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# CMS Guide to Retailers

Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia, Turkey, Ukraine.



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# Introduction

You have in your hands a comprehensive guide for retailers wishing to expand in the CEE Region. If you are wondering how to set up your retail business anywhere in CEE, or how to manage your space or staff, you will find this CMS guide for retailers useful.

Retail is an overwhelming industry. Any expansion in this industry faces competitiveness, complexity, and risks. Whether you want to buy, rent or develop your space; how do you employ, train and pay your staff; what should you be aware of when incorporating your business, appointing your management, any pay your taxes – we want to guide you through your first steps of entering a market, from both legal and tax point of view. With all this info available in a comprehensive and concise jurisdictional chapters, you can better understand the legal and tax aspects of your future investments. After you have reached an informed decision to expand to a CEE jurisdiction, we will have a team of legal and tax professionals ready to support you.

CEE is a lively region, with constant economic bright notes and upgrades. This is the region to be in and CMS wants to support you. We know the market, we know the industry, and we certainly know what you need from us to support your success in this region. We invite you to go through our guide and reach the same conclusion.

We are grateful to the numerous contributors to this guide. For more information on expansion your retail business in CEE, you are welcome to get in touch with us.



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# Austria

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# Space

## 1) to rent

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What is the definition of a lease on the local market?

A lease is the right to use a building or premises for a pre-defined period of time against a consideration.

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Can a foreign company rent a property directly or is a local SPV required?

In general, a foreign company can rent a property directly. However, some federal states require a permit in order for certain properties in the federal state in question to be leased to a foreigner.

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Lease duration: long-term vs. short term.

Austrian law does not, generally speaking, stipulate any long-term or short term durations for leases. Retail rental agreements are usually concluded for a period of between 10 and 25 years (including extension options).

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Are there any requirements regarding the form of a lease agreement?

In general, there are no requirements regarding the form of a non-residential lease agreement. If the parties have agreed upon the property to be rented and the rental amount, then a verbal agreement has been concluded. However, lease agreements for a limited term lease which are subject to the Austrian tenancy law have to be concluded in writing and therefore must be signed by both parties.

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Does a lease agreement require registration with any authorities?

Yes, the financial authority is to be informed of the fact that a lease agreement has been concluded and stamp duty is also to be paid to said office, pursuant to the Stamp Duty Act.

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Is there a legal or tax difference between renting premises with or without fit-out?

In general, a 20% VAT rate is charged for furniture, whilst 10% is charged for rental objects for residential purposes (no option right) and 20% for rental objects for retail purposes, provided that the landlord exercises their option right on taxation of the rental income.

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Can we do turnover-based leases?

Turnover-based lease, where the rent is based on the turnover generated by the tenant on the premises, is common for retail leases in Austria. A fixed basic lease element and a variable turnover-based element is usually agreed upon.

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What are the most common securities on the local market required from the tenant?

The tenants must usually provide a monetary deposit or a bank guarantee as a security. This normally covers 3 to 6 gross monthly rents.

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Are there any stamp duties for lease agreements?

Written lease agreements are subject to stamp duties according to the Austrian Stamp Duty Act. Indefinite term lease agreements are subject to a stamp duty equal to 1% of the collective sum of three annual gross rents. The fee for fixed term rental agreements for business premises is 1% of the gross rent from the total duration of the lease agreement and is a maximum of 1% of 18 times the annual amount.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both transactional structures are used in Austria. It usually depends on the individual case, on the tax options and on the business model in particular.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

In general EU citizens and citizens of other EEA member countries may acquire real estate on the territory of Austria under the same conditions as Austrian nationals.

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Are there any historical title issues to observe when buying a property?

We recommend that a prospective buyer uses the deeds in the Austrian land register to check the chain of ownership.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Where property purchase agreements are made the parties' signatures have to be notarised. Where share purchase agreements on shares of an Austrian limited company (GmbH) are made, a notarial deed is required.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

The transfer of real estate or shares needs to be registered with the land or commercial register.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

Land transfer tax is generally 3.5%. The sale of a real estate company may also be subject to RETT.

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

For the occasional performance of construction services, contractors with a company seat within the EEA or in Switzerland must fulfil the conditions and requirements prescribed by the laws of their own country in order to perform construction services.

If a company performs permanent construction activities, then it is required to establish a branch or subsidiary in Austria and is also required to register the fact that it performs construction services.

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

The landowner usually requests the permits required for construction but they may also be requested by any investor who has other material or obligational rights on the real estate in question (meaning rights other than an ownership right) and where said rights allow them to carry out construction works or general works (e.g. building rights).

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What permits are required for construction of properties?

A building permit has to be obtained, pursuant to the applicable federal state act. Additional permits can be required (e.g. monument protection).

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Are there any surprising costs, levies or other charges related to construction?

Unexpected costs often arise for ensuring compliance with worker protection legislation and safety provisions.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

Yes, in general construction must be started within the period in which the construction permit is valid. This period is four years for Vienna and two years in some other cases. This period can be extended per request in some provinces. Moreover, the construction has to be completed within four years of the beginning of construction.

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Can an investor transfer a construction permit to another investor?

The construction permit is a material notification associated with the property in question. The construction permit may therefore only be transferred to an investor together with the real estate.

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Yes, there are special requirements for said activities.



# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Local nationals usually perform work for an employer on the basis of an employment contract. Service contracts are much rarer and in practice mostly used for consultants and directors or board members.

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What is the duration of employment contracts on the local market?

An employment agreement may be executed for a definite or indefinite period of time. As a rule, most employment agreements are concluded for an indefinite period.

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Are there any restrictions regarding the execution of definite term employment contracts?

Yes. Having one fixed-term employment contract follow on from the last employment contract (consecutive fixed-term contracts) is only allowed if there is objective justification for this or if it lies in the interests of the employee. If this is not the case, then these contracts may be treated as an indefinite term continuous employment contract.

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Are there any special rules for employment contracts of directors / board members?

An employment contract or a service contract (freier Dienstvertrag) may be agreed with directors and board members. They are often excluded from the national worker protection legislation (e.g. with regards to working time). The contracts for directors of a stock company shall be concluded for the period in which they work at the company and termination is restricted to important reasons.

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Is there a collective bargaining agreement applicable nationally to retail in Austria?

Yes there is a collective bargaining agreement for employees in the retail sector (Handelsangestellte).

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Are there any restrictions regarding the employment of foreign nationals?

Citizens of EU member states, countries in the European Economic Area (EEA) and Swiss citizens are in general allowed free access to the Austrian labour market and to become self-employed without a permit for work. Non-EU citizens and Croatian citizens need a work and residency permit in order to be able to work in Austria.

The "Rot-Weiß-Rot-Karte" (red-white-red card) allows non-EU citizens access to the Austrian labour market in order to work and take up residence in Austria. The card is valid for two years. The application can be made by the employee or employer.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Both types of employment are allowed by Austrian law and used in practice. The chosen type of employment in a particular case depends on the relevant circumstances (period performing work in Austria, the foreign national's position etc.).

The competent authorities have to be notified if foreign workers are posted to Austria.

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Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

A non-EU citizen or a citizen of Croatia can only commence working if they have previously obtained a work permit.

It is as an exception possible for foreigners to work without a work permit, e.g. foreigners who are employed by a foreign employer without a registered office located in the federal territory only require a secondment permit, provided the period of work does not last longer than 6 months. Furthermore, no work permit is necessary; for example for foreigners who have been employed by their foreign employer within the framework of a joint venture and on the basis of a company training program for no more than six months or on the basis of a training program and within the framework of an international group for not more than 50 weeks.

Foreigners who work in the following manner do not require a work permit: if they are employed as holiday or professional trainees or for up to three months in the calendar year for the sole purpose of expanding and applying their knowledge in order to acquire practical skills and who work without an entitlement to remuneration or an entitlement to be given work (volunteers).

There is no need for a work permit for business meetings, visits to fair events and congresses in Austria.

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Are there any special (more favourable) procedures for employment of foreign management staff?

Employees with a high level of education and a high salary usually obtain a working permit (Red-White-Red Card) more easily. These are awarded on the basis of a points system.

## 2) to pay

How are salaries and other benefits determined in Austria?

Salaries may be determined by the individual employment contract, general employer's acts, the potentially applicable collective bargaining agreements and/or Austrian laws. If there are contradictory provisions, the provisions most favourable for the employee apply.

Does local law envisage a minimum salary and other payments?

There is no general minimum wage guaranteed by law in Austria, but collective agreements apply to most sectors which stipulate a minimum wage based on training and professional experience.

Do foreign nationals fall under the local employment rules and regulations?

Yes, in general they do.

What are the current personal income tax rates in Austria?

Income tax is due on personal income. The income tax rate is based on a progressive tax rate system. In order to calculate how much income tax is due, the personal income must be divided up into segments:

€ 11,000 and less: 0%

over € 11,000 to € 18,000: 25 %

over € 18,000 to € 25,000: 35 %

over € 25,000 to € 31,000: 35 %

over € 31,000 to € 60,000: 42 %

over € 60,000 to € 90,000: 48 %

over € 90,000 to € 1,000,000: 50 %

over € 1,000,000: 55 %

What are the Personal Income Tax implications for foreign nationals working in Austria?

Persons who obtain income in but are neither resident nor have their habitual residence in Austria only have limited tax liability in Austria. This means that only the income gained in Austria will be subject to tax in Austria. Details are often stipulated in double tax agreements among countries.



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Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

In general, yes. Foreign nationals employed in Austria must have health insurance in Austria, as must their family members with permanent residence in Austria.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

Special provisions apply for trainees (*Lehrlinge*). A written apprenticeship contract is required here.

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Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

Special provisions apply on apprenticeship contracts. They have to be concluded for a definite period (training period and, to a limited extent, the period of continued employment).

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Is it possible to terminate an employment contract for training purposes without grounds?

No, the conditions for termination of trainee employment agreements are very strict. Termination is only possible if the conditions for extraordinary termination are met.

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Do trainees enjoy the same protection as full employees?

Trainees enjoy even more protection against dismissal than full employees do.

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Is it possible to agree two subsequent training contracts?

In general, the apprenticeship contract is concluded for the entire training period.

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Once the training is finished,  
is a new employment  
contract required?

Yes, in general a new employment contract is required, unless the details of the subsequent work relation were already agreed to.

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Is a trainee entitled to  
severance payment after  
termination of employment?

The new severance pay system (from 2003) is characterised by a requirement that the employer pay monthly amounts. The payments amount to 1.53% of the monthly remuneration, subject to social insurance contributions. An employee/ trainee is entitled to severance pay if the relation of employment was ended without any fault of the employee. In every other case, the claim to severance payment is not lost, but will not be paid out for the time being.



# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors establish a limited liability company (GmbH) as an SPV for their investment. It can be incorporated with a minimum share capital of EUR 35,000.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

Anyone who is an Austrian citizen or a citizen of an EEA country or Switzerland may become a sole proprietor. Anyone who has a residency permit for Austria allowing him or her to carry out his or her trade may also become a sole proprietor. Shareholders of a GmbH (Austrian equivalent of a limited company) to be incorporated in Austria do not need Austrian citizenship; they may also be foreign nationals.

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How long does it usually take to fully set up the most common company in the local market?

Once an application to register the company has been duly submitted, the registration procedure takes roughly 1-3 weeks. It usually takes another few weeks to obtain an identification number for VAT etc. Said identification number allows the company to become fully active. Trade law regulations (such as acquiring a trade license) also need to be taken into account when incorporating a GmbH.

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What are the registration steps?

The GmbH is established by articles of association or a certificate of incorporation (one-person companies) in the form of a notarial deed. The company, its registered seat, the business purposes of the company, the amount of equity and the amount of capital paid in by the individual shareholders must be noted in the document. A GmbH must have at least one managing director who is a natural person with legal capacity.

The application for the company to be entered into the commercial register must contain the following documents: articles of association as a notarial deed, the notarised shareholders' resolution on appointing a managing director, a notarised sample signature from the managing director, a bank confirmation and confirmation from the managing directors that the capital has been paid in.

An Austrian GmbH is incorporated once it has been entered into the commercial register.



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What other actions may be required for the company to become fully operational?

The tax number and identification number for VAT are to be obtained after the company has been entered in the company register.

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Does a company performing retail activities on the local market require any additional permits / licences?

The Austrian Trade Code differentiates between regulated, partially regulated and free trades. Different professionals are therefore subject to different requirements. The retail trade generally falls under the category of free trade. The trade authorities in general need to be informed of any work undertaken in this sector, but a certificate of proficiency does not generally need to be provided. Sectors such as the weapons trade, pharmaceuticals, trade in medical products and leasing medical products are generally subject to stricter requirements.

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What other forms of companies are present in Austria?

In addition to limited companies, the following types of companies can be established in Austria:

- joint stock company (AG),
- general partnership (OG),
- limited partnership (KG),
- sole proprietorship (Einzelunternehmer), and
- European public limited company – Societas Europea (SE),

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How can an Austrian company be closed down?

The most common option involves regular liquidation, which entails closure on the basis of a decision by the shareholders. If the company becomes insolvent, the provisions of the Austrian Insolvency Act (Insolvenzordnung) apply.

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How long does it usually take for an Austrian limited liability company to be wound-up / liquidated?

The liquidation proceedings normally take between 12 to 18 months, and often take longer for larger companies.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

The Austrian GmbH law requires that managing directors according to commercial law have to be natural persons with legal capacity. Managing directors neither need to be Austrians, nor do they have to have their residence or place of habitual residence in Austria.

If a managing director according to trade law has to be appointed by the company or the sole proprietor because there is no certificate of proficiency, then said director must be of full age, have a certain position in the company and must have a clean criminal record. They must be a citizen of an EU/EEA member state or have a residency permit allowing them to carry out a trade in Austria.

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Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

Under Austrian law, a director / board member of a limited company may conclude either an employment contract or a service agreement with the company.

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Is a director/ board member required to be physically present on the local market?

No, a managing director/ board member is not required to have a continual physical presence on the local market.

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Does the director/board member require any special permits to work and stay in the local market?

A foreign national acting as a director/ board member may, depending on certain circumstances (country of residence, duration of stay and/or type of relationship with the local Austrian company), require a residence and/or work permit.

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Is it obligatory to pay remuneration to a director/ board member in your jurisdiction? What are the tax effects of such remuneration?

Speaking in legal terms, the remuneration for director/board member is not obligatory unless they are employed by the company and a collective agreement applies. Special payments up to a sixth of the annual salary are taxed with the more favourable wage tax rate of 6%.

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What is the procedure for appointment/dismissal of a director/board member?

By resolution of the shareholders (GmbH) or supervisory board (stock company, "AG").

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The corporate income tax (CIT) rate is 25%.

The general VAT rate is 20% and the decreased rate 10% (13% for some agriculture supplies, wine production, etc.).

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Is VAT grouping or consolidation for corporate tax purposes available?

Yes, the main advantages of the group taxation model are that the profit and loss from different corporate bodies connected with each other can be offset against each other for tax purposes. The parent company or the holding company shall combine the total taxable income of the group members with its own income. The request for group taxation must be concluded for a period of at least three years.

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Which payments to foreign countries are subject to withholding tax in your country and at which rates?  
Are exemptions available?

In general, the following payments may be subject to withholding tax if they are made to non-resident companies:

- Dividends
- Interests
- Royalties
- Services

The rate is subject to the respective double tax agreements.

No EU withholding tax has to be paid as of 1 January 2017. Instead, an automatic information exchange between the EU and some non-member states exists.

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Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

There are currently no thin capitalisation rules in Austria. Though no draft regulation is currently available, it is assumed that rules on thin capitalisation will be implemented in the near future as part of the OECD BEPS initiative.

However, Austrian tax authorities tend, in their administrative practice, to accept a debt-to-equity ratio of approximately 3:1 to 4:1, although this is not considered as a safe harbour. The debt-to-equity ratio accepted by tax authorities also depends on the average ratio for the industry sector in question.

Please note that, under Austrian law, a company is considered to be in need of reorganisation if the equity ratio is less than 8% and the fictitious period required for debt repayment (fiktive Schuldentilgungsdauer) extends over more than 15 years. In such case, any debt repayment is forbidden by law and interest is not deductible.



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Please specify other rules that limit interest deductibility.

There are no restrictions on interest deduction in Austria. Inter-company interest deduction payments are also tax deductible if they meet arm's-length requirements. Interest deduction will as an exception be denied if:

- (i) the recipient of the interest is a group company (e.g. a shareholder) or is (directly or indirectly) controlled by the same shareholder, and
- (ii) the interest is subject to <10% corporate income tax in the resident state of the recipient.

Furthermore, interest expenses resulting from the debt-financed acquisition of shares are usually tax deductible. As an exemption, interest expenses relating to the debt-financed acquisition of shares from a group company (e.g. a shareholder) or (directly or indirectly) controlling shareholders are non-deductible.

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List any rules on the tax implications of discount sales or sales below the acquisition value.

Price reductions or discounts due to early payments and discounts granted to the customer at the time of the supply reduce the VAT base. From an income tax perspective, any benefit resulting from the discounted sale of goods / services to employees are not subject to taxation, provided that the following requirements are all met:

- (i) the discount is granted to all employees or specific groups of employees,
- (ii) the employee does not resell such goods / services, and
- (iii) each discount sale does not exceed 20%.

If the discount sale exceeds 20%, then the resulting benefit is tax exempt if it does not exceed the total amount of EUR 1,000 per calendar year.

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Rules on utilisation of tax losses.

Tax losses resulting from business income may be carried forward indefinitely and may be offset against taxable income. However, only 75% of the current income may be offset against any tax losses brought forward from previous years. A company may, in exceptional cases, offset any available tax loss carry forwards against 100% of taxable income in a financial year resulting from (for example) liquidation gains, restructuring gains or income from the sale of or the termination of business operations. Excess tax losses can still be carried forward. Loss carry-backs are not permitted.



# Bosnia and Herzegovina

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## 1) to rent

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What is the definition of a lease on the local market?

A lease is the legal relation between a property owner (landlord) and a tenant. The landlord grants the tenant the right to occupy and use their premises for a predefined period of time in exchange for a consideration according to the terms agreed in the lease agreement. The right of use may include the right of usufruct, unless stipulated otherwise by the lease agreement.

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Can a foreign company rent a property directly or is a local SPV required?

Foreign companies / nationals may directly lease properties.

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Lease duration: long-term vs. short term.

The law does not prescribe the duration of lease agreements. The parties can freely agree on that.

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Are there any requirements regarding the form of a lease agreement?

Lease agreements must be concluded in written form, otherwise they do not bear legal effect.

Lease agreements do not have to be concluded as a notary deed, but if they are, one contracting party can directly enforce against the other party in case of default.

If the tenant wishes the lease agreement to be registered with the competent land register, this requires either the property owner's notarized signature on the lease agreement or for the lease agreement to be executed as a notarial deed.

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Does a lease agreement require registration with any authorities?

No. However, registration of the lease agreement with the land register is an advisable way to protect the tenant's rights under certain circumstances if the title over the property is transferred.

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Is there a legal or tax difference between renting premises with or without fit-out?

Fit-outs are not legally regulated, but performing improvements to the premises may lead to tax liabilities, as the tax authorities may require the tenant who has performed the improvements to issue invoices including VAT.

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Can we do turnover-based leases?

Yes.

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What are the most common securities on the local market required from the tenant?

It is advisable to conclude the lease agreement as a notary deed, so that the landlord may directly enforce his rights if a tenant defaults. Tenants are usually asked to provide bank guarantees, bills of exchange, security deposits or similar.

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Are there any stamp duties for lease agreements?

Aside from certain administrative fees for verifying the agreement, there are currently no stamp duties for lease agreements on business premises.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Local market practice indicates share deals are more common in cases where a buyer wants to acquire land which has already been built upon and/or real estate which is in the ownership of a legal entity.

Asset deals are conducted with the aim of acquiring land without any finished buildings on it. In this case, the buyer not only acquires the land but also assumes all third-party rights and obligations to that land registered in the relevant registries.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

The law on property rights allows foreign nationals (both natural and legal persons) to obtain ownership over real estate in BiH. It applies the principle of reciprocity unless regulated otherwise by bilateral agreements.

The reciprocity principle applies to countries specified in a list published annually by the ministers of justice, with the prior consent from the minister of foreign affairs of BiH.

Foreign nationals may also acquire property rights on real estate by means of inheritance.

Foreign nationals cannot obtain property rights on real estates located on territory which is intended for the protection of national security and where foreign nationals are by law excluded from obtaining property rights.



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Are there any historical title issues to observe when buying a property?

BiH has been left with the remnants of a socialist regime, which are evident in its legal practice even today. Since much real estate was and is owned by the state, it is advisable to conduct a proper due diligence process before purchasing the real estate, in order to ensure there are no issues related to state ownership.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Both the land and share purchase agreements must be concluded in written form. The law on public notaries states that every transfer of the land needs to be in the form of a notary deed, otherwise it will be considered null and void.

Share transfer practices vary from court to court. Some courts require notarial verification of signatures, whilst some require the agreement to be in the form of a notary deed.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

In BiH, the transfer of property rights (both to property and to shares) requires registration.

In case of an asset deal, the land purchase agreement must be registered with the relevant land register so the property rights can be transferred. In case of a share deal, the transfer of shares must be registered with the relevant court register.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

The RETT rate varies and is regulated according to the legislation of each canton as an administrative unit in the Federation of BiH ("FBiH"). While the applicable tax rate is 5%, this should be additionally confirmed, depending on the location of a specific real estate. There is no RETT in the Republika Srpska ("RS"), but an annual property tax of between 0.10% and 0.20% for the estimated value of the property. The RS tax authority maintains a fiscal register of real estate, with which tax payments and obligations for every property are recorded. VAT is payable for newly constructed buildings and the surrounding land.

The term "real estate company" is not used as such in the law on RETT. It is, however, used in the laws of corporate income tax of RS and FBiH, which determine how income earned by the foreign legal entity from the transfer of ownership over real estate is to be taxed, unless stipulated otherwise in bilateral agreements.

### 3) to construct

Are there any restrictions on the local market regarding direct construction by foreign nationals?

Foreign nationals and foreign legal persons acting as business persons may carry out constructions if they fulfill the conditions determined by the relevant laws. Only investors may initiate the procedure to obtain construction and usage permits.

If foreign nationals act as investors, they will be granted the construction permits according to the principle of reciprocity.

Under the laws on corporate income tax of FBiH and RS, construction projects lasting longer than 6 months are considered permanent branches and taxable as such, unless prescribed otherwise by double-taxation agreements.

Can only an owner request the necessary permits for construction, or is this option also available to tenants?

Construction permits are issued to investors only, but investors may construct buildings on behalf of buyers.

What permits are required for construction of properties?

Constructions are initiated by submitting an application for the issuance of a location permit, unless prescribed otherwise.

Thereafter, a construction permit, which gives the investor the right to construct a building is issued. Construction works must start within a period of two years from the date of the legally binding issuance of the construction permit.

In order to use a property, investors must obtain a use permit.

Are there any surprising costs, levies or other charges related to construction?

In BiH, the investor must only pay administrative costs for the process of obtaining the construction permit.

Depending on the region, there may be certain additional levies (e.g. land rent fee). These levies are generally set by the administrations on the municipal and/or district level. A detailed analysis of costs is advisable before commencing construction works.

Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

An investor in FBiH must construct the building within two years of the date of the legally binding issuance of the construction permit. This time period may be extended by one year.

In RS, investors will lose this right if they do not begin construction within a period of three years from the date upon which the issued construction permit became valid.

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Can an investor transfer a construction permit to another investor?

The law in FBiH requires that, if there is a change in investors during construction, the relevant authorities must issue an amended permit within 20 days from the date on which they were informed of this change. Changes may be requested up to the permit's issuance.

In RS, the law states that investors can request an amendment to construction permits. However, the amendments scope is not regulated.

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Depending on the retail activity, tenants have to obtain certain permits in order to commence business.



# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Employment contracts are the rule, service contracts the exception with the latter mostly used for external consultants.

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What is the duration of employment contracts on the local market?

Employment contracts may be entered into for an indefinite or definite period of time, provided there are certain limitations on the duration of definite period contracts, as explained below.

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Are there any restrictions regarding the execution of definite term employment contracts?

A definite employment contract may only be negotiated for a maximum duration of three years in FBiH and two years in RS, with some exceptions provided by the law.  
In RS definite-term contracts may be entered into solely for specific reasons as determined by law.

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Are there any special rules for employment contracts of directors / board members?

Yes, employment contracts for directors / board members represent a special subcategory of employment contracts, as certain provisions of employment law do not apply to such contracts and the parties have much more freedom to agree on their mutual rights and obligations. Directors/ board members may enter into specific management agreements in both legal entities.

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Is there a collective bargaining agreement applicable nationally to retail in BiH?

Collective bargaining agreements exist at the entity level. Both FBiH and RS have general collective agreements, and various branch collective agreements exist in both legal entities, depending on the business activities of the employer.

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Are there any restrictions regarding the employment of foreign nationals?

Foreign nationals require a work & residence permit in order to work and stay in BiH. The rules also stipulate certain exceptions under which work permits are not required.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

BiH laws only recognise direct employment. Secondment/posting as a type of employment is not explicitly regulated within BiH laws. Foreign nationals may stay and work in BiH based on various legal grounds, and although secondment is not explicitly regulated, it is not prohibited either. It may result in additional legal implications. Direct employment requires that certain formal conditions be fulfilled.

---

Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

If a foreign national is in BiH for business, they are required to obtain a residence and work permit. The residence permit may be obtained based on the work permit or on other legal grounds stipulated within BiH's law on foreigners. The respective permits are awarded for a period of one year and may be extended.

---

Are there any special (more favourable) procedures for employment of foreign management staff?

Yes, the law allows work permits for foreign management staff to be much more quickly obtained and also requires less documentation for the procedure of employing foreign management staff.



## 2) to pay

How are salaries and other benefits determined in BiH?

Salaries and other benefits are determined by the individual employment contract, by-laws on workers, potentially applicable collective agreements and/or BiH laws. There is no hierarchy in which such documents apply – the most favourable provisions will always apply to the employee.

Does local law envisage a minimum salary and other payments?

The minimum salary in FBiH is stipulated within the applicable collective agreements or individual codes of procedure, while in RS the minimum salary is determined by the government of RS based on proposals from the socio-economic council. This salary is determined in the last quarter of the current year for the following year.

In FBiH, the minimum hourly wage is currently approx. EUR 1.18, while collective agreements for certain fields may prescribe an even lower hourly wage, but not lower than approx. EUR 0.83.

The minimum monthly salary is approx. EUR 189.00.

Do foreign nationals fall under the local employment rules and regulations?

Foreign nationals working in BiH enjoy the same rights as those for local employees.

What are the current personal income tax rates in BiH?

Employment income is subject to personal income tax at a rate of 10% after deducting mandatory social security contributions and non-taxable personal allowance.

In FBiH, part of the gross monthly salary includes the mandatory social contributions, to be paid for the employees at the following rates: (i) retirement and disability insurance (22.5%), (ii) basic health insurance (17.5 %) and (iii) insurance from unemployment (0.5 %)

The above-mentioned tax laws will be subject to amendments in FBiH.

In RS, mandatory social contributions to be paid as part of the gross monthly salary include the following rates: (i) retirement and disability insurance (18.5%), (ii) basic health insurance (12%), (iii) insurance from unemployment (1 %), and (iv) child protection (1.5%).

---

What are the Personal Income Tax implications for foreign nationals working in BiH?

Foreign national employment income generated in BiH is subject to Bosnian PIT and social security contributions ("SSC"), unless exemptions under double tax agreements provide otherwise.

The following employees of international organisations and foreign representations are exempted from the PIT:

- (i) foreign diplomatic mission chiefs, their staff and household members if they are not Bosnian nationals or residents of RS or FBiH;
- (i) foreign consulate chiefs in RS or FBiH, their staff and household members if they are not Bosnian nationals or residents of RS or FBiH;
- (ii) employees of the United Nations and its agencies; and employees of foreign diplomatic and consular representations.

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Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

Foreign nationals employed in both FBiH and RS fall under social contribution and pension schemes, depending on the legal entity they reside in.

Family members of such foreign nationals have health insurance in accordance with international agreements between BiH and the country of origin of the foreign national employed locally.

Other schemes may be applicable if there is a bilateral agreement between BiH and the foreign national's country of origin.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

It does. Employers enter into employment agreements with trainees containing an agreed upon probationary term, legally limited to a maximum of 3 months.

---

Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

Training is not recognised by law as one of the grounds for the parties to enter into a definite-term employment contract. Parties usually enter into an indefinite or definite term contract and agree on a probationary term of 3 months, this being the longest possible period.

---

Is it possible to terminate an employment contract for training purposes without grounds?

If a trainee does not meet the employer's expectations during the probationary term, the employer may terminate their employment with such reasoning. Unless otherwise agreed by the underlying agreement with the trainee, the termination notice period in such case is set to a minimum of 7 days.

---

Do trainees enjoy the same protection as full employees?

Yes, as full employees they are entitled to full salary and other benefits. If the current employment is the employee's first employment, they are entitled to full annual leave after 6 months of employment. If the employee's employment is terminated, they will be entitled to proportional annual leave for the period worked.

---

Is it possible to agree two subsequent training contracts?

In BiH, there are no clear laws on training contracts. A training period with a maximum term of three months can be provided for in a definite or indefinite term employment contract.

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Once the training is finished, is a new employment contract required?

The parties conclude an employment contract with an agreed training period. After the training period's expiry, the parties remain in an employment relationship for the term for which the employment contract was initially concluded.

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Is a trainee entitled to severance payment after termination of employment?

