

Breaking Tax News Tackling taxes



Amendments regarding Real Estate Taxation in the course of the Austrian Tax Reform 2015/16

Further to the draft for legal appraisal regarding amendments to the Final Taxation Act as well as the "Banking Package" (see our "Breaking Tax News" No. 2/2015), the Austrian Ministry of Finance released the main part of the tax reform 2015/2016 on 19 May 2015. Regarding real estate taxation the draft provides for the following amendments.

Real Estate Gains Tax. For alienations of real estate from 1 January 2016 onwards the tax rate will be increased from 25 to 30% (also for so-called „old cases“) and the inflation-induced deduction will be abolished. If the taxpayer chooses the option to be taxed at the progressive rate instead of the REGT flat tax, expenses may henceforth be considered when determining the tax base. Losses incurred from the sale of real estate may be set off up to 60% (instead of 50%) against rental and leasing income as well as royalties. Upon request losses may also be distributed over a period of 15 years. As far as business activities are concerned, up to 60% of such losses can be set off against other income which is taxed at the progressive rate. For public as well as non-profit corporations the withholding REGT rate shall remain at 25%.

Depreciations. The depreciation rate for premises directly used for business purposes will generally be 2.5% p.a. (instead of 3% or 2% so far). Business premises that are rented out for residential purposes will be subject to a depreciation rate of 1.5% (instead of the current 2%). The depreciation rate for private real estate will remain unchanged at 1.5%. However, the depreciation base will be calculated only with 60% (instead of the current 80%)

of the historic acquisition costs (i.e. 40% "land component"), unless a different percentage is proven by the tax payer. These changes will also be applicable to real estate, which is already rented out. In case of an evident and considerable discrepancy between the new provision and the actual circumstances the tax authorities are entitled to apply a different ratio. Currently, maintenance costs and costs for repair of residential buildings are subject to distribution over a period of 10 years. From 1 January 2016 onwards, this period shall be extended to 15 years (the rule shall also apply to ongoing distributions).

Real Estate Transfer Tax for donations and inheritances. Only the taxation of transfers of agricultural and forestry land within the family circle shall remain unchanged at 2% of the single tax value ('Einheitswert'). When transferring other real estate there will no longer be a beneficial taxation within the family circle (former tax rate of 2% of the triple tax value) from 1 January 2016 onwards. In the absence of an expert opinion the **land value** will henceforth be the RETT base. The land value is based on the fair market value (standardized values according to the real estate's location will be provided in a MoF decree). Moreover, the land value will be the tax base for both transfers within and outside the family circle. If the consideration (e.g. purchase price or assumption of a mortgage) amounts to over 70% of the land value the applicable RETT will be 3.5% of the land value ("acquisition with consideration"). If the consideration's value lies between 30% and 70% of the land value, only the consideration will be subject to 3.5% RETT. The remainder of the land value will be subject to the progressive RETT rates for acquisitions without consideration

("acquisition with a certain consideration"). If the consideration amounts to 30% of the land value or less ("acquisition without consideration"), the RETT rate will be applicable to the entire land value. **The progressive tax rates** amount to 0.5% for land values ranging from EUR 0 to EUR 250,000, 2% from EUR 250,000 to EUR 400,000 and 3.5% from EUR 400,000. For transfers of enterprises without consideration the tax exempt amount will be increased from EUR 365,000 to EUR 900,000 and RETT is capped with 0.5% of the entire land value. In the case of **restructurings** a RETT rate of 0.5% will generally be applicable. Upon request, the RETT in the amount of 0.5% can be distributed over a period of 2 to 5 years. Moreover, inheritances and donations between spouses as well as registered partners regarding their principal residence are tax exempt up to a size of 150 square meters. If the residence's size exceeds this threshold, the exceeding portion will be subject to RETT.

Real estate owning companies. For acquisitions from 1 January 2016 onwards, the transfer/unification of at least 95% of the shares in a company holding Austrian real estate is a taxable transaction triggering 0.5% RETT from the land value. RETT will also be triggered if at least 95% of the shares in a real estate owning partnership are transferred to new shareholders within a period of 5 years. According to the current legal situation, all shares in the company have to be transferred/unified in order to trigger 3.5% RETT from the triple tax value. Shares held by a trustee will for tax purposes henceforth be attributed to the trustor.

We will keep you updated on the further developments regarding the legislative procedure.

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