LEGAL

changes that every Investor needs to know about

TAX

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January 2018

Agenda

1. IAS/MSSF 16
2. shopping mall tax
3. interest cost deduction limitations
4. VAT turbulance
5. deal structure impact factors
6. summary

IAS 16/MSSF 16

essence of the change

WHAT?

- assets leased for more than 12 month should be presented in a balance sheet of a lessee
- total lease fees in the whole lease period should be presented in a balance sheet as lessee's liabilities

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IAS 16/MSSF 16

essence of the change

WHEN?

2019

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IAS 16/MSSF 16

essence of the change

WHO?

Entities applying International Accounting Standards:

- banks
- eminents of securities listed in EEA
- voluntarily – entities applying for listings, members of capital groups applying IAS

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IAS 16/MSSF 16

essence of the change

- increase of balance sheet totals
    - impact on bank loan covenants due to increase of total liabilities value
        - increase of EBITDA – by changing leasing costs into depreciation and interest cost (where applicable)
            - most exposed industries: retail, airlines, professional services , healthcare

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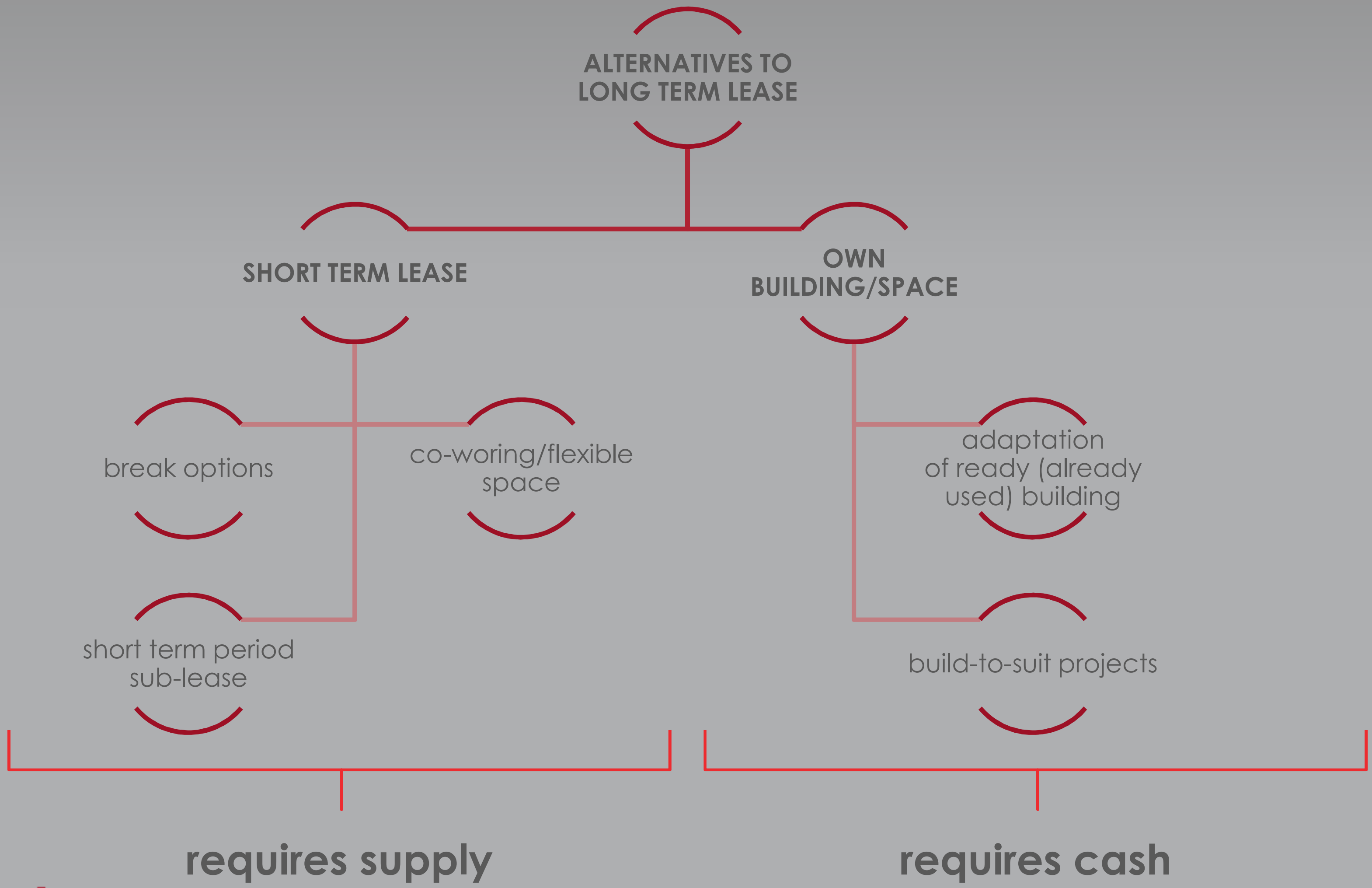
IAS 16/MSSF 16

potential impact on real estate market



shopping mall tax

minimum CIT on commercial real estate

How it will work?

