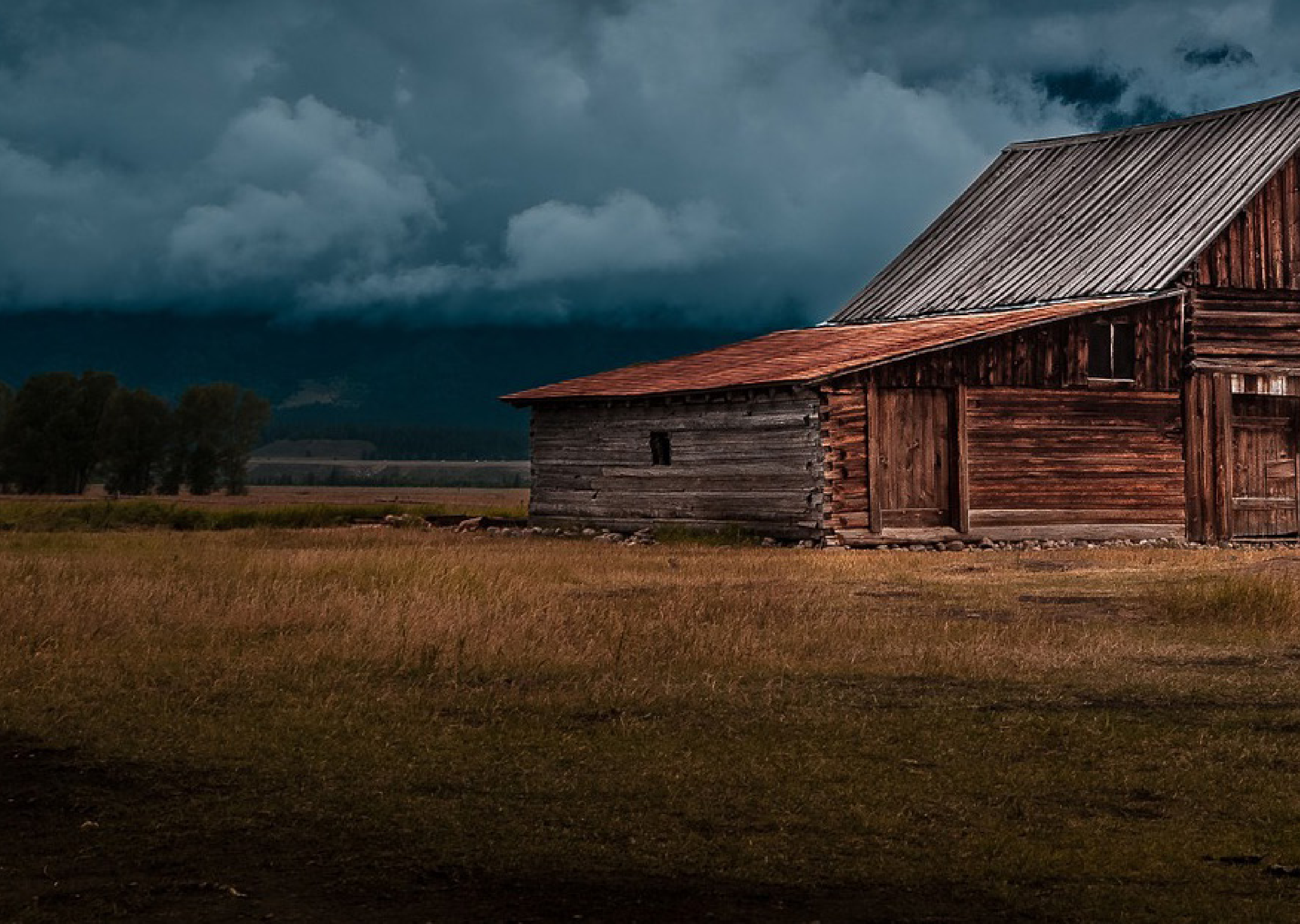
RGLOBAL

Preferential Portfolios

Tax efficiency in international real estate investment

Virtual Round Table Series

Real Estate Working Group 2018



Preferential Portfolios

Tax efficiency in international real estate investment

Real estate remains an attractive proposition for international investors. Whether that is residential or commercial property, the relatively attractive yield in comparison to more traditional investments such as bonds, makes real estate a key part of any balanced portfolio.

Global real estate is considered by many to be in a late stage of its cycle, with high valuations reducing potential yields. This cycle was particularly evident in the US during 2017, where sales of commercial property fell by 8 per cent to USD375.6 billion, according to figures from Real Capital Analytics (RCA). This has been attributed to a reassessment of prices following three interest rate rises from the US Federal Reserve and an expectation of further hikes in 2018/19.

Another contributor to this investment trend could be the disruptive new 'proptech' companies which don't play by the traditional rules, altering supply and demand dynamics and property usage. Examples include AirBnB, which enables long-term tenants to sublease apartments and Google, which is planning to develop its own city regions.

Rather than reduce real estate's attractiveness as an asset class, however, this simply increases the need to make sure the investment is as profitable as possible. Investment in New York City might have tumbled by 32 per cent in 2017, but the search for yield has sparked significant interest in smaller real estate markets, where the potential for more profitable deals is greater.