No. In BiH, an employee is only legally entitled to severance payment if the following apply: their employment was concluded for an indefinite term, employment is terminated after 2 years of continuous employment with the same employer, and the termination is due to reasons not attributable to the employees' conduct.



## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors will use a Ltd. or stock company as an SPV for their investment. They can be incorporated with a minimal share capital of EUR 500 in FBiH and EUR 0.50 in RS. At least one shareholder must be involved and such companies can be up and running within a matter of weeks.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

Only in specific cases such as business entities which manufacture and sell military equipment, mediator's services and arms, ammunition and explosives for military purposes.

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How long does it usually take to fully set up the most common company in the local market?

It usually takes between 10 and 20 days in both legal entities for a Ltd. or stock company to be duly registered with the competent commercial court. It will take another 10 to 15 days for subsequent applications to be carried out (statistics, accounting and tax) and for the company to become fully active.

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What are the registration steps?

To establish a Ltd. or stock company, incorporation papers must be signed by shareholders in BiH or by issuing a corresponding PoA. Certain documents must be personally signed by the future directors (if this is done abroad, they must be signed before public notaries in certain jurisdictions). An interim bank account must be opened and share capital paid by the shareholder. Incorporation papers (along with a certificate confirming that the share capital has been fully paid) must be filed with the competent commercial court. Once the court confirms the registration, it will register the company with the commercial court register and issue an incorporation decree.

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What other actions may be required for the company to become fully operational?

Based on the incorporation decree, the director of the company may request a company's seal, register the company with the State Office for Statistics, open a permanent bank account, commission an accounting office and register the company with the tax authorities. Certain additional registration obligations may arise, depending on specific circumstances.

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Does a company performing retail activities on the local market require any additional permits / licences?

In RS, certain retail business activities require additional certificates or resolutions from the relevant ministry. Retail and wholesale premises and equipment need to fulfil minimal technical conditions and the persons involved in the activities of retail and wholesale need to have adequate professional qualifications as according to RS's law on trade.

In FBiH, a natural person may run a retail business, provided they have the required professional qualifications. Both retail and wholesale premises and equipment need to fulfil minimum technical conditions. Additional permits and certificates may still need to be acquired from the relevant ministry in order to carry out retail activities, as according to FBiH's law on internal trade.

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What other forms of companies are present in BiH?

In RS, the available forms for establishing a business entity are: a Ltd. company, a Plc., a limited partnership and a partnership company. In FBiH, these are: an unlimited liability company, a limited partnership, a Plc. and a Ltd. company.

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How can an Bosnian company be closed down?

A company can be closed down if their shareholders reach a winding-up decision (decision on liquidation), appoint a liquidator who will finalise the activities of the company (fulfil all of the company's outstanding obligations and divide any remaining assets) and apply for the winding-up to be registered with the competent commercial court. If the company is not in good financial standing, bankruptcy proceedings must be applied.

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How long does it usually take for an Bosnian limited liability company to be wound-up / liquidated?

The process may take between 12 and 18 months in both legal entities.



## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

A foreign national can be a director/ board member of a Bosnian Ltd. or stock company. Such person must issue a statement confirming they have accepted their appointment and stating there are no circumstances preventing their appointment in the meaning of the Bosnian Commercial Companies Act.

---

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

A director / board member of a Ltd. or stock company may be employed by either employment agreement or management agreement. The company must have a representative/director in order to operate.

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Is a director/ board member required to be physically present on the local market?

In general, there are no explicit rules which govern this matter, however in certain cases the director's presence is advisable and required. Such cases are usually related to situations where the director needs to sign certain documents, where there is an ongoing inspection procedure has been initiated by the competent authorities, or in cases where the agency for migration affairs is inspecting the premises of the company (usually to determine if the conditions under which a residence permit is granted are met). If the director is the only employee of the company, they should be frequently physically present.

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Does the director/board member require any special permits to work and stay in the local market?

Depending on certain circumstances (country of residence, duration of stay and/or type of relationship with the local Bosnian company), a foreign national acting as a director / board member may require a residence and/or work permit.

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Is it obligatory to pay remuneration to a director/board member in your jurisdiction? What are the tax effects of such remuneration?

It is possible (but rare) to negotiate a labour agreement/management agreement without providing remuneration to the director. Tax laws stipulate they will be liable for payment of social contributions in any case. Since the tax basis will be zero, the director's personal income will not be liable to tax.

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What is the procedure for appointment/dismissal of a director/board member?

The shareholders will reach a decision on the basis of which a certain person is appointed as a director / board member of a Ltd. or stock company. Such person will then issue a statement accepting the appointment and declaring that no circumstances exist preventing their appointment in the meaning of the Bosnian Commercial Companies Act. The director / board member will further confirm their signature in writing. All documents will then have to be filed and registered with the competent commercial court.

For dismissals in Ltd. or stock companies, shareholders can unilaterally reach a decision on revocation (and unless otherwise agreed, do not need a valid reason to do so), which shall then be registered with the competent court register.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The general corporate income tax rate is 10 % in both legal entities. VAT rate is fixed at 17% of the turnover from goods or services applicable to the company paying VAT.

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Is VAT grouping or consolidation for corporate tax purposes available?

Consolidation for the purposes of corporate income tax is available in BiH. In FBiH, the subsidiaries may join with parent companies in order to form a group for tax purposes, provided the parent company directly or indirectly control more than 50% of shares or stocks of the subsidiary, depending on the type of company. The companies also need to be residents of FBiH. In RS, grouping for CPT purposes is not provided for by the relevant law. VAT grouping is not available in BiH.

---

Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

In both legal entities, the following payments are subject of withholding tax:

- (i) dividends and profit shares,
- (ii) interests,
- (iii) remuneration for intellectual property rights,
- (iv) tax and business consultancy and audit services,
- (v) insurance and reinsurance premiums,
- (vi) telecommunication services between RS or FBiH and the foreign country, and
- (vii) lease of movable assets.

Unless prescribed otherwise by double tax agreements, the rate of the withholding tax is 10% in RS. The rate is also 10% in FBiH, except for dividends, where it is 5%.

Interest on bank loans, commodity loans and bonds are exempt from withholding tax.

---

Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

In FBiH, the following thin capitalisation rules apply: interest is non-deductible for tax purposes only by the amount where the total amount of loans granted by associated companies does not exceed a 4:1 debt-to-equity ratio. This rule is not applicable to banks and insurance companies.

In RS, corporate interest on loans is recognised as expenses only if the amount of interest is subject to tax during the year in which such deduction is made.

Interest on the loan granted by a non-resident to its permanent establishment in RS cannot be recognised as an expense of said permanent establishment in RS.

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Please specify other rules that limit interest deductibility.

For RS see above.

In FBiH, thin capitalisation is the only rule limiting interest deductibility.

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List any rules on the tax implications of discount sales or sales below the acquisition value.

Price reductions or discounts granted to the customer at the time of supply reduce the VAT basis

In practice, the tax authorities may try to dispute the transfer pricing setup, arguing that under normal circumstances other entrepreneurs would not sell products below their acquisition value.

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Rules on utilisation of tax losses.

In both legal entities, tax losses can be carried forward for 5 years and utilised against taxable profit in future periods.

# Bulgaria

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# Space

## 1) to rent

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What is the definition of a lease on the local market?

The term "lease" is used when the property owner (landlord) allows the lease holder (tenant) to use the property for a pre-defined period of time against a consideration payable by the tenant.

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Can a foreign company rent a property directly or is a local SPV required?

There are currently no legal restrictions on a foreign company / national directly renting a property.

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Lease duration: long-term vs. short term.

A lease agreement may not be concluded for a period of longer than 10 years, unless it is considered a commercial transaction. Agreements for the latter may be entered into for any period agreed between the parties, whilst also bearing in mind the fact that long-term leases (20+ years) are still not very common.

Under Bulgarian law, persons who perform simple management activities may not conclude lease contracts for a period longer than three years, unless there is a corporate decision by the competent company body.

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Are there any requirements regarding the form of a lease agreement?

None. If the tenant wants to protect its lessee's rights against a possible transfer of the rented property, the lease agreement could be entered into the land register and then signed with a provable date. Registration in the land register proves to any new owner of the rented property that the lease agreement is valid for the whole lease term.

If the lease agreement is not entered into the land register but has a notary certified date, it will apply to any new owner of the rented property for no more than one year as of the transfer date. If the lease agreement date is not certified, the new owner of the rented property may terminate the agreement with a one-month prior notice.



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Does a lease agreement require registration with any authorities?

No, that is not legally required. The registration of the lease with the land register is an advisable way of protecting the tenant's rights in cases where title over the property is transferred.

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Is there a legal or tax difference between renting premises with or without fit-out?

With regards to fit-outs, the lease agreement should contain detailed provisions on the rights and obligations of the parties involved, as this is not regulated by the underlying laws in detail.

The party (tenant or landlord) which bears the fit-out works may: (i) deduct the fit-out costs for tax purposes, as according to the amortisation schedule (up to five years); and (ii) claim VAT credits. If fit-out works are not dealt with in the lease contract, the tax authority could claim that fit-out works represent a supply by the tenant to the property owner, resulting in VAT liability for the tenant on the value of the works. In addition, if the tenant vacates the premises before the investment for the fit-out has been fully amortised, then any unamortised amount could represent a non-deductible tax expense.

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Can we do turnover-based leases?

While this is legally possible, the tax authority could try to dispute such agreements and apply VAT taxation on the basis rent. For this reason, a basis rent and a turnover rent is more usual.

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What are the most common securities on the local market required from the tenant?

Lease agreements are often notarised, allowing the property owner to request direct enforcement in cases where the tenant becomes unable to meet its contractual obligations. Tenants are usually required to provide a deposit in the amount of up to three months worth of rent.

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Are there any stamp duties for lease agreements?

None.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both options are available to investors. The final structure of the transaction usually depends on the circumstances of each individual case.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

Foreign natural or legal persons are entitled to acquire ownership rights over land plots under the conditions of an international treaty which has been accepted and has entered into force in Bulgaria. Foreign individuals may also acquire ownership rights over land plots via legal inheritance.

EU/ EEA citizens and legal persons may acquire ownership of land plots but must observe the legal requirements in accordance with the terms of the Treaty of Accession of the Republic of Bulgaria to the European Union.

Foreigners natural and legal persons from outside the EU/EEA may acquire ownership of buildings without limitations and limited property rights to real estates in Bulgaria.

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Are there any historical title issues to observe when buying a property?

The ownership title of the current owner depends on the rights of his or her predecessors.

The possibility of third-party claims is precluded by the so called "prescription period of possession". The current owner of the property is considered the rightful owner once this period has expired, regardless of the rights of their predecessors. The prescription period is 10 years in cases of bad-faith possession and 5 years in cases of a good-faith possession. The prescription period rules do not apply to state and municipal properties.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

The transfer of the company share shall be performed under an agreement. The signatures on the agreement have to be notarised. The agreement's contents shall be registered with the commercial register. Any ownership transfer agreements should be executed in the form of a notary deed.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

In Bulgaria, transfers of titles (both to property and/or shares) require registration.

For an asset deal, the properties purchase agreement shall be registered with the land register.

For a share deal, the transfer of shares shall be registered with the commercial register.

---

Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a “real estate company” subject to RETT in your jurisdiction?

The acquisition of real estate requires the payment of various taxes:

- A local tax, determined by the competent municipality – usually about 2.5% of the real estate price;
- registration fee in the amount of 0.1% of the real estate price, for registration with the land register;
- notary fees, calculated in accordance with an official notary tariff; and
- VAT (rate 20%) for transfer of regulated land plots (already developed for construction) and new constructions (up to five years from the issuance of the use permit).

The sale of “real estate company” is not subject to RETT.

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

Foreign companies can undertake construction activities in Bulgaria if they are registered with the Bulgarian Construction Chamber and specify the respective type of construction they will undertake.

Under the Bulgarian Corporate Income Tax Act, foreign companies carrying out construction projects in Bulgaria will have to set up a taxable permanent establishment in Bulgaria, unless protection under double tax agreements is exercised.

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

In principle, only the property owner may request the construction permit. In exceptional cases, the request may be made by the tenant, but with the consent of the property owner (landlord) and in the name and on behalf of the property owner.

---

What permits are required for construction of properties?

A construction permit is required, which allows the investor to construct a building (according to a detailed description) on a certain property.

Once the construction is finished, the investor will have to obtain a use permit confirming that the construction has been carried out properly and allowing the investor to use the construction.

Depending on the specifics of a particular project, other permits might also be required.

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Are there any surprising costs, levies or other charges related to construction?

No.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

A building permit expires when:

1. construction has not commenced within three years of the permit becoming valid; and

2. basic construction work, including finishing the roof of the buildings, has not been completed within five years of commencing constructions.

The contractor may request re-certification of the building permit within three months of the respective term having expired. A building permit may be re-certified only once: either for the renewal of the term for commencement of the construction work or for renewal of the term for completion of the construction work.

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Can an investor transfer a construction permit to another investor?

Yes, an application must be filed to the respective municipality and an order for the transfer of the construction permit must be issued in order for the transfer to be valid.

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Based on the type of retail activity performed in the leased premises, the tenant will be required to obtain additional operation permits. The retail sale of food requires food sale registration under the Foodstuffs Act.

Retail sale of medicinal products may only be carried out by pharmacies holding authorisation from the Executive Agency for Medicinal Products in Bulgaria.

The retail sale of tobacco requires a permit for the sale of tobacco and tobacco products.



# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Employment contracts are the rule, while service contracts are considered to be the exception (in practice used mostly for consultants and managing directors).

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What is the duration of employment contracts on the local market?

Employment contracts can be entered into for an indefinite (rule) or definite (exception) period of time.

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Are there any restrictions regarding the execution of definite term employment contracts?

A fixed-term contract may be concluded in the following cases:

- contracts for temporary, seasonal or short-term activities (may not exceed three years). A fixed-term employment contract may be concluded for work that is not of a temporary, seasonal or short-term nature for a period of no less than one year. The employee may also apply to enter into such an employment contract for a shorter period, upon their written request. The same employee may re-sign for a period of at least one year in such cases, but only once for the same type of work and with the same employer.
- contracts with new employees in companies which are bankrupt and/or in liquidation,
- replacement of employees who are absent from work for a longer period of time,
- contracts for work in a position which is to be occupied through a competitive examination (usually for a fixed term), and
- positions where mandate agreements apply.

---

Are there any special rules for employment contracts of directors / board members?

Relations with the directors/board members are regulated by a management agreement. The parties are free to negotiate the agreement's provisions, but the mandatory content and restrictions usually applicable to an employment contract (working hours, breaks, leaves, termination etc.) do not apply here.

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Is there a collective bargaining agreement applicable nationally to retail in Bulgaria?

Currently, no.

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Are there any restrictions regarding the employment of foreign nationals?

There are no work restrictions for citizens of the EU/EEA member states or Switzerland.  
Non-EU/EEA or Swiss citizens have the right to work in Bulgaria only after having been issued with a work permit or blue card. These provisions do not apply to management personnel.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Both types of employment are an option. Each of the options requires certain formal conditions to be fulfilled, whilst the selected type of employment will depend on the particulars of each individual case (the nationality of the foreign national, duration of stay, the foreign national's position, etc.).

---

Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

If a foreign non-EU/EEA or Swiss national is in Bulgaria for business, then he or she requires a permit. If they are not in Bulgaria for business, then they are not subject to residence and work restrictions on the local market.

---

Are there any special (more favourable) procedures for employment of foreign management staff?

Foreign directors / board members of Bulgarian companies do not need work permits (unless they work under employment agreement). The rules for residence permits depend on the country of origin (EU/EEA and Swiss nationals do not need residence permits on the local market).



## 2) to pay

How are salaries and other benefits determined in Bulgaria?

Salary and other benefits may be determined by the individual employment contract, internal rules of procedure, potentially applicable collective agreements and/or Bulgarian laws. There is no hierarchy for how such provisions are applied – those most favourable to the employee will always apply.

Does local law envisage a minimum salary and other payments?

A minimum salary is approved annually by the Ministry Council. For 2017, the minimum salary is approx. EUR 235 (BGN 460).

A payment for length of service is provided for and is equal to 0.6% of the basic monthly salary based upon each year of employment in the same or a similar position, or in the same company. This payment is due after the employee has gained one year of professional experience.

A general provision stipulates that employees are entitled to benefits (such as increased salary) for night work, overtime, working on Sundays and holidays, etc.

It is advisable for the employer to ensure these details are stipulated by works agreements or internal codes of procedure.

Do foreign nationals fall under the local employment rules and regulations?

Yes, all employees working in Bulgaria fall under local employment rules and regulations.

What are the current personal income tax rates in Bulgaria?

Employees pay personal income tax to the amount of 10 %, which is withheld by the employer and paid directly to the tax authorities.

Mandatory contributions to the social security funds are made by both the employer and employee.

The employer is obliged to make contributions to the social security system. Said contributions comprise statutory pension, social health security, unemployment insurance and occupational accident insurance. Contributions to the social security system are borne by the employer to 60% and by the employee to 40%. The employer must also withhold the employee's share of social security contributions.

What are the Personal Income Tax implications for foreign nationals working in Bulgaria?

Employment income earned by foreign nationals and sourced to Bulgaria is subject to Bulgarian PIT and social security contributions ("SSC"), unless exemptions under double tax agreements and the EU regulation on the coordination of social security systems / bilateral social conventions apply.

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Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

Foreign nationals employed in Bulgaria fall under Bulgarian social contributions and pension schemes and must have health insurance in Bulgaria, provided they have been granted long-term or permanent residence, as must their family members with permanent residence in Bulgaria.

For citizens of EU member states, there are exemptions under the EU regulation on the coordination of social security systems, while exemptions apply under bilateral social conventions for citizens of third countries.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

It does. By signing an "on-the-job" training employment contract, the employer and the employee may agree to train the employee in order to work in a specified occupation or speciality. Such contract with the same employee may only be signed once with the same company, and for training in the same profession.

The contract shall specify the form, place and the duration of training, compensation the parties owe each other in case of non-performance, as well as any other matters related to the provision of the training.

The duration of training may not exceed 6 months, except in certain cases.

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Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

In an "on-the-job" training employment contract, the parties shall specify the period during which the employee undertakes to work for the employer after the successful completion of the training, and the employer undertakes to provide work to the trainee conforming to the qualifications attained. The term of this agreement may not be longer than three years as of the successful completion of the training.

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Is it possible to terminate an employment contract for training purposes without grounds?

No, it is not.

---

Do trainees enjoy the same protection as full employees?

During training, the employee shall receive remuneration in proportion to the work done, but no less than 90% of the national minimum salary. The trainees enjoy the same level of protection as full employees.

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Is it possible to agree two subsequent training contracts?

No, such a contract may only be concluded once.

---

Once the training is finished, is a new employment contract required?

After successfully completing his or her the training, the trainee's employment agreement continues until the required term (no more than 3 years after expiration of the training period) has expired. The parties may enter into a permanent employment contract upon expiration of the term of the initial agreement, subject to their own will.

---

Is a trainee entitled to severance payment after termination of employment?

No explicit requirements.



# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors will use a Ltd. company as an SPV for their investment. A Ltd. company is a capital company, meaning its shareholders are – under normal circumstances – not liable for the company's obligations. A minimum share capital of approx. EUR 1 and at least one shareholder are required in order to incorporate the company and it can be up and running within a couple of weeks.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

Legally speaking, no. Certain practical problems may arise during the incorporation and afterwards if the shareholders are based in certain jurisdictions.

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How long does it usually take to fully set up the most common company in the local market?

The incorporation procedure itself takes up to four business days after all the necessary documents have been filed. Additional formalities may take a few more days.

Registration with the tax authorities usually takes up to one week. VAT registration during the first year of activity is optional and takes approx. 2 weeks.

It generally takes approximately 2.5 months for the legal requirements pertaining to the opening of a commercial site to be satisfied if the necessary documents for the premises have already been obtained.

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What are the registration steps?

To establish a Ltd. company, incorporation papers must be signed by shareholders in Bulgaria or by having a corresponding notarised PoA issued. Certain documents must be personally signed by the future directors (if they are abroad, then before public notaries). An interim bank account must be opened and share capital paid in by the shareholder. Incorporation papers (along with a certificate confirming that the share capital has been fully paid in) must be filed with the commercial register. If all the requirements are met, the company will be registered by the end of the first working day following filing.

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What other actions may be required for the company to become fully operational?

Once the company is incorporated, the director may request a company seal, open a permanent bank account, commission an accounting office and register the company with the tax authorities. Certain additional registration obligations may arise, depending on specific circumstances.

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Does a company performing retail activities on the local market require any additional permits / licences?

Apart from some specific additional permits/registrations which may need to be carried out depending on the type of retail business, it does not. Retail and wholesale premises must meet minimum technical requirements.

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What other forms of companies are present in Bulgaria?

The same types of companies as in most EU jurisdictions are recognised, including a stock company and a limited partnership.

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How can an Bulgarian company be closed down?

The shareholders of a Ltd. company can reach a winding-up decision, upon the basis of which a liquidation procedure will be opened and submitted to the commercial register. The liquidator (typically the manager, unless decided otherwise by the shareholders) will have to wind up the company's activities (notify the tax authorities and the company creditors, divide up the remaining assets etc.).

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How long does it usually take for an Bulgarian limited liability company to be wound-up / liquidated?

The deadline for liquidation of the company will be decided upon by the shareholders of the company, but they must observe a compulsory six-month period between the information notice to the company's creditors being published in the commercial register and the start of the process to divide up the assets.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

No. A foreign national can be a director/board member/manager of a Bulgarian company and must present the same documents (or their equivalent) as those required from Bulgarian nationals.

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Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

A manager/board member usually signs a management agreement with the company.

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Is a director/ board member required to be physically present on the local market?

No, they are not.

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Does the director/board member require any special permits to work and stay in the local market?

Unless they work under an employment agreement, they do not. The rules for residence permits depend on the country of origin (EU/EEA and Swiss nationals do not require a residence permit on the local market).

---

Is it obligatory to pay remuneration to a director/board member in your jurisdiction? What are the tax effects of such remuneration?

It is possible for the management agreement with the director, board member or manager not to provide for remuneration. In such case, no income tax applies.

Contributions for social security are due unless the person is a non-Bulgarian resident and not subject to social security according to EU law or bilateral international treaty. If remuneration is paid, only persons residing in Bulgaria (residing for over 183 days) are liable for income tax.



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What is the procedure for appointment/dismissal of a director/board member?

The shareholder/s will reach a decision on the basis of which a certain person is appointed as a manager of a Ltd. company or Plc. etc. Such person will have to accept the appointment and declare that no circumstances in the meaning of the Bulgarian Commercial Act exist preventing their appointment. The manager will further confirm their signature in written form. All documents will then have to be filed and registered with the commercial register.

As for dismissal from a Ltd. company, shareholders can unilaterally reach a decision on revocation (and unless otherwise agreed, do not need a valid reason to do so), which shall then be entered into the commercial register.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The general corporate income tax rate is 10 %.  
The VAT rate is 20 %.

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Is VAT grouping or consolidation for corporate tax purposes available?

VAT grouping is not available. Neither is consolidation for corporate income tax purposes, with the exception of a participation exemption.

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Which payments to foreign countries are subject to withholding tax in your country and at which rates?  
Are exemptions available?

The following amounts paid by Bulgarian companies to non-resident legal persons are subject to withholding tax (WHT): dividends, income from financial assets or from deals with financial assets, interest, rent, intellectual property or license fees, technical services, franchise, management services, penalties and compensations.

Dividends are taxed at 5% and other payments at 10% WHT.

WHT can be reduced or eliminated under double tax agreements or by application of the relevant EU directives.

There are several exemptions regarding, amongst others, EU residents, bonds placed in the EU, transaction between related companies.

---

Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

The applicable capitalisation rule is based on a 3:1 debt-equity ratio, i.e. it limits tax deductibility on expenses arising from loans to 3 times the shareholder's total equity.

Expenses from bank loans and financial leasing are exempt from thin capitalisation rules.

---

Please specify other rules that limit interest deductibility.

The interest between related companies shall be at arm's length, otherwise it could be treated as a hidden distribution of dividends, meaning the related interest expense will not be tax deductible or taxation (incl. the WHT) will be applied at the market levels of the interest rates.

---

List any rules on the tax implications of discount sales or sales below the acquisition value.

The VAT base is provided without discounts. Sale below acquisition value is not explicitly restricted in the tax legislation.

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Rules on utilisation of tax losses.

Tax losses can be carried forward for 5 years and utilised against taxable profit in future periods.

# Croatia

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# Space

## 1) to rent

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What is the definition of a lease on the local market?

The term lease is defined as a limited property right where the property owner (landlord) grants the lease holder (tenant) the right to use the property for a pre-defined period of time against a consideration payable by the tenant.

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Can a foreign company rent a property directly or is a local SPV required?

There are currently no legal restrictions for a foreign company or foreign national to directly rent a property – although this approach may have certain legal and tax disadvantages.

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Lease duration: long-term vs. short term.

Although there is no legally prescribed minimum or maximum term, long-term leases (20+ years) are still uncommon. Lease agreements are usually concluded for shorter periods of time (between 3 and 15 years).

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Are there any requirements regarding the form of a lease agreement?

The written form is mandatory for the lease of business premises. Lease agreements in which the Republic of Croatia, a city, a municipality or a county act as landlords must be concluded in the form of a notarial deed.

A lease agreement will often be concluded as a notarial and enforcement deed (although this is not required) to allow for its direct enforcement in case the tenant defaults.

If the tenant wishes the lease agreement to be registered with the competent land register, then this requires either the landlord's signature on the lease agreement to be certified by a public notary or the lease agreement to be concluded in the form of a notarial deed.

---

Does a lease agreement require registration with any authorities?

No, the lease agreement does not have to be registered with the authorities. However, the registration of the lease with the land register is advisable in order to protect the tenant in case title to the property is transferred.

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Is there a legal or tax difference between renting premises with or without fit-out?

Legally speaking, the lease agreement should include detailed provisions regarding the rights and obligations of the parties if a fit-out takes place, as this is not sufficiently regulated by the underlying laws.

From a tax perspective, if the value of the fitting-out works decreases the rent payable by the tenant, then the tax authority could claim that such works represent a supply by the tenant to the landlord, resulting in VAT liability for the tenant on the value of the works. If the tenant vacates the leased property before the investment in connection with the fit-out has been fully amortised, any unamortised amount could represent a non-deductible tax expense (once derecognised in the balance sheet).

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Can we do turnover-based leases?

This is legally possible. However, the tax authority could try to dispute such agreements. For this reason, it is common to have a base and a turnover rent.

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What are the most common securities on the local market required from the tenant?

The lease agreement will often be concluded as a notarial and enforcement deed, allowing the landlord to request direct enforcement if a tenant fails to meet its contractual obligations. The tenants are usually asked to provide a bank guarantee, bill of exchange or debenture note that covers 3 to 6 monthly rents.

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Are there any stamp duties for lease agreements?

There is currently no stamp duty for lease agreements on business premises.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both options (share and asset deal) are available to investors. The final structure of the transaction will usually depend on the circumstances of each individual case (e.g. asset deals are more common where undeveloped land is being purchased, while share deals often facilitate the acquisition of constructed land).

---

Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

Different rules apply depending on whether the purchaser is EU based or not.

EU purchasers are prevented from acquiring agricultural land, natural reservations or other protected areas.

Non-EU purchasers may acquire property in Croatia only under the principle of reciprocity and with the prior consent of the Minister of Justice.

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Are there any historical title issues to observe when buying a property?

Due to issues still arising from the former regime's concept of social ownership, a full-title due diligence is always recommended.

---

Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Both land and share purchase agreements require the written form. The seller's signature on the land purchase agreement must be certified by a public notary in order for the title transfer to be registered with the competent land register. With a share transfer, the share transfer agreement must be concluded as a notarial deed.

---

How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

The transfer of title (both to property / shares) has to be registered. With an asset deal, the land purchase agreement has to be registered with the competent land register.

With a share deal, the transfer of shares has to be registered on the shares ledger of the target company and with the competent commercial court.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

The sale of property is subject to 25% VAT or 4% RETT, depending on the type of property (land for building vs. agricultural land), its previous use and the VAT status of the seller and acquirer. Reducing of RETT rate to 3% is announced as of 1 January 2019.

VAT generally applies to "new" buildings and attached land as well as construction land.

RETT applies to "old" buildings and agricultural land. Croatia also recognises the right to opt in for VAT.

The law still does not explicitly state that the sale of a "real estate company" is subject to RETT, but the underlying risk cannot be excluded due to the general substance-over-form principle. According to changes announced as of 1 January 2019, profits derived by non residents from real estate in Croatia may be taxable in Croatia.



### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

The EU principle of free movement of services is recognised with reference to EEA-based contractors. These must fulfil certain formal requirements before they can start to perform construction activities.

For non-EEA based contractors, the right to perform construction activities depends on the principle of reciprocity (for WTO countries, such reciprocity is assumed). Certain issues may arise in practice.

Under the Croatian Corporate Profit Tax Act, construction projects that last longer than 6 months will result in the company in question being considered a taxable permanent establishment, unless protection under double tax agreements is exercised.

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

The owner must request the permits required for construction. In exceptional cases, the request can be made by the tenant, but with the consent of the property owner (landlord).

---

What permits are required for construction of properties?

A construction permit allowing an investor to build an approved building on a specific property is required.

Once the construction has been completed, the investor has to obtain a use permit confirming that the construction has been done properly. Said permit allows the investor to use the property.

In some cases, the investor must obtain a location permit prior to requesting a construction permit. The location permit determines the conditions for the development and construction of a specific property.

---

Are there any surprising costs, levies or other charges related to construction?