- comes into force on 1 January 2018
- office buildings, shopping centers over PLN 10m (EUR 2.3m)
- due on leased buildings, i.e. starts on construction accomplishment (not due on own premises)
- 0,035% per month, 0,42% per year on building acquisition/construction cost minus PLN 10m
- deductible from CIT on operating activity, i.e. if CIT is higher than this new tax is not due, but if CIT is lower the excess of the new tax over CIT amount should be paid

shopping mall tax

minimum CIT on commercial real estate

ASSUMPTIONS*	
NOI	4 300
LTV	50,00%
bank interest rate p.a.	3,00%
tax amortization p.a.	2,50%
asset management costs	2,00%
CIT	19,00%
NewTax p.a.	0,420%
NewTax free amount	2 326
developers margin at yeild 6,5%	27,00%

*in EUR ths

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shopping mall tax

minimum CIT on commercial real estate

ASSET DEAL

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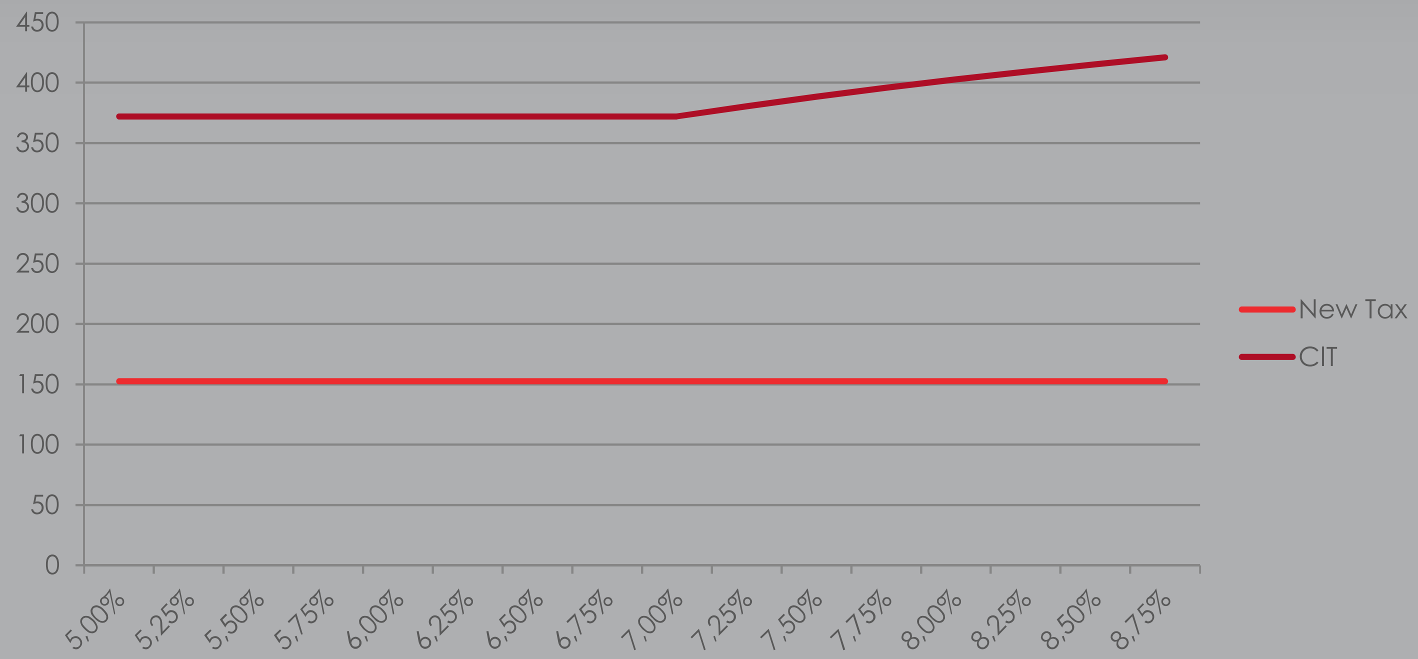
shopping mall tax

minimum CIT on commercial real estate

SHARE DEAL FROM THE DEVELOPER



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interest cost deduction limitations

what is „30% EBITDA" rule…

BEFORE 2018/2019

- restrictions cover related party debt only
- reference point was the level of total equity (1:1 debt-to-equity ratio)