Data from PWC's Emerging Trends in Real Estate report for 2018, reveals that many of the top three cities for real estate investment in Europe, Asia Pacific and the USA are second-tier cities with growth potential.

In the US the top three are - Seattle, Austin and Salt Lake City, while in Europe they are Berlin, Copenhagen and Frankfurt. In Asia Pacific, investors are targeting Bangalore, Bangkok and Guangzhou.

The figures from RCA back up this renewed vigour for new real estate investment markets, showing that global sales volumes totalled USD873 billion in 2017, which represents a 6 per cent rise in Asia Pacific and an 8 per cent increase in Europe.

While the search for profitable real estate deals goes on, it is worth remembering that one of the best ways to improve yield is to ensure the investment is tax-efficient. When cross-border investment is involved this importance is magnified. A clear understanding of how the jurisdiction you are investing in treats foreign investors for tax purposes is crucial, in order to assess and plan for income tax, corporation tax, capital gain tax, withholding tax and inheritance tax. Poor structuring can turn a potentially profitable investment into a loss-making one.

If tax-efficient vehicles, holding entities and funding methods are used correctly, they can shelter foreign investors from double taxation and dramatically reduce the tax burden, consequently increasing investment yields.

In the following discussion we speak with IR Global experts from five jurisdictions, and gain valuable insights into tax-efficient real estate investment in their respective home countries. Bob Blanchard from California takes us through the 'blocker' structures used in the US to shield foreign investors from withholding and inheritance tax, while Jayson Schwarz in Toronto, points out the benefits of using a Canadian non-resident corporation (NRC).

Dirk Lehmann, in Germany, analyses the pros and cons of 'double-dipping' while Richard Ashby in New Zealand gives us a lowdown on the booming Auckland residential property market's new 'bright-line' rule.

Finally, Gustavo Yanes Hernández in Spain helps us to understand the concept of permanent establishment and its tax consequences for real estate investment in Spain.

UNITED KINGDOM

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The View from IR

Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.

SPAIN

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Gustavo Yanes Hernández is a Spanish lawyer with expertise in taxation law on both an international and national level. He is also experienced in advising on mergers and acquisitions.

He has a Master's degree in European Law and is admitted to the Bar in Madrid. He is a member of the International Association of Young Lawyers, the Alumni Association of the Europa Institute – Law Department of Saarland University and the Centre for Financial Studies.

He was educated at the Centre for Financial Studies at Saarland University and speaks in Spanish, German and English.

NEW ZEALAND

Richard Ashby

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Richard Ashby has more than 25 years' experience with New Zealand taxation matters, starting his career with the Internal Revenue Division before eventually becoming tax partner at Gilligan Sheppard.

He deals with clients of all types and sizes and provides tax opinions on the appropriate treatment of items of income and expenditure, assists clients with IRD risk reviews and audits and can assist clients who are having difficulties meeting their tax payment obligations to make suitable repayment arrangements with the IRD.

Richard strives to maintain a good work/life balance and outside of the office spends a large amount of time on his road bike, either training or competing in various events around the North Island.

GERMANY

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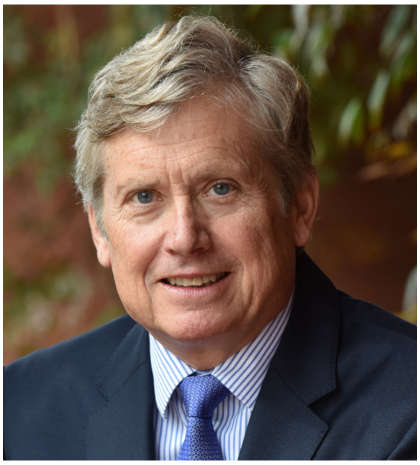
Dirk has been in the tax consulting business for 25 years. As one of the main partners of Wagemann + Partner, he is responsible for international taxation, which is a focal point of his firm. For about 10 years, Dirk has been leading a group of international tax law specialists to promote the exchange of current issues in international taxation. A further focus for Dirk is the taxation of capital investments and clients of medical practices and the healthcare profession. He advises clients of all legal forms and individuals.

Dirk has a Master´s degree in Business Management and a Master of International Taxation. He has been licensed as a tax advisor in Germany since 2001.



U.S – CALIFORNIA

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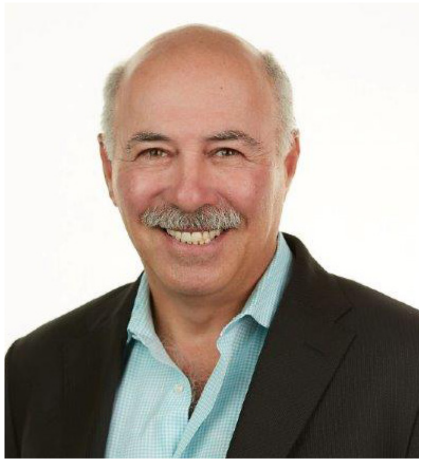
Bob Blanchard has more than thirty years of experience in real estate and corporate finance. His areas of practice include complex real estate acquisitions, dispositions and exchanges, corporate mergers and acquisitions, asset and mortgage securitization, business and real estate lending, tax credit financing, and the regulation of financial institutions and securities markets.

