

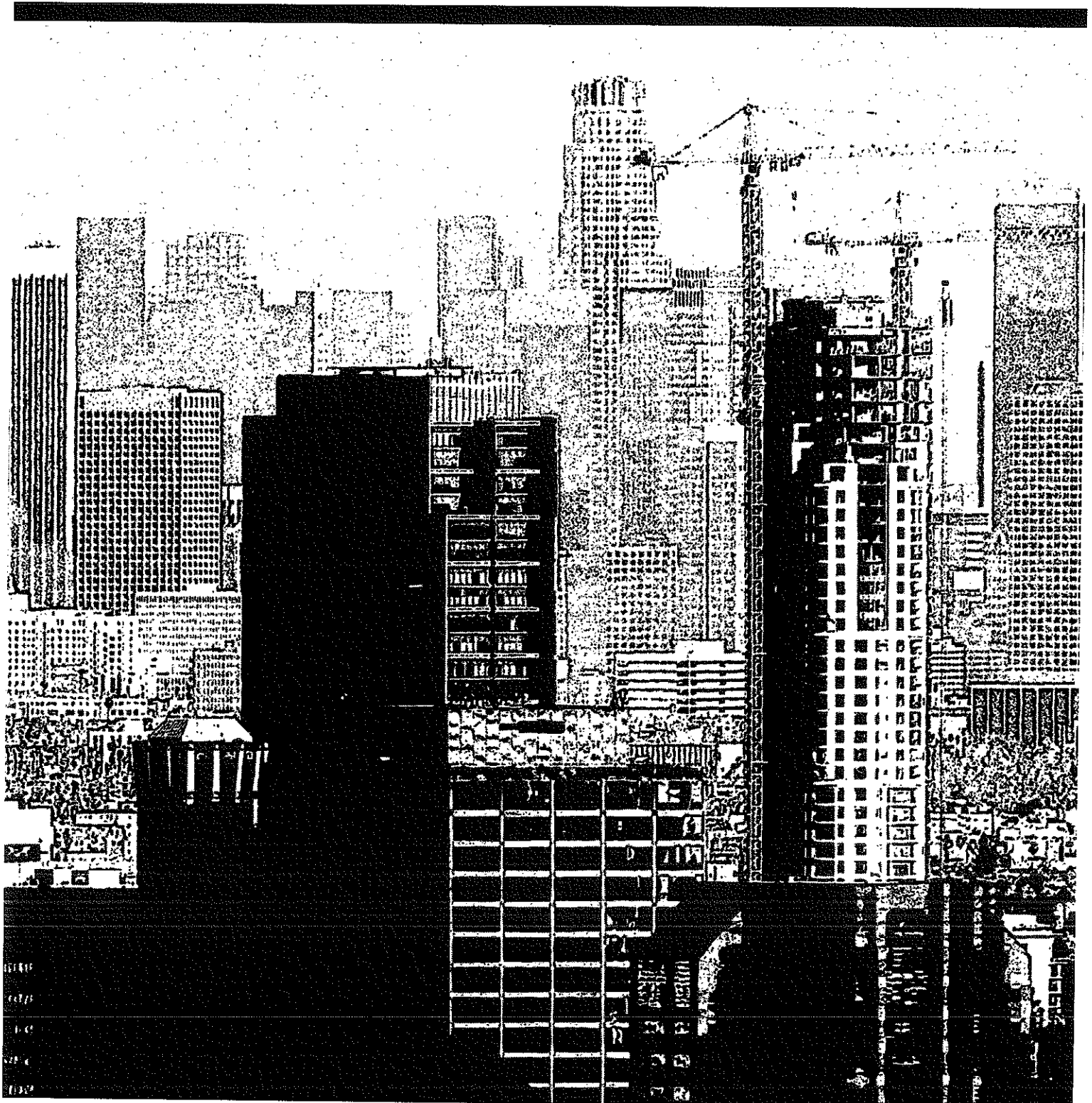


the global voice of
the legal profession®

Real Estate

Newsletter of the International Bar Association Legal Practice Division

VOL 15 NO 2 SEPTEMBER 2011



In this issue

From the Chair	4
From the Editor	5
Committee officers	6
IBA Annual Conference Dubai, 30 October – 4 November 2011: Our committee's sessions	7
Country reports	
Argentina	
Bill to limit the purchase of rural land by foreigners	10
Australia	
Misrepresentation by silence in Australia: The death of caveat emptor?	12
Brazil	
Restrictions on the ownership of rural real estate property by foreigners	13
Croatia	
Conversion of agricultural land – ten times lower charges	19
Cyprus	
Planning amnesty in Cyprus	20
Denmark	
Indirect taxes – back to basics and opening of new frontiers	21
Dubai	
The impact of the Jointly Owned Property Law on hotels and branded operators in Dubai	22
France	
Financing French investment properties	25

India

FSI and TDR in Mumbai	26
-----------------------	----

Indonesia

Condominium law in Indonesia	27
------------------------------	----

Luxembourg

The European Alternative Investment Fund Managers Directive: How will it affect managers of real estate funds?	29
--	----

Mexico

Development Capital Certificates (CKDs): The bet for financial recovery of the real estate market	32
--	----

Poland

Is the acquisition of a perpetual usufruct fully protected by the principle of public credibility guarantee for land and mortgage registers under Polish civil law?	33
New rules in waste management	35

Romania

Opportunities for private investors created by the new Romanian PPP Law	38
--	----

Spain

New tax agreement between Germany and Spain: Will there be changes to taxation on real estate capital gains?	39
--	----

Ukraine

Taxation of real estate transactions in the light of the new Tax Code	40
--	----

UK

Rethinking easements and restrictive covenants	43
Planning to sell and leaseback? Are you accountable?	46

International Bar Association

4th Floor, 10 St Bride Street
London EC4A 4AD, United Kingdom
Tel: +44 (0)20 7691 6868
Fax: +44 (0)20 7691 6564
www.ibanet.org

© International Bar Association 2011.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without the prior permission of the copyright holder. Application for permission should be made to the Head of Publications at the IBA address.