FROM 2018/2019

- restrictions cover both related party and external debt
- the treshold is PLN 3m, above which the reference point is EBITDA (in practice NOI) – 30% of NOI
- „existing loans" covered from 2019, new loans covered from 2018

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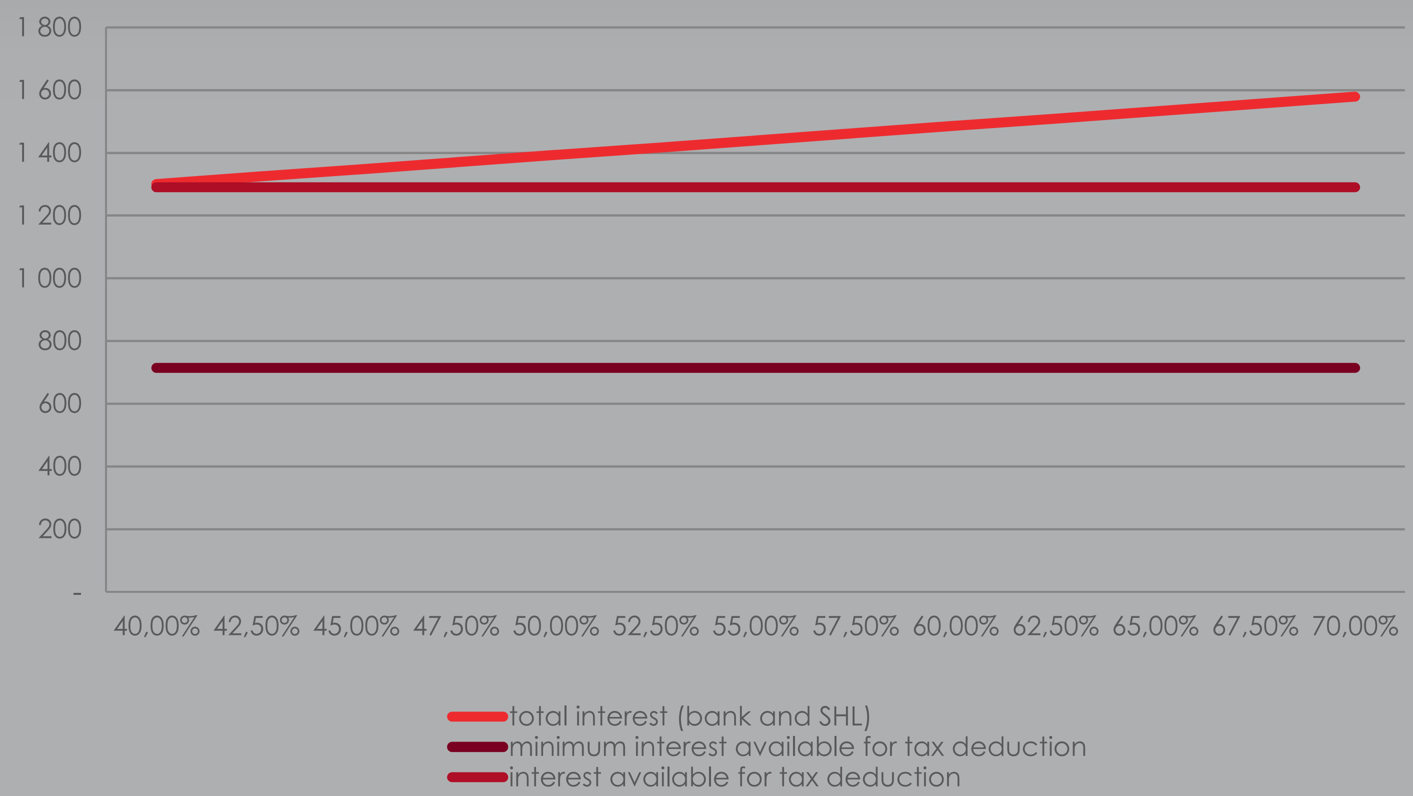
interest cost deduction limitations

...and how it impacts investment profitability?