Prior to founding Blanchard, Krasner & French in La Jolla, California, Bob was partner in the Los Angeles law firm of Sheppard, Mullin, Richter & Hampton and prior to that, a partner in the law firm of Seltzer, Caplan, Wilkins and McMahon based in San Diego.

Bob is widely published and a frequent speaker on numerous topics, including speaking on “The Evolving Worldwide Legal and Regulatory Climate for Securitization” at a meeting of the American Bar Association held in Brussels, Belgium, and contributing author of Commercial Real Estate Finance: A Current Guide to Representing Lenders and Borrowers, ABA.



CANADA

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Jayson Schwarz is the founder and senior partner of Schwarz Law LLP. In almost 40 years of practice he has acted for clients that are multi-national corporations and small and medium sized businesses. The bulk of his practice is devoted to solving puzzles. Whether it is organising a land acquisition and the necessary financing or assisting in a complex estate planning scenario, Jayson excels in out of the box solutions and creative thinking, that lead to economic success, tax savings and personally satisfying the needs of his clients.

Experience in the real estate industry on a personal level is bolstered by his close relationships with many of the largest builders and land developers in Ontario. Jayson has been a member of BILD (the “Building and Land Development Association”) for many years; has lectured for the Ontario Government Tarion Warranty Program to new homebuyers; is the resident real estate legal writer for numerous magazines with many published articles and is often asked to quote by national publications, and television on real estate matters.

Under his aegis the firm has been involved in many international commercial transactions involving various American, Caribbean, South American, African and European jurisdictions.

He has an LLM in Business Law.

What are the major tax regulations and reforms that currently affect real estate investment in your jurisdiction?

Canada – Jayson Schwarz (JS) When a non-resident of Canada (NRC) receives rental income from real property in Canada, there are a number of tax regulations that apply.

Perhaps most important, is the requirement to withhold non-resident tax at the rate of 25 per cent on the gross rental income paid or credited to the NRC. As an alternative the NRC can file a separate Canadian income tax return to report the net rental income, after deducting applicable expenses. This would be done when net Canadian-source rental income is less than the withholding tax.

An NRC corporation (NRCC) that invests in Canadian real estate will pay corporate tax on profits at a rate of 15 per cent federally, plus applicable provincial tax. On a sale of Canadian real estate, a gain that is treated as a capital gain will be 50 per cent taxable as a capital gain at the rate mentioned above. The other half of a capital gain is tax-free.

Withholding tax rates can be reduced under most of Canada's treaties, and, in the case of the Canada's US tax treaty, the withholding rate is zero.

There is also a Canadian withholding tax on dividends paid to NRC shareholders of 25 per cent. Under the Canada / US tax treaty, dividends paid to individuals are subject to a reduced withholding of 15 per cent, and dividends paid to corporate shareholders that own at least 10 per cent of the voting stock of the company are subject to a reduced withholding rate of 5 per cent.

Canadian real estate is considered 'Taxable Canadian Property' (TCP), and income from the sale of TCP is taxable in Canada. Most tax treaties do not override the ability of Canada to tax this gain. When an NRC disposes of TCP, the purchaser is required to withhold 25 per cent of the gross proceeds for non-depreciable capital property (50 per cent of gross proceeds for inventory and depreciable property) unless the NRC has paid the tax or provided security for the tax.

NRC's in the Greater Toronto Area (GTA) are subject to a recently instituted non-resident speculation tax (NRST). The tax applies to the purchase of up to six residential properties, and is in addition to land transfer tax. In effect, it represents a 15 per cent speculation tax for NRC's on the purchase price. It does not, however, apply to commercial properties or to a purchase of six or more units.

The answer to tax efficiency, is to consult with your local counsel to determine if your country of residence has a beneficial treaty. Estate matters concerning real estate appear to be neglected in almost all treaties and individuals should be aware of the possibility of double if not triple taxation in some circumstances.

New Zealand – Richard Ashby (RA) All of New Zealand's (NZ) tax treaties contain an article dealing with income from real property, permitting NZ to tax any income derived from land situated in the country.

Unlike most jurisdictions, NZ does still not have a comprehensive capital gains tax in place, although the prospect of introducing one, is being debated by our political parties.

