

# Real Estate - Taxation and Structuring

Clare Moger, Director, Tax

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# Agenda

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# Section 1

## Asset or Share Deal



## Asset Deal

- Usually preferred by investors
- Investor only acquires the asset
- Seller taxed on full amount of gain
- Tax losses may absorb gain
- Subject to VAT for new property
- Tenant may be able to break lease on change of owner

## Share Deal

- Often preferred by seller
- Investor acquires company history and any liabilities
- Potential capital gain exemption (47.5% if sold by a Slovene company)
- Buyer acquires tax losses
- No VAT

## Making a share deal more attractive

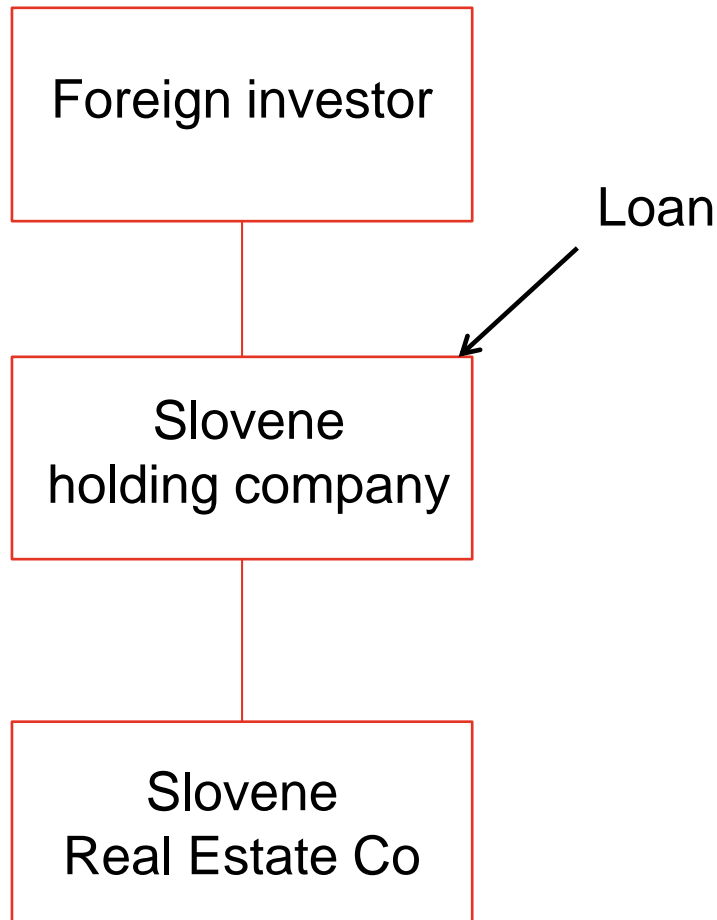
- One company (d.o.o.) for each investment
- Keep the company clean – only things related to the investment
- Consider a demerger to move the asset into a clean company
- Vendor due diligence
- Keep records!