INTEREST DEDUCTION LIMITATION



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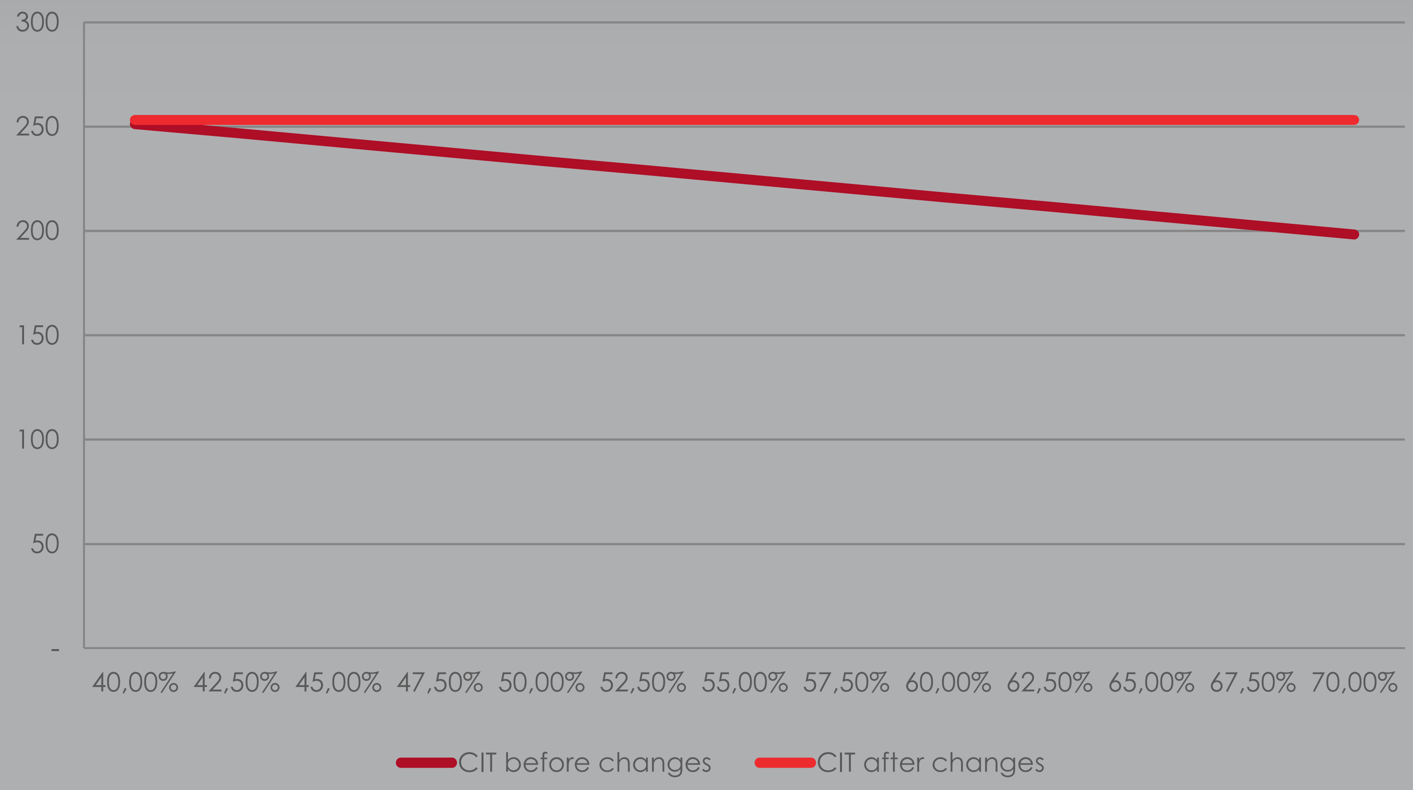
interest cost deduction limitations

…and how it impacts investment profitability?