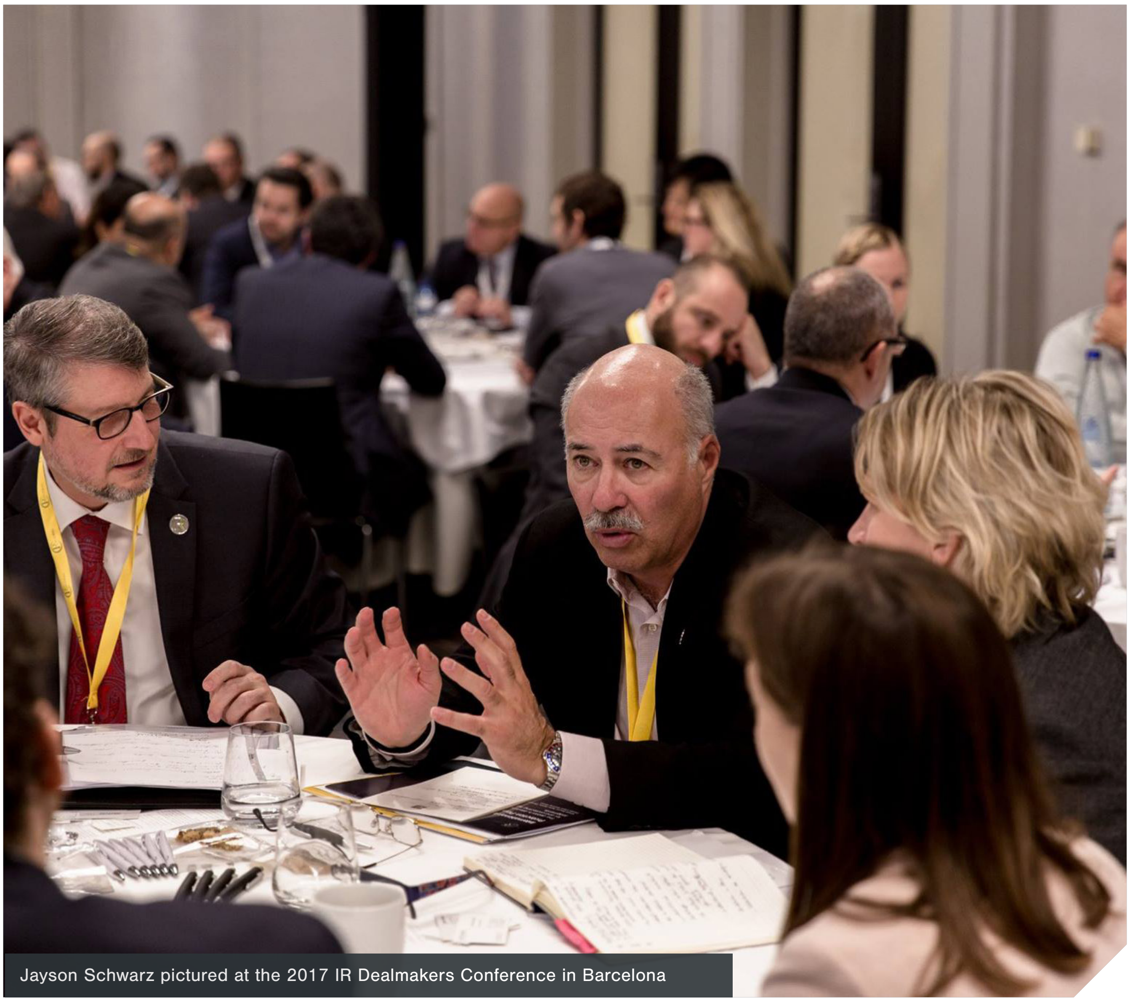
With no capital gains tax, investing in NZ land has for some time been an attraction for non-resident investors.

Presently land in NZ can therefore be acquired and resold, without becoming subject to any NZ taxation, unless caught by one of the specific land taxing provisions. These taxes mainly deal with land acquired for the intention of resale, those involved in land-related businesses (dealers/developers/builders) and those non-business persons who undertake land development projects like one-off subdivisions.

In recent years, the Auckland residential property market has seen significant price growth, predominantly fuelled by supply versus demand.

The initial government reaction was the removal of the ability of investors to claim depreciation on residential buildings, as an expense against the rental income derived from the residential tenant, thereby increasing the net rental income subject to taxation.

Next came the introduction of a bright-line rule. Under this rule, the disposal of residential land within two years of its acquisition date where the land was not being used as the owner's main home, attracted a tax (so a quasi-capital gains tax). Earlier this year we saw an increase in the bright-line period from two to five years.



Jayson Schwarz pictured at the 2017 IR Dealmakers Conference in Barcelona

Finally, there are proposals presently under consideration and likely to be law by early 2019, which will in essence ring-fence any tax loss incurred with respect to a residential property investment, requiring the loss to be carried forward to the following income year, only available for offset against residential property income or any other income under the specific land taxing provisions.

Until recently, there were essentially no restriction on non-residents acquiring NZ land, unless that land was defined as 'sensitive land' in the Overseas Investment Act 2005 (OIA), in which case, the overseas person (a defined term in that same Act) had to apply for approval for the acquisition from the Overseas Investment Office, prior to the transaction proceeding.

Germany - Dirk Lehmann (DL) In Germany, there is a difference between corporate and individual investors. There is also a difference in taxation depending on how long a real estate asset is held for.

The corporate tax rate is 15 per cent, plus a solidarity surcharge of 5.5 per cent. Added to this is a trade tax of 15 per cent, making a total tax burden of around 30 per cent. An exemption from trade tax is possible though, allowing the tax burden to be reduced to around 15 per cent. Foreign individuals holding property are taxed with a progressive rate up to 45 per cent, with a surcharge of 5.5 per cent, although those holding property for more than 10 years can gain a tax exemption on its sale.

Germany has a new government since last year, but there are no important tax issues under discussion, related to real estate investments. We expect to see a further tightening of rent controls for rental properties (Mietpreisbremse), but only in areas of high demand in larger cities. The rents will be capped at 10 per cent above the average rent for the local market.