Advertising

Should you wish to advertise in the next issue of the Real Estate Committee newsletter, please contact the IBA Advertising Department.
advertising@int-bar.org

Contributions to this Newsletter are always welcome and should be sent to Gerardo Carrillo Valadez at the address below:

Newsletter Editor

Gerardo Carrillo Valadez
Haynes & Boone, Mexico City
Tel: +52 (55) 5249 1847
Fax: +52 (55) 5249 1801
gerardo.carrillo@haynesboone.com

This newsletter is intended to provide general information expressed in this regarding recent developments in real estate law. The views publication are those of the contributors, and not necessarily those of the International Bar Association.

attention of public authorities and non-profit and non-political organisations promoting the business community in Romania. The PPP Law appears suitable mainly for projects that can generate revenues themselves, a fact that may be discouraging for private investors. Given that the PPP Law would seem to exclude availability payments to the project company, investors must be very confident that the project will produce enough revenue to cover the costs of the investments and to generate profit.

Nonetheless, PPP projects, as regulated by the PPP Law, bring undeniable benefits, such as:

- the increase of efficiency in the implementation of projects;
- the possibility of benefiting from the know-how of the private sector;
- the possibility of financing more projects;
- the allocation of risk between the public partner and private partner;
- the enhancement of the investment environment.

Additionally, upon publication the PPP Law provided that the PPP project shall be

initiated by the public partner, who shall analyse and select certain private investors, with which it shall further negotiate and finally conclude the PPP contracts. The PPP Law has been criticised by the European Commission in consideration of the uncompetitive procedure of awarding the contract to a private investor on the basis of an expeditious negotiation procedure contravening European procurement legislation. The entire awarding procedure was amended in April 2011 under pressure from the European Commission. Currently the methodological norms are under scrutiny by the European Commission.