IMPACT ON CIT



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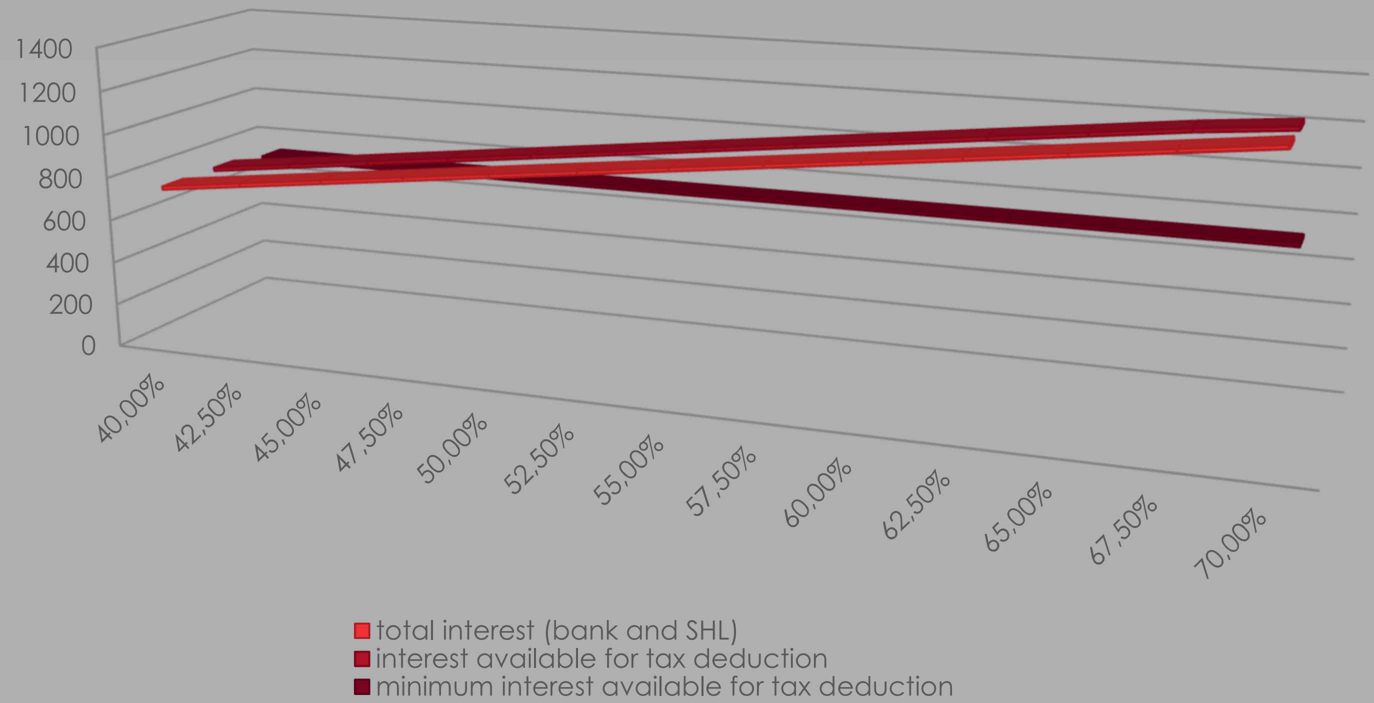
interest cost deduction limitations

...and how it impacts investment profitability?

INTEREST DEDUCTION LIMITATION



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interest cost deduction limitations

...and how it impacts investment profitability?

IMPACT ON CIT

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interest cost deduction limitations

…and how it impacts investment profitability?

- new interest deduction limitation targets internal debt, which may be replaced by equity, and hits the goal
- analysis of the creditability in reference to the market conditons
- debt-push-down not available anymore
- limitation does not cover investment funds and alternative investment funds