Property tax is also under review, since the calculation is based on adjusted values from 1964 in western Germany, and 1934 in eastern Germany. The real market value is usually much higher than the estimated value by law. As a result of this, properties in the same city (e.g. Berlin) are valued differently, depending on whether the property is located in the eastern or western part of the city.

The adjusted value applied to the property tax also depends on the municipality in which the property is located. High differences are usual, with Berlin applying a tax factor of 810 per cent, while the lowest factors in Germany are less than 400 per cent.

For investors property tax is usually not an issue because the tax is charged to tenants as operating expenses. It can, however, be an issue for landlords, because tenants factor this in when deciding where to rent a property.

With regard to inheritance and gift tax, there is limited tax liability for properties located in Germany and owned by a foreigner. There are only a few double taxation treaties that allow foreigners to avoid a double taxation risk with inheritance and gift tax in Germany and country of fiscal residence

To take the US and Canada for example, if a German resident with property in the US dies, inheritance tax is triggered in both the US and Germany. Germany has a double tax treaty with the US for inheritance tax and gift tax, so inheritance tax in Germany would not apply. This is not the case with many other countries though, including Canada.

We also have tax exemption thresholds, i.e. 400,000 euros per child, but that's only applicable to German residents. It also applies to beneficiaries who live elsewhere in the EU, because EU law says we can't differentiate, but it wouldn't apply in Canada or the US.

Spain – Gustavo Yanes Hernández (GYH) In Spain, there are several regulations that apply to the acquisition and sale of real estate. The main differences between Barcelona and Madrid are in transfer tax and stamp duty for mortgages and acquisition of real estate, because these taxes are regional not federal in nature. In general, Madrid has more tax advantages than any other region in Spain.

Some major taxes to consider at the time of acquiring real estate are VAT and transfer tax. As a general rule, if an entrepreneur sells a property to a foreign investor, the transaction will be subject to VAT. However, if the seller is an individual, the acquirer pays the transfer tax. A higher transfer tax means a higher price, because the acquirer cannot deduct this, while VAT can be deducted.

For this reason, foreign investors usually try to negotiate transfers of real estate properties that are subject to VAT in Spain, rather than transfer tax. There are some special rules that may apply for VAT/Transfer Tax, so it is mandatory to analyse the transaction before making a binding offer for real estate in Spain.

This can be a deal breaker, because the acquisition cost is much higher with transfer tax.

With regard to the sale of real estate located in Spain by non-residents, the main difference is in the tax rates. For EU residents there is a tax rate of 19 per cent and for residents in third countries outside the European Union the tax rate is 24 per cent. It is important also to mention that the sellers may have to pay the 'Tax on the Increase of Urban Land Value', a local tax that may be relevant depending on how many years the owner has held the property.

U.S – Robert Blanchard (RB) Taxation in the United States must be analysed at both the federal level and individual state level. Taxation relating to real property investment can be divided into four parts.

First, there is a general income tax on net income from a property, whether that income is from rents or gains on sale, and is imposed at both the federal and state level. Taxation rates vary depending on the type of taxpayer.

Second, there is a withholding tax applied to foreign investors that is generally calculated on the gross sales proceeds if the foreign person sells the property. The withholding tax is also applied to rents received. Withholding tax is imposed at the federal level and sometimes at the state level.

Third, there is an inheritance tax if a foreign individual dies while holding US property. Real estate and interests in US entities holding real property are considered as part of the US tax estate of a foreign individual, which is taxed at a rate of 40 per cent of the value over USD60,000.

The fourth tax, is an annual property tax applied on the state and local level, not the federal level. In California, this is this is approximately 1 per cent of the assessed value based on the value at date the property was acquired or improved. In other states, the assessed value is often adjusted annually. Typically, this tax is passed on to the tenants as a component of rent.

SESSION TWO - TAX-EFFICIENT VEHICLES

Are tax-efficient vehicles available to investors? If so, which are most common in your jurisdiction and why? Any examples.

Spain – GHY Tax-efficient vehicles are used in Spain, but first of all we need to differentiate between general and special tax regimes.

The general regime states that when foreign investment funds make a direct investment in real estate, we need to know if they have a legal or tax personality and a permanent establishment (PE) in Spain.

As a general rule, if the investment fund has the corresponding human and material resources in Spain, they can have a PE in our country for tax purposes. This makes a big difference in Spain, because capital gains tax (CGT) for non-resident corporations without PE is 19 per cent, while for Spanish corporations or PE owned by non-residents it is 25 per cent. Despite the tax rate difference, the foreign investment funds or companies usually set up a PE or a limited liability company (LLC) to invest in Spain, since there is more certainty in connection with the application of the internal tax regulation that may apply,

As to the special tax regimes, there is a specific corporate vehicle known as 'SOCIMI', which is a company that operates in the trademark regulated market. This is not a regular stock market, so it's much easier to get into. The corporation tax is zero and there is only a special taxation on the distribution of dividends, depending on the application of double taxation treaties (DTT).

There are, however, certain conditions that these companies must comply with, such as a minimum share capital of five million euros, a minimum number of shareholders and a minimum level of dividend distribution each year. It is an interesting vehicle to consider for investment in Spain.