Local taxes and water connection fees must be paid. Such fees are calculated by multiplying the volume or surface of the planned building with a pre-determined coefficient determined by the relevant by-laws. These fees may be equal to a few percent of the construction costs.

Local taxes and water connection fees must be paid. Such fees are calculated by multiplying the volume or surface of the planned building with a pre-determined coefficient determined by the relevant by-laws. These fees may be equal to a few percent of the construction costs.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

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Yes, current laws determine that the permitted building must be built within 5 to 10 years – the range depends on the type of the structure.

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Can an investor transfer a construction permit to another investor?

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Yes. If the underlying property for which a construction permit has been obtained is sold during construction, the new owner of the property may apply for a transfer or change of the permit (change of the investor) within 15 days.

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

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Based on the type of retail activity performed in the leased premises, the tenant will be required to obtain additional operation permits.

Retail and wholesale premises require minimal technical requirements.

Retail sale of medicinal products may be carried out only by pharmacies and stores specialising in the retail sale of medicinal products which hold authorisation from the Agency for Medicinal Products and Medical Devices of Croatia.



# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Employment contracts are the rule, while service contracts are considered the exception (in practice used mostly for consultants and directors / board members).

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What is the duration of employment contracts on the local market?

Employment contracts may be entered into for an indefinite or definite period of time. The first are considered the rule, the latter the exception.

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Are there any restrictions regarding the execution of definite term employment contracts?

Yes, definite-term contracts may be entered into only for specific reasons (legally pre-determined) and for a specific time. While the first definite-term contract may be concluded for a term that is not limited by law (under the condition that such a term is justified by the reason for the contract and is stated as such in the contract), the aggregate duration of all the definite term contracts concluded with the employee (provided that the first contract was subsequently prolonged) may not exceed 3 years.

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Are there any special rules for employment contracts of directors / board members?

Yes, the employment contracts of directors / board members represent a special subcategory of employment contracts, as certain provisions of employment law do not apply to such contracts and the parties have more freedom to determine their mutual rights and obligations.

---

Is there a collective bargaining agreement applicable nationally to retail in Croatia?

Currently, no. Croatia had a collective bargaining agreement for the retail sector, but this ceased to be valid in July 2013. A new collective bargaining agreement has been expected since then, but negotiations between the parties have proved to be difficult.

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Are there any restrictions regarding the employment of foreign nationals?

Non-EU nationals require a work & residence permit to work and stay in Croatia. The same rule applies to nationals from Austria.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Both types of employment are common. Each of the options require certain formal conditions to be met, so the selected type of employment will depend on the particulars of each individual case (especially the nationality of the foreign national, duration of his/her stay in Croatia, the foreign national's position, etc.).

---

Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

If a foreign national (i.e. a non-EU national or a national of Austria) is in Croatia for business, then they require a permit.

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Are there any special (more favourable) procedures for employment of foreign management staff?

Yes, foreign directors / board members of Croatian companies may stay and work in Croatia for a maximum of 90 days (within a calendar year) by applying for a simple work certificate.

## 2) to pay

How are salaries and other benefits determined in Croatia?

The salary and other benefits may be determined by the individual employment contract, internal rules of procedure, potentially applicable collective agreements and/or Croatian laws. There is no hierarchy in which these are applied – the most favourable provisions will always apply to the employee.

Does local law envisage a minimum salary and other payments?

The minimum salary is set at a national level. In 2018, the prescribed minimum salary is EUR 460 gross. The relevant laws i.e. the salary level, also apply to foreign nationals (whether directly employed or just posted / seconded to Croatia).

Local laws include a general provision that grants employees benefits for (as an example) night work, overtime, working on Sundays and holidays, and salary compensation during sick leave.

It is always advisable for the employer to determine the details of this through a works agreement or internal codes of procedure.

Do foreign nationals fall under the local employment rules and regulations?

Yes, all employees who work in Croatia enjoy the “minimum protection” provided for in labour law provisions.

What are the current personal income tax rates in Croatia?

Employment income is subject to personal income tax at progressive rates of 24% and 36% after the mandatory social security contributions and non-taxable personal allowance have been deducted.

Local tax is paid on top of the personal income tax at rates of up to 18%, depending on the employee’s residence.

On top of the gross salary, the employer is obliged to pay the following mandatory social contributions for the employees:

(i) health insurance (15%), (ii) occupational health and safety (0.5%), and (iii) contributions for employment (1.7%).

What are the Personal Income Tax implications for foreign nationals working in Croatia?

Foreign national’s employment income sourced to Croatia is subject to Croatian personal income tax and social security contributions, unless exemptions under double tax agreements and EU regulations on the coordination of social security systems / bilateral social conventions are applicable.

For income earned abroad, foreign nationals are obliged to calculate, pay and declare the personal income tax and social security contributions themselves. The employer must fulfil the aforementioned obligation if foreign nationals are employed locally.

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Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

Foreign nationals employed in Croatia generally fall under the Croatian social contributions and pension scheme.

Foreign nationals employed in Croatia must have health insurance in Croatia, as must their family members with permanent residence in Croatia.

Exemptions are available for citizens of EU member states under the EU regulation on the coordination of social security systems, while exemptions under bilateral social conventions are applicable for citizens of third-state countries.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

It does. Employers enter into employment agreements with trainees and agree on a probationary term, which is legally limited to a maximum of 6 months. Volunteering without an employment contract is possible only for certain legally-prescribed professions and/or positions (retail is not amongst them).

---

Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

Training is not recognised by law as one of the grounds for the parties to enter into a definite-term employment contract. Parties usually enter into an indefinite or definite term contract and agree on the longest possible probationary term of 6 months.

Recent practice has seen definite-term contracts being concluded for training purposes – to be on the safe side, such agreements are also concluded for a period of up to 6 months (equal to the maximum probationary period). It remains to be seen if this approach will be contested before the courts.

---

Is it possible to terminate an employment contract for training purposes without grounds?

If a trainee does not meet the employer's expectations during the probationary term, the employer may terminate their employment for that reason. Unless agreed otherwise by the underlying agreement with the trainee, the termination notice period is at least 7 days. If the agreement was concluded for a definite time period, the possibility to terminate it must be explicitly agreed upon.

---

Do trainees enjoy the same protection as full employees?

Yes, as full employees they are entitled to a full salary and other benefits.

If the current employment is the employee's first employment, they are entitled to full annual leave after 6 months of employment. If the employee's employment is terminated, they are entitled to proportional annual leave for the period worked.



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Is it possible to agree two subsequent training contracts?

This approach is very challenging in practice – it is only approved in exceptional cases where the training is completed in two very materially different positions and the circumstances of the individual case do not indicate that the training has in fact been agreed upon for the same or similar positions.

---

Once the training is finished, is a new employment contract required?

Once the training / probationary period is finished, the parties are not required to enter into a new employment contract.

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Is a trainee entitled to severance payment after termination of employment?

Unless agreed otherwise, they are not. An employee is legally entitled to severance payment only if their employment is terminated after 2 years of continuous employment with the same employer and due to reasons not attributable to the employees' conduct.

# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors will use a Ltd. company as an SPV for their investment. It can be incorporated with a minimal share capital of HRK 20,000 (approx. EUR 2,670) by at least one shareholder and can be up and running within a couple of weeks.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

Legally, there are none. Certain practical problems may arise during and after incorporation if the shareholders are based in certain jurisdictions. (e.g., certification of documents, full legalisation, KYC procedure, etc.)

---

How long does it usually take to fully set up the most common company in the local market?

It takes between 5 and 10 days for a Ltd. company to be duly registered with the competent commercial court. It will take another 5 to 10 days for the subsequent applications to be made (statistic, accounting, tax, etc.) and for the company to become fully active.

---

What are the registration steps?

To establish a Ltd. company, the incorporation papers must be signed by the shareholders in Croatia or by issuing a corresponding PoA. Certain documents must be signed personally by the future directors (if abroad, then before public notaries in certain jurisdictions). An interim bank account must be opened and the share capital paid in by the shareholders. Incorporation papers (along with a certificate confirming that the share capital has been fully paid in) must be filed with the competent commercial court. Once the court confirms the registration, it will register the company with the commercial court register and issue an incorporation decree.

---

What other actions may be required for the company to become fully operational?

Based on the Incorporation Act, the director of the company must request a company's seal, register the company with the State Office for Statistics, open a permanent bank account, commission an accounting office and register the company with the tax authorities. Certain additional registrations may be necessary, depending on specific circumstances.

---

Does a company performing retail activities on the local market require any additional permits / licences?

No, it does not require additional permits / licenses. However, a permit is required to run a business and additional permits may be required, depending on the type of retail activity being performed by the company (e.g. retail and wholesale premises require minimal technical requirements).

---

What other forms of companies are present in Croatia?

Croatia recognises the same types of companies as most EU jurisdictions, including a joint stock company (Plc.) and limited partnership.

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How can an Croatian company be closed down?

If the company is in good financial standing, their shareholders shall pass a resolution on the liquidation of the company and appoint a liquidator who will wind up the activities of the company (fulfilling all of the company's outstanding obligations and distributing any remaining assets) and apply for the liquidation to be registered with the competent commercial court. If the company is not in good financial standing, then (pre-)bankruptcy proceedings must be initiated.

---

How long does it usually take for an Croatian limited liability company to be wound-up / liquidated?

The process may take between 12 and 18 months.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

A foreign national can be a director / board member of a Croatian Ltd. company. Such person must issue a statement by which he or she accepts his or her appointment and states that there are no circumstances pursuant to the Croatian Commercial Companies Act preventing their appointment.

---

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

A director / board member of a Ltd. company does not have to be directly employed by the company or have any type of service contract with such company. A contract is however required if the company pays the director / board member any type of remuneration.

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Is a director/ board member required to be physically present on the local market?

No, they are not.

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Does the director/board member require any special permits to work and stay in the local market?

Depending on certain circumstances (country of residence, duration of stay and/or type of relationship with the local Croatian company), a foreign national acting as a director / board member may require a residence and/or work permit.

---

Is it obligatory to pay remuneration to a director/board member in your jurisdiction? What are the tax effects of such remuneration?

If a director is not under contract with the local Croatian company (no employment, service or other contract), then no remuneration is paid. However, this is rare.

Directors / board members tend to have a management contract with the company and are paid a remuneration which is taxable.

If directors and board members are employees of the company, personal income tax is paid on the remuneration at progressive rates of 24% and 36%.

If they are not employees but only perform the function of director and board member (but are also under contract with the company), their remuneration will be taxed in the same way as other income at 24% and 36%.

---

What is the procedure for appointment/dismissal of a director/board member?

The shareholders decide who shall be appointed as a director / board member of a Ltd. company. Such person will then issue a statement accepting the appointment and declaring that no circumstances exist that prevent their appointment pursuant to the Croatian Commercial Companies Act. The director / board member will further confirm their signature in writing. All documents then have to be filed and registered with the competent commercial court.

Regarding dismissals from Ltd. companies, the shareholders can unilaterally pass a resolution on the dismissal of a director / board member (and unless otherwise agreed, do not need a valid reason to do so), which must then be registered with the competent court register.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The general corporate income tax rate is 18%, while a reduced rate of 12% applies to companies with annual revenues of up to approx. EUR 400,000.

VAT rates: general 25%, decreased 13% and 5%.

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Is VAT grouping or consolidation for corporate tax purposes available?

VAT grouping as well as consolidation for corporate income tax purposes is not available in Croatia.

---

Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

Interest, royalties, dividends, fees for intellectual property rights and fees for market research services, tax and business consultancy and audit services paid by Croatian companies to non-resident legal persons are subject to withholding tax.

Dividends are taxed at 12% and other payments at a 15% withholding tax. Withholding tax at 20% applies to payments for any other services provided to tax havens (list of countries published by the Ministry of Finance). Announced changes as of 1 January 2019 envisage 20% withholding tax applicable to payments for all services provided to tax heavens.

Withholding tax can be reduced or eliminated under double tax agreements or by application of the relevant EU directives.

Interest on bank loans, commodity loans and bonds are WHT exempt.

---

Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

The thin capitalisation rule is applicable. It is based on a 4:1 debt equity ratio, i.e. it restricts the tax deductibility of expenses arising from loans received from a principal foreign shareholder (with more than 25% capital or voting rights) to a limit of no more than four times the shareholder's total equity or their voting rights.

The rule applies to both loans from related parties and to third-party loans guaranteed by a qualifying shareholder.

Loans from foreign banks and financial institutions are exempt from the thin capitalisation rules.

---

Please specify other rules that limit interest deductibility.

If the interest rate on loans received from a related party exceeds the market interest rate at the time of the granting of the loan (set at 4.55% for 2018), the related interest expense will not be tax deductible. As of 2019, ATAD rules should be incorporated into Corporate Profit Tax Act which will further limit tax deductibility of interest on cross border loans.

---

List any rules on the tax implications of discount sales or sales below the acquisition value.

The VAT base is reduced by price reductions or discounts caused by early payments and discounts granted to the customer at the time of the supply.

In practice, the tax authority may try to dispute the transfer pricing setup, arguing that under normal circumstances other entrepreneurs would not sell products below their acquisition value.

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Rules on utilisation of tax losses.

Tax losses can be carried forward for 5 years and utilised against taxable profit in future periods.

# Czech Republic

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## 1) to rent

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What is the definition of a lease on the local market?

A lease is defined as a limited property right where the property owner grants the leaseholder the right to use the property for a pre-defined period of time (either definite or indefinite) against a consideration payable by the tenant.

---

Can a foreign company rent a property directly or is a local SPV required?

It can, a local SPV is not necessary.

---

Lease duration: long-term vs. short term.

Czech law does not provide for a minimum or maximum term of the lease. Lease agreements are usually concluded for a shorter period of time (between 1 and 5 years).

---

Are there any requirements regarding the form of a lease agreement?

An agreement for a lease of business premises can be concluded orally. However, for reasons of legal certainty, the vast majority of lease agreements are concluded in the written form.

If the tenant wishes to register the lease agreement in the land register, the landlord's signature on the lease agreement must be certified by a public notary.

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Does a lease agreement require registration with any authorities?

No. However, if the contractual parties wish to do so, a lease agreement may be registered in the land register.

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Is there a legal or tax difference between renting premises with or without fit-out?

If the tenant pays for fit-out, then it is entitled to keep the fit-out on its balance sheet and use it for depreciation purposes.

However, the property owner will most likely require the tenant to remove the fit-out at the end of the lease term, at the tenant's cost.

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Can we do turnover-based leases?

There are currently no legal restrictions on turnover-based leases.

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What are the most common securities on the local market required from the tenant?

As a security, the tenants must usually provide a monetary deposit, a bank guarantee and/or a corporate guarantee, usually covering 3 monthly rents and service charges (incl. VAT).

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Are there any stamp duties for lease agreements?

No stamp duties currently apply for lease agreements on business premises.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both transactional structures are used. Investors usually prefer share deals for tax reasons (as RETT does not apply to share deals) and because other rights (such as construction warranties) can be transferred, etc.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

There are no longer any such restrictions.

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Are there any historical title issues to observe when buying a property?

Even though the time period for filing new restitution claims has already expired, there are still a number of restitution claims pending.

Therefore, before acquiring a property we recommend that the prospective buyer enquire at the relevant institutions whether there are any unresolved claims concerning the property.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Land purchase agreements must be executed in writing and concluded according to the Czech law. The signatures on the agreement have to be notarised.

For a share transfer, the share transfer instrument must be executed with notarised signatures.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

Transfer of title to property requires registration in order for it to take effect.

For an asset deal, an application for registration of title in favour of the buyer must be filed with the competent land register on the basis of the purchase agreement. Title is transferred to the buyer upon its registration in the land register.

For a share deal, the transfer of shares comes into effect immediately. However, the transfer also has to be notified to the competent commercial register court.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

The sale of property is subject to 4% RETT, payable by the buyer. Sale of a "real estate company" is not subject to RETT in the Czech Republic.

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

The performance of construction activities requires that the contractors fulfil those conditions and requirements prescribed by Czech law associated with the performance of construction services.

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

The permits required for construction are usually requested by the landowner but may also be requested by the tenant with the owner's consent. The owners usually issue a power of attorney to the tenant for this purpose.

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What permits are required for construction of properties?

Construction of a new building and reconstruction or removal of a building can be carried out only after a zoning and construction permit has been acquired and come into effect.

The zoning permit is issued by the competent local building authority once it has found that the intended construction is in accordance with the local zoning plan.

A request for the issuance of a construction permit must be submitted together with detailed project documentation prepared by the authorized engineer. It may also prove necessary to acquire consent statements from competent agencies and bodies.

After the building is completed, it can only be occupied and used after the use permit has been obtained. The local construction authority will issue the use permit after the technical inspection of the building.

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Are there any surprising costs, levies or other charges related to construction?

In addition to material costs and general construction costs, construction also means the following costs have to be paid: costs for the supervision of construction works, costs for insurance, administrative expenses and public utilities charges.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

No, but the investor must begin construction of the building during the period in which the building permit is valid, which is usually 2 years from the issuance of the final construction permit.

The validity of the construction permit may be extended. Once the construction starts, there is no time limit for the end of construction.

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Can an investor transfer a construction permit to another investor?

Yes, but only if the land for which the construction permit was issued is also being transferred.

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Based on the type of retail activity performed in the leased premises, the tenant is required to fulfil additional requirements and may be obliged to obtain additional permits.

Pharmacies and specialised stores holding a permit issued by the National Drug Control Authority may carry out the retail sale of medicinal products.

The retail sale of dangerous substances, weapons and ammunition requires specialised permits from various authorities.

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

They usually perform work for an employer on the basis of employment contracts, while service contracts are considered to be the exception (in practice used mostly for external consultants).

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What is the duration of employment contracts on the local market?

Employment agreements may be concluded for indefinite or definite time periods.

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Are there any restrictions regarding the execution of definite term employment contracts?

Yes, there are certain restrictions on concluding successive definite term agreements. Definite term employment contracts can be concluded for a maximum period of 3 years and can be extended twice for an additional 3 years (i.e. the maximum definite term for an employment contract is 9 years).

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Are there any special rules for employment contracts of directors / board members?

Directors/board members may only carry out work for the company after concluding a mandate agreement.

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Is there a collective bargaining agreement applicable nationally to retail in Czech Republic?

No.

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Are there any restrictions regarding the employment of foreign nationals?

Citizens of EU member states, countries in the European Economic Area (EEA) and Swiss citizens have free access to the Czech labour market and are able to work, find employment and become self-employed without a permit for work.

Non-EU citizens need a work and residence permit in order to be able to work in the Czech Republic.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Both types of employment are in line with Czech law and are used in practice. A foreign employee can perform work on the basis of an employment agreement concluded with an employer in the Czech Republic. In this case, the employment relationship shall be governed by Czech law.

The other form is a secondment (posting) of employees from an employer based in another EU member state. The employee remains employed by their posting employer and the employment relationship is governed by the law of the posting employer. However, the employee shall be subject to certain regulations applicable in the Czech Republic such as minimum salary, relevant minimum level of guaranteed salary, extra pay for overtime work, maximum working hours and minimum rest periods, etc.

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Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

A non-EU citizen can only start work as an employee if they have already obtained a work permit.

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Are there any special (more favourable) procedures for employment of foreign management staff?

No.

## 2) to pay

How are salaries and other benefits determined in Czech Republic?

In general, salaries and benefits are determined in individual contracts. Some employers, usually larger corporations, have collective agreements. The minimum salary is set by law.

Does local law envisage a minimum salary and other payments?

A minimum salary is prescribed at the national level and currently amounts to approx. EUR 430 per month. According to the Labour Act, extra payments are obligatory in certain cases, e.g. overtime work or work during weekends/bank holidays.

Do foreign nationals fall under the local employment rules and regulations?

Yes, they do.

What are the current personal income tax rates in Czech Republic?

Employment income is subject to personal income tax ("PIT") at a flat tax rate of 15%. There is a surcharge of 7% for individuals with incomes exceeding 48 times the average salary within the calendar year.

In addition to the gross salary, the following mandatory social contributions ("SCC") apply: health insurance (4.5%) and pension insurance (6.5%).

What are the Personal Income Tax implications for foreign nationals working in Czech Republic?

Employment income earned by foreign nationals which is sourced in the Czech Republic is subject to Czech income tax and social security contributions, unless exemptions under double tax agreements and the EU regulation on coordination of social security systems / bilateral social conventions apply.

If foreign nationals are employed in the Czech Republic, the obligation to withhold personal income tax and social security contributions lies with the employer.





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Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

Foreign nationals employed in the Czech Republic must have health insurance in the Czech Republic, as must their family members with permanent residence in the Czech Republic.

An employee who is an EU or EEA member state citizen is regarded as the insurance policy holder for the family members and, as a general rule, there are no obligations for family members to pay separate health insurance premiums.

Family members of an employee who is a citizen of third-state countries are not covered under the employee's insurance policy and are obliged to buy a commercial health insurance policy.

There are exemptions to this rule under EU law and bilateral agreements.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

There is no specific employment contract that would govern training of employees in general.

The trainees may enter into employment contracts with their employer, which may include a probationary term (max. 3 months).

The employer may also conclude a qualification agreement with a new or an existing employee in order to improve their qualifications.

If the employer concludes a qualification agreement with an employee in order to improve their qualifications, the agreement shall include in particular the employer's obligation to allow the employee to improve their qualifications and the employee's obligation to remain employed by the employer for an agreed term, not exceeding the term of five years, or to reimburse the employer for the costs related to improving their qualifications which were paid for by the employer, even if the employee ends the employment relationship before the qualifications are improved.

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Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

No, Czech law does not provide for limited employment contracts for training of retail personnel.

The trainees may enter into a regular employment contract with their employer, which may include a probationary term (max. 3 months). Employment contracts may be concluded for a definite (fixed) term in accordance with the labour code.

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Is it possible to terminate an employment contract for training purposes without grounds?

Only during the probationary term, which may last for a maximum of three months.

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Do trainees enjoy the same protection as full employees?

Yes.

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Is it possible to agree two subsequent training contracts?

Definite term employment contracts can be concluded for a maximum period of 3 years, which can be twice extended for an additional 3 years (i.e. the maximum definite term for an employment contract is 9 years).

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Once the training is finished, is a new employment contract required?

There is no such statutory obligation.

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Is a trainee entitled to severance payment after termination of employment?

There is no entitlement to severance pay for employment relationships terminated during a probationary period.

Employees are entitled to obtain severance pay from the employer if their employment relationship is terminated on the grounds set out by the labour code or if the employment relationship is terminated by mutual agreement, based on the same grounds.

# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors will establish an “s.r.o.”, a limited liability company, as an SPV for their investment. This is a capital company whose liability is – under normal circumstances – limited to its assets/capital and the shareholders are in general not liable for its obligations. It can be incorporated with a minimum share capital of CZK 1 and requires one shareholder at the very least.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

No, there are none. Nevertheless, an incorporation performed by foreign companies and/or nationals can cause certain practical problems (e.g. certification and translation of required documents).

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How long does it usually take to fully set up the most common company in the local market?

It usually takes between 4 to 6 weeks to set up a company from the initial instructions of the client.

It usually takes another 4 to 6 weeks for the subsequent applications to be made (e.g. VAT registration) in order for the company to be fully active.

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What are the registration steps?

In order to set up a limited liability company, the following main steps must in particular be completed:

- adoption of the articles of association according to the founders' requirements, in the form of a notarial deed;
- registration with the trade license office and issuance of the respective trade license;
- opening of a special bank account for the company for the payment of the founder's monetary contribution to the company's registered capital;
- payment of the founder's monetary contribution to the company's registered capital (minimum monetary contribution is CZK 1, i.e. approx. 5 euro cents);
- obtain documents regarding the company's executive directors proving their integrity and ability to perform their function;
- obtain documents proving the right of the company to use the premises where the registered offices and address will be; and
- registration in the commercial register (application must be submitted to the relevant court administering the register).

The company is established and comes into existence upon its registration in the commercial register.

The company must register with the tax authority no later than 15 days from its establishment.

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What other actions may be required for the company to become fully operational?

After the company has been registered in the court register, a regular bank account shall be opened and the VAT registration obtained. If the company employs staff, it may have additional registration obligations.

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Does a company performing retail activities on the local market require any additional permits / licences?

No. But there may be some additional requirements, depending on the nature of the goods.

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What other forms of companies are present in Czech Republic?

In addition to "s.r.o." companies, the following types of companies can be established in the Czech Republic:

- joint stock companies,
- limited partnerships,
- unlimited companies, and
- European public limited companies – Societas Europea.

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How can an Czech Republic company be closed down?

The most common option is regular liquidation, which means a closure on the basis of a decision by the shareholders.

Compulsory liquidation is also possible in certain cases (e.g. inactivity).

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How long does it usually take for an Czech Republic limited liability company to be wound-up / liquidated?

The liquidation procedure normally takes between 6 to 9 months, but may take longer for larger companies.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

A foreign national can be a director/board member of any Czech company. They must be 18 years or older, be of full legal capacity and be able to provide proof of integrity (i.e. proof of a clean criminal record).

---

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

Under Czech law, the role of director/member of the board is incompatible with an employment relationship.

It is possible for a person to have such a role under a mandate agreement concluded with the company. Such agreement only has to be concluded if the director/member of the board is to be remunerated for their work.

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Is a director/ board member required to be physically present on the local market?

No, it is not a specific legal requirement, but the director/board member is personally responsible for the day-to-day running of the company.

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Does the director/board member require any special permits to work and stay in the local market?

Depending on their nationality and the duration of their stay, a foreign national acting as a director/board member may require a residence permit.

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Is it obligatory to pay remuneration to a director/board member in your jurisdiction? What are the tax effects of such remuneration?

Legally speaking, remuneration for a director/board member is not obligatory.

They may receive remuneration through a mandate agreement, where such remuneration is subject to tax.

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What is the procedure for appointment/dismissal of a director/board member?

In general, only a simple resolution by the company's general meeting is required for a director/board member to be appointed or dismissed.

However, the articles of association of the company in question may require additional steps.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The corporate income tax ("CIT") rate is 19%.

VAT rates: general rate 21% and two decreased rates of 15% and 10%.

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Is VAT grouping or consolidation for corporate tax purposes available?

VAT grouping is available. But consolidation for CIT purposes is not yet available in the Czech Republic.

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Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

The following types of payments are subject to a 15% / 35% withholding tax when paid to non-resident entities ("WTH"):

- dividends;
- interest;
- royalties;
- rental income from real estate located in the Czech Republic; and
- payments for other services and independent activities (e.g. commercial, consultancy and management).

WHT on dividends, interest, royalties and rental income from real estate located in the Czech Republic can be reduced or eliminated under double tax agreements or by application of the relevant EU directives.

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Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

The debt-to-equity ratio for related party loans to equity is 4:1 (6:1 for banks and insurance companies). Unrelated party loans (e.g. bank loans) are not subject to thin capitalisation.

Back-to-back financing (i.e. credits and loans between related parties provided through an unrelated intermediary such as a bank) is also subject to thin capitalisation rules.

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Please specify other rules that limit interest deductibility.

If the interest rate on loans received from a related party (25% direct or indirect shareholding) exceeds the market interest rate at the time of granting the loan, the interest expense on the portion of interest exceeding the market rate will not be tax deductible. The taxpayer bears the burden of proving the extent of the market interest rate.

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List any rules on the tax implications of discount sales or sales below the acquisition value.

If goods are sold at a discount, the tax authority may dispute the price and the burden of proof lies with the retailer to prove that the price was a fair market price.

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Rules on utilisation of tax losses.

Tax losses can be utilised, but only for a maximum of 5 consecutive tax periods following the year when the tax losses arose.





# Hungary





# Space

## 1) to rent

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What is the definition of a lease on the local market?

A lease is a limited property right as provided for in Act V of the Civil Code 2013 ("Civil Code"), where the property owner allows the tenant to use the property for a pre-defined period of time and against a consideration payable by the tenant.

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Can a foreign company rent a property directly or is a local SPV required?

It can, and business activities conducted by the foreign company from the rented property could constitute a permanent establishment ("PE") in Hungary for the foreign company, resulting in the profits attributable to this PE becoming subject to Hungarian corporate income tax (9%) and local business tax (up to 2%, depending on the relevant municipality).

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Lease duration: long-term vs. short term.

Hungarian law does not provide for a minimum or maximum term of lease. Lease agreements are usually drawn up for a fixed term of between 3 and 5 years.

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Are there any requirements regarding the form of a lease agreement?

Lease agreements must be concluded in written form. There are no specific formal requirements regarding signatures, as the agreements are not registered with the land register.

Communications requiring the tenant to vacate the leased premises at the end of the lease term are usually issued as a notarial deed. The latter makes the tenant's removal from the property directly enforceable.

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Does a lease agreement require registration with any authorities?

No.

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Is there a legal or tax difference between renting premises with or without fit-out?

If a fit-out is carried out, the lease agreement must contain detailed provisions regarding the rights and obligations of the parties, as these are not sufficiently regulated by the underlying laws.

From a tax perspective, where the value of the work (fit-out) carried out by the tenant decreases the rent payable by the tenant (i.e. the ultimate beneficiary of such work will be the landlord after the lease agreement is terminated), the tax authority could claim that such work represents a supply by the tenant to the landlord, resulting in VAT liability for the tenant on the value of the work.

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Can we do turnover-based leases?

There are currently no legal restrictions with regard to turnover-based leases.

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What are the most common securities on the local market required from the tenant?

Tenants must usually provide either a cash deposit or an unconditional first-demand bank guarantee. In some cases, a guarantee from a parent company is also accepted. This security usually covers 3-6 month's rent and service charge.

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Are there any stamp duties for lease agreements?