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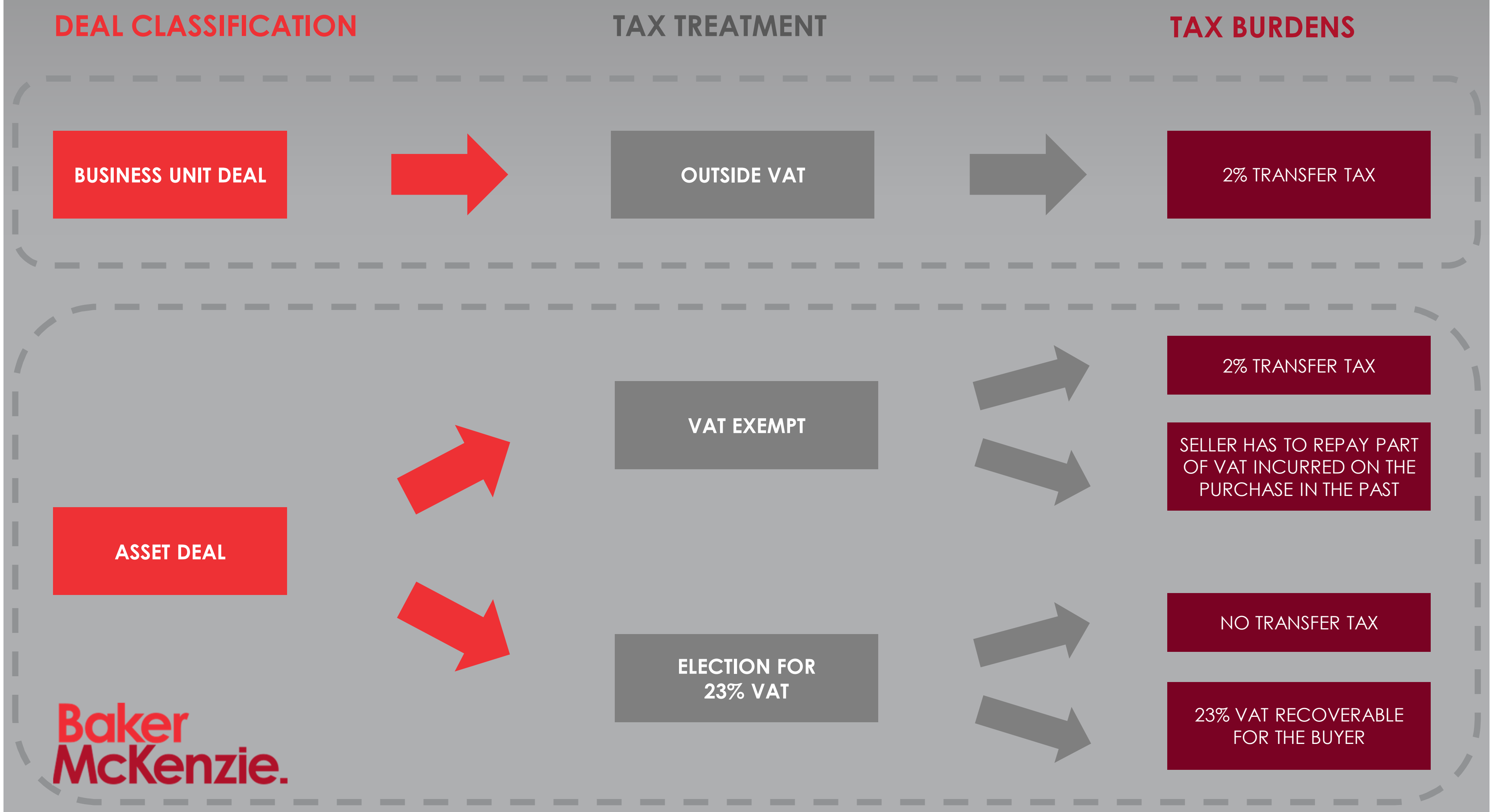
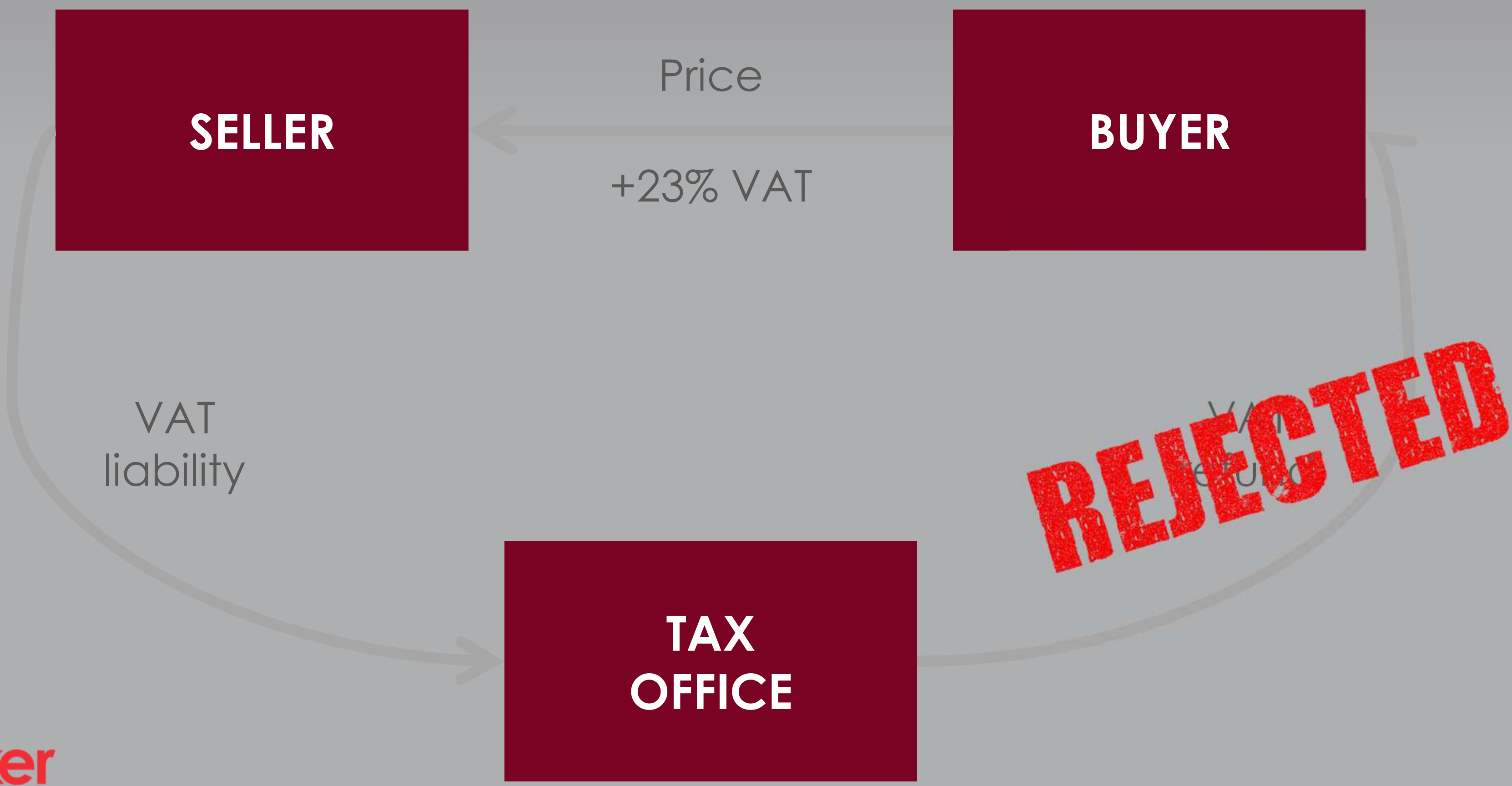
VAT turbulance