We also have a special tax regime for dwelling and home rental in Spain, which is not well known between foreign investors yet. If the investor sets up a corporate in Spain with eight units or more that are dedicated to home rental, or at least offer in the real estate market for this purpose, then the effective corporate tax rate is only three or four per cent. That is a reduction in the taxable base of 85 per cent and is usually done via a limited liability company (LLC).

USA – RB In the US, the most common vehicle is what is known as a blocker structure that involves setting up a US corporation to hold the property in the US and have that US corporation be owned by a non-US corporation, or other form of entity organised outside the US.

The non-US entity is owned by the foreign investor. The purpose of the structure is, firstly to avoid inheritance tax, because the stock of the foreign corporation that owns the US corporation would not be treated as US property for purposes of US inheritance tax.

It is also used to avoid the withholding tax that applies to both rents and sales proceeds, because the disposition of stock after the property is sold is not treated as a sale of real property, but a sale of an investment security. It is, therefore, not subject to capital gains tax, unless modified by treaty between the US and the country of the investor.

The typical method of funding the US corporation is with equity and also a debt instrument. The debt instrument is designed such that interest paid is deductible to the US corporation but not taxed to the foreign corporation, unless that tax is imposed by treaty.

The structure allows the flow of rental and other operating income from the property to move through the blocker corporation and on to the foreign owners without being subject to either US withholding tax or US income tax.

This blocker structure has become even more popular since the tax reforms which reduced the US corporate tax rate from 35 per cent to 21 per cent. When real property is sold, the US corporation will pay tax on the gain realised, but the investors avoid withholding tax, inheritance tax and the capital gains tax on the stock of the US corporation that might otherwise apply.

Germany – DL As I mentioned earlier, our view on taxation differs in Germany, depending on who the investor is. I have both high net worth (HNW) individuals and institutional investors as clients, particularly many US HNWs who invest in Berlin. HNWs can benefit from a special regime in Germany that allows the tax-free sale of property by individuals after 10 years of ownership.

Investing via a corporation can reduce income tax burden to 15 per cent by avoiding trade tax via a foreign-based corporation without a branch in Germany. There will, however, be an exit tax of 15 per cent, which can be optimised via the deduction of expenses and interest.

Many foreign investors will use a German limited liability partnership (GmbH & Co. KG) to optimise tax efficiency. This structure allows investors to 'double dip' on expenses, claiming them twice in two different countries. German tax law is changing though, with some anti-avoidance legislation likely to affect this practice.

If the property sale is structured via a foreign share deal, this is usually not taxed in Germany, but some double taxation treaties are changing to allow tax in the country where the property is located. Holding structures allowing share deals in Germany are also tax exempt, although selling at least 95 per cent of the corporation triggers German real estate transfer tax (RETT) in the amount of 3.5 – 6.5 per cent, depending on the location of the property. It is planned by the government to reduce the limit down from 95 to 90 per cent to reduce harmful tax practices. The real estate transfer tax is triggered regardless of the fiscal residence of the owner of the property.

Real estate investment trusts (REITS) are tax-efficient, but are only applicable to institutional investors. They must be listed on a stock exchange, have a minimum equity of 15 million euros and be in the form of a public limited company.

Canada – JS Non-residents of Canada (NRCs) may hold property in a number of different ways.

There is the Canadian Corporation (CC) which is subject to the general corporate tax rate of 26.5 per cent in the province of Ontario on any income. On repatriation of funds by dividend to the NRC, there will be a withholding tax of 25 per cent. The withholding tax may be reduced under a treaty between Canada and the country of residence of the NRC.

When investing via a non-resident corporation (NRCC), rental payments are subject to a Canadian withholding tax of 25 per cent, but this is often reduced by a treaty. As is the case with an individual non-resident, a NRCC can make the net income election by filing a Canadian income tax return if the net rental income is less than the withholding tax.

The NRCC yields the lowest overall effective tax rates when earning income from property. One benefit of using a NRCC to invest in Canadian real estate is the ability to have multiple shareholders but leave the compliance burden with only one entity.

When comparing CCs and NRCCs or special purpose vehicles (SPVs) (from a purely Canadian tax perspective) the NRCC has the lowest overall effective tax rates when earning income from property and comparable effective tax rates to a CC when earning income from a business.

Non-residents can also invest via partnership, special purpose vehicle or shares.

The members of a partnership will be taxed in Canada on their share of the taxable income earned by the partnership. If the partnership earns property income, the non-resident partners will be subject to Canadian withholding tax on the gross rentals. In addition, there may be interest tax costs using this format.

An SPV established in a jurisdiction with both a favourable tax treaty and favourable treatment to the shareholders, based on their residency by the country of residence of the SPV may be advantageous. This can be achieved by careful utilisation of the broad spectrum of talent available from IR Global. Choosing the appropriate tax advisor in combination with a Canadian counterpart is something that is available to reduce the burden of taxation.

Shares of a NRCC are considered taxable Canadian property (TCP), if, within sixty months prior to the date of disposition, more than 50 per cent of the fair market value of the shares is derived from real property situated in Canada. Many of Canada's tax treaties exempt from taxation in Canada a gain on the sale of shares of a non-resident corporation owning Canadian real estate. This needs to be considered in light of the other comments above.

