

## Concerning draft of real estate tax changes

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On 17 June 2024, the long-awaited draft of amendments to the real estate tax regarding the definitions of a structure and a building appeared, which are to take effect from 2025. The changes are necessitated by rulings of the Constitutional Tribunal, in particular in the context of the unacceptable reinforcement of the Building Law. Contrary to the original announcements, the Ministry of Finance has proposed a regulation that does not represent the *status quo* in relation to the current legislation. The proposed interferences are serious and may result in an extension of the scope of taxation of business assets. Below are selected proposed concepts:

- 1) Reinstating the **premise of the 'technical and utilitarian whole'** for structure components, which until 2016 caused numerous disputes with the tax authorities - this may result in additional non-construction components being included for taxation, such as: technical parts, computers, equipment electronics;
- 2) Taxing the **construction parts of wind and nuclear power plants** (as at present) - but failing to explicitly identify **PV power plants** may mean that they risk being taxed on the whole (including PV panels); especially as the authorities will be able to rely on the premise of the 'technical whole';
- 3) Indication directly for taxation as structures of **tanks, silos, storage bunkers** - in our opinion, there is still room for a different qualification of facilities that perform **technological functions** in addition to their storage function;
- 4) The inclusion in taxation as structures of **"tent coverings"** and **"pneumatic shells"**, which up to now have been qualified for taxation in very different ways, often remaining outside of taxation; the terms used raise our doubts, which can be a sticking point for the different qualification of objects;
- 5) The category of structure is to be: *"free-standing permanently attached to the ground: (...) an industrial installation and a technical device"* - these categories have always raised difficulties of interpretation, the draft regulation does not exclude them, with the result that an important area of dispute with the tax authorities remains topical;
- 6) The structure is supposed to be, among other things, an 'electricity grid', for which there are doubts about the components, especially the **transformer**; the regulations do not specify the equipment, but from the wording of the explanatory memorandum it seems that it should be taxable;
- 7) **Container facilities** permanently attached to the ground are to be structures (without priority for buildings), as are **sheds and hangars**;
- 8) Removal of the railway infrastructure exemption for **freight terminals**; it appears in the explanatory memorandum that even the notification application to the European Commission has been withdrawn;
- 9) Removal of the requirement that the structure be 'erected' using **construction products** - it is sufficient that it is 'made of' them (and therefore need not have anything to do with the construction process).

- 10) As a positive element, it should be pointed out that in **complex facilities**, such as sewage treatment plants and sports facilities, the definition of a **building** is to take priority over the part of the complex that is a building, even if such a complex facility is listed as a structure - this may allow a certain rationalization of the tax base.

A public consultation is assumed over the next 3 weeks. As MDDP, we intend to take an active part in them, representing the interests of entrepreneurs. We will also provide support in formulating positions to industry organizations.

#### What can and should be done now? How can we help?

- 1) It is necessary to assess whether and how the new regulations may affect the scope of taxation, what risks and opportunities are involved, what change in the level of taxation is to be expected and what formal obligations may arise - we help, among other things, through full asset reviews with the results in the form of reports, as well as spot-checking questionable assets;
- 2) At subsequent stages, we provide support in tax proceedings and when applying for tax rulings.
- 3) In our view, great importance should be attached to the fixed asset register, which is primarily verified by the municipal tax authorities. We propose measures to verify and adjust the records, including by settling investments into fixed assets (cost segregation).

**We encourage you to submit your comments and observations to us, this we will pass on to the Ministry. Our contact is:**

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or with your advisor from MDDP.

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