None.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both transactional structures are used. Investors prefer share deals due to their preferential tax treatment, the reduced risk in relation to pre-emption rights, the possibility of transferring other property rights, etc.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

EU citizens and citizens of other EEA countries, as well as citizens of OECD member countries, may acquire real estate, except for agricultural land, in the territory of Hungary under the same conditions as Hungary nationals.

All other foreign individuals may acquire property in Hungary after consent has been issued by the competent governmental office.

Heavy restrictions apply to the acquisition of agricultural real estate, practically excluding foreigners from acquiring agricultural land for investment purposes.

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Are there any historical title issues to observe when buying a property?

Restitution came to an end in 2006, meaning restitution claims can no longer be made.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Land purchase agreements must be concluded in writing and must either be executed as a notarial deed or countersigned by an attorney-at-law. The above also applies for share purchase agreements in share transfer cases.

---

How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

Transfer of title (both to property and shares) requires registration.

With asset deals, the sale and purchase agreement must be filed with the competent land register, as must the seller's unconditional consent to registration of the buyer's title. Title is transferred to the buyer upon registration.

With share deals, the transfer of shares must be registered with the court register. The effects of the transfer come into force from the moment the share transfer is announced to the company.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

The purchase of real estate is subject to a 4% transfer duty on the buyer, up to a market value of approx. EUR 3.26 million, and up to 2% for any amount in excess of approx. EUR 3.26 million, altogether this is capped at approx. EUR 650k per property.

The acquisition of shares in a "real estate company" is also subject to a transfer tax similar to the one for the transfer of real estate (i.e., the transfer tax is still calculated on a per-property basis), but only providing the acquiring person or entity purchases at least 75% of the shares (this may be directly or indirectly, i.e., if the relatives of a private person or related entities are involved in the purchase). A "real estate company" means a company where more than 75% of the total assets comprise Hungarian real estate, or a company holds a direct or indirect participation of at least 75% in such a company.

The sale of land (except for building plots) is exempt from VAT, as is the sale of buildings (providing the occupancy permit was issued more than two years before the sale). However, taxpayers (the seller) may opt to be treated as liable for VAT and such option may also be separately exercised so that it only affects commercial property. In such a case, a domestic reverse charge applies.



### 3) to construct

Are there any restrictions on the local market regarding direct construction by foreign nationals?

No restrictions are applicable but under the Hungarian corporate income tax rules, a construction site creates a permanent establishment (PE) if it is in use for more than 3 months, with or without interruptions, unless the relevant double tax agreement provides otherwise.

Can only an owner request the necessary permits for construction, or is this option also available to tenants?

The permits required for construction are usually requested by the landowner. With the landowner's consent, the permit may also be requested by the investor who has (instead of ownership right) any other material or obligational right on the real estate in question that allows them to construct or carry out works (e.g. building right).

What permits are required for construction of properties?

Construction of new or replacement buildings, or the reconstruction/removal of buildings, can be carried out only after a construction permit has been issued. The latter is issued by the competent local construction authority after it finds that the intended construction is in accordance with the local zoning regulations and that the rights of third parties or public interest are not endangered. A request that a construction permit be issued must be submitted together with the approved project documentation, as prepared by the authorised engineer and accompanied by any statements of consent from relevant competent agencies and bodies which may be necessary.

After the building is constructed, it can only be occupied and used after a use permit has been obtained. The local construction authority will issue a use permit after a technical inspection of the building has been carried out.

Are there any surprising costs, levies or other charges related to construction?

If the overall value of the construction works exceeds EUR 5 million, then a construction escrow agent must be engaged by the employer. The escrow agent charges a fee to the employer for their escrow services. Such fee can usually not be passed on to the general contractor.

Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

No, but the investor must start construction of the building during the period in which the building permit is valid, which is 3 years from the issuance of the final construction permit. If the construction works are commenced during the term in which the construction permit is valid, the building must be ready for use and a use permit must be applied for within 5 years from the date construction commences.

The validity of the construction permit may be extended, but no more than twice and for no more than 1 year in each case.

---

Can an investor transfer a construction permit to another investor?

Yes. The investor may transfer the construction permit to another entity or a person with the right to build before the construction works commence or during construction.

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Based on the type of retail activity performed in the leased premises, the tenant is required to fulfil additional requirements and may be obliged to obtain additional permits.

Retail sale of medicinal products may only be carried out by pharmacies and stores specialised in the sale of medicinal products holding a permit issued by the National Institute of Pharmacy and Nutrition.

Tobacco products may only be sold in shops, which have the required state licence.



# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Local nationals are usually hired via employment contracts, while service contracts are only used in special cases. Hungarian authorities are very strict when it comes to distinguishing between these two types of contracts, as many employers try to avoid taxes by setting up service contracts with individuals, although according to their work they are in a relation of employment with the employer.

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What is the duration of employment contracts on the local market?

Employment contracts are generally concluded for an indefinite period. The contracting parties may decide to draw up the contract for a fixed-term period.

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Are there any restrictions regarding the execution of definite term employment contracts?

The duration of a fixed-term definite period employment contract may not exceed five years. This also applies if the employment contract is extended and if another definite period employment contract is entered into within six months of the original definite term employment contract being terminated.

If an employment contract requires official authorisation, then it may only be entered into for the duration specified in the authorisation. If this authorisation is extended, then the duration of the new fixed-term employment contract may exceed five years when combined with the duration of the previous employment contract.

A fixed-term employment contract may be extended, or another fixed-term employment contract may be entered into, within six months of the previous one being terminated and if this is done based on the employer's legitimate interests. Such agreement may not infringe upon the employee's legitimate interests (in particular concerning the length of the notice period based on the time employed at the company, severance payment and holiday allowance).

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Are there any special rules for employment contracts of directors / board members?

As leaders of the employer's internal organisation, directors/board members are considered executive employees. The law allows the contractual parties to agree to rights, obligations and responsibilities in executive employment contracts different to those which are agreed to in normal employment contracts, particularly with regards to areas such as working hours, remuneration, disciplinary responsibility, termination of the employment contract, etc.

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Is there a collective bargaining agreement applicable nationally to retail in Hungary?

No.

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Are there any restrictions regarding the employment of foreign nationals?

Citizens of EU member states, or citizens of countries in the European Economic Area (EEA), have free access to the Hungarian labour market without requiring a work permit. Citizens must still fulfil other obligations, such as notifying the authorities.

Third-country nationals require a work and residence permit unless they are considered refugees, persons admitted for subsidiary protection or persons enjoying temporary protection.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Both types of employment are in line with Hungarian law and are used in practice. The chosen type of employment will depend in each particular case on the relevant circumstances (period in which the work is performed in Hungary, the foreign national's position etc.).

---

Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

A third-country national can only find employment/start working if they have previously obtained a work permit, otherwise the employment contract will be considered null and void. The competent Hungarian authorities are entitled to penalise (e.g. by imposing fines) the employer as well.

---

Are there any special (more favourable) procedures for employment of foreign management staff?

Yes, foreign citizens can be employed under a “simplified employment” provision, provided the conditions of their work meet the requirements set out by the relevant statute.

Simplified employment can be divided into four types: agricultural work, tourism seasonal work, occasional work and work as a walk-on in the film industry.

The duration of agricultural and tourism seasonal work cannot exceed 120 days in a calendar year.

Occasional work forms a special category of fixed-term employment contracts established between the employer and the employee.

The employment period may commence upon the tax authorities receiving notification of this and does not require a written contract. A written employment contract can be entered into by the parties using the template contract provided by the Simplified Employment Act, as long as the company is not legally obliged to submit electronic reports.

## 2) to pay

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How are salaries and other benefits determined in Hungary?

The basic salary must be specified in the written employment contract; this is in order to determine fringe benefits, which are set out in the document issued by the employer.

Both the salary and the fringe benefits may be determined by the employer’s internal policies, any potentially applicable collective bargaining agreement, as well as by the statutory provisions of the laws of Hungary.

---

Does local law envisage a minimum salary and other payments?

The national minimum wage for 2017 amounts to approx. EUR 416.66 gross.

Extra remuneration must be granted for different circumstances (overtime allowance, night allowance, shift work allowance etc.)

Extra payments for extraordinary working conditions, which are outside the scope of the difficulty of work and are related to special burdens at work, unfavourable environmental influences and danger at work may be determined by works agreements.

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Do foreign nationals fall under the local employment rules and regulations?

The Labour Code provisions apply if the employee in question, regardless of their nationality, in general performs their work in Hungary. There are certain mandatory provisions, which must be applied even if the employment agreement on the basis of the parties’ free choice of law, falls under a foreign law.

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What are the current personal income tax rates in Hungary?

Employment income is subject to a flat-rate 15% personal income tax withheld by the employer. If a foreign employer (e.g. when posting to Hungary) does not determine and withhold the personal income tax, the individual in question will be themselves responsible for assessing and paying it to the Hungarian tax authority on a quarterly basis.

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What are the Personal Income Tax implications for foreign nationals working in Hungary?

Employment income paid by a Hungarian employer to a foreign national employee is taxable at a rate of 15%. The relevant double tax agreement may prescribe taxation outside Hungary for a non-Hungarian tax resident individual under certain conditions (e.g. length of stay in Hungary does not exceed 183 days and their income is paid by an entity outside Hungary), but such exemptions are more likely to apply to a foreign employer being posted to Hungary rather than to employment in Hungary.

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Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

They do if they are employed in Hungary, unless relevant EU regulations require otherwise (e.g., if the individual has activities outside Hungary as well). If a posting to Hungary does not exceed 2 years, the individual remains covered by their home country's social security system and is exempt from Hungarian social security.

If applicable, a 10% pension fund contribution, 7% health fund contribution and 1.5% labour market contribution are to be withheld from the employee's remuneration. In addition, the employer is obliged to pay a social tax at a rate of 20% and a 1.5% training fund contribution.

A foreign employer must register with the Hungarian tax authority to fulfil the above obligations (excluding the training fund contribution, which is not applicable if there is no registered office, branch office or PE in Hungary) or engage a representative for this purpose. Otherwise, it will be the duty of the individual to assess the level of these fees and pay them to the Hungarian tax authority (in this case, the foreign employer may reimburse such costs to the individual in a tax-exempt manner).

EEA or Swiss adult citizens with a registered address in Hungary for a period of at least one year are obliged to pay a monthly health service contribution of approx. EUR 24. This entitles them to receive health services. Individuals to whom the mandatory contribution does not apply can request voluntary state insurance coverage, which is significantly more expensive (50% of the minimal wage per month, i.e. currently approx. EUR 205) and provides only emergency services in the first 24 months (unless the fee for 24 months is paid upfront). Private insurance coverage is often chosen by foreigners instead.

Underage family members are entitled to Hungarian state health services if they are resident in Hungary.

### 3) to train (local nationals)

Does training of retail personnel require an employment contract?

There is no specific type of employment for trainees. Training of retail personnel requires an employment contract, which can include a probationary term (max. 3 months). If the trainee is a student in higher education, they are entitled to perform work under the provisions of a student employment contract.

Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

Yes. The Labour Code provisions apply to any such contract.

Is it possible to terminate an employment contract for training purposes without grounds?

No. The Labour Code provisions on general termination also apply for a traineeship employment contract.

An employment agreement concluded for a fixed period of time may be terminated with immediate effect by the employer without grounds if the employer pays the employee's salary for the remaining period. This period may not however exceed 12 months.

Do trainees enjoy the same protection as full employees?

Yes, they do. If trainees are students, the provisions of the Hungarian Higher Educational Act may provide even better protection for them than the provisions of the Hungarian Labour Code.

Is it possible to agree two subsequent training contracts?

Statutory provisions (reduced working hours and longer absence from work) provide reasons for extending the duration of the traineeship period initially agreed upon. In such cases, a new contract must be entered into, as the previous one will expire before the end of the traineeship.

Once the training is finished, is a new employment contract required?

The employer has no statutory obligation to enter into a new contract after the termination of a training contract.  
If an employer decides to enter into another employment contract, then this may be done providing both parties agree to this.

Is a trainee entitled to severance payment after termination of employment?

Labour code provisions shall apply to the employment of trainees, which means the trainee is entitled to severance payment after 3 years of employment, but such a lengthy traineeship is very unlikely.

The provisions of the Hungarian Higher Educational Act differ from the Labour Code provisions, to the benefit of students.

# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors choose a limited liability company (LLC) since - as a general rule - the liability of the shareholder for the obligations of the company as a separate legal entity is limited to the capital contribution of each shareholder. Incorporation requires a minimum registered capital of EUR 10,000 and at least one shareholder.

---

Are there any restrictions for a foreign national to incorporate a company in the local market?

None. Additional administrative tasks may arise (e.g. submission of an up-to-date company excerpt, certified document from the company representatives and official translations of the documentation). Each person entered into the Hungarian company register who is a non-resident (e.g. managing director, SB member, shareholder) must appoint a local delivery agent to ensure correspondences between the authorities and the non-resident person can be carried out smoothly.

---

How long does it usually take to fully set up the most common company in the local market?

After an application to register the company has been duly submitted, the Hungarian Court of Registration has 15 working days to decide on the registration. In practice, registration takes around one week.

A Hungarian company may also apply for a simplified registration procedure, which takes between 2-3 working days.

---

What are the registration steps?

The following corporate documentation is to be prepared:

- articles of association (or deed of foundation in the case of a single-shareholder company);
- notice re the registered seat;
- list of shareholders;
- declaration of acceptance by the managing director(s);
- specimen signature from the managing director;
- power of attorney; and
- other documents, depending on the circumstances of the company.

1. A bank account with a Hungarian bank is then opened.

A local lawyer or notary public submits the registration request to the Court of Registration.

The Court of Registration has 15 business days to decide on the registration request, after which it automatically issues an electronic certificate containing the company registration number, the tax number and the statistical code of the new company.

The court then issues a final decision on the registration.

The establishment of an LLC is free of charge; no stamp duty or publication fee is required.

A Hungarian tax number is issued upon the registration of the company. The company also has to be registered with the relevant local municipality, the chamber of commerce and with the statistical office.

A tax ID number must be obtained when the company has a foreign CEO or managing director, unless they undertake their duties without pay. A Hungarian social security identification number must also be obtained.

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What other actions may be required for the company to become fully operational?

Additional information forms must be filed with the Central Statistical Office and the Hungarian Tax Authority after the company has been entered into the Hungarian company register. This must be done within 15 days of the registration of the new company.

If the company intends to employ staff, then it may have additional registration obligations.

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Does a company performing retail activities on the local market require any additional permits / licences?

Additional permits/licences are only required for specific retail activities such as the sale of tobacco, medical products, products containing particular chemicals, etc.

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What other forms of companies are present in Hungary?

In addition to an LLC, the following types of companies may be established:

- unlimited partnership,
- limited partnership,
- private stock company,
- branch office, and
- representative office.

It has not been possible to establish a public stock company since 2014, while the general meeting of a private stock company may make a decision transforming any type of company into a public company.

---

How can an Hungarian company be closed down?

A voluntary dissolution procedure is required to close down a solvent company. This means a closure on the basis of a decision by its shareholders in which they determine the commencement date of the dissolution and appoint an administrator to conduct the procedure. Such procedure may only be initiated if the company is capable of duly settling its debts, if any.

If the company is insolvent, the debtor company, any of its creditors, the administrator or, in certain cases, the court ex officio, may initiate a liquidation procedure aiming to enforce the creditors' claims and the distribution of the company's remaining assets. Such procedure is conducted by the liquidator appointed by the court.

---

How long does it usually take for an Hungarian limited liability company to be wound-up / liquidated?

The voluntary procedure normally takes between 12 to 18 months, longer with larger companies. The law requires that the voluntary dissolution process be completed within 3 years.





## 2) to appoint

Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

Any person who is of legal age and has full legal capacity in the scope required for their role as director/board member may be appointed as director/board member of a Hungarian company. There are no restrictions excluding the appointment of foreign nationals as directors/board members of a Hungarian company.

The appointment of a director/board member shall take effect when the person appointed signs a declaration of acceptance. Such document must also state that there are no circumstances preventing their appointment (e.g. prison sentences for criminal offences, prohibition from carrying out the role of executive officer).

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

A director/board member of a company may enter into either an employment contract or a service agreement with the company. Depending on the agreement concluded, the director/board member may receive remuneration for their services or may perform their duties without pay.

Is a director/ board member required to be physically present on the local market?

No.

Does the director/board member require any special permits to work and stay in the local market?

Any person who is an EU, EEA or Swiss national (i.e. has the right to free movement and residence) may be employed without a working permit. Others (i.e. third-country nationals) are employed on the basis of a special work permit or a residence permit issued by the immigration authority.

For non-residents, each director/board member is obliged to appoint a service agent (either a natural or a legal person) who has a permanent address in Hungary to accept and forward any official correspondence addressed to said director/board member in relation to their position as executive officer of the company.

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Is it obligatory to pay remuneration to a director/board member in your jurisdiction? What are the tax effects of such remuneration?

Remuneration for a director/board member is not obligatory unless they are employed by the company under an employment contract, in which case at least the statutory minimum wage must be paid.

The taxes and contributions levied on remuneration for a director/board member are as follows, both for an employment and a performance contract (unless otherwise stated below):

1. Individual charges (to be withheld):
  - 15% personal income tax,
  - 10% pension fund contribution,
  - 7% health fund contribution, and
  - 1.5% labour market contribution (not applicable in the case of a mandate contract).
2. Company charges:
  - 20% social tax, and
  - 1.5% training fund contribution.

---

What is the procedure for appointment/dismissal of a director/board member?

A director/board member of a company is appointed by a decision of the members/shareholders. Such appointment becomes effective when the appointed person issues a statement accepting the appointment and declaring that no circumstances exist preventing his or her appointment. Such documentation must be filed with the Court of Registration and the appointment becomes valid and effective towards third parties once the court enters the appointed person into the Hungarian company register.

Regarding dismissal, a director/board member may be revoked by a decision of the company's shareholder(s). Revocation may occur at any time and without grounds; however, the constituting document of a company may establish special rules on revocation (e.g. special majority or valid reasons required for that decision).

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

Corporate income tax rate is 9%.

The general VAT rate is 27%. An 18% reduced rate applies to some products such as a few socially sensitive food items, hotel services, festival entrance fees and internet access. A 5% rate applies to goods such as books, newspapers, medicines and medical related goods, meat etc.

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Is VAT grouping or consolidation for corporate tax purposes available?

Yes. Under the Hungarian VAT grouping scheme, no Hungarian VAT is chargeable for transactions between members of the same VAT group. It is required that members be related entities and that their place of establishment be in Hungary.

---

Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

No withholding tax applies if the payment is made to any entity (Hungarian or non-Hungarian) other than a natural person, regardless of the classification of the payment.

With payments made to private individuals, the 15% personal income tax rate generally applies unless the relevant double tax agreement requires otherwise. The same applies for social security contributions if applicable under the relevant EU regulation or bilateral taxation agreement.

---

Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

Yes. If a company's debt/equity ratio exceeds 3:1, then interest charged on the excess amount of debt will not be deductible for Hungarian corporate income tax purposes.

The level of net debt applicable for this purpose is the daily average amount of debt arising from loans, private debt securities and bills of exchange (excluding bills of exchange towards trade creditors), as well as any other liabilities received from anyone except for financial institutions, provided said liabilities are recorded in the statutory accounts for the year in which the relevant interest is paid (minus the daily average amount for most receivables, excluding trade receivables).

The equity is the daily average amount of registered capital, capital reserve, profit reserve and tied-up reserve recorded in the year for which the relevant interest is paid.

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Please specify other rules that limit interest deductibility.

Interest deductibility may also be adversely affected by transfer pricing requirements.

General Hungarian corporate income tax principles set out that expenses and costs (including interest and interest-related items) are non-deductible unless they serve specific business purposes and are in harmony with the rule of law.

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List any rules on the tax implications of discount sales or sales below the acquisition value.

Under Hungarian VAT law, discounts decrease the VAT base in the following cases:

- discounts granted for early payments,
- discounts granted due to former purchases reaching a certain amount, and
- discounts granted for marketing reasons.

Such discounts are recognised for corporate income tax purposes, unless the transaction takes place between related entities and is not at arm's length. If the discount is not granted for a business purpose or if it contradicts general anti-tax avoidance principles, tax deduction is not allowed. If discounts are provided later, the relevant invoice must be amended.

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## Rules on utilisation of tax losses.

Losses can be carried forward for a period of five years (a few exceptions apply depending on when the loss was generated). Up to 50 percent of the current profits for the year may be carried forward each year during this five-year period. Carry-back of losses is not permitted, except for taxpayers in the agricultural sector.

A change of ownership (outside the company group) may adversely affect the taxpayer's right to utilise losses carried forward from previous years. In order to be able to utilise the losses, the parties either need to be publicly trading entities or the taxpayer needs to substantially maintain the same activities as were carried out before the change of ownership took place, and for at least two taxable years.

Losses carried forward and acquired by a successor company in the course of corporate transformation may be written off only in proportion to the ratio of sales for the continued business activity and the average sales by the predecessor company in the last three tax years before the transformation.





# Montenegro



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# Space

## 1) to rent

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What is the definition of a lease on the local market?

A lease is a limited property right whereby the property owner (landlord) allows the lease holder (tenant) to use the property for a pre-defined period of time against an amount payable by the tenant.

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Can a foreign company rent a property directly or is a local SPV required?

There are currently no legal restrictions on a foreign company / national directly renting a property – although in practice, this approach can have certain legal and tax disadvantages.

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Lease duration: long-term vs. short term.

There is no legally prescribed minimum or maximum term.

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Are there any requirements regarding the form of a lease agreement?

They are usually executed in written form, while lease agreements for apartments and business premises also require the parties' notarised signatures.

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Does a lease agreement require registration with any authorities?

No, it does not. However, the registration of the lease with the competent land register is advisable in order to protect the tenant against a possible transfer of property resulting in the lease agreement being terminated.

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Is there a legal or tax difference between renting premises with or without fit-out?

Legally, the lease agreement includes detailed provisions regarding the rights and obligations of the parties in case of a fit-out, as these are not sufficiently regulated by the underlying laws.

From a tax perspective, a fit-out performed by the lessee may under certain conditions be treated as a supply of goods and services (separate from lease) and therefore be subject to VAT.

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Can we do turnover-based leases?

This is legally possible. Depending on the type of turnover-based model and whether the lessor and the lessee are related parties, tax issues may arise in connection with the amount of the rent.

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What are the most common securities on the local market required from the tenant?

The tenants are usually asked to provide a bank guarantee or a cash deposit covering 3-6 monthly rents.

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Are there any stamp duties for lease agreements?

There are currently no stamp duties for lease agreements.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both options are available to investors. The final structure of the transaction will usually depend on the circumstances of each individual case.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

There are some restrictions regarding direct acquisition of property by foreign nationals, but they usually apply only in cases which are not relevant for retail premises.

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Are there any historical title issues to observe when buying a property?

There are not, but full-title due diligence is always recommended.

---

Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Both land and share purchase agreements require a written form, while land purchase agreements have to be executed as a notarial deed. It is advisable for the share transfer agreement to be notarised before public notary.

---

How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

Transfer of title (both to property and shares) requires registration. For an asset deal, the land purchase agreement is to be registered with the competent land register.

For a share deal, the transfer of shares is to be registered with the Central Register of Business Entities.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

Acquisition of real estate is subject to a 3% real estate transfer tax. Acquisition of newly constructed buildings is subject to VAT at a rate of 19%.

Sale of a "real estate company" is not subject to real estate transfer tax.

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

Foreign entities may be involved in direct construction if they fulfil certain requirements as provided by law. In most cases, the complicated procedures required to prove that certain qualifications have been fulfilled means the construction works are usually performed by Montenegrin nationals.

---

Can only an owner request the necessary permits for construction, or is this option also available to tenants?

Yes. The request can, in exceptional case, be made by the tenant, but only after authorisation by the property owner (landlord).

---

What permits are required for construction of properties?

A project usually requires the following: (i) an outline of the urban technical conditions which contain specific development parameters for a particular facility; (ii) a construction permit which (along with a notification to the competent authorities of the commencement of works) allows construction works to be commenced; and (iii) a use permit confirming that the construction has been properly carried out, thus allowing the investor to use the property.

---

Are there any surprising costs, levies or other charges related to construction?

Construction requires that payment of municipal rates and other community taxes be made. The fee is defined by local authorities and depends on the facilities on the construction land, the extent to which the investor is financing communal equipment and facilities, etc.



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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

Yes, a construction permit is no longer valid if the works do not commence within two years of the date on which the construction permit was issued. In addition, the construction permit defines the deadlines within which the investor must finish its works. They are defined as follows: (i) 3 years from the date upon which the construction permit for new buildings comes into effect, and (ii) two years from the date on which the construction permit for buildings that have been reconstructed comes into effect. These terms can be prolonged at the request of the investor.

---

Can an investor transfer a construction permit to another investor?

Yes, the new investor is obliged to submit a request for a change in investor within 7 days of the change and to provide evidence of title over the land (for example, the building).

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Based on the type of retail activity performed in the leased premises, the tenant is required to obtain additional operation permits. Retail and wholesale premises require minimal technical requirements.



# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Employment contracts are the rule, while service contracts are considered the exception (in practice used mostly for consultants etc.).

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What is the duration of employment contracts on the local market?

Employment contracts can be entered into for an indefinite or definite period of time. The first are considered the rule, the latter the exception.

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Are there any restrictions regarding the execution of definite term employment contracts?

Yes, definite term contracts may be entered into only for specific reasons (which are legally pre-determined) and for a specific time. The entire duration of all definite term contracts may not exceed 24 months.

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Are there any special rules for employment contracts of directors / board members?

They represent a special subcategory of employment contracts and can be concluded for a definite/indefinite period of time, but no special rules apply.

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Is there a collective bargaining agreement applicable nationally to retail in Montenegro?

Currently, no.

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Are there any restrictions regarding the employment of foreign nationals?

Foreign nationals require a work & residency permit to work in Montenegro.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Montenegrin laws recognise direct employment, secondment and intra-company transfer. Each of the options requires certain formal conditions to be fulfilled. The selected type of employment depends on the particulars of each individual case (especially the type of work to be performed in Montenegro, the foreign national's position, etc.).

---

Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

If foreign nationals are in Montenegro for business, they require a permit.

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Are there any special (more favourable) procedures for employment of foreign management staff?

No, there are not.

## 2) to pay

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How are salaries and other benefits determined in Montenegro?

Salary and other benefits may be determined by the individual employment contract, works agreement or by-laws agreed to with an employer, as well as any applicable general or industry-specific collective agreements and/or Montenegrin laws.

---

Does local law envisage a minimum salary and other payments?

The minimum salary is defined at a national level. For 2017, the minimum salary amounts to EUR 193 net. A foreign national employed in a Montenegrin company is entitled to a minimum monthly salary of approx. EUR 450 gross, or approx. EUR 300 net.

Employees are entitled to increased salary for overtime work. Said increased amount is equal to 40% of the employee's base salary, as prescribed by the general collective bargaining agreement.

---

Do foreign nationals fall under the local employment rules and regulations?

Foreign nationals who are directly employed in Montenegro fall under the local employment rules, while the case is not clear for seconded employees or intra-company transfers. They remain employed in the sending country, so it may be argued that the local rules do not apply to them. This matter is not dealt with explicitly by law.

---

What are the current personal income tax rates in Montenegro?

Workers are required to pay mandatory social security contributions for health, pension and disability, and unemployment insurance at the following rates:

- 1) Personal income tax - 9% (includes dividends, interest, capital gains and other types of personal income).
  - Salaries are subject to progressive taxation: a gross salary of up to EUR 720 is subject to a 9% rate, while the portion of the salary exceeding this amount is subject to an 11% rate.
- 2) Mandatory social security contributions:
  - a) pension and disability insurance - 20.5%;
  - b) health insurance - 12.8%; and
  - c) unemployment insurance - 1%.
- 3) A surtax imposed by local municipalities – 10 to 15%  
Work fund - 0.2%

---

What are the Personal Income Tax implications for foreign nationals working in Montenegro?

The personal income of foreign nationals working in Montenegro which is sourced to Montenegro is subject to Montenegrin personal income tax and mandatory social security contributions, unless provided for otherwise by the applicable double tax agreements or social security treaty.

For income received from abroad, foreign nationals are obliged to calculate, declare and pay personal income tax and social security contributions themselves. The aforementioned obligation lies with the employer if foreign nationals are employed locally.

---

Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

Foreign nationals employed in Montenegro generally fall under Montenegrin social contributions and pension scheme.

Foreign nationals employed in Montenegro must have health insurance in Montenegro, as must their family members with permanent residency in Montenegro.

Exemptions to this may be possible under existing social security treaties.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

The Montenegrin Labour Law does not regulate training, meaning these persons will have to be employed. It is possible to agree on a probationary period, which can last up to 6 months.

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Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

No, this is not one of the grounds for terminating definite term employment contracts.

---

Is it possible to terminate an employment contract for training purposes without grounds?

No, the employment contract cannot be terminated without grounds.

---

Do trainees enjoy the same protection as full employees?

Since they have to be employed – yes.

---

Is it possible to agree two subsequent training contracts?

N/A

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Once the training is finished, is a new employment contract required?

N/A

---

Is a trainee entitled to severance payment after termination of employment?

Since they have to be employed – yes.

# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors will use a Ltd. company as an SPV for their investment in Montenegro. Incorporation requires minimum share capital of EUR 1 and at least one shareholder.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

Legally, there are none. Certain practical problems may arise during and after incorporation if the shareholders are based in certain jurisdictions. (E.g. certification of documents, full legalisation, etc.)

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How long does it usually take to fully set up the most common company in the local market?