possible tax treatment of a real estate transaction



VAT turbulance

problems with VAT recovery in 2016/2017



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VAT turbulance

problems with VAT recovery in 2016/2017

before 2016

- ~ 100% of asset deals
- lack of certainty as to VAT treatment
- VAT tax rulings to secure tax comfort

in 2016

- tax authorities' challenges of closed deals
- challenges of rulings' protection power
- VAT unrecovered by some investors (up to 10 cases)

in 2017

- VAT fine introduced
- most deals closed as business unit deals and share deals
- banks limiting VAT bridge financing

in 2018

- are there any ways to limit the uncertainty?
- what will be deal structures in the future?

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VAT turbulance

new Tax Code and VAT split payment

VAT SPLIT PAYMENT

- available from VII 2018
- applicable to transactions starting from VII 2018
- applying this procedure should eliminate VAT fine
- depends on the decision of an investor

PRE-CLOSING TAX CONSULTATIONS

- available likely from 2019
- applicable to transactions starting from 2019
- outcome of the tax consultations will be binding for the tax authorities (they will not be able to revisit assessed tax treatment)
- applying this procedure should eliminate VAT fine and penalty interest

TAX AUDIT ON REQUEST

- available likely from 2019
- applicable to past transactions (i.e. before 2019)
- tax audit will be „under control" of a taxpayer
- outcome of the tax audit will be binding for the tax authorities (they will not be able to revisit assessed tax treatment)
- applying this procedure should eliminate VAT fine, but will not eliminate penalty interest

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deal structure impact factors

short and long term impact factors

IMPACT FACTOR	ASSET DEAL	BUSINESS UNIT DEAL	SHARE DEAL
PAST IMPACT FACTORS			
▪ no capital gain taxation (step-up, tax optimization)	V		
▪ no transfer tax (all VAT deals)	V		
CURRENT SHOR-TERM IMPACT FACTORS			
▪ VAT recovery problems		V	V
▪ legal changes on FIZ taxation			V
MID-TERM IMPACT FACTORS			
▪ asset subject to tax optimization schemes (GAAR application)	V	V	
▪ tax attributes resulting from step-up	V	V	
LONG-TERM IMPACT FACTORS			
▪ existing holding structures (German funds)	V	V	
▪ changes in tax treaties legislation	V	V	

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deal structure impact factors

comparison of deal costs

ASSUMPTIONS*	
real estate market value	66 000
developer margin	27%
construction and land cost	48 180
development loan	48 180
share market value	17 820
CIT 19%	19%
CLAT on share sale	1%
CLAT on business unit sale	2%