## Section 2

# Post-acquisition Structuring

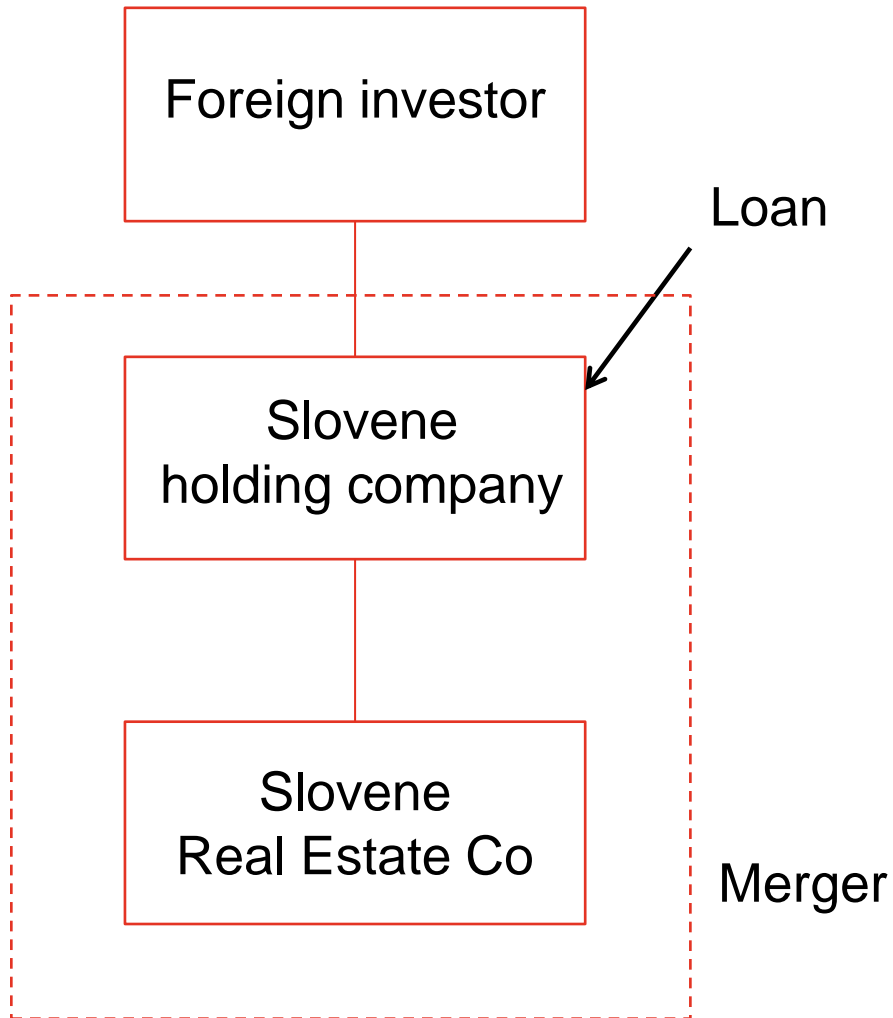


## Mergers and debt pushdown – share deal



- Investor sets up a new holding company to buy a real estate company containing the asset
- The new holding company takes on a loan to buy the real estate company

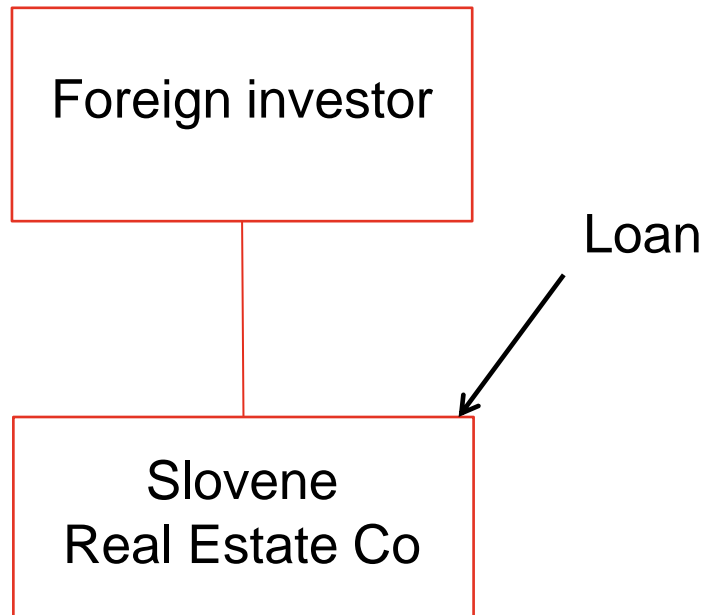
## Mergers and debt pushdown – share deal



- Merger of the holding company and the company containing the asset
- This puts the loan and the asset in the same company



## Mergers and debt pushdown – share deal



- Interest on the debt will not be deductible for corporate tax purposes after the merger

## Withholding tax

- Tax of 15% must be withheld from rental payments to foreign entities
- Rental payments to Slovenian resident companies are exempt
- Dividends and interest may be subject to withholding tax, depending on recipient's tax residence

# Section 3

## VAT



## VAT Issues

- The sale of new investment property is subject to VAT
- The sale of non-building land, and of older property, is VAT exempt
- Real estate rentals are VAT exempt (except for hotel accommodation)
  - BUT there is an “option to tax” the above exempt transactions
    - IF letting / selling to VAT-taxable persons
    - Opting to tax enables input VAT to be deducted
- Evidence to support taxable purpose, including agreement with tenants on option to tax, submitted to tax authorities, will be required for due diligence
- Input VAT deducted on real estate development costs can become repayable if there’s a reduction in taxable use within 20 years

# Section 4

## Due Diligence



## Top tips for a good DD

- Don't expect it to be like anything else - it's not an audit or tax inspection
- Document everything as the development proceeds – at some point you will have to explain it to the investor and their advisors
- Have all the paperwork ready – ideally in electronic form
- DD findings can lead to post closing adjustments and indemnities and warranties – full and clear explanations can help to limit this
- Consider a vendor DD or pre-sale advice

**Clare Moger**  
**Director, Tax**

Phone no: +386 1 5836 058

E-mail: [clare.moger@si.pwc.com](mailto:clare.moger@si.pwc.com)

**Tom Dane**  
**Manager, Tax**

Phone no: +386 1 5836 056

E-mail: [thomas.dane@si.pwc.com](mailto:thomas.dane@si.pwc.com)

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