November 2016

REITs may soon be coming to Poland

Poland's Ministry of Finance published a draft bill which would authorize the establishment and operation of Polish Real Estate Investment Trusts (Spółki Rynku Wynajmu Nieruchomości) in Poland. At this stage, the proposal has not been officially presented as a bill to the Parliament, so the bill proposal may still undergo significant changes before becoming effective, but the main points are outlined below.

I. Commercial Aspects

The bill proposes a new form of company in Poland – a "real estate lease market company" ("REIT"). The REIT would be similar to a joint-stock company. A REIT, however, must be a publicly traded company, with its stock listed for trading on a regulated market. The REIT's seat or management board must be located in Poland.

The share capital requirement for a REIT is relatively high – at least PLN 60,000,000. In addition, no less than 70% of its assets must consist of real estate holdings (but not residential real estate), or shares/stock in subsidiaries which deal in real estate, and no less than 70% of its net income must be derived from real estate (sale, lease or management). However, the proposed bill limits the ability of a REIT to leverage debt, in that its debt would be limited to 70% of its asset value. Also, at least 90% of its net income must be paid to stockholders by the end of each financial year. If profits are not distributed, then they must be re-invested in the real estate market.

In respect of other requirements, not regulated by the new statute, the REIT will be governed the Poland's Commercial Companies Code, applicable to joint-stock companies. Thus, the REIT is to be governed by a Management Board and Supervisory Board, but there must be at least two members on the Management Board.

Furthermore, under the draft statute the Management Board is obligated to avoid conflicts of interest. So if a conflict of interest does occur, the Management Board has a duty to protect the interests of the stockholders. This provision assumes that in such an event, reasonable actions would need to be taken in order to maintain procedures designed to identify and manage each conflict.

II. Tax Aspects

The main advantage for a REIT is the lack of double taxation, as REITs would be exempt from company income tax (CIT). Its income from managing/selling real estate, as well as income realized through real estate based stock/shares holdings would be free from taxation. Thus, only the REIT's stockholders receiving dividends would be required to pay income tax from such dividends received from the REIT.

However, if a REIT fails to meet the commercial and operational requirements listed above by the end of its second tax year of its operations, the REIT would be taxed on its income at the entity level and would be required to file corrected tax returns, and pay any taxes owed with interest.

III. Conclusion

According to the Ministry, the REIT statute was introduced to serve two objectives: (i) encourage investors, including individual persons, to invest in real estate and thus spur greater economic growth; and (ii) change the balance of capital on the real estate market in Poland by encouraging Polish investors to invest in the property market. Currently, foreign investors hold the significant share of the real property investment and management market.

But not only would Polish individual investors benefit from the new REIT law –international institutional investors will also find new opportunities for real property investments through this well-known investment vehicle. The proposal has already been met with enthusiasm from representatives of the real estate market and the general public.

The proposed date for the new statute to enter into force is 1 January 2017. However, there may be more amendments introduced to the bill before then.

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