*in EUR ths

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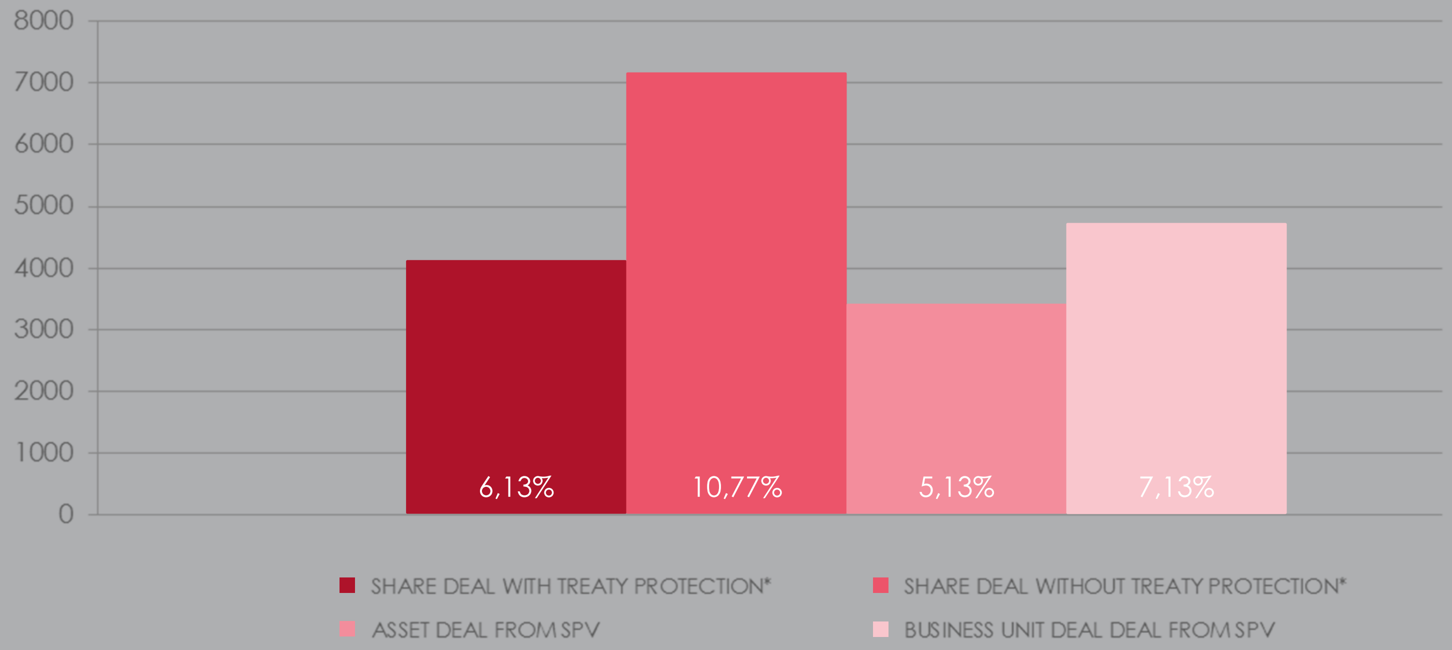
deal structure impact factors

comparison of deal costs

SUMMARY OF TAX BURDENS				
	SELLER	**BUYER**	**TOTAL**	**DEAL %**
SHARE DEAL WITH TREATY PROTECTION**	1 693	2 353	**4 046**	**6,13%**
SHARE DEAL WITHOUT TREATY PROTECTION**	4 755	2 353	**7 108**	**10,77%**
ASSET DEAL FROM SPV	3 386	0	**3 386**	**5,13%**
BUSINESS UNIT DEAL DEAL FROM SPV	3 386	1 320	**4 706**	**7,13%**

**in EUR ths*

***assuming the parties will share latent capital gain tax 50/50*



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summary

- IAS/MSSF 16 will impact certain tenants and its impact on the real estate market may be rather gradual and long term
- minimum CIT on commercial real estate should have limited impact on acquisitions made <6% yield; it may turn developers to sell assets rather than shares
- „30% EBITDA" rule will eliminate tax shield created out of interest on internal loans exceeding 70% LTV
- VAT recovery troubles may impact the transaction structures only by the time new legal tools providing comfort on tax treatment are implemented (expected in 2019)
- mid-term and long-term factors, as well as transaction costs may direct the market into asset/business unit deals rather than share deals

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Thank you