It takes between 5 and 10 days for a Ltd. company to be duly registered with the competent commercial register. It will take another 5 – 10 days for the subsequent applications to be carried out (accounting, tax etc.) and for the company to become fully active.

---

What are the registration steps?

To establish a Ltd. company, the incorporation papers must be signed by the shareholders in Montenegro or a corresponding PoA must be issued. Certain documents must be signed personally by the future directors (may also be signed abroad). The shareholder must then open an interim bank account and pay in the share capital (if the company is established with the minimum share capital of EUR 1, this is not necessary). The incorporation papers (along with a certificate confirming that the share capital has been fully paid in – not required for a share capital of EUR 1) must be filed with the competent commercial register. Once the commercial register confirms the registration, it will register the company with the Central Register of Business Entities and issue an incorporation resolution.

---

What other actions may be required for the company to become fully operational?

Based on the incorporation resolution, the director of the company may request a company's seal, register employee(s) with the tax authorities (given that, pursuant to Montenegrin law, the director of a company must be employed), open a permanent bank account, obtain TIN and VAT (if any) numbers, file a request with the accounting office, etc.

---

Does a company performing retail activities on the local market require any additional permits / licences?

The registration of a company performing retail activities does not require any additional permits / licences. However, a license is required to run the company. Based on the type of retail activity performed by the company, additional permits may be required. For example, retail and wholesale premises must fulfil certain minimal technical requirements.

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What other forms of companies are present in Montenegro?

Montenegro recognises the same types of companies as most EU jurisdictions including a Plc., limited partnership and general partnership.

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How can an Montenegrin company be closed down?

Liquidation proceedings can be carried out as (1) regular or longer liquidation proceedings (if the company has unsettled debts/obligations towards its creditors etc.) and as (2) short or summary liquidation proceedings (if the company does not have any debts/obligations). The Central Register of Business Entities is the competent state authority.

---

How long does it usually take for an Montenegrin limited liability company to be wound-up / liquidated?

The liquidation procedure usually takes approx. six months (for regular or longer liquidation proceedings) or approx. seven days from the date when the complete set of documents are filed with the Central Register of Business Entities (for shorter liquidation proceedings).

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

A foreign national can be a director/ board member of a Montenegrin Ltd. company. Such person must sign a consent form, which is part of the application to the commercial register for their appointment.

---

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

A director of a Ltd. company must be directly employed by the company. This is not required for a board member.

---

Is a director/ board member required to be physically present on the local market?

No, they are not.

---

Does the director/board member require any special permits to work and stay in the local market?

Directors require and board members may require a work and residence permit (depending on the duration of their stay).

---

Is it obligatory to pay remuneration to a director/ board member in your jurisdiction? What are the tax effects of such remuneration?

Remunerations to directors or board members are subject to standard Montenegrin personal income tax rates and mandatory social security contributions.



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What is the procedure for appointment/dismissal of a director/board member?

The shareholders will reach a decision on the basis of which a certain person is appointed as a director / board member of a Ltd. company. Such person will further confirm their signature in writing by signing a consent form on their appointment, which is part of the application to the commercial register. All documents will then have to be filed and registered with the competent commercial register. Regarding dismissal in Ltd. companies, shareholders in these companies can unilaterally reach a decision on revocation (and unless otherwise agreed, do not need a valid reason to do so), which shall then be registered with the competent register.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The main tax rate of 9% applies to both domestic and foreign companies.

VAT is imposed on good, services and imports. The rates are 19%, 7% and 0%, depending on the type of goods or services being supplied. Exports are zero-rated and exemptions are provided for financial services, sale of land, etc. Registration for VAT is only mandatory for taxpayers whose taxable supplies exceed EUR 18,000. A VAT return is filed monthly, while VAT is paid by the 15th of the current month for the previous month.

---

Is VAT grouping or consolidation for corporate tax purposes available?

VAT grouping is not available.

Consolidation for corporate income tax purposes is possible, but only for companies, which are Montenegrin residents.

---

Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

The following income streams are subject to a 9% withholding tax in Montenegro when paid to non-resident legal persons, unless otherwise prescribed by the applicable double tax agreement: income from interest, royalties, dividends, capital gains, lease, market research services, consultancy and audit services, entertainment and sport services and the sale of agricultural products.

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Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

Montenegro does not have thin capitalisation rules.

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Please specify other rules that limit interest deductibility.

Interest paid to non-residents above the usual commercial rates is not recognised for tax purposes.

The deduction of interest payments is also subject to Montenegrin transfer pricing rules.

---

List any rules on the tax implications of discount sales or sales below the acquisition value.

Price reductions or discounts due to early payments reduce the VAT base, as do discounts granted to the customer at the time of the supply.

The tax authorities may dispute the transfer-pricing setup if they consider it not to be at arm's length. However, they seldomly do so in practice.

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Rules on utilisation of tax losses.

Tax losses can be carried forward for 5 years and utilised against taxable profit in future periods. Loss carrybacks are not allowed.



# What clients say



CMS has 'international experience and deep local expertise, which is highly valuable in cross-border transactions'

*Legal500, 2017*



The team in Zagreb provides 'focused and commercial advice' to domestic and international clients on day-to-day employment issues as well as on the employment issues associated with transactions handled by the firm. One notable area of experience is advising employers on regional severance packages.

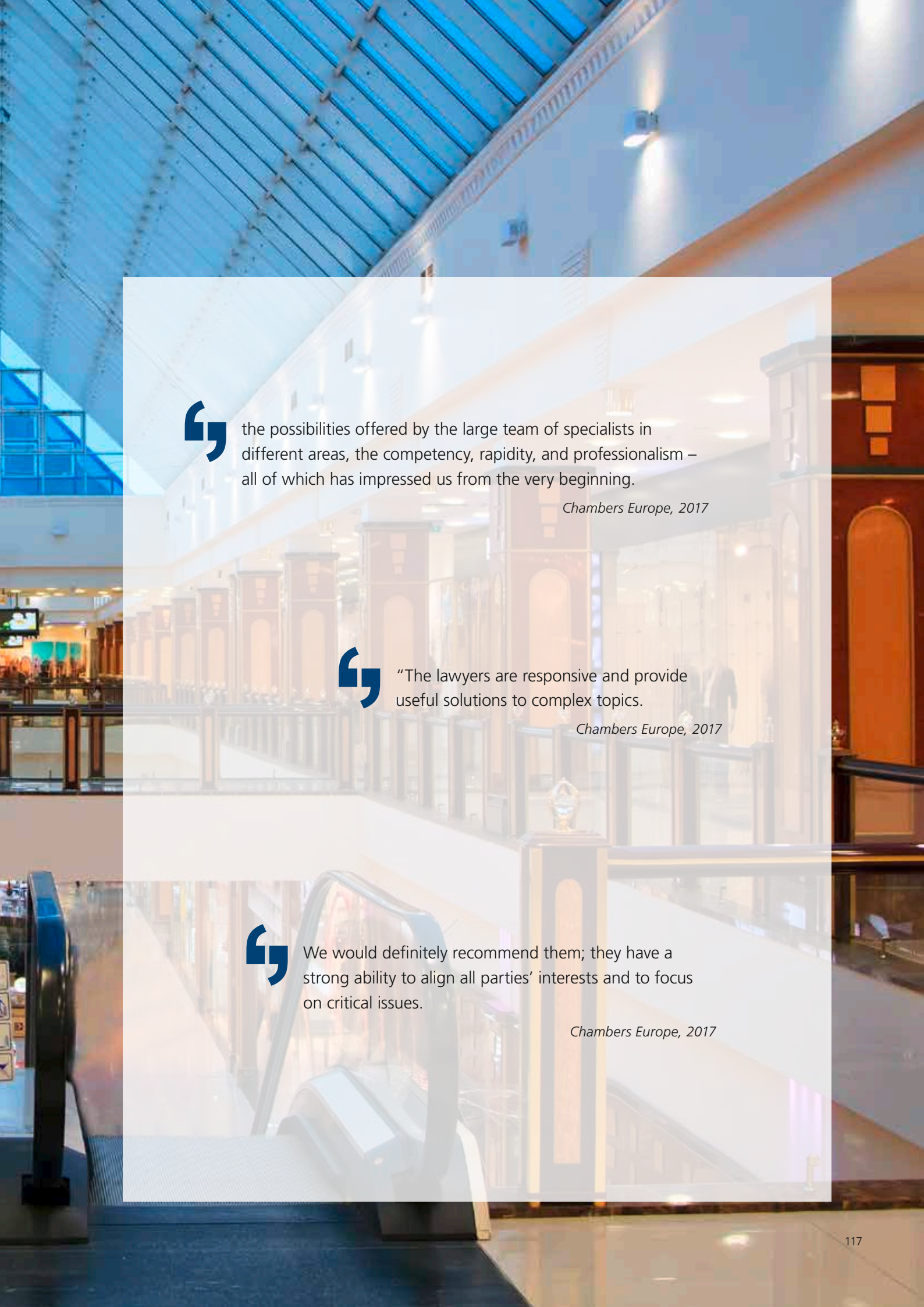
*Legal500, 2017*



Strengths One client notes the firm's "know-how in the countries of the CEE region.

*Chambers Europe, 2017*





“ the possibilities offered by the large team of specialists in different areas, the competency, rapidity, and professionalism – all of which has impressed us from the very beginning.

*Chambers Europe, 2017*

“ “The lawyers are responsive and provide useful solutions to complex topics.

*Chambers Europe, 2017*

“ We would definitely recommend them; they have a strong ability to align all parties’ interests and to focus on critical issues.

*Chambers Europe, 2017*

# Poland



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# Space

## 1) to rent

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What is the definition of a lease on the local market?

A lease is a right of obligational nature where a property owner allows the leaseholder to use a property for a predetermined period of time and against a consideration.

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Can a foreign company rent a property directly or is a local SPV required?

The following persons may take up and pursue economic activity under the same terms as Polish entities: foreign persons from EU and EFTA member states, parties to the European Economic Area (EEA) Agreement and foreign persons from countries not party to the EEA Agreement with the right to enjoy freedom of establishment under the respective agreements between those countries and the European Union and its member states. Entities that do not comply with the above conditions are required to establish a local SPV.

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Lease duration: long-term vs. short term.

A lease agreement concluded for more than 30 years is deemed as having been concluded for an indefinite period of time after the 30 years have expired. The same rule applies to a 10-year lease if one of the parties is not a business entity.

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Are there any requirements regarding the form of a lease agreement?

A lease agreement concluded for more than 1 year should be concluded in written form, otherwise a lease agreement will be deemed as having been concluded for an indefinite period of time.

If a tenant wishes to register the lease agreement in the land register, the signatures on the lease agreement must be certified by a public notary.

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Does a lease agreement require registration with any authorities?

No. However, a lease agreement may be registered in the land register upon the wish of the contractual parties.

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Is there a legal or tax difference between renting premises with or without fit-out?

Legally, a lease agreement must have detailed provisions regarding the rights and obligations of the parties if a fit-out is necessary, as they are not sufficiently regulated by the underlying laws.

Fit-out works can be performed either by the landlord or tenant. These two situations will have different tax implications. If a fit-out is performed by the landlord, the fit-out may be considered a free-of-charge benefit for the tenant.

This would not be the case if the tenant performs the fit-out works on their own.

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Can we do turnover-based leases?

There are currently no legal restrictions for turnover-based leases.

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What are the most common securities on the local market required from the tenant?

As a security, tenants must usually provide:

- (a) a monetary deposit or a bank guarantee, normally covering 3-6 monthly rents,
- (b) submission to enforcement to vacate the leased premises once the lease expires (in the form of a notarial deed), and
- (c) submission to enforcement with respect to payments of monetary obligations (in the form of a notarial deed).

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Are there any stamp duties for lease agreements?

There are currently no stamp duties for lease agreements.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both transactional structures are used.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

EU citizens and citizens of other EEA member states, as well as citizens of countries that are members of the OECD, can acquire real property on the territory of the Republic of Poland under the same conditions as nationals of the Republic of Poland.

All other foreign nationals may acquire property in Poland solely under the principle of reciprocity and with the prior consent of the Ministry of Infrastructure.



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Are there any historical title issues to observe when buying a property?

Restitution claims.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

A land purchase agreement must be concluded in the form of a notarial deed.

A share purchase agreement must be concluded in written form with signatures certified by a notary.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

Under Polish law, transfer of title to the land must be registered in the land register. Relevant provisions related to the disclosure of the new owner (perpetual usufructee) are included in the sale agreement. A notary usually applies to the court for a change in this case.

For a share deal, the titleholder to the property entered in the land register remains unchanged. However, a change with the company's shareholders must be entered in the commercial register.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

Real estate tax is payable from the date on which the property is acquired, based on the useable area and tax rate per sqm. Regulations concerning RETTs are yet to be adopted and will come into force in 2018.

However, if a sale of real estate is not subject to VAT, then it will be subject to a 2% unrecoverable stamp duty levied on the market value of the transaction.

There is no special tax on the sale of shares in a company holding real estate. However, a standard 1% unrecoverable stamp duty is levied on the market value of the shares.

The stamp duty is payable by the purchaser.

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

There are currently no restrictions regarding direct construction by foreign nationals in Poland.

---

Can only an owner request the necessary permits for construction, or is this option also available to tenants?

Under Polish law, a construction permit is granted to an entity holding a right to use the property for construction purposes. Such right may be granted by the owner or perpetual usufructee of the property to anyone, including the tenant.

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What permits are required for construction of properties?

Under Polish law, the following construction-related permits are required to construct a building:

zoning permit – required if a property is not covered by a local zoning plan; environmental permit – required only in specific cases (to be assessed by technical advisors); water permit – required only in specific cases (to be assessed by technical advisors); construction permit; and occupancy permit – is needed after the building is constructed and before it is used.

Polish law may also require other decisions/arrangements to be made with the authorities before or during the procedure for obtaining the above permits, such as a decision from the monuments preservation office if the property is entered in the monuments register.

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Are there any surprising costs, levies or other charges related to construction?

There are no surprise charges. General construction costs (e.g. employment expenses for the construction workers, costs for the supervision of construction works, costs of insurance, administrative expenses) need to be paid.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

There is no specific time when the construction has to be completed. However, construction works have to start within three years of the date upon which a construction permit becomes effective. A construction permit also expires if construction works are suspended for more than three years.

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Can an investor transfer a construction permit to another investor?

Yes, a construction permit can be transferred to another entity on the condition that this entity takes on all obligations described in the permit and files a statement confirming the right to use the property for construction purposes.

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Depending on the type of retail activity performed in the leased premises, the tenant is required to fulfil additional requirements and may be obliged to obtain additional permits.

Retail and wholesale premises must comply with the minimal technical requirements.

There are also specific requirements for entities that perform specific business activity, e.g.

alcoholic drinks – an alcohol licence is required for the sale or storage of alcohol products;

medicines – a specific permit is required for the sale and storage of medicines;

food – a specific permit is required from the sanitary authorities;

dangerous chemicals – a specific permit is required from the provincial sanitary authorities;

sale and storage of animals – a specific permit is issued by the Veterinary Inspectorate; and

sale and storage of weapons – a specific permit is issued by the Ministry of Internal Affairs.

# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Local nationals are usually hired under employment or service contracts. However, a service contract for work that resembles employment (high degree of subordination) will be considered as an employment contract, regardless of its name. Therefore, an employment contract may be the only option for certain types of work.

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What is the duration of employment contracts on the local market?

Employment contracts may be concluded for an indefinite or a definite period, or for a trial period of up to 3 months (please find restrictions on the duration of definite period contracts below).

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Are there any restrictions regarding the execution of definite term employment contracts?

Yes. In general, employment under definite term contract(s) cannot exceed 33 months in total. Also, only 3 consecutive definite term contracts can be concluded in a row. Violation of the above rules results in employment being deemed indefinite. However, there are some minor exceptions to the above restrictions, in particular related to seasonal work or other extraordinary circumstances.

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Are there any special rules for employment contracts of directors / board members?

No. There is no special type of employment contract for company directors or management board members. Such individuals are usually employed under employment or service (management) contracts. Management board members may also be engaged solely as holders of office in the management board without any underlying contract (with remuneration paid on the basis of a resolution on appointment to the board).

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Is there a collective bargaining agreement applicable nationally to retail in Poland?

No. However, a company-level collective agreement could be concluded with company trade union organisations if there are any such organisations operating in the company.

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Are there any restrictions regarding the employment of foreign nationals?

EU nationals can be employed without a work permit.

Non-EU nationals can be employed only if they have a valid work and residence permit in Poland.

Permits are granted to a particular foreigner and specify their position and the period of the permit's validity, which generally lasts up to 3 years, with the possibility of further extensions.

A citizen of the Republic of Armenia, Belarus, Moldova, Georgia, the Russian Federation or Ukraine may be employed for a period not exceeding 6 months in a period of 12 consecutive months without a work permit, on the basis of the employer's statement of their intention to entrust work to a foreigner. The statement has to be registered with a local labour office.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

In general, there are no special types of employment for foreign nationals. They are usually employed directly by the employer based in Poland, posted to Poland by a foreign employer or hired via a private Polish temporary employment agency.

In general, an employee employed directly in Poland under a Polish contract will be fully subject to Polish employment law.

A worker temporarily posted to Poland will be subject not only to the law governing their employment (e.g. the law of their home country), but also to specific mandatory Polish laws (e.g. related to minimum wage, working time, holiday entitlements, occupational health and safety, etc.). Employers posting employees to Poland must fulfil a number of administrative duties (e.g. designating a person authorised to contact the Polish authorities, storing and providing access to employees' documents, etc.).

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Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

Nationals of EU member states, Iceland, Norway, Lichtenstein and Switzerland can enter Poland and start working from the first day of their stay without any type of permit.

Foreigners from other countries must obtain their work permit prior to starting their work on the local market.

Citizens of the Republic of Armenia, Belarus, Moldova, Georgia, the Russian Federation or Ukraine may be employed for a period not exceeding 6 months within 12 consecutive months without a work permit, on the basis of the employer's statement of their intention to entrust work to a foreigner. This statement has to be registered with a local labour office.

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Are there any special (more favourable) procedures for employment of foreign management staff?

Management staff from EEA countries are exempt from the obligation to obtain work and residency permits.

Foreigners from other countries only require a work permit as a member of a legal entity's management board if the member is present in Poland for more than 6 months in total during any consecutive 12-month period.

## 2) to pay

How are salaries and other benefits determined in Poland?

In general, an employee's salary is based on an agreement between the employer and the employee. However, the salary cannot be lower than the statutory minimum wage (as described below).

Depending on the nature of the benefit, its amount may be determined by an individual contract, statutes, a collective bargaining agreement (if applicable), or the company's internal regulations, such as salary or bonus by-laws.

Does local law envisage a minimum salary and other payments?

Yes. The minimum salary is set by law and may change annually. The minimum salary for 2017 is: (i) PLN 2,000 (~ EUR 467) monthly gross under an employment contract, and (ii) PLN 13 (~ EUR 3) gross per hour under a service contract.

Do foreign nationals fall under the local employment rules and regulations?

Yes. In general, a foreign national directly employed in Poland under a Polish contract will be subject to Polish employment law in full.

What are the current personal income tax rates in Poland?

Current annual personal income tax (PIT) rates are 18% and 32%, depending on the level of the employee's annual income. Moreover, a 19% tax rate may be chosen under B2B service contracts.

What are the Personal Income Tax implications for foreign nationals working in Poland?

Under Polish PIT, as a general rule a foreign national (i) whose stay in Poland exceeds 183 days in a tax year, or (ii) has their centre of interest in Poland acquires resident status (i.e. all their types of income are subject to Polish PIT).

If neither conditions (i) and (ii) are met, foreign nationals do not acquire resident status (i.e. only their Polish income could be subject to taxation in Poland).

Polish general rules apply subject to the relevant double tax agreements between Poland and the other country.

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Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

As a rule, employees performing work in Poland are subject to the Polish social security system. Consequently, the employer must register them with the Polish social security institution and pay the relevant social security contributions.

EU nationals performing work in Poland are similarly subject to the Polish social security system. However, EU regulations provide a few exemptions from this rule (e.g. when posting workers between EU countries, it may be possible to remain subject to the home country's social security system for up to 2 years).

The insured person may also register their family members if the employee's family members do not enjoy health insurance in Poland or another EU member state.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

In general and depending on the nature and duration of work as well as the trainee's age, training can be performed on the basis of: (i) an employment contract for a trial period, and (ii) a service contract (regular or for special graduate internships). There are no specific regulations concerning retail personnel in this respect.

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Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

An employment contract for a trial period may last up to 3 months. There are no such time limits in relation to regular service contracts (but a service contract may not be suitable, depending on the nature of the work and the level of worker's subordination).

Only one employment contract for a trial period may be concluded with an individual. This is to be concluded for a specific type of work and only one employment contract for a trial period may be concluded within 3 years. After this period expires, it is possible to conclude only one extra trial period contract for the same type of work.

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Is it possible to terminate an employment contract for training purposes without grounds?

An employment contract for a trial period may be terminated without grounds by serving a statutory period of notice, which lasts from 3 days to 2 weeks, depending on the contract's duration.

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Do trainees enjoy the same protection as full employees?

In general, yes. However, they have a shorter notice period if they are employed under an employment contract for a trial period.

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Is it possible to agree two subsequent training contracts?

No. Only one trial-period employment contract may be concluded for a specific type of work. Concluding a subsequent training contract is only allowed: (i) if the type of work provided by the employee differs from the type conducted under the previous contract, or (ii) after 3 years (but may only be concluded once).

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Once the training is finished, is a new employment contract required?

Yes. After the termination of a trial-period employment contract, the parties must conclude another employment contract (definite or indefinite) in order to extend employment.

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Is a trainee entitled to severance payment after termination of employment?

A trainee – employed under a trial-period employment contract – is entitled to statutory severance payment according to the general rules. These rules are: a trainee may only receive severance payment if the company employs at least 20 employees and the contract was terminated early due to reasons not related to the employee (e.g. liquidation of the work post, reductions in staff numbers). No statutory severance payment is due if the trial-period employment contract simply expires.



# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Limited liability company – also for real estate transactions.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

A limited liability company may be incorporated by any natural person, also if they are a foreign national.

A limited liability company may not however be incorporated by another limited liability company which has a sole shareholder. This also applies to foreign entities.

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How long does it usually take to fully set up the most common company in the local market?

It takes on average approximately 2 months to have a fully operational company.

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What are the registration steps?

The following actions are necessary to register a limited liability company:

- obtaining the necessary information and documents,
- agreeing on the final text of the articles of association,
- executing the articles of association before a notary public,
- filing an application with the register court,
- filing an application with the tax office to register the company for VAT / EU-VAT purposes in Poland, and
- notifying the social security institution that the employees have been hired within 7 days of the first employment contract being concluded between the company and an employee.

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What other actions may be required for the company to become fully operational?

After incorporating the company, i.e. after the execution of the articles of association, the company should take the following actions:

- open a bank account for the company in Poland and transfer the amount of the share capital, and
- conclude a lease agreement for the company's premises.

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Does a company performing retail activities on the local market require any additional permits / licences?

Some retail activities may require additional permits / licences.

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What other forms of companies are present in Poland?

These are:

- civil law partnerships,
- registered partnerships,
- professional partnerships,
- limited partnerships,
- limited joint-stock partnerships, and
- joint-stock companies.

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How can an Polish company be closed down?

A limited liability company is wound up upon the completion of its liquidation activities and its removal from the register.

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How long does it usually take for an Polish limited liability company to be wound-up / liquidated?

A limited liability company may only be closed down after a 6-month period, beginning when a mandatory announcement is published in the official gazette. On average, the process takes approximately 8 months.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

A natural person who has been sentenced for crimes connected to conducting certain business activities may not hold the position of director / board member, supervisory board member or liquidator.

---

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

A director / board member does not have to be employed by the company or have a different type of agreement with a Polish company.

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Is a director/ board member required to be physically present on the local market?

A director / board member does not have to be physically present in Poland. Some duties require signatures from the management board (e.g. execution of financial statements, list of shareholders, declaration of the management board on contributions towards the share capital, etc.) and an attorney-in-fact may not be appointed for these purposes.

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Does the director/board member require any special permits to work and stay in the local market?

Foreign nationals from member states of the EU or EEA do not require special permits to work and stay in Poland. Other foreigners may require various permits such as a work permit, visa, permission to stay in Poland, etc.

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Is it obligatory to pay remuneration to a director/board member in your jurisdiction? What are the tax effects of such remuneration?

It is not obligatory to pay remuneration to a director / board member in Poland.

If remuneration is paid, the company will be required to pay advances on the personal income tax arising from the remuneration. Furthermore, the company is required after each tax year to provide the director / board member with formal information on the amount of personal income tax advances paid.

A director's / board member's income is subject to a progressive tax rate (18% and 32%).

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What is the procedure for appointment/dismissal of a director/board member?

A director / board member of a limited liability company is appointed by a shareholders' resolution and may be dismissed at any time, providing the articles of association do not state otherwise.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The corporate income tax rate is 19%. The standard VAT rate is 23%.

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Is VAT grouping or consolidation for corporate tax purposes available?

Polish corporate income tax regulations provide for the formation of a tax capital group under the following conditions:

- (i) it is formed by capital-related commercial companies with their seats in Poland,
- (ii) the average share capital of each company may not be lower than PLN 1,000,000,
- (iii) one of the companies is a dominant company and has a 95% share in the share capital of the other companies (dependent companies),
- (iv) the dependent companies do not hold shares in other companies forming the group, and
- (v) none of the companies are in tax arrears.

The creation of a tax capital group requires the execution of a special agreement. The group must last for at least 3 years. Furthermore, the companies must fulfil additional criteria while being a part of the group, e.g. their taxable income to taxable revenue ratio must be at least 3% for each tax year.

No VAT grouping is available in Poland.

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Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

Payments of interest, licence charges and dividends made by a Polish company to an entity outside Poland are generally subject to withholding tax.

As a rule, interest and royalties are subject to a 20% withholding tax and dividends are subject to 19% withholding tax.

However, the payment may be exempt or subject to a lower withholding tax rate as a result of a double tax agreement. The paying entity should have the recipient's certificate of fiscal residency in order to apply the exemption/lower tax rate.

Additionally, a withholding tax exemption (resulting from EU law) may apply in certain cases, i.e. when interest and royalty payments are paid by Polish corporate residents to related EU or EEA companies. Please note that a number of criteria must be fulfilled to benefit from these exemptions (e.g. shareholding thresholds).

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Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

Polish thin capitalisation rules indicate that a taxpayer cannot treat interest on loans from related parties as tax-deductible costs in the same proportion as the ratio between the debt to the related parties and the company's capital.

A party is considered to be a related party if:

- (i) a lender (or a group of lenders) holds (either directly or indirectly) at least 25% of the shares in the borrowing company, or
- (ii) a parent company holds (either directly or indirectly) at least 25% of the shares in both the borrower and the lender.

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Please specify other rules that limit interest deductibility.

n/a

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List any rules on the tax implications of discount sales or sales below the acquisition value.

If an item is sold at a price that significantly and without justification departs from its market value, the tax authorities have the right to assess the taxable revenue of the purchaser using the item's market value as a basis. Such a determination usually requires an expert opinion.

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Rules on utilisation of tax losses.

Tax losses in Poland may be deducted from income during the five tax years subsequent to the tax loss occurring. Deductions in a single year may not exceed 50% of the value of the loss.



# Romania

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# Space

## 1) to rent

What is the definition of a lease on the local market?

A lease right is a real property right according to which the owner, as the lessor, allows the lessee to use the property for a pre-defined period of time and in exchange for a consideration (i.e. rent) to be paid by the lessee.

Can a foreign company rent a property directly or is a local SPV required?

A foreign company can rent directly, but there may be certain tax disadvantages.

Lease duration: long-term vs. short term.

The maximum term of a lease cannot exceed 49 years but there is no provision related to the minimum term. Any lease concluded for more than 49 years will be automatically reduced to the maximum duration of 49 years. Lease agreements are usually concluded for a shorter period of time (between 1 and 7 years).

Are there any requirements regarding the form of a lease agreement?

The agreement for the lease of business premises must be concluded in writing; no other legal formalities are required.

Does a lease agreement require registration with any authorities?

The lease agreement is usually registered with the competent fiscal authorities and the land register (to prevent third parties making claims based on the lease agreement).

Is there a legal or tax difference between renting premises with or without fit-out?

Regarding fit-outs, lease agreement should contain detailed provisions regarding the rights and obligations of the parties involved, as these are not sufficiently regulated by the underlying laws. If the value of fit-out reduces the rent payable by the tenant, the tax authority could claim that such works constitute a supply of works by the tenant to the landlord, resulting in a VAT liability for the tenant, based on the value of the works.



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Can we do turnover-based leases?

Turnover leases are most often used in relation to retail operations and are used almost exclusively in factory outlet centres, airports and railway stations. In general, rent is to be paid in advance every quarter or every month, depending on what the parties agree to.

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What are the most common securities on the local market required from the tenant?

Tenants usually provide a bank guarantee or a corporate guarantee as security covering 1-3 monthly rents.

---

Are there any stamp duties for lease agreements?

No stamp duty is payable for lease agreements.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both transactional structures are used. Investors prefer share deals due to the preferential tax treatment, the reduced risk in relation to pre-emption rights and the possibility of transferring other property rights, etc.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

EU citizens/ EU legal persons registered according to an EU member state's legislation can own land directly in Romania, subject to obtaining a tax registration number from the relevant Romanian tax authority.

Pre-emption rights (by the Romanian state, co-owners, neighbours, tenant farmers) have to be observed before selling forested land and agricultural land located outside the city limits.

There is no restriction on the acquisition of buildings by foreigners.



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Are there any historical title issues to observe when buying a property?