New Zealand – RA In NZ, the most common ownership structures for property are individual names (sole or joint), companies, limited partnerships and trusts. For larger development projects, joint venture structures (incorporated/unincorporated) may also be used.

New Zealand's income tax rates are fairly similar between the various taxpayer types at the top end of the income scale (individual and trustees are taxed at 33 per cent, and companies at 28 per cent). The choice of the use of the structure itself is important, as the owner of the property assets may not generate significant tax efficiencies alone.

Where a company ownership structure is used, certain tax efficiencies could arise for the investor disposing of the shares (because NZ has no capital gains tax in relation to share disposals) in the asset-owning company as opposed to the company selling the asset itself and then distributing the cash to the investor. Experience would suggest most purchasers just want to buy the asset, essentially unencumbered from any hidden issues they may unwittingly assume when acquiring shares.

New Zealand does allow the use of a couple of tax look-through structures, which can provide both tax efficiencies and legal separation benefits for non-resident investors.

While a company is a fairly common ownership vehicle for NZ property, particularly commercial real estate where the limited liability status afforded to the shareholders protects their personal assets from the reach of creditors, it is not without its complexities from a taxation perspective.

There are two main issues in this regard. Firstly, if the company owns more than one investment property at the same time, it cannot sell one and distribute an otherwise non-taxable capital gain to its shareholders without having to pay income tax at the time of the distribution. Secondly, most taxing jurisdictions do not recognise the 28 per cent NZ company tax paid on any company profit which is subsequently distributed to shareholders, as a tax credit against the tax payable on that distribution in the non-resident's home jurisdiction. This naturally increases the cost of profit repatriation for the non-resident investor, thereby reducing their net investment return.

The ability to use either a look-through company (LTC) or a limited partnership can, at times, significantly increase the non-resident investors return. While maintaining the limited liability protection from a commercial perspective, the look-through status of the entity from a NZ tax perspective, means that no 28 per cent company income tax is paid, and, instead, the non-resident investor can essentially choose the ownership vehicle for their LTC/partnership interest, which will then maximise their tax position in their home taxing jurisdiction.

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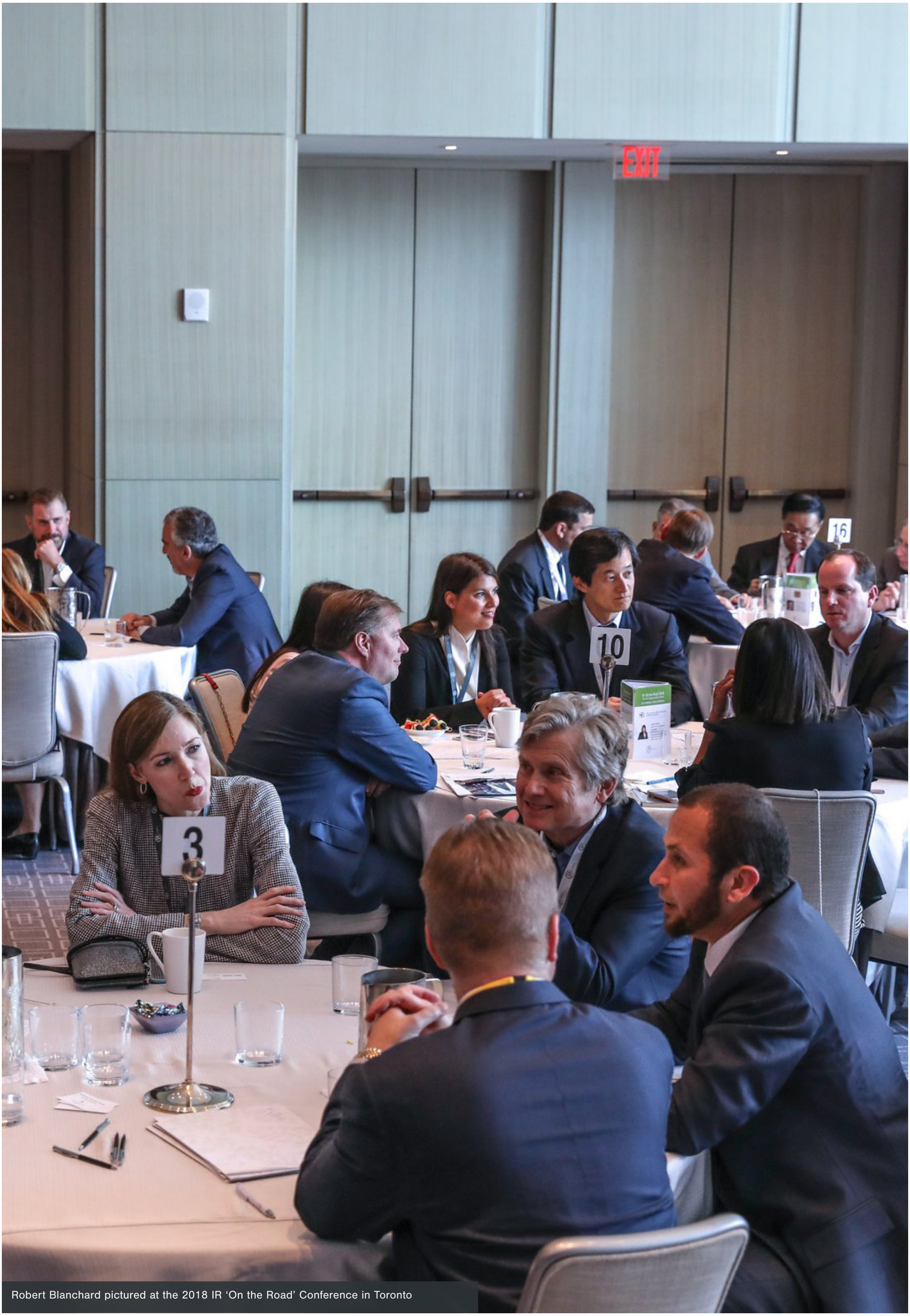

