation discount for 2 years in the total amount of 4 % when selling real estate in year 12).

- **Business activities:** the tax flat-rate of 25 % and the inflation discount shall also be valid for business activities regardless of the method of calculating taxable income. If, however, the **focus** of the business activities lies on **lease or sale of real estate** or if real estate is part of an enterprise's current assets, tax will be levied on the basis of the regular **income tax rate** (up to 50 %).
- **Private foundations:** the new ImmoESt is part of the **preliminary CIT ("Zwischensteuer")** regime for private foundations. This preliminary CIT will be credited according to capital income tax withheld for allowances paid by the private foundations.
- **Corporations under public law (KÖR), non-profit organizations:** capital gains on sale of real estate will henceforth be taxable.
- **No offsetting of losses:** losses from sale of real estate cannot be compensated with other income. If, however, a (voluntary) tax assessment is carried out, gains and losses from sale of real estate can be compensated; when exercising the option to taxation on the regular income tax rate, the income may be assessed at a tax rate of up to 50 %.
- **Filing obligation and liability for notary publics and lawyers as representatives:** the calculation of capital gains and the filing obligation shall henceforth be carried out compulsively in the course of real estate transfer tax returns by the representatives (self-assessment). In general, representatives are liable for payment of ImmoESt. The ImmoESt shall become due by the 15th day of the second month following the payment.
- **No deduction of expenses:** like in the capital income tax-regime, any deduction of expenses from the tax base is allowed when calculating ImmoESt. There will only be an exemption for costs allocated in the course of the self-assessment by representatives.

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