

“On Income Tax from the Transfer of Real Estate”

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# Tax Alert





### **New Instruction “On Income Tax from the Transfer of Real Estate”**

The Ministry of Finance and the State Cadaster Agency have approved the joint instruction “On Income Tax from the Transfer of Real Estate” (the **Instruction**). The Instruction was published in the Official Gazette on January 17, 2024, and entered into force immediately.

The Instruction provides for clarifications regarding the application of the tax on capital gains from the transfer of real estate from individuals (referred to as investment income in article 17 of law no. 29/2023 “On Income Tax”). It highlights that the tax-registered legal entities and physical persons that perform the sale of real estate in the course of their business activities are not subject to personal income tax from the transfer of real estate.

They will continue to pay (i) the local tax on the transfer of real estate, as outlined in article 28 of law no. 9632/2006 “On Local Taxes System” and (ii) include the revenues from sale in their taxable revenues and pay corporate income tax or personal income tax from business activities as outlined in law no. 29/2023 “On Income Tax”.

Instead, physical persons (individuals) who are not tax-registered shall pay the personal income tax from the transfer of real estate (capital gain tax) at the rate of 15% of the difference between the sale and purchase value of the real estate.

According to the Instruction, the “*act of transfer of real estate*” includes the act of sale (sale purchase agreement), the act of exchange of property between individuals, the act of donation, inheritance, or waiver of the right of ownership from the real estate in favor of another person. Furthermore, the term “*realized capital gain*” means the positive difference between the sale

value and the purchase value of the real estate. In the cases where this difference results in a negative amount then the capital gain will be considered zero in each transaction.

Under the Instruction, the sale price for the immovable property is considered the highest value between the price determined in the act of transfer of real estate by the parties and reference prices for real estate determined in the decision of the Council of Ministers.

From the reference prices of buildings, shall be applied a 1% deduction for each year the seller has used the property starting from the date of obtaining ownership title. The deduction of 1% shall apply to all real estate mentioned in the Instruction namely flats, buildings for economic activity, constructions related to outdoor parking facilities, outdoor swimming pools, outdoor sports facilities, construction intended for industrial activity, construction related to agriculture and livestock or supporting activities with a maximum cap set at 30%.

Furthermore, for the buildings (excluding apartments and constructions registered following a legalization process) with an amortization coefficient exceeding 50%, the tax value will be assessed by licensed real estate appraisers. The State Agency of Cadaster will consider this value once, for the specific transaction.

The act of transfer of real estate shall be registered with the local directorate of the State Cadaster Agency after the payment of personal income tax has been made by the transferor of real estate. The payment of tax shall be made by the beneficiary of the title of ownership in cases

of donation, inheritance, or renunciation of the property. Before registration with the local directorate of the State Cadaster Agency, the transferor or the beneficiary must prove the payment of the personal income tax.

The following tax exemptions apply:

- donations and inheritances (i) received by legal heirs in the first and the second degree (i.e. children, spouse, parents, and dependent persons living with the donor/deceased for at least 1 year prior to his or her death), and (ii) between sisters or brothers;
- donations and inheritances received by any other person of up to ALL 1 million for movable properties, and up to ALL 5 million for immovable properties (per taxpayer); and
- the transfer of property rights to legal heirs in the first and the second degree by way of donation and/or renunciation of property, where the property derives from compulsory co-ownership acquired under law no. 7501, dated 19.7.1991, "On the land", as amended.



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