Robert Blanchard pictured at the 2018 IR 'On the Road' Conference in Toronto

What funding structures are generally used by international investors to maximise tax efficiency? Case examples?

USA – RB The typical structure for non-US investment in US real estate is through a US corporation owned by a non-US entity, organised either in the investor's domicile or a tax advantaged jurisdiction.

The recent reduction in US corporate income tax from 35 per cent to 21 per cent renders this structure even more favourable. As discussed earlier, the US corporation is commonly referred to as a 'blocker' as it blocks the real property from being treated as owned by a foreign person and the attendant disadvantages of a foreign person directly owning real property in the US.

The non-US investor generally acquires two types of interest in the blocker corporation: equity (shares of stock) and debt (a registered promissory note). The ratio of debt to equity and debt terms vary, but in general should be commercially reasonable, which is driven by the type of underlying real estate investment being considered.

The minimum equity is typically 20 per cent to 50 per cent of total capitalisation, depending on the financial strength and leverage of the underlying investment. Subject to certain limitations, applicable to very large transactions, the interest is generally deductible to the blocker corporation and, if structured properly, can be exempt from US withholding tax when paid to the non-US investor, as is repayment of the principal.

This structure can be successful in sheltering the operating income from the real property from US tax. On sale of the real property, the blocker corporation will pay US tax on any gain realised, but liquidated distributions back to the non-US investor after sale of all real property are not subject to US withholding tax. As a cautionary note, the US has tax treaties with many countries and the terms of the treaty may vary these tax principles.

Canada - JS When considering the cross-border investment structure, it is important to consider, among other items, where the non-resident of Canada (NRC) is resident for tax, whether the NRC is entitled to treaty benefits, how income is taxed in the home jurisdiction, possible repatriation strategies and the exit strategy.

Capitalisation is an issue if the corporation is claiming a deduction for interest paid to a specified NRC. The Income Tax Act of Canada restricts a deduction for interest paid or payable by a corporation resident in Canada, in a taxation year, on debts owing to specified NRCs, if the ratio of these debts to the corporation's equity exceeds 1.5 to 1. A specified non-resident is basically any NRC that owns more than 25 per cent of a Canadian corporation. Therefore, it is tough to be a lender and an owner.

It is worth considering the utilisation of hybrid or convertible shares as a means of financing Canadian real estate initiatives by NRCs. If an investment is made directly and the shares are created as special or preference shares, drafting may provide a means of reducing the tax impact and strengthening an NRC position.

Germany – DL There are no advantages in using equity as a source of funding in Germany. Shareholder loans made under arm's length conditions are possible, but may trigger limited tax liability in Germany for the creditor.

Hybrid financing and preference shares are relevant to German-based corporations and payment has to be qualified as either debt or equity. Equity does not allow this structure to reduce taxable income.

Where a German-based corporation is being used, dividends trigger withholding tax of 25 per cent, plus a solidarity surcharge. Any deductions based on double taxation treaties or the EU's parent subsidiary directive are potentially subject to national treaty override regulations.

With regard to deductions based on debt interest payments, losses can be carried back for the previous year and carried forward. Deductible losses are limited to one million euros, plus 60 per cent of the remaining taxable income.

New Zealand – RA New Zealand is a signatory to both base-erosion and profit shifting (BEPS) and Automatic Exchange of Information (AEOI) initiatives and consequently any non-resident investor considering NZ as an attractive opportunity, must factor this point into their decision matrix.

With both initiatives, we have seen recent legislative amendments to facilitate both the increased automatic sharing of information with other taxing jurisdictions, and the implementation of various rules to counter the BEPS strategies non-residents use to lower their exposures to NZ taxation.

As a consequence, there are rules (although they were in existence well before BEPS came on the scene) that act to restrict interest deductions on debt, where the non-resident investor fails to satisfy requisite debt/asset thresholds (thin capitalisation).

There are also laws that re-characterise hybrid financial arrangements to ensure uniformity of tax treatments between the lender/borrower jurisdictions, and the requirement of the borrower to deduct non-resident withholding tax on interest on payments to the non-resident lender. New Zealand also has a transfer pricing regime, with Inland Revenue active in reviewing interest rate pricing between associated cross-border parties, to ensure an arms-length market rate is being used in the financing transaction.

for example, the (possible) impact of the insurance premium on the price, and the applicable law (the same law should apply to the insurance policy and the sale and purchase agreement).

Other questions include the legal subrogation right of the insurer and the tax treatment of any insurance payment received by the purchaser and the related possible impact on tax gross-up clauses.

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