Although several months have passed since the PPP Law entered into force, no project has been implemented or initiated under the new legal framework. It is expected that the above-mentioned inconveniences related to the PPP project financing shall be removed in the near future, thus allowing private investors to access the real estate sector in Romania using PPPs and their indisputable benefits.

José Blasi

Monereo Meyer
Marinel-lo, Barcelona
jblasi@mmmm.es

New tax agreement between Germany and Spain: will there be changes to taxation on real estate capital gains?

In a press release dated 3 February 2011 it was announced that the governments of Germany and Spain had signed, in a German-Spanish summit, a new Convention for avoiding double taxation, for clarifying the needs arising from economic and business relations between Spain and Germany and the subsequent changes introduced to the OECD Model Tax Convention.

When it becomes effective, the new Convention will replace the one signed in Bonn on 5 October 1966. It will enter into force three months after exchange of

the ratification instruments although the provisions will apply from 1 January of the following year. Therefore, if the agreement is ratified in the near future, it is expected that the modifications will become applicable from 1 January 2012.

A very significant change in this new Convention is in the article relating to capital gains taxation with the introduction of real estate anti-abuse provisions.

Because of this, capital gains arising from the sale of shares or stakes in companies, the main assets of which relate directly or

indirectly to real estate located in Spain or Germany, shall be correspondingly subject to taxation in Spain or Germany, starting from 1 January 2012.

The concept of 'real estate' shall be understood in line with internal definitions provided by each country: in Spain, photovoltaic panels and wind farms are considered real estate.

Additionally, the new Convention modifies both the regulations applicable

to partnerships and the mechanisms for avoiding double international taxation particularly in Germany.

Will there therefore be changes to taxation on the direct or indirect sales of real estate located in Spain or in Germany?

This matter will have to be looked into. The announcement of the entry into force of this new Convention offers, without doubt, opportunities for tax planning.

Taxation of real estate transactions in light of the new Tax Code

Timur Bondaryev

Arzinger, Kiev

timur.bondaryev@
arzinger.ua

A number of legislative innovations in Ukraine occurred on 1 January 2011. In the opinion of many experts, the most significant was the entry into force of the new Tax Code – the first attempt in the history of Ukraine to codify tax legislation – which can be estimated quite differently, has many pros and cons and has a huge impact on the entire economy of the country.

In addition to codifying existing rules, the legislator's attempt was a completely new approach to taxation of certain transactions which, significantly affected the real estate sector. The Tax Code clearly demonstrates the legislator's keen attention to real property taxation and to taxation of proceeds from real estate transactions. The experts working on the Tax Code carefully studied current tax practices having regard to the appropriate assets and proceeds, and took steps to increase the tax burden or introduce new taxes. This article will analyse the basic and most significant changes in real property taxation.

Real estate tax (property or wealth tax)

Prior to the Tax Code, owners of real estate assets were not regarded as property taxpayers; landowners and tenants paid a land payment in the form of land tax or rental payment (see below the section on Land tax). It should be

noted that the real estate tax as a type of tax was originally envisaged in article 14 of the Law of Ukraine On Taxation System but its introduction was constantly delayed.

According to the Tax Code the real estate tax shall be introduced on 1 January 2012, the date on which the unified all-Ukrainian system of property rights registration is expected to come into force. The coincidence is apparently to be explained by the necessity to ensure the monitoring and enforcement of the tax payments, as there is no unified property registration system at present.

Taxpayers

Taxpayers are individuals and legal entities, including non-residents – owners of the properties.

Tax base

The object of taxation is residential property only. We suppose that the legislator introduced the tax based on the assumption that taxation of commercial properties shall be imposed by taxation of the proceeds derived from its use.

The tax base shall be the residential or living (not total) area of the respective facility.

If the taxpayer owns several real estate properties the tax base shall be calculated with respect to each individual one.