Title to land can be acquired by transfer, inheritance or reconstitution of the ownership rights over land confiscated during the communist regime. In the latter case, the deed attesting ownership is the "ownership title" (Titlu de Proprietate). Many land owners have incomplete or "defective" title deeds over their land in the form of (i) ownership certificates (adeverinta de proprietate) and/or a record of the transfer of possession (proces verbal de punere in posesie), (ii) simple certificates (adeverinta) issued by the relevant municipality where the land is located, or (iii) other "imperfect" property documents.

After 1989, several special restitution laws were enacted aiming to provide legal remedies for owners whose properties were taken from them by force during the communist regime. The most common risk to a seller's title often arises from the existence of litigation or restitution claims against its property.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Land purchase agreements must be executed in writing and concluded in an authenticated form (i.e. in front of a public notary). The public notary carries out all the necessary formalities for registration of the agreement in the land register.

Share purchase agreements are also executed in writing.

---

How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

Transfer of title requires registration.

With asset deals, the land purchase agreement must be filed with the competent land register. The title is transferred to the buyer upon due registration.

With share deals, the transfer of shares in a limited liability company must be registered with the competent trade register. The material effects come into force immediately after signing the SPA.

With transfer of shares in a joint stock company, the share purchase agreement is registered in the shareholders' register and the corporate documentation is registered with the competent trade register. The material effects of the transaction come into force upon registration of the transfer with the competent trade register.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a “real estate company” subject to RETT in your jurisdiction?

The standard rate of VAT is 19% and is applicable to the sale of new buildings and plots of land that can be built upon.

The reduced VAT rate of 5% applies to the sale of buildings to individuals in certain circumstances.

VAT generally applies to new buildings.

A VAT exemption applies to the sale of old buildings and plots of land that cannot be built upon.

Individuals who sell Romanian property are liable to transfer tax if the value of the property exceeds EUR 100,000.

Natural persons who sell property in Romania are granted a tax-free amount of EUR 100,000. If the property’s value exceeds this amount, then a transfer tax on the amount exceeding EUR 100,000 becomes due.

This limit does not apply to Romanian companies (also small companies) which are liable for corporate income tax. All revenue generated by this company is subject to corporate income tax, thus allowing expenses to be deducted (i.e., amortisation, consultancy fees, etc.).

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

Foreign nationals must establish a branch or a subsidiary or register a new company in Romania. The registration is subject to the usual requirements such as: specific documentation, entry into the trade register, fiscal registration, etc.

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

Construction permits are usually requested by the landowner but may also be requested by an investor possessing any other material or obligational rights that allow them to build or carry out works (e.g. building rights).

---

What permits are required for construction of properties?

Construction, reconstruction or demolition of a building can be carried out only after a building permit/demolition permit has been issued. The permit is issued by the competent local authority once it has found that the intended construction complies with the relevant plans. A request for a building permit to be issued must be submitted together with the approved project documentation as prepared by the authorised engineer. Said submission shall also be accompanied by the relevant consent statements from the competent agencies and bodies.

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Are there any surprising costs, levies or other charges related to construction?

No.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

The building permit is valid for a period of 12 months. The beneficiary must begin the construction works during this period. The permit is valid for the entire duration of the works stipulated in the authorisation and as according to the technical design. If the construction works do not start within the above-mentioned term, the validity of the building permit can be extended for another maximum period of 12 months.

The period in which the works are to be executed, as stated in the building permit, begins the moment the works commence.

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Can an investor transfer a construction permit to another investor?

The investor may transfer the building permit to another entity or person who has the right to build. The new investor must observe the provisions of the building permit and register the amendments to the real property rights with the land register.

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Subject to the type of business activity performed in the leased premises, the tenant is required to fulfil additional requirements.

The sale of medicinal products may only be carried out by pharmacies and stores specialising on the sale of medicinal products. Activities involving dangerous/ chemical substances require environmental authorisation, fire protection authorisation, specific authorisation for the transportation of chemical substances and certain notifications.

# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Local nationals are usually hired under individual employment agreements; other types of contracts (such as service contracts, management agreements etc.) are only used as an exception (e.g. for consultants, board members, etc.).

---

What is the duration of employment contracts on the local market?

In general, employment agreements are concluded for an indefinite period. They may also be concluded for a definite (fixed) period in certain cases, as expressly specified by the Labour Code.

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Are there any restrictions regarding the execution of definite term employment contracts?

The Romanian Labour Code expressly stipulates the cases in which an employer can conclude employment agreements for a definite (fixed) term (e.g. seasonal activities, temporary increases in the employer's activity, etc.). The maximum period for a fixed-term agreement is 36 months.

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Are there any special rules for employment contracts of directors / board members?

Directors or board members of joint stock companies are not hired under individual employment agreements. If they are appointed from among the employees of the company, the employment agreement is suspended during their period in office and a management agreement is concluded.

Employment agreements are subject to strict rules and requirements, but management agreements are more flexible. In employment agreements, termination may only occur for specific reasons, whilst there are more flexible grounds for termination in management agreements.

There are no restrictions for the termination of directors and managers of limited liability companies or other types of company.

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Is there a collective bargaining agreement applicable nationally to retail in Romania?

There is neither a collective bargaining agreement applicable at national level, nor at the industry level.

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Are there any restrictions regarding the employment of foreign nationals?

EU and European Economic Area (EEA) citizens have the same right to work in Romania as nationals. They work under the same conditions as nationals and do not need to apply for a work permit. If they are employed for longer than three months, the employer has the obligation to register the residence of the citizen with the branch of the General Inspectorate for Immigration (IGI) responsible for the county in which the person resides.

Non EU/EEA or non-Swiss nationals can work in Romania with a work permit (issued by the General Inspectorate for Immigration) and a long stay visa (issued by diplomatic missions or consular offices). One of the conditions for the work permit is that the applicant observes the rule regarding the number of visas that can be granted in a year.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Both types of employment are permitted and used in practice.

Companies from EU member states and the European Economic Area (EEA) have an obligation to notify the competent labour authorities in Romania if posting an employee to Romania. If an EU/EEA company posts a third-country employee to work in Romania, the employee shall fill in a statement that he/she is in compliance with the legal provisions of employment within the EU or EEA member state in which the company is established.

---

Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

Citizens of EU member states and countries in the European Economic Area (EEA) can work without obtaining a permit, but the employers have to register the employee's residence with the General Inspectorate for Immigration after three months.

Non-EU citizens must obtain a permit in order to work in Romania.

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Are there any special (more favourable) procedures for employment of foreign management staff?

A non-EU citizen employed as a sole director of a company with foreign shareholders can obtain a work permit without having to fulfil all the legal requirements.

Foreign citizens employed by the public authorities do not require a work permit but they must obtain a long stay visa.

## 2) to pay

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How are salaries and other benefits determined in Romania?

The salary is the remuneration for the work performed by the employee based on the individual employment agreement and comprises the basic wage, allowances, benefits and other additional payments agreed between employee and employer. The salary is established through individual and/or collective negotiations between the employer and the employees or their representatives. Companies commonly offer their employees bonuses and/or other benefits, usually based on the company's economic situation and the employee's performance.

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Does local law envisage a minimum salary and other payments?

The minimum gross base salary guaranteed to all full-time employees is set each year by a government decision. For 2017, the minimum monthly gross base salary is RON 1,450 (~ EUR 316).

Additional payments are granted for special working conditions related to special burdens at work, unfavourable environmental influences and danger at work. These can be determined by individual and/or collective agreements.

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Do foreign nationals fall under the local employment rules and regulations?

Yes they do, providing they are hired in Romania under an employment agreement.

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What are the current personal income tax rates in Romania?

Employment income is subject to personal income tax ("PIT") of 16% after the mandatory social security contributions ("SSC") and non-taxable personal allowance have been deducted.

The employer is obliged to pay the following social contributions for their employees (in addition to the gross salary): health insurance (5.2 %), pension insurance (15.8%), unemployment insurance (0.5 %), contributions to the holiday fund (0.85%), and contributions to the employment accident risk fund (0.15%).

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What are the Personal Income Tax implications for foreign nationals working in Romania?

Foreign national employment income sourced in Romania is subject to personal income tax and social security contributions, unless exemptions under double tax agreements and EU regulations on coordinating social security systems / bilateral social conventions apply.

If foreign nationals are employed locally in Romania, the obligation to withhold personal income and social security contributions lies with the employer.

---

Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

The laws of the EU or EEA member state in which the foreign national works and/or lives are the ones that apply in relation to the social security system. Exemptions are available under the EU regulation on the coordination of social security systems for citizens of EU member states, whilst exemptions apply under the relevant bilateral social conventions for citizens of other countries.

All foreign nationals benefit from the right to a public pension and to participate in the social security system.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

Training of retail personnel requires that the employment contract include a probationary term, which should not exceed 90 calendar days for executive positions and 120 calendar days for management positions.

There can only be one probationary term. The maximum period for which an employee may continuously train the retail personnel is 12 months.

---

Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

Yes. An on-the-job apprenticeship contract is a particular type of individual labour contract, based on which the employer undertakes to provide the apprentice with vocational training in a retail trade. In addition to the payment of wages, the apprentice undertakes to attend vocational training courses and to work as a subordinate to their employer. The 'on-the-job' apprenticeship contract is concluded for a limited duration, which cannot exceed 36 months.

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Is it possible to terminate an employment contract for training purposes without grounds?

An employment contract can be terminated during the probationary period by any party, by written notification and without prior notice. The termination decision does not need to be justified.

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Do trainees enjoy the same protection as full employees?

Trainees enjoy the same protection and benefit from the same rights and obligations (stated by the law) as employees, as granted by the individual employment contract and the by-laws of the company.

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Is it possible to agree two subsequent training contracts?

There can only be one trial period for each individual employment agreement. However, an employee may be subject to a new trial period if they start a new position or profession with the same employer, or is to perform their duties in a work place under difficult, harmful or dangerous conditions.

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Once the training is finished, is a new employment contract required?

There is no such statutory obligation.

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Is a trainee entitled to severance payment after termination of employment?

Trainees benefit from the same rights and obligations as employees and they are entitled to severance payment in certain cases, as stated by the law. Severance payments are generally provided for in collective labour agreements, applicable at company level. There may be certain cases where a trainee has to bear the expenses for receiving benefits in kind such as professional qualifications.



# Set-up

## 1) to incorporate

What is the most common form of company in the local market, especially for real estate transactions?

The most common form is the limited liability company (in Romanian, SRL). The liability of the shareholders is limited to the initial contribution. An SRL can be established rather easily with a minimum share capital of RON 200 (~ EUR 45).

Are there any restrictions for a foreign national to incorporate a company in the local market?

There are no restrictions for foreign nationals. However, there may be specific formalities for foreign companies and/or nationals during the registration process.

How long does it usually take to fully set up the most common company in the local market?

Once a complete application file is submitted to the competent trade register, it takes approx. 5 days to have the file approved and the registration documentation issued. If further clarification is requested, then the registration process is extended. It may take several weeks for the other necessary formalities (e.g. opening of regular bank account, registration for tax purposes, etc.) to be completed.

What are the registration steps?

All business entities must be entered into the trade register, as organised by the Romanian Chamber of Commerce and Industry. The date of incorporation signals the commencement of an entity's legal existence. The reservation of a company name must be requested at the trade register; checks are made ensuring that company names are protected at the national level.

The founders shall prepare the articles of association and register the company with the competent trade register within 15 days of the articles of association being signed.

Certain other documents are necessary for the incorporation file. The registration file is then submitted to the competent trade register. Incorporation is approved by the trade register within 5 days from submission of a complete file, unless additional information or clarification is required.

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What other actions may be required for the company to become fully operational?

A company should open/have a bank account and designate signatories as representatives. The company should be registered with the fiscal authorities within 30 days of registration with the trade register. If the company hires employees, it may be subject to additional registration obligations with the competent territorial labour inspectorate.

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Does a company performing retail activities on the local market require any additional permits / licences?

A retail company does not need any special permits in addition to the general permits. This should be verified again at the moment of incorporation of the company and throughout the company's lifespan, as it depends on the actual activity being carried out, which may require specific permits.

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What other forms of companies are present in Romania?

There are:

- general partnerships (in Romanian, societate in nume colectiv);
- limited liability company with share capital (in Romanian, societate in comandita pe actiuni);
- joint stock companies (in Romanian, societate pe actiuni); and
- limited partnerships (in Romanian, societate in comandita simpla).

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How can an Romanian company be closed down?

A company can be closed if it exceeds the incorporation timeframe, if it cannot fulfil the object of activity, if it declares annulment of the company by decision of the shareholders to dissolve it or by decision of a competent court due to the company becoming bankrupt. Voluntary dissolution is followed by liquidation of the company (mandatory for joint stock companies). A company can be dissolved without appointing a liquidator in some cases. This procedure must be registered with the trade register and published in the Official Gazette.

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How long does it usually take for an Romanian limited liability company to be wound-up / liquidated?

Voluntary dissolution without appointing a liquidator can take approx. 6-8 months in practice.

Dissolution should not take longer than 1 year.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

Only individuals with full legal capacity can be directors or board members of a company. They must issue certain statements on their acceptance of this position. There are no restrictions regarding nationality. The only restriction may arise from the applicant's criminal record.

---

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

Directors or board members of joint stock companies may not be hired based on individual employment agreements. If they are appointed from among the employees of the company, the employment agreement will be suspended whilst they are performing said role. They can, however, conclude management agreements with the company.

There are no restrictions regarding the directors and managers of limited liability companies or of other types of company.

---

Is a director/ board member required to be physically present on the local market?

No. A director/board member can be represented by other members of the board if a member is absent.

---

Does the director/board member require any special permits to work and stay in the local market?

A foreign national acting as a director/ board member may require a residence and/or work permit. This depends on various circumstances such as the country of residence, the duration of stay and/or the type of relationship that the foreign national has with the local company.

Citizens of EU member states, countries in the European Economic Area (EEA) and Swiss citizens can work in Romania without obtaining a permit.

Non-EU citizens have to obtain a permit.

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Is it obligatory to pay remuneration to a director/board member in your jurisdiction? What are the tax effects of such remuneration?

Remuneration for directors or board members is not mandatory. They may receive remuneration through a management contract: this remuneration is added to the salaried income and is taxable at a PIT rate of approximately 16% and a SSC rate of approximately 39%.

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What is the procedure for appointment/dismissal of a director/board member?

The director or board member of a company is appointed by the general meeting, except for the first directors, who are appointed by the articles of association.

A director or a board member may be dismissed at any time following a vote at the general meeting.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The corporate income tax (CIT) rate is currently 16%.

VAT rates: as of 1 January 2017, the general rate is 19% and the reduced rates are 9% and 5%.

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Is VAT grouping or consolidation for corporate tax purposes available?

VAT grouping is available and is used solely for consolidation purposes by entities, which are part of the same group (i.e. those which have close legal, organisational and economic links but which are independent from one another). Transactions carried out between members of the same VAT group are subject to VAT (if applicable).

No consolidation for corporate income tax purposes is possible.

---

Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

When paid to foreign entities, dividends, interest, royalties, commissions and payments for management and consulting services are subject to a 16% withholding tax ("WTH"). WHT can be reduced or eliminated under double tax agreements or by application of the relevant EU directives.

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Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

The deductibility of interest and related net foreign exchange losses related to loans granted by entities other than those presented above is limited to:

- “The safe harbour rule”. As of 2016, Romanian companies were able to deduct interest expenses up to a maximum limit as set by the National Bank of Romania reference interest rate (currently, 1.75% for loans denominated in RON and a 4% annual interest rate for loans denominated in foreign currency). Any interest exceeding the interest rate limitation mentioned above is permanently non-deductible for corporate income tax purposes.
- “Debt-to-Equity ratio”. The deductibility of interest expenses related to loans granted for more than one year is subject to further limitations based on the calculation of the debt-to-equity ratio. Interest expenses and net foreign exchange losses are fully deductible if the debt-to-equity ratio is positive and lower than or equal to 3:1.

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Please specify other rules that limit interest deductibility.

Please see thin capitalisation rules.

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List any rules on the tax implications of discount sales or sales below the acquisition value.

Discounts granted by sellers under certain conditions (e.g., commercial or financial discounts) are excluded from the VAT taxable base on sales. Specific transfer practice rules must be observed when supplying goods below acquisition values.

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Rules on utilisation of tax losses.

Tax losses can be carried forward for a period of up to 7 consecutive years and can be utilised against taxable profit in future periods.



# Serbia

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# Space

## 1) to rent

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What is the definition of a lease on the local market?

Lease is a limited property right whereby the property owner (lessor) allows the leaseholder (lessee) to use the property against an amount payable by the lessee.

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Can a foreign company rent a property directly or is a local SPV required?

There are currently no legal restrictions against a foreign company or national directly renting a property.

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Lease duration: long-term vs. short term.

There is no legally prescribed minimum or maximum term. The leases are usually established for a period of time of between 5 and 10 years.

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Are there any requirements regarding the form of a lease agreement?

Serbian law does not require the written form for lease agreements. Nevertheless, these are regularly executed in written form.

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Does a lease agreement require registration with any authorities?

A lease agreement does not need to be submitted to any registries in order for the lease to be valid. However, registration of the lease with the competent land registry is advisable.

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Is there a legal or tax difference between renting premises with or without fit-out?

The lease agreement will need to have detailed provisions regarding the rights and obligations of the parties in case of fit-out, as this is not sufficiently regulated by the underlying laws.

From a tax perspective, a fit-out as performed by the lessee may, under certain conditions, be treated as a supply of goods and services (separate from lease) and therefore subject to VAT.



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Can we do turnover-based leases?

This is legally possible. Depending on the type of turnover-based model and whether the lessor and the lessee are related parties, tax issues may arise in connection with the rental amount.

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What are the most common securities on the local market required from the tenant?

The tenants are usually asked to provide a bank guarantee or cash deposit covering 3-6 monthly rents.

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Are there any stamp duties for lease agreements?

There are currently no stamp duties for lease agreements.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both options (share and asset deal) are available to investors in Serbia.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

Foreign natural persons and legal entities are allowed to acquire title to real estate in Serbia under the following additional requirements: foreign natural persons and legal entities that perform business activities on the territory of the Republic of Serbia may, under the conditions of reciprocity, acquire the real estate necessary for the performance of their business activities. The existence of reciprocity between the Republic of Serbia and the country of origin of the foreign natural person or legal entity has to be confirmed by the Ministry of Justice. Agricultural land cannot be owned by a foreign natural person or legal entity.

Due to the fact that, in some cases, procedure to determine the existence of the said reciprocity can be rather complicated, real estate is rarely directly acquired by foreign legal entities. In practice, the issue is surpassed by legal entities incorporating Serbian SPV.

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Are there any historical title issues to observe when buying a property?

The restitution process is still ongoing. Hence, the buyer should inquire whether there are any restitution or indemnification claims filed with regard to the property.

Various legal factors, as well as diverse laws which entered into force in the field of construction since 2009, mean full-title due diligence is always recommended in these cases.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Both the land and share purchase agreements must be executed in written form and notarised before a public notary.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

Transfer of title (to both property/shares) requires registration.

For an asset deal, the land purchase agreement must be registered with the competent land registry. Moreover, all rights over real estate or changes in rights over real estate must be registered in the land registry within 30 days of the date when they occurred.

For a share deal, the transfer of shares will have to be registered with the Serbian Business Registers Agency.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

Acquisition of real estate is subject to 2.5% RETT.

Acquisition of newly constructed buildings is subject to VAT at a rate of 20% (residential buildings are taxed at a special 10% rate).

The sale of "real estate companies" is not subject to real estate transfer tax.

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

Construction-related permits can only be obtained by a natural person or legal entity holding ownership rights over the underlying land or long-term lease rights over underlying publicly-owned land. Taking into account the above-mentioned limitations, construction permits are, as a rule, obtained by Serbian entities, who also carry out the construction works (including e.g. foreign entities' SPVs).

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

It is usually the owner who requests the permits required for construction. As an exception, the request may be made by the tenant, but only based on authorisation from the property owner (landlord).

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What permits are required for construction of properties?

In order to construct or use new facilities or to reconstruct or refurbish real estate in Serbia, the following permits must be obtained:

- 1) Location conditions represents a zoning clearance for the project.
- 2) Construction (building) permit –this permit (along with a notification to the competent authorities of commencement of works) allows the construction works to be commenced and represents an official confirmation that the main design is in accordance with the zoning permit and the applicable building code.
- 3) Use permit – issued upon completion of works. Allows the use of a facility if the competent authority determines that the facility is suitable for use.

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Are there any surprising costs, levies or other charges related to construction?

The investor in construction works must pay a land-development fee. Such fee depends on the location of the underlying land and the planned surface and purpose (i.e. use) of the building.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

Yes, a construction permit ceases to be valid if the works do not commence within two years of the date upon which the construction permit becomes final and binding. Further, the construction permit ceases to be valid if a use permit for the relevant facility is not issued within five years of the date upon which the construction permit becomes final and binding. However, these deadlines do not apply to major constructions works/facilities (such as e.g. highways, bridges, renewable energy facilities, etc.) for which construction permits are issued by the competent ministry.

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Can an investor transfer a construction permit to another investor?

If the building under construction for which a construction permit has been obtained is sold, the new owner may apply for a change to the permit (change in the investor) within 15 days of the transfer.

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Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Based on the type of retail activity performed in the leased premises, the tenant may be required to obtain additional (non—real estate) operation permits.

# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Employment contracts are the rule, while service contracts are the exception. Service contracts may only be concluded in order to carry out work that does not fall within the scope of the company's business activity.

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What is the duration of employment contracts on the local market?

Employment contracts can be entered into for an indefinite or definite period of time. The first are considered the rule, the latter the exception.

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Are there any restrictions regarding the execution of definite term employment contracts?

Yes, definite term contracts may be entered into, but only for specific reasons (legally pre-determined) and for a specific time. Definite term contracts cannot exceed 24 months.

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Are there any special rules for employment contracts of directors / board members?

No, there are no special rules for employment contracts for directors/board members. But the director or other legal representative of the employer may conclude a "management agreement" with the company. This agreement does not establish an employment relationship, so there is no obligation to comply with mandatory requirements of the labour law.

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Is there a collective bargaining agreement applicable nationally to retail in Serbia?

Currently, no.

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Are there any restrictions regarding the employment of foreign nationals?

Foreign nationals may be employed on the condition that they obtain a residence and work permit.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Serbian laws recognise employment, i.e. direct employment, secondment and intra-company transfer. Each of these options requires certain formal conditions to be fulfilled. The type of employment selected will depend on the particulars of each individual case.

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Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

No work permit is required if a foreign national does not stay longer in Serbia than 90 days within a 6 month period, as of first entry.

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Are there any special (more favourable) procedures for employment of foreign management staff?

No.

## 2) to pay

How are salaries and other benefits determined in Serbia?

Salary and other benefits may be determined by the following: the individual employment contract, the works agreement and by-laws concluded with the employer, applicable general or industry specific collective agreements and/or Serbian laws.

Does local law envisage a minimum salary and other payments?

The minimum salary is determined by the Social and Economy Council on a national level. The minimum salary for 2017 amounts to RSD 130 (approx. EUR 1) net per hour.

Some other payments are regulated by the Labour Law or collective agreements.

Where the minimum amount is not regulated by law or collective agreement, it is always advisable for the employer to regulate this matter in the employment contract concluded with the employee or in the works agreement/by-laws.

Do foreign nationals fall under the local employment rules and regulations?

Foreign nationals directly employed in Serbia fall under the local employment rules, while the rules are not clear for seconded employees or those who have been transferred intra-company; they remain employed in the sending country, so it may be argued that the local rules do not apply to them. However, this matter is not explicitly regulated.

What are the current personal income tax rates in Serbia?

Personal income tax rates range from 10% to 20%, depending on the type of income. Salaries are taxed at 10% rate.

In addition, annual personal income tax is to be levied if the person's annual income exceeds three times the average annual salary.

Mandatory social security contribution rates are as follows:

- Pension and disability insurance: 26%
- Health insurance: 10%
- Unemployment insurance: 1.5%

What are the Personal Income Tax implications for foreign nationals working in Serbia?

The personal income of foreign nationals working in Serbia and sourced to Serbia is subject to Serbian personal income tax and mandatory social security contributions, unless provided for otherwise by the applicable double tax agreement or social security treaty.

For income received from abroad, foreign nationals are obliged to calculate, declare and pay personal income tax and social security contributions themselves. The aforementioned obligation is with the employer if foreign nationals are employed locally.

Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

The personal income of foreign nationals working in Serbia and sourced to Serbia is subject to Serbian personal income tax and mandatory social security contributions, unless provided for otherwise by the applicable double tax agreements or social security treaty.

### 3) to train (local nationals)

Does training of retail personnel require an employment contract?

The Serbian Labour Law does not have provisions on training. Therefore, the person(s) in question will have to be employed. It is possible to agree on a probationary period which can last up to 6 months.

Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

No, this is not one of the grounds for concluding definite-term employment as stipulated by the labour law.

Is it possible to terminate an employment contract for training purposes without grounds?

No, the employment contract cannot be terminated without grounds.

Do trainees enjoy the same protection as full employees?

Yes, they do.

Is it possible to agree two subsequent training contracts?

N/A



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Once the training is finished,  
is a new employment  
contract required?

N/A

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Is a trainee entitled to  
severance payment after  
termination of employment?

Yes, they are.

# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors will use a limited liability company. A “d.o.o.” is a capital company. Company formation requires at least one shareholder with a minimum share capital of approx. EUR 1, after which the company can be up and running within a couple of weeks.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

There are no restrictions on foreign-based nationals and companies incorporating a company.

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How long does it usually take to fully set up the most common company in the local market?

A decision on the company’s registration should be issued within five days of the necessary documents having been submitted to the Serbian Business Registers Agency (“SBRA”) – in practice the procedure usually takes longer.

Following registration, the company is required to have a unique company seal made and to open a permanent bank account. Opening the bank account and implementing the “Know Your Customer” procedures may take approximately 10 days.

It will take an additional 5 – 10 days for the subsequent applications to be made (corporate income tax, VAT, local taxes, etc.) and for the company to become fully active.

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What are the registration steps?

The memorandum of association must first be signed and authenticated before the competent authority, as must other documents required for the company's incorporation.

Certain documents have to be personally signed by the future directors, meaning the directors cannot authorise other persons to sign the documents.

An interim bank account is then opened and the share capital paid. The share capital can be paid even after the company's registration, but no later than five days from the date on which the company's memorandum of association was adopted.

The incorporation documents have to be filed with the SBRA. Once the SBRA confirms the registration, it will register the company with the Register of Business Entities and issue their decision on the company's incorporation.

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What other actions may be required for the company to become fully operational?

The company is required to have a unique company seal and open a permanent bank account.

Having a functioning bank account is a precondition for registration with the tax authorities - the company must register with the tax administration for corporate income tax and with the public revenue office for local taxes, in both cases within 15 days of the company's registration.

The company has to authorise an accountant for corporate income tax registration. The accounting companies require a signed agreement for this. Registration of the company as the VAT payer may be performed at the same time.

Certain additional registration obligations may arise, depending on specific circumstances.

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Does a company performing retail activities on the local market require any additional permits / licences?

Performing retail activities on the local market does not require additional permits/licences. However, certain type of retail activities, such as the sale of medicines, tobacco, petrol, etc., may only be registered (and therefore be allowed) after the relevant permits/licenses have been obtained.

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What other forms of companies are present in Serbia?

Serbia recognises the same types of companies as most EU jurisdictions, including a joint stock company (Serbian: "akcionarsko društvo"), a limited partnership (Serbian: "komanditno društvo") and a general partnership ("ortačko društvo").

---

How can an Serbian company be closed down?

Subject to the company being in good financial standing, the procedure for closing down a Serbian company is carried out in the following phases:

- (a) the liquidation procedure is opened – this includes adoption of the shareholders' decision, appointment of the liquidation administrator, registration of the opening of liquidation with the SBRA and tax and bank formalities;
- (b) creditors have 120 days to report their claims against the company; and
- (c) liquidation and deletion of the company from the SBRA is then completed, including payments to creditors, decision of the shareholders' meeting, distribution of liquidation surplus, closing of bank accounts, tax formalities and de-registration from the SBRA.

If the company is not in good financial standing, bankruptcy proceedings are conducted before the competent court.

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How long does it usually take for an Serbian limited liability company to be wound-up / liquidated?

The liquidation procedure usually takes approximately six months.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

A foreign national can be a director or board member of a Serbian limited liability company.

The company's memorandum of association or the shareholders' resolution may specify the requirement that a person needs to meet in order to be appointed as a director.

---

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

The company may choose between two options: a) the director may be employed in the company and have a standard employment contract, or b) the director may be engaged based on a management contract.

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Is a director/ board member required to be physically present on the local market?

No, that is not necessary.

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Does the director/board member require any special permits to work and stay in the local market?

Depending on certain circumstances (duration of stay and/or type of relationship with the local Serbian company), a foreign national acting as a director/board member may require a residence and/or work permit.

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Is it obligatory to pay remuneration to a director/board member in your jurisdiction? What are the tax effects of such remuneration?

If the director/board member is employed by the company, then salary must be paid. Despite different legal interpretations on whether the director must be paid when engaged under a management contract, the common practice is that they must be paid.

Remunerations to directors under employment contract are taxed as salary at a 10% rate, while the remuneration to board members or directors under management contracts is subject to a 20% tax rate. The income of directors and board members is additionally subject to social security contributions.

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What is the procedure for appointment/dismissal of a director/board member?

The director(s) shall be appointed/dismissed by resolution of the shareholder/general meeting or the supervisory board (if a company is managed in a two-tier system).

The shareholder/general meeting or the supervisory board are not obliged to specify the reasons for dismissal of the director, unless this is expressly stipulated in the memorandum of association or the shareholders' resolution.

Any change in the company's director must be registered with the SBRA within 15 days from the date upon which such change occurs.

The appointment/dismissal is considered effective from the date of the shareholders' resolution being adopted.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The general corporate income tax rate is 15%.

VAT rates: general 20%, special 10%.

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Is VAT grouping or consolidation for corporate tax purposes available?

VAT grouping is not available in Serbia.

Consolidation for corporate income tax purpose is possible, but only for companies which are Serbian residents.

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Which payments to foreign countries are subject to withholding tax in your country and at which rates?  
Are exemptions available?

The following are subject to a 9% withholding tax in Serbia when paid to non-resident legal persons, unless provided for otherwise by the applicable double tax agreement: income from interest, royalties, dividends and lease; artistic, sports and entertainment services; and provision of services that are or will be rendered or used in Serbia.

Capital gains tax is payable at a rate of 20%, based upon the decision of the tax authorities and unless provided for otherwise by the applicable double tax agreement.

Income from the sale of secondary raw materials and waste is subject to a 1% tax rate.

A special 25% rate applies (except on dividends) if the income is gained by companies from jurisdictions with a preferential tax system.

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Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

Interest on loans granted by related parties is not recognised for tax purposes if the interest and loan related expenses exceed a certain debt-to-equity ratio — 10:1 for banks and financial leasing companies and 4:1 for other companies.

---

Please specify other rules that limit interest deductibility.

The deductibility of interest payment is subject to Serbian transfer pricing rules. Further, the following are not recognised as expenditure for tax purposes: default interest charged between related parties and interest and related costs paid by the Serbian branch to its non-resident head office.

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List any rules on the tax implications of discount sales or sales below the acquisition value.

In general, price reductions or discounts due to early payments and discounts granted to the customer at the time of the supply reduce the VAT base.

Tax authorities may dispute the transfer pricing setup if they consider it as not having been done according to the arm's length principle.

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Rules on utilisation of tax losses.

Tax losses can be carried forward for 5 years and utilised against taxable profit in future periods.



# Slovakia



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# Space

## 1) to rent

---

What is the definition of a lease on the local market?

A lease is a limited property right to movable or immovable property where the property owner (landlord) allows the tenant to use a property for a pre-defined period of time (definite or indefinite) against a consideration payable by the tenant.

---

Can a foreign company rent a property directly or is a local SPV required?

Yes, any owner of a property is entitled to rent it. Some properties cannot be acquired by certain foreigners (e.g. agricultural land), while such restrictions do not generally apply to a Slovak SPV established and owned by a foreign company.

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Lease duration: long-term vs. short term.

A minimum or maximum term of lease is not prescribed for business premises.

Certain types of leases of agricultural land require a minimum lease term of 5 years and a maximum lease term of 30 years.

A lease concluded for an extended period of time (e.g. 100 years) may also be declared invalid if its purpose is to prevent termination by notice without grounds, which is only allowed for leases concluded for an indefinite period of time.

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Are there any requirements regarding the form of a lease agreement?

A lease agreement can be concluded orally or in writing.

Some types of leases require a written form, such as agreements for a lease of non-residential premises or agreements for a lease of agricultural land where said land is to be used by an agricultural business and for agricultural purposes.

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Does a lease agreement require registration with any authorities?

The lease agreement on the lease of land may be registered with the land register. If not, this does not affect the validity of the contract, but may affect land tax payment.

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Is there a legal or tax difference between renting premises with or without fit-out?

Fit-outs conducted by the landlord increase the book value of the building. The landlord may use the increased value of the building as a basis for tax depreciation.

Fit-outs conducted and paid for by the tenant can be depreciated by the tenant, provided that this option is agreed to in the written agreement with the landlord. If the lease contract is terminated, the remaining book value of the fit-outs represents taxable income for the landlord, provided that the fit-outs are not removed by the landlord.

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Can we do turnover-based leases?

Yes, they can be applied.

Turnover based rents can be a combination of a fixed lease with a turnover based component or a solely turnover based lease. The second option is seldom used.

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What are the most common securities on the local market required from the tenant?

The tenants are often required to provide a monetary deposit or a bank guarantee as a security. This is usually equal to 1 to 3 monthly rents (including service charges).

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Are there any stamp duties for lease agreements?

None.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both transactional structures are used, but share deals are preferred by investors due to the preferential tax treatment, the reduced risk in relation to pre-emption rights, the reduced risk of the lease agreement being terminated by tenants due to changes in ownership of the property, etc.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

Some properties may not be acquired by certain foreigners (e.g. agricultural land for which the principle of reciprocity applies). Such restriction does not usually apply to a Slovak SPV established and owned by a foreign company.

The restriction for agricultural land does not apply to the following:

- citizens of EU states, OECD member states or Switzerland;
- companies with their registered offices in EU states, OECD member states or Switzerland; and
- citizens or companies of other states where an international treaty means this restriction does not apply.

---

Are there any historical title issues to observe when buying a property?

For real estate transfer, a buyer should consider the possibility that restitution proceedings related to the real estate may arise. The potential buyer would be well advised to research the legal grounds for the seller's ownership title, as data publicly available in the land register is deemed valid unless proven otherwise. If the data contained in the land register is proven to be false, a bona fides acquisition may also be challenged.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Land purchase agreements must be executed in writing and must meet Slovak statutory requirements. The seller's certified signature is required.

For a share transfer, it depends what shares are transferred.

In a limited liability company, a share purchase agreement must be executed in written form with certified signatures from both parties. The written form, though recommended, is not required for joint stock companies.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

Ownership of real estate is acquired upon registration with the land register.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

No RETT is levied in Slovakia.

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

In order to perform business construction activities, foreign nationals must establish a branch or an enterprise, and also obtain the necessary licence.

An EU national who only occasionally performs construction activities in Slovakia may carry out this activity based on their license in a foreign state and is not required to establish a branch or an enterprise in Slovakia.

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

The construction permit is requested by the owner (for future construction, the request is made by the person who will be its owner).

A tenant may request a construction permit if adjustments are made to the construction or if extensions to the construction or maintenance works are required, but only if a written agreement allowing this has been concluded between the tenant and the owner.

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What permits are required for construction of properties?

New construction work or a change in construction may only begin after the construction permit becomes valid.

A construction permit must be preceded by a final territory decision which “places” the construction on the territory and which stipulates the general conditions for construction.

For simple constructions and their extension, a territory decision and a construction permit may be obtained in one joint proceeding; joint proceedings may only occur for other constructions if the conditions for their placement result from the territorial plan, which the municipality has adopted for the zone.

The construction permit is not required for certain types of constructions, e.g. minor constructions or maintenance works, although the construction authority must be notified of such constructions.

After having been finished, constructions requiring a construction permit also require a use permit before they may be used. A use permit is also required for minor constructions and their extensions, even if only notification was required (i.e. not a construction permit).

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Are there any surprising costs, levies or other charges related to construction?

The issuing of territory decisions, construction permits (or changes in construction permits) and permits for use is subject to administrative fees. A local development fee may also need to be paid, depending on different municipal regulations.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

The construction of the building must begin whilst the construction permit is valid. This period is 2 years after the permit becomes effective (1 year for commercial constructions). The construction authority may grant a longer period of validity where good grounds can be presented for this.

The validity of a construction permit can be extended, based on a request, which must be submitted before the permit expires.

Once construction begins, the construction permit cannot expire anymore; this does not prevent the construction authority from deciding on the removal of a partial construction if e.g., the partial construction deteriorates and is a threat to life or health.

If the deadline for the completion of the construction set by the construction permit is not met, the latter is still valid and the investor (constructor) should submit a request for a change in the construction permit prolonging the period. If not, the construction office may consider it a breach of the conditions of the construction permit.

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Can an investor transfer a construction permit to another investor?

Yes, an investor may transfer the construction permit to another entity or person having a right to build (i.e. construction companies) prior to the start of construction works or during construction.

If a construction is already partially finished, then it will also be necessary to transfer the partial construction.

---

Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Depending on the type of retail activity performed on the leased premises, the tenant is required to fulfil additional requirements and may be obliged to obtain additional permits.

The retail sale of medicinal products and medical devices may be carried out only by pharmacies and specialised stores of medicinal products, which hold a permit issued by the local district municipality. All final decisions related to permits are published on the website of the National Centre of Medical Information.

The retail sale of tobacco and alcohol in product packaging for consumers requires a permit issued by the financial administration of the Slovak Republic.

# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

Local nationals perform work for employers on the basis of employment contracts.

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What is the duration of employment contracts on the local market?

Employment contracts may be concluded for a definite or indefinite period of time, but usually for an indefinite period of time. If an employment contract does not stipulate a period of time or is not concluded in written form, it is considered to have been concluded for an indefinite period of time. The agreed period of time cannot exceed 2 years (certain exceptions apply).

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Are there any restrictions regarding the execution of definite term employment contracts?

Yes. If an employment contract is concluded for a definite period of time, it cannot exceed 2 years. It can be prolonged only twice and only within the above-mentioned 2 year period. If it is not extended, it is considered to have been concluded for an indefinite period of time. The same applies if a new contract is concluded with an employee within 6 months of their previous employment with the same employer having been terminated.

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Are there any special rules for employment contracts of directors / board members?

While the law does not require that board members conclude a contract, this is standard practice.

Directors who are not members of the statutory board must conclude an employment contract.

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Is there a collective bargaining agreement applicable nationally to retail in Slovakia?

Yes, several collective agreements currently apply covering specific food, chemical and pharmaceutical areas.



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Are there any restrictions regarding the employment of foreign nationals?

Citizens of EU member states, countries in the EEA and Swiss citizens have free access to the Slovak labour market, allowing them to work, find employment and become self-employed without a work permit.

Non-EU citizens require a work permit and residency permit in order to be able to work.

Work permits can be granted for a maximum of 2 years (extensions are possible).

---

Types of employment of foreign nationals: direct employment vs. secondment / posting.

Both types of employment are allowed, direct employment being more common.

The employer is obliged to conclude a written agreement with the employee being posted to the position. Upon a request from the labour inspectorate, an employer shall provide said inspectorate with all relevant documents.

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Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

A non-EU citizen can work in the Slovak Republic only if they have already obtained temporary residence for the purpose of employment.

In some cases, a third country national may not require a temporary residency permit for the purpose of employment for a 90 day period from the point at which residence in Slovakia commences, provided said third country national fulfils certain obligations under the law.

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Are there any special (more favourable) procedures for employment of foreign management staff?

No.

## 2) to pay

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How are salaries and other benefits determined in Slovakia?

Salary and other benefits are determined by individual employment contracts. Collective agreements may also apply. The agreed upon conditions must comply with the minimum wage requirements.

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Does local law envisage a minimum salary and other payments?

Yes, the minimum wage is currently set at EUR 435 per month or EUR 2.50 per hour.

The minimum wage is multiplied by a coefficient factor of between 1 and 2, depending on the difficulty of the job.

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Do foreign nationals fall under the local employment rules and regulations?

Yes, they do. If foreign nationals are employed by a foreign employer who temporarily dispatches employees to Slovakia, foreign law still applies, while certain provisions of Slovak law will have priority if they are more favourable.

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What are the current personal income tax rates in Slovakia?

The current personal income tax rate is 19% on income where the tax base does not exceed 176.8 times the minimum level required for subsistence (approx. EUR 35,022.31 per year).

A tax rate of 25% is applicable if the tax base exceeds 176.8 times the subsistence minimum.

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What are the Personal Income Tax implications for foreign nationals working in Slovakia?

If foreign nationals working in Slovakia are tax residents in Slovakia, their worldwide income is subject to taxation in Slovakia.

If foreign nationals working in Slovakia are tax residents in a foreign country, only their income sourced in Slovakia is subject to Slovak PIT and SSC, unless exemptions under double tax agreements and the EU regulation on the coordination of social security systems/bilateral social conventions are applied.

If foreign nationals are employed in Slovakia, the obligation to withhold PIT and SSC lies with the employer.

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Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

Foreign nationals employed in the Slovak Republic must have health insurance in the Slovak Republic, as must their family members who are permanently resident in the Slovak Republic

There are exemptions for citizens of EU member states under the EU regulation on the coordination of social security systems.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

Trainees are considered regular employees. Their employment contract may contain a probation period of up to three months.

If a trainee is not older than 26 and is a student at a secondary school or at a university, they may be employed under a special temporary student work agreement until the end of the calendar year in which they turn 26. On average, the extent of the work may not exceed 20 hours in a week.

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Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

Generally, there is no legal difference between trainees and other employees.

Employers usually conclude an employment contract with trainees for a shorter period of time than usual. A probation period (of 3 months) can be agreed to, or the position may be designated as a part-time one.

Temporary student work agreements can be concluded for a maximum of 12 months and can be terminated after a 15-day period of notice without any grounds being given.

---

Is it possible to terminate an employment contract for training purposes without grounds?

Generally, there is no legal difference between trainees and other employees or between the employment relations of trainees and of other employees.

However, student temporary work agreements can be terminated after a 15-day period of notice without any grounds being given.

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Do trainees enjoy the same protection as full employees?

Yes, they do, but temporary student work agreements are subject to different regulations.

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Is it possible to agree two subsequent training contracts?

The agreed period of time cannot exceed 2 years. The employment contract may only be prolonged twice and within a 2 year time period (the same applies if a new contract is concluded with an employee within 6 months of them having their employment with the same employer terminated), or it is considered to have been concluded for an indefinite period of time.

Temporary student work agreements can only be concluded for a definite period of time not exceeding 12 months; it is possible to conclude this repeatedly if the requirements for this (age, status of student) are met.

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Once the training is finished, is a new employment contract required?

A trainee is considered a regular employee.

If an employment relation established by a student temporary work agreement is terminated (and/or cannot be renewed e.g. due to an age restriction), there is no obligation to sign an employment contract with the student.

If a student continues working for an employer after termination of the student temporary agreement (or if a student temporary agreement is concluded and the requirements for its conclusion were not met), then a regular employment contract is considered to have been established between the employer and the employee.

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Is a trainee entitled to severance payment after termination of employment?

If a trainee has their employment contract terminated, then they are entitled to the same severance payment as a regular employee.

If an employee working on a temporary student work agreement has their contract terminated, then the employee is not entitled to severance pay.

# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

The most preferred form is a limited liability company, which is established by one or more shareholders (maximum: 50). The minimum amount of registered capital is EUR 5,000, while each of the shareholders must contribute at least EUR 750. Either 50% of a company's registered capital or the full amount (one shareholder) must be paid in (if there is more than one shareholder) prior to registering it, while at least 30% of each contribution to the registered capital must be paid in. Non-monetary contributions must be paid in full.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

Generally, there are none, although certain practical problems may occur (e.g. certification and translation of required documents).

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How long does it usually take to fully set up the most common company in the local market?

The registration procedure should take 2 business days (if no licences are required) once an application for registration of a newly established company has been duly submitted.

Since a licence must usually be obtained, the average time for incorporation and registration of the limited liability company is two weeks (when obtaining a free trade licence) once all documents required for incorporation, registration and the obtaining of licences have been collected.

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What are the registration steps?

A business company is established through the execution of a memorandum of association or a foundation deed, signed by all shareholders (founders). The signatures must be certified. After a company has been established, its registered capital must be paid in.

Licences must be obtained for all business activities prior to registration of the company. The consent of the tax authorities must also be acquired (said consent is mandatory for Slovak shareholders, foreign shareholders must sign a statement saying they do not have an obligation to acquire said consent).

Residency permits must also be obtained for board members; this does not apply to EU citizens and citizens of OECD member states.

A legal title must be obtained for the premises in which the company will have its registered offices (e.g. lease agreement, consent of the property owner).

The request for registration of the company must be signed by all members of the company's statutory body.

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What other actions may be required for the company to become fully operational?

A regular bank account must be opened after the company has been registered with the commercial register. If the company employs staff, it may have additional registration obligations.

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Does a company performing retail activities on the local market require any additional permits / licences?

It is necessary to obtain a trade license for retail activities from the trade licence office. Some types of retail activity may however require a different licence and may be subject to different procedures.

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What other forms of companies are present in Slovakia?

In addition to limited liability companies, the following types of companies can be established:

- joint stock companies,
- simple joint stock companies,
- general partnerships,
- limited partnerships,
- cooperative societies,
- European economic interest groupings,
- European companies, and
- European cooperative societies.

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How can an Slovakian company be closed down?

The most common option is regular liquidation, which is a closure based on a decision by the shareholders. If certain explicitly stated statutory obligations are not fulfilled, a compulsory liquidation based on a court decision is also possible.

It is necessary for a company to fulfil all its liabilities during liquidation and for it to end its business activities.

In insolvency cases, the company should be closed down in a bankruptcy procedure managed by a bankruptcy administrator.

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How long does it usually take for an Slovakian limited liability company to be wound-up / liquidated?

The liquidation procedure normally takes 9 months, and is longer with larger companies.

## 2) to appoint

Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

The only requirement for a person to be a member of the statutory board is a residence permit (not applicable for EU citizens and citizens of the OECD member).

If a person who is not a member of the statutory board is appointed as the director, an employment contract is required and legal requirements for employment must be met (e.g. a work permit may be required, as described above).

If a company wants to obtain a licence (for performance of business activities) or keep it, then members of the statutory body must also meet other requirements such as integrity, etc. The requirements depend on the type of licence.

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

Although not required by law, a contract is usually concluded for members of the statutory board.

Directors who are not members of the statutory board must conclude an employment contract with the company (which is also considered a managerial contract).

Is a director/ board member required to be physically present on the local market?

No. Nevertheless, this may have certain tax implications, as it could have an impact on the place of effective management.

Does the director/board member require any special permits to work and stay in the local market?

Generally, the director/board member requires a residence permit in Slovakia. This does not apply to EU citizens and citizens of OECD member states.

If a person who is not a member of the statutory board is appointed as the director, an employment contract is required and legal requirements for employment must be met (e.g. a work permit may be required, as described above).



Is it obligatory to pay remuneration to a director/board member in your jurisdiction? What are the tax effects of such remuneration?

Regardless of whether the director/board member receives the remuneration through a management contract or through an employment contract, their income is taxed with PIT in the same manner as the regular salary of an employee (tax rates of 19% and 25% are applicable).

Under an employment contract, the SSC (including health insurance) is 35.2% (employee's share) and 13.4% (employer's share). If a management contract is concluded instead of an employment contract, the SSC is lowered to 1.05%.

What is the procedure for appointment/dismissal of a director/board member?

Generally (e.g. for a limited liability company and a joint stock company), members of a statutory board are appointed and have their positions revoked by the general assembly of a company. The articles of association of the joint stock company may stipulate that members of the statutory board be appointed by a supervisory board of the company.

If the director has an employment contract, it must be terminated according to the rules of Slovak labour law.

### 3) to pay taxes:

What are the applicable corporate tax and VAT rates?

Corporate income tax rate is 21%.

VAT rates are as follows:

- standard rate: 20%, and
- reduced rate: 10% (e.g. antibiotics supply, pharmaceuticals, books, basic foodstuffs such as meat, milk, bread etc.).

Is VAT grouping or consolidation for corporate tax purposes available?

VAT grouping is possible if taxable persons who are connected financially, economically and organisationally have their registered offices, place of business or fixed establishment within the territory of Slovakia.

Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

The following types of payments are subject to a 19% withholding tax ("WHT") when paid to foreign entities:

- interests,
- royalties,
- rental income from real estate and movable properties located in Slovakia,
- income from sale of real estate,
- payments for consulting and managing services performed in Slovakia,
- payments related to selling shares, and
- other payments.

If the aforementioned payments are made to entities from countries with which Slovakia has not concluded double tax agreements, the applicable rate is 35%.

Dividends are subject to WHT in the following cases:

- the applicable rate is 7% when paid to individuals (natural persons), and
- the applicable rate is 35% when paid to entities (both natural and legal persons) from countries with which Slovakia has not concluded double tax agreements.

WHT can be reduced or eliminated under the applicable double tax agreements or by application of the relevant EU directives.

---

Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

Interest from loans paid to a related party and related expenses exceeding 25% of income operations are not tax deductible. However, this rule is not applicable to certain financial institutions.

---

Please specify other rules that limit interest deductibility.

If an interest rate on loans received from a related party exceeds the interest rate, which would have been agreed to by non-related parties at the time of granting the loan, the interest expense exceeding such rate will not be tax deductible.

A "safe harbour" concept in the form of a recognised interest rate is also available. This takes into account the fact that the recognised interest rate is significantly lower than the market interest rate.

---

List any rules on the tax implications of discount sales or sales below the acquisition value.

Price reductions or discounts due to early payments and discounts granted to customers at the time of supply reduce the VAT base.

The tax authority may try to dispute a transfer pricing setup, arguing that other entrepreneurs would not sell products below their acquisition value under normal circumstances.

If a tax audit takes place, the tax authority may require that the internal rules for providing discounts to business partners be presented.

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Rules on utilisation of tax losses.

Tax losses can be carried forward in equal parts for 4 years, starting from the year immediately following the year for which the tax loss was recognised (i.e. 25% each year).

# Slovenia

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# Space

## 1) to rent

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What is the definition of a lease on the local market?

A lease is considered a limited property right whereby the property owner allows the leaseholder to use the property for a pre-defined period of time against a consideration payable by the tenant.

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Can a foreign company rent a property directly or is a local SPV required?

It can, but there may be certain tax disadvantages.

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Lease duration: long-term vs. short term.

Slovenian law does not provide for a minimum or maximum term of the lease.

Lease agreements are usually concluded for a shorter period of time (between 1 and 5 years).

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Are there any requirements regarding the form of a lease agreement?

An agreement for a lease of business premises must be concluded in written form.

For reasons of legal safety, a lease agreement is often concluded in the form of a notarial deed.

If the tenant wishes to register the lease agreement in the land register, the landlord's signature on the lease agreement or on the land register permission (if such permission is not included in the lease agreement) must be certified by a public notary, or the lease agreement must be executed in the form of a notarial deed.

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Does a lease agreement require registration with any authorities?

No, but a lease agreement may be registered in the land register at the request of the contractual parties.

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Is there a legal or tax difference between renting premises with or without fit-out?

Legally speaking, the lease agreement will need to have detailed provisions regarding the rights and obligations of the parties in cases of fit-out, as these are not sufficiently regulated by the underlying laws.

From a tax perspective, if the value of the works (fit-out) decreases the rent payable by the tenant, then the tax authority may claim that such works represent a supply by the tenant to the landlord, resulting in VAT liability for the tenant on the value of the works.

In addition, if a tenant ends the lease agreement before the investment in the fits-out has been fully amortised, any unamortised amount can represent a non-deductible tax expense (once derecognised in the balance sheet).

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Can we do turnover-based leases?

There are currently no legal restrictions on turnover-based leases.

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What are the most common securities on the local market required from the tenant?

As a security, the tenants must usually provide a monetary deposit, a bank guarantee and/or a bill of exchange, normally covering 3 to 6 monthly rents.

---

Are there any stamp duties for lease agreements?

There are currently no stamp duties for lease agreements on business premises.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both transactional structures are used. Usually, investors prefer share deals due to their preferential tax treatment, the reduced risk in relation to pre-emption rights, the possibility of transferring other property rights, etc.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

EU citizens, citizens of other countries, which are members of EEA, and citizens of countries that are members of OECD can acquire real property within the territory of the Republic of Slovenia under the same conditions as nationals of the Republic of Slovenia.

All other aliens (non-citizens of any of the above-mentioned countries) may acquire property in Slovenia solely under the principle of reciprocity and with the prior consent of the Ministry of Justice.

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Are there any historical title issues to observe when buying a property?

According to the statistics provided by the Ministry of Justice and Public Administration, 99.6% of the restitution proceedings for nationalised property have been completed as of 30 September 2016 but there are still, however, some denationalisation proceedings pending which might result in prior transfers being declared null and void. For this reason, full title due diligence is always recommended.

Despite the above, transfer of the real estate (change of ownership) is also valid and possible in restitution cases in which the statutory conditions for restitution in kind are not met.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Land purchase agreements must be executed in writing and concluded according to the Slovenian law, as the law only recognizes and enforces property rights relating to property located in Slovenia if said rights are consistent with the national laws of Slovenia.

In order to register the ownership of real estate in the land register either the seller's signature on the land register permit needs to be notarised or the land purchase agreement (including the land register permit) must be concluded in the form of a notary deed.

For a share transfer, the share purchase agreement must be executed as a notarial deed.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

Transfer of title (both to property/shares) requires registration. For an asset deal, a proposal for entry of title in favour of the buyer must be filed with the competent land register on the basis of the land purchase agreement. The title is transferred to the buyer upon its registration in the land register.

With a share deal, the transfer of shares in the Ltd. company must be entered into the court register, but the material effects (change of control over the target) come into force immediately after the SPA is signed.

With a transfer of shares in a Plc., the seller must give the broker a written order to transfer the shares in the dematerialised securities (as entered into the central register) from their share account to the share account of the buyer after the SPA is signed. The material effects of the transaction come into force only when the transfer of the shares is entered into the central register.



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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a “real estate company” subject to RETT in your jurisdiction?

The sale of property is subject to 22% or 9.5% VAT or to 2% RETT, depending on the type of property, its previous use and the VAT status of the seller and buyer.

RETT applies to “old” buildings and agricultural land. VAT generally applies to construction land and “new” buildings (up to two years of use).

After the building has been used for the initial period of two years, the transaction becomes VAT exempt and RETT will apply. Under certain conditions, the parties may opt for VAT instead of RETT. This option is usually taken to avoid paying RETT, which is not refundable.

Sale of a “real estate company” is not subject to RETT in Slovenia.

## 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

Contractors performing occasional construction work and who have their company’s registered offices in the EEA or in Switzerland must fulfil those conditions and requirements prescribed by their domestic law in order to perform said construction services.

The permanent performance of construction activities requires the establishment of a branch or subsidiary in Slovenia, which has to be registered as performing construction services.

For other foreign contractors, the right to carry out construction services in Slovenia depends on the principle of reciprocity.

In line with the Slovenian Corporate Profit Tax Act, all construction projects lasting longer than 12 months trigger taxable permanent establishments (PE) in Slovenia, unless protection under a double tax agreement is granted.

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

The permits required for construction are usually requested by the landowner but may also be requested by the investor who has (instead of an ownership right) any other material or obligational right on the real estate in question, which allows them to build or carry out works (e.g. building right).



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What permits are required for construction of properties?

Construction of new or substitute buildings and reconstruction or removal of a building can be carried out only after the construction permit has come into force. This permit is issued by the competent local construction authority once it has found that the intended construction is in accordance with the spatial planning act and that the rights of third parties or public interest are not endangered. A request that a construction permit be issued must be submitted to competent agencies and bodies together with the approved project documentation as prepared by an authorised engineer and by any consent statements which may have been issued.

After the building is constructed, it can only be occupied and used after the use permit has been obtained. The local construction authority will issue the use permit after technical inspection of the building. Use permits are not required for the use of simple constructions.

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Are there any surprising costs, levies or other charges related to construction?

Any decisions made on land use, building permits (or amendments to building permits) and use permits can mean administrative costs have to be paid.

Depending on the rules in the municipality, local "development charges" may also have to be paid.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

No, but the investor must commence construction of the building during the period in which the building permit is valid, which is 1 to 3 year(s) from the issuance of the final construction permit.

The validity of the construction permit may be extended, but no more than twice and for not more than two years. Once the construction starts, there is no time limit for the end of construction.

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Can an investor transfer a construction permit to another investor?

Yes. Before the start of construction works or during construction, the investor may transfer the construction permit to another entity having the right to build.

Together with the request for an amendment to the construction permit, the new investor must also submit proof of their right to build. The construction permit is amended (transferred to a new investor) in a fast-track procedure without the parties being heard.

Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

Depending on the retail activity in the leased premises, the tenant may be obliged to fulfil additional requirements and can be obliged to obtain additional permits.

The business premises of retailers and wholesalers must fulfil minimal technical requirements, listed in the rules "on minimal technical requirements for the performance of retail activities".

The retail sale of medicinal products may be carried out only by pharmacies and stores specialised on the sale of medicinal products holding a permit issued by the Agency for Medicinal Products and Medicinal Devices of the Republic of Slovenia.

The retail sale of dangerous chemicals requires a permit for the sale of dangerous chemicals, issued by the Chemicals Office of the Republic of Slovenia.

# Staff

## 1) to employ

How are local nationals usually hired (employment contract vs. service contract)?

They normally perform work for an employer on the basis of an employment contract, while service contracts are considered to be the exception (in practice used mostly for consultants and directors/board members).

What is the duration of employment contracts on the local market?

As a rule, employment agreements are concluded for an indefinite period. Employment agreements may be concluded for a definite (fixed) period only in cases specified by law.

Are there any restrictions regarding the execution of definite term employment contracts?

Yes, definite term contracts may be entered into, but only for specific reasons as prescribed by the Employment Relationship Act and for a specific time.

The maximum period for fixed-term agreements is two years for the same work.

Are there any special rules for employment contracts of directors / board members?

Directors/board members may perform work based on an employment contract or a management agreement (civil agreement).

In the employment contract with the director/board member, the contractual parties may have differing rights, obligations and responsibilities arising from the employment relationship in relation to the conditions and restrictions on periods of notice, working hours, remuneration, disciplinary responsibility and termination of the employment contract.

Is there a collective bargaining agreement applicable nationally to retail in Slovenia?

Yes – a new collective agreement for retail sector entered into force in 2018.

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Are there any restrictions regarding the employment of foreign nationals?

Citizens of EU member states, countries in the European Economic Area (EEA) and Swiss citizens have free access to the Slovenian labour market and are able to work, find employment and become self-employed without a permit for work.

Non-EU citizens require a work & residence permit in order to work in Slovenia.

Since 1 September 2015, a single permit has allowed foreign nationals from third countries to enter Slovenia and find residence, employment and work.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Both types of employment are in line with Slovenian law and are used in practice. The chosen type of employment in a particular case will depend on the relevant circumstances (period performing work in Slovenia, the foreign national's position etc.).

Companies from EU member states, the European Economic Area (EEA) and Switzerland who provide services in Slovenia using posted workers are required to register the start of such service provision with the Slovenian Employment Service. The same applies to third-country companies providing short-term services in Slovenia involving the supply of goods and services by posted workers.

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Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

A non-EU citizen or a citizen of Croatia can only find work or employment / start working if they have previously obtained a work permit.

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Are there any special (more favourable) procedures for employment of foreign management staff?

Yes, all foreign nationals who work as short-term representatives for a period of no longer than 90 days in the calendar year may perform work in Slovenia on the basis of a simple application for a work certificate, although they still need to be entered into the court register as representatives of a legal entity.

## 2) to pay

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How are salaries and other benefits determined in Slovenia?

They may be determined by: the individual employment contract, employer's general acts, potentially applicable collective agreements and/or Slovenian laws. In case of contradictory provisions, the provisions most favourable for the employee apply. The basic salary should be determined in the employment contract, whereas bonus payments can also be determined in works agreements.

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Does local law envisage a minimum salary and other payments?

The minimum salary is decided on a national level by the Minimum Wage Act. The minimum wage for 2018 amounts to EUR 842.79.

According to the Employment Relationships Act, extra payments shall be granted for special working conditions in relation to the distribution of working time.

Extra payments for the following can be provided for by collective agreements: special working conditions related to special burdens at work, unfavourable environmental influences and dangers at work, which are not included in the normal difficulty of work.

The Employment Relationships Act also contains provisions on extra payment for years of service and states that these shall be regulated by the branch applicable collective agreement.

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Do foreign nationals fall under the local employment rules and regulations?

Yes, they do.

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What are the current personal income tax rates in Slovenia?

Employment income is subject to personal income tax ("PIT") at progressive tax rates of 16%, 27%, 34%, 39% and 50%, after mandatory social security contributions ("SSC") and non-taxable personal allowance have been deducted.

In addition to the gross salary, the employer is obliged to pay the following mandatory social contributions for the employees: health insurance (6.56%), pension insurance (8.85%), unemployment insurance (0.06%) and contributions for parental leave (0.1%).

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What are the Personal Income Tax implications for foreign nationals working in Slovenia?

Foreign national employment income sourced in Slovenia is subject to Slovenian PIT and SSC, unless exemptions under double tax agreements or the EU regulation on the coordination of social security systems or bilateral social conventions apply.

If foreign nationals are employed locally in Slovenia, the obligation to withhold PIT and SSC lies with the employer.

For income received from abroad, Slovene tax residents are obligated to calculate, pay and declare PIT and SCC themselves (even if they are foreign nationals).

Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

Foreign nationals employed in Slovenia as well as their family members with permanent residence in Slovenia must have health insurance in Slovenia. The employee is regarded as the insurance policy holder for the family members and, as a general rule, there are no obligations for family members to pay separate health insurance premiums.

Exemptions are available for citizens of EU member states under the EU regulation on the coordination of social security systems, while exemptions for citizens of third countries apply under bilateral social conventions.

### 3) to train (local nationals)

Does training of retail personnel require an employment contract?

A trainee may enter into an employment contract with their employer. This contract can include a probationary term (max. 6 months). Sectoral legislation can also allow voluntary traineeship, in which case a contract for voluntary traineeship is concluded.

Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

Slovenian law provides an option to conclude employment contracts for traineeships for a limited period of time.

Is it possible to terminate an employment contract for training purposes without grounds?

No. For a traineeship, the conditions for termination of the employment agreement are even stricter than for regular employment contracts. Termination is only possible if the conditions for extraordinary termination of the employment contract are met or where the employing company is dissolved.

Do trainees enjoy the same protection as full employees?

Yes. Some additional protection for such employees is also provided by law. Such protection includes stricter conditions for the termination of the employment contract, provisions regarding salary and certain obligations of the employer in relation to training the trainee.

Is it possible to agree two subsequent training contracts?

Statutory provisions (reduced working hours and longer absence from work) provide reasons for extending the initially agreed upon duration of the traineeship. In such cases, a new contract must be concluded as the previous one expires before the end of the traineeship.

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Once the training is finished,  
is a new employment  
contract required?

There is no such statutory obligation.

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Is a trainee entitled to  
severance payment after  
termination of employment?

Yes. The basis for severance payment shall be the respective average full-time monthly salary during the last three months.

If a fixed-term employment contract concluded for a period of one year or less is terminated, the worker shall be entitled to severance payment to the amount of one fifth of the basis for calculating the amount.

If the fixed-term employment contract is concluded for a period of more than one year, the worker shall be entitled to severance payment according to the amount referred to in the preceding sentence and increased by a proportionate part of severance payment for each month of work.



# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors will establish a Ltd. company as an SPV for their investment. The latter is a capital company whose liability is – under normal circumstances – limited to its assets/capital and the shareholders are in general not liable for its obligations. It can be incorporated with a minimum share capital of EUR 7,500 by at least one shareholder.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

No, there are not. Nevertheless, incorporation performed by foreign companies and/or nationals may cause certain practical problems (e.g., certification and translation of required documents).

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How long does it usually take to fully set up the most common company in the local market?

Once an application for registration of the company is duly submitted, the registration procedure takes approx. two weeks.

It usually takes another week or two for the subsequent applications to be carried out (opening of a regular bank account, obtaining a VAT identification number, etc.). The company can become fully active once these steps have been taken.

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What are the registration steps?

In order to be established, a Ltd. company must adopt articles of association (the contract must be signed by all the statutory founders or their representatives). In addition, each founder of a new company and/or each natural person appointed as a new company's director, procurator or supervisory board member who is not a Slovene company/citizen must obtain a Slovene tax number (if they do not already have one). The shareholders in Slovenia can do this personally using a PoA.

Certain documents (e.g. statement on consent to the appointment) must be signed by the future directors personally and not on the basis of the PoA, but they can be signed abroad before public notaries. Once all the required documents have been duly signed, the shareholder opens an interim bank account and pays in the nominal capital. If the new company is founded with contributions in kind, the founders must also compile and sign a report on the contributions in kind before the application for registration is made.

The report on the contributions in kind (together with all incorporation papers and the bank notice certifying that the nominal capital has been fully paid) must be filed with the competent commercial court. The company is registered with the commercial court register once the court issues a final decision on the registration.

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What other actions may be required for the company to become fully operational?

A regular bank account must be opened and a VAT identification number must be obtained after the company is entered into the court register. If the company employs staff, it may have additional registration obligations.

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Does a company performing retail activities on the local market require any additional permits / licences?

Not in general. It is, however, bound by the rules on minimum technical requirements for performing the trade activity. These rules prescribe minimal technical requirements for retail and wholesale facilities.

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What other forms of companies are present in Slovenia?

In addition to Ltd. companies, the following types of companies can be established in Slovenia:

- joint stock company,
- limited partnership,
- unlimited company,
- European public limited company – Societas Europea, and
- limited partnership with share capital.

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How can an Slovenian company be closed down?

The most common option is regular liquidation, which means closure on the basis of a decision by the shareholders. If the company is inactive for 6 months, a compulsory liquidation is also possible.

If the company does not have unpaid debts or unsettled relationships with its employees, an option for simplified deletion from the court register without liquidation exists. In this case, the shareholders are liable for all potential unpaid debts after the cancellation.

If the company becomes insolvent, it should be closed down in bankruptcy proceedings, which are managed by the bankruptcy administrator.

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How long does it usually take for an Slovenian limited liability company to be wound-up / liquidated?

The liquidation procedure normally takes between 12 to 18 months, and often takes longer for larger companies.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

A foreign national can be a director/board member of a Slovenian Ltd. company. They must issue a statement upon assuming the position saying they accept their appointment and that there are no circumstances in the meaning of Article 255 of the Slovenian Companies Act preventing their appointment.

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Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

Under Slovenian law a director/board member of a Ltd. company may conclude either an employment contract or a civil management agreement with the company.

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Is a director/ board member required to be physically present on the local market?

No, a director/board member is not required to be continually physically present on the local market.

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Does the director/board member require any special permits to work and stay in the local market?

Depending on certain circumstances (country of residence, duration of stay and/or type of relationship with the local Slovenian company) a foreign national acting as a director/board member may require a residence and/or work permit.

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Is it obligatory to pay remuneration to a director/ board member in your jurisdiction? What are the tax effects of such remuneration?

Legally speaking, the remuneration for a director or board member is not obligatory, unless they are employed by the company.

They may receive remuneration through a management contract (a form of a civil contract) where such remuneration is taxable (progressive PIT rates ranging from 16% to 50% and reduced SSC rates apply).

The directors and board members may also be employed by the company through an employment contract. Their salary is then taxed for PIT and SSC in the same manner as a regular salary. A progressive PIT rate ranging from 16% to 50% applies. SSC applies, where the rate for employees ranges from 38.2% to 22.1% and a rate of 16.1% applies for the employer.

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What is the procedure for appointment/dismissal of a director/board member?

The shareholder will reach a decision, based on which a certain person is appointed as a director/board member of a Ltd. company. Such person will then issue a statement accepting the appointment and declaring that no circumstances exist preventing their appointment in the sense of Article 255 of the Slovenian Companies Act. All of the documents will then have to be filed and registered with the competent court register.

As for dismissal from a Ltd. company, shareholders may reach a decision on revocation at the general meeting (and unless agreed upon otherwise in the articles of association, they do not need a valid reason to do so), which must then be registered with the competent court register.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The corporate income tax (CIT) rate has been 19% since 1 January 2017.

VAT rates: general rate 22% and decreased rate 9.5%.

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Is VAT grouping or consolidation for corporate tax purposes available?

No VAT grouping or consolidation for CIT purposes is available.

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Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

The following types of payments are subject to a 15% withholding tax ("WTH") when paid to foreign entities:

- dividends;
- interest;
- royalties;
- rental income from real estate located in Slovenia; and
- payments for consulting services, marketing services, market research, staff recruitment, administration services, information services and legal services, when paid to blacklisted jurisdictions (non-EU countries with a nominal profit tax rate lower than 12.5%).

WHT on dividends, interest, royalties and rental income from real estate located in Slovenia can be reduced or eliminated under double tax agreements or by application of the relevant EU directives.

WHT on payments for services to blacklisted jurisdictions cannot be reduced.

Payments to the Republic of Slovenia, municipalities and the Bank of Slovenia are WHT exempt.

No WHT applies to payments between domestic entities (tax residents of Slovenia).

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Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

The thin capitalisation rule is applicable. It is based on a 4:1 debt-to-equity ratio, meaning it limits the tax deductibility of interest arising from loans received from a related entity (25% direct or indirect shareholding). The interest on the portion of the loan, which is higher than 4 times the company's total equity or voting rights, is not tax deductible.

The rule also applies to loans received from related parties and to third party loans guaranteed by a related party.

Loans from banks and financial institutions are exempt from the thin capitalisation rules if the related party does not provide guarantee for such loan.

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Please specify other rules that limit interest deductibility.

If the interest rate on loans received from a related party (25% direct or indirect shareholding) exceeds the market interest rate at the time of granting the loan, the interest expense on the portion of interest exceeding the market rate will not be tax deductible. The taxpayer bears the burden of proving the level of the market interest rate.

The "safe harbour" concept in the form of a recognised interest rate is also available. However, the recognised interest rate is significantly lower than the market interest rate.

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List any rules on the tax implications of discount sales or sales below the acquisition value.

Price reductions or discounts due to early payments and discounts granted to the customer at the time of supply reduce the VAT base.

The tax authority may try to dispute the transfer pricing setup, arguing that under normal circumstances other entrepreneurs would not sell products below their acquisition value.

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Rules on utilisation of tax losses.

Tax losses can be carried forward indefinitely.

They can be utilised against taxable profit in the future periods, with the limitation that only 50% of the current year's profit may be reduced by tax losses carried forward (the other 50% may still be reduced by other tax allowances, if available).



# Turkey

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# Space

## 1) to rent

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What is the definition of a lease on the local market?

Lease is a property right whereby the property owner (lessor) allows the leaseholder (lessee) to use the property for a pre-defined period of time against an amount payable by the lessee.

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Can a foreign company rent a property directly or is a local SPV required?

There are currently no legal restrictions against a foreign company or a foreign national renting a property directly, except when acquiring or renting property within military forbidden zones and security zones.

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Lease duration: long-term vs. short term.

Lease agreements may be executed for either a definite or an indefinite period of time. Rental contracts are usually signed for a one-year period and they are automatically renewed if neither property owner nor tenant gives prior notice of termination.

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Are there any requirements regarding the form of a lease agreement?

Rental agreements do not need to have a specific form or fulfil any set requirements and may simply be a verbal agreement between landlord and tenant. A written tenancy contract is recommended in order to document at least the lease term, rent and deposit amounts. Additionally, as of 13 September 2018, the use of foreign currency denominated or indexed payments for lease agreements among Turkish residents have been restricted.

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Does a lease agreement require registration with any authorities?

No, it does not.

Registration of the lease with the competent land register is still advisable. This means the lease agreement will remain in force even if the property is sold.

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Is there a legal or tax difference between renting premises with or without fit-out?

No.



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Can we do turnover-based leases?

There are currently no legal restrictions against turnover-based leases.

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What are the most common securities on the local market required from the tenant?

The lessees are usually asked to pay 1 to 2 months' worth of rent in cash as a security deposit. This varies according to the nature of the leased property and the term of the lease.

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Are there any stamp duties for lease agreements?

Yes. The fee is usually paid by the lessee at the start of the contract at a rate of 1.89/1000. An additional fee at a rate of 9.48/1000 may be charged in cases where there is a guarantor under the lease agreement.

The basis for the calculation is the lease costs of the whole contract period.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both share and asset deals are available to investors.

The final structure of the transaction usually depends on the circumstances of each individual case.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

Yes. Foreign nationals may buy any kind of real estate (house, business premises and land), subject to legal restrictions.

The following apply pursuant to Turkish legislation:

- Foreign nationals can buy and acquire a maximum of thirty (30) hectares of property in total.
- Foreign nationals cannot acquire or rent property within military forbidden zones and security zones.
- Foreign nationals can acquire property or limited in rem rights in a district/town where said property consists of up to 10 % of the total area of the said district/town.
- Legal restrictions do not apply in setting mortgage for foreign nationals and legal entities that are duly established in foreign countries.
- The properties are subject to winding-up provisions in the following cases: (i) if the properties are acquired in violation of laws, (ii) if the relevant ministries and administrations determine that the properties are being used in violation of the purpose of purchase, (iii) if the property is acquired with a project commitment and if the foreigner in question does not apply to the relevant ministry within the relevant period in case, and (iv) if the projects are not realised within the required time period.

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Are there any historical title issues to observe when buying a property?

Yes. Full-title due diligence is always recommended.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Share Purchase:

Share purchase agreement for Ltd. companies must be executed before the public notary and registered before the relevant trade register.

The notarisation procedure is not required for joint stock companies. The share certificates are to be transferred and the share transfer must be registered to the share ledger. If no share certificates have been issued, such transaction must be executed before the public notary.

Land Purchase:

Land purchase agreement must be executed in written form before the relevant land register and registered there.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

A transfer of title (both to property/shares) must be registered.

For an asset deal, the land purchase agreement has to be registered with the competent land register.

For a share deal, the transfer of shares has to be entered in the shares' ledger of the target company and the relevant trade register.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

A 'title deed charge' of 2% of the value of the real estate is to be paid by both the seller and the purchaser on registration of the transaction with the relevant land register (the total charge to seller and purchaser is therefore 4% of the real estate value).

Sale of a real estate company is not generally subject to RETT.

Recent tax audits conducted by the Ministry of Finance indicate that tax authorities tend to consider any share transfer carried out by an entity which only owns real estate as a real estate transfer rather than a share transfer.

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

There are none.

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

A construction permit is mandatory and the decision on which party should request the permit may be decided upon by agreement. Either the owner or the contractor may obtain the necessary permit. If there is no agreement stating that the contractor shall obtain the permit, the owner has the responsibility to do so.

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What permits are required for construction of properties?

- Zoning situation report (from the municipality)
- Project confirmation (from the municipality)
- Construction permit (from the municipality)
- Surface structure license (from the municipality)
- Occupancy permit (from the municipality)

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Are there any surprising costs, levies or other charges related to construction?

No.

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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

Yes, if the construction does not begin within two (2) years, the permit becomes invalid again.

The construction should be finished within five (5) years or the permit becomes invalid. It is possible to request a renewal of the permit if the construction takes longer.

---

Can an investor transfer a construction permit to another investor?

Yes, the construction permit will be amended if the underlying property for which a construction permit has been obtained is sold.

---

Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

The need for additional permits depends on the nature of the retail activity, e.g.: the retail sale of medicinal products may only be carried out by pharmacies and stores specialised in the retail sale of medicinal products, whilst the retail sale of alcohol and tobacco also requires a certain type of permit, to be obtained from the Tobacco and Alcohol Market Supervision Agency.

# Staff

## 1) to employ

How are local nationals usually hired (employment contract vs. service contract)?

Employment contracts do not need to have a certain form. Employment contracts executed orally are also binding on the employer and the employee. Definite-term employment contracts for a period of one or more years must be executed in writing.

Additionally, as of 13 September 2018, the use of foreign currency denominated or indexed payments have been restricted for employment agreements among Turkish residents. However, the employment contracts may be denominated or indexed in foreign currency if:

- the performance thereunder shall take place outside of Turkey; or
- the employee is not a Turkish citizen; or
- the employer is a branch, representation office or liaison office of a non-resident in Turkey; or
- a Turkish entity in which a non-resident in Turkey owns, whether directly or indirectly, shares corresponding to 50% or more of the entity's share capital.

What is the duration of employment contracts on the local market?

An employment contract may be executed for an indefinite or definite term. The latter is considered to be an exception under the Labour Law.

Are there any restrictions regarding the execution of definite term employment contracts?

Yes, definite-term contracts may only be entered into for the completion of specific objectives with a justified reason. If they are extended more than once, the entire employment relationship shall be deemed to have been concluded for an indefinite term as from the initial employment.

Are there any special rules for employment contracts of directors / board members?

No.

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Is there a collective bargaining agreement applicable nationally to retail in Turkey?

Currently, no.

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Are there any restrictions regarding the employment of foreign nationals?

At least five Turkish citizens must be employed for each foreign national. If work-permit applications need to be filed from abroad, foreigners are required to file an application at the Turkish consulate in the country where they are a citizen or a permanent resident.

The work-permit application should be accompanied by an employment contract and a letter of assignment. The employer in Turkey is required to file an online application and submit the required information and documents to the Ministry within ten business days following the date of the candidate's application to a consulate.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Turkish laws recognise direct employment but there is no legislation on secondment/posting.

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Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

No. A foreign national is required to obtain a residency and work permit in order to live and work in Turkey.

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Are there any special (more favourable) procedures for employment of foreign management staff?

Work permits are not required for board members of joint stock companies who are not residents in Turkey.

## 2) to pay

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How are salaries and other benefits determined in Turkey?

Salary and other benefits may be determined by:

- employment contract,
- collective agreement, and/or
- Turkish laws.

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Does local law envisage a minimum salary and other payments?

National minimum wage applies to all employees in Turkey. Under the Labour Law, the minimum wage is annually determined and revised by the relevant department of the Ministry of Labour and Social Security.

As of 01 January 2018, the minimum monthly gross wage for 2018 is TRY 2.029,50; approx. EUR 310.

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Do foreign nationals fall under the local employment rules and regulations?

Yes, they do.

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What are the current personal income tax rates in Turkey?

Income scales (TRY) (Employment Income) / rate (%):

- up to TRY 14,800 (app. EUR 2,250) - 15%
- over TRY 14,800 (app. EUR 2,250) up to 34,000 (app. EUR 5,160) - 20%
- over TRY 34,000 (app. EUR 5,160) - up to 120,000 (app. EUR 18,200) - 27%
- over TRY 120,000 (app. EUR 18,200) - 35%

Income scales (TRY) (Employment Income) / rate (%):

- up to TRY 14,800 (app. EUR 2,250) - 15%
- over TRY 14,800 (app. EUR 2,250) up to 34,000 (app. EUR 5,160) - 20%
- over TRY 34,000 (app. EUR 5,160) - up to 80,000 (app. EUR 12,150) - 27%
- over TRY 80,000 (app. EUR 12,150) - 35%

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What are the Personal Income Tax implications for foreign nationals working in Turkey?

Individuals with full tax liability ("resident individuals") are taxed on their worldwide income while individuals with limited tax liability ("non-resident individuals") are taxed only on income earned in Turkey. Non-resident individuals are individuals who are not resident in Turkey.

Salary and wages are considered to be compensation to employees in association with a specific place of business as well as benefits that are provided to them that can be represented in terms of money. There is no distinction between salary and wages, so the terms may be used interchangeably. Certain payments made by the employer on behalf of the employee, such as payment for rent and utilities, are grossed up and taxed as wage income.

#### **Social Security Coverage**

In the private sector, both the employees and employers contribute to the social security schemes. The general contribution rates for employees and employers are 14% and 19.5% respectively. The contribution amounts, calculated as a percentage of gross salary, are paid within an upper and lower limit. Notifications that an individual is subject to a social security schemes must be filed by the end of the following month to the social security institution in question. The premiums withheld from the salaries of the employees are also payable within the same period.

Do foreign nationals fall under the local social contributions and pension scheme? What are the obligations for health and social security payments for their family members?

Foreign nationals usually fall under the local social contributions and pension scheme, but a foreign employee working in Turkey may be exempt from paying social security contributions if Turkey and the country which the employee is a citizen of have executed a bilateral social security treaty. Where such a treaty exists, the employee should be able to continue paying social security contributions in their home country with no social security premium payable in Turkey.

Without a bilateral treaty, a foreign employee may be exempt from paying social security contributions for a period of three (3) months provided that:

- the employee has been sent to Turkey by a foreign resident entity to undertake work in Turkey, and
- the employee in question is able to prove that they are registered with a social security scheme in their home country.

The family of the foreign employee shall also benefit from the general health insurance.

### 3) to train (local nationals)

Does training of retail personnel require an employment contract?

There is no specific type of employment contract for trainees, meaning training of retail personnel requires an employment agreement.

The employer enters into an employment agreement with the trainees and agrees on a probationary term, which is legally limited to a maximum of two (2) months.

Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

Recent practice has seen definite-term contracts being executed for training purposes, but they may only be entered into in order to complete specific objectives and for a justified reason. If the definite-term contract is extended more than once, the employment relationship shall be deemed as having been concluded for an indefinite term from the beginning of the employment period onwards.

Is it possible to terminate an employment contract for training purposes without grounds?

No, it is not.

Do trainees enjoy the same protection as full employees?

There are no specific provisions for trainees under Turkish Labour Law, but they do enjoy the same protection as full employees (as they are deemed to be full employees as well) via a duly concluded employment agreement.



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Is it possible to agree two subsequent training contracts?

No. Trainees are often subject to laws stipulating that a traineeship is required for some occupational groups (i.e. the Attorneys Law contains provisions that traineeship is required before becoming a lawyer). As a trainee can only work at one (1) workplace, two subsequent training contracts cannot be executed unless the trainee ends their employment at the place where they are working.

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Once the training is finished, is a new employment contract required?

Yes, it is. There are no provisions regarding trainees in Turkish Labour Law, so a full employment agreement must be executed if the employer wishes to employ the trainee as a full-time worker.

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Is a trainee entitled to severance payment after termination of employment?

Yes, trainees are entitled to severance payment, provided the employment contract is executed for an indefinite term.

# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

Most investors use a joint-stock company ("JSC") for their investment. In order to incorporate JSCs, a minimum share capital of approx. TRY 50,000 (approx. EUR 7,500) and at least one (1) shareholder is required.

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Are there any restrictions for a foreign national to incorporate a company in the local market?

As long as the company's main area of activity does not act against public policy, there are no restrictions.

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How long does it usually take to fully set up the most common company in the local market?

It usually takes 3 to 5 days for a JSC to be duly registered with the trade register. It takes another 7 to 10 days for the subsequent post-establishment applications to be completed (accounting, tax, signature circular, etc.).

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What are the registration steps?

Step I – Obtain temporary tax numbers for the company and foreign directors  
 Step II – Obtain a temporary tax number for the Turkish SPV  
 Step III – Open a temporary bank account for the Turkish SPV  
 Step IV – File for foundation and registration of the company at the trade register.  
 Step V – Obtain a final tax number for the Turkish SPV

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What other actions may be required for the company to become fully operational?

Conversion of temporary bank account to a permanent bank account and obtaining of tax certificates.

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Does a company performing retail activities on the local market require any additional permits / licences?

Additional permits/licences are only required for specific retail activities such as the sale of tobacco, alcohol, medical products, etc.

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What other forms of companies are present in Turkey?

Companies in Turkey may be established as:

- joint stock companies,
- limited liability companies (LLC),
- sole proprietorships,
- collective companies, and
- limited partnerships.

JSCs and LLCs are the most common types preferred in Turkey.

---

How can an Turkish company be closed down?

A company could be closed down for one of the following reasons:

- the shareholders reach a decision as to the dissolution of the company via a general assembly meeting,
- the company has a limited period of activity,
- the company loses two thirds of its share capital, or
- the articles of association provide for specific causes which can lead to dissolution.

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How long does it usually take for an Turkish limited liability company to be wound-up / liquidated?

If there are no ongoing lawsuits against the company, the liquidation process takes around eight (8) months. The lawsuits must be concluded in order for the liquidation process to be completed.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

A foreign national can be a director/board member of a Turkish company. No restrictions apply here.

---

Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

A director/board member of a company is neither required to be employed at the company nor must they execute a service agreement with the company.

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Is a director/ board member required to be physically present on the local market?

No, they do not.

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Does the director/board member require any special permits to work and stay in the local market?

A residency and working permit is required only if the director is also an employee of the company.

---

Is it obligatory to pay remuneration to a director/ board member in your jurisdiction? What are the tax effects of such remuneration?

It is not obligatory to pay remuneration to such directors/board members unless they are also employees of the company via an employment agreement.

---

What is the procedure for appointment/dismissal of a director/board member?

As per the Turkish Commercial Code, a shareholders' resolution shall decide whether a company director is to be dismissed and a new one appointed. Said decision requires the votes of a majority present at the general assembly meeting.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The corporate income tax rate on business profits is 22%.

The generally applicable VAT rate is set at 1%, 8%, and 18%, depending on the type of the activity.

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Is VAT grouping or consolidation for corporate tax purposes available?

Consolidation of the accounts of group companies for tax purposes is not allowed, since each company is regarded as a separate taxpayer.

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Which payments to foreign countries are subject to withholding tax in your country and at which rates? Are exemptions available?

Certain corporate income and gains are subject to withholding tax. These include income from professional services, rental income, income from royalties and know-how, dividend income including branch remittance, time deposit interest and REPO gains and income on interest from state and treasury bonds, etc. (both for residents and non-residents). Various withholding tax rates for differing income and gains have also been established.

The following withholding tax rates apply to non-resident entities\*:

1. Independent professional service fees - 20%
2. Earnings from immovable property - 20%
3. Interest income from bonds:
  - a. interest from government bonds and treasury bills - 0%, and
  - b. interest from private bonds - 0%
4. Interest income from deposit accounts:
  - a. interest on f/x deposit accounts: 20%, 16%, 13% depending on the term
  - b. interest on TRY deposit accounts: 5%, 3%, 0% depending on the term
5. Interest on loans:
  - a. interest on any kind of loans obtained from foreign banks and financial institutions, foreign states - 0%; and
  - b. others - 10%
6. Repo gains - 15%
7. Royalty fees, know-how fees, license fees - 20%
8. Earnings from the sale of intellectual property - 20%
9. Dividends - 15%

*\*Treaty rates prevail over the local rates.*

The decisive factors are whether the income is derived from a resident entity or a non-resident entity and whether the income is generated inside or outside Turkey.

If a double tax agreement exists, the applicable tax rates might be reduced or eliminated for the income and earnings derived by non-resident companies in Turkey.

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Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

In order for borrowings to be considered thin capital, said borrowings must be from shareholders or from persons related to the shareholders and more than triple the company's equity at any time within the relevant year. The ratio can be double for loans received from related banks or financial institutions (excluding institutions which provide financing only to related parties). In order to be considered thin capital, borrowings from related party's banks or financial institutions must exceed six times the company's equity.

Where thin capitalisation exists, interest paid or accrued and foreign exchange losses calculated on such thin capital are re-classified and taxed as dividends distributed by the borrower and as dividends received by the lender and are hence considered repatriated profit for non-resident lenders.

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Please specify other rules that limit interest deductibility.

#### **Transfer Pricing Rules**

If the price for the sale or purchase of goods and services to or from related parties is not determined in accordance with the "arm's length" principle, the distribution of the related profits is considered to have been disguised through transfer pricing and the profits arising from such transactions are considered as "profit distributions disguised through transfer pricing".

The tax authorities may dispute the aforementioned price for the sale or purchase of goods and service. In such cases, the profits from this transaction are considered to have been distributed through transfer pricing and are therefore deemed to be "disguised dividends distributed as of the end of the year in which such transaction is realised". Such amounts are also subject to dividend withholding tax.

#### **Treatment of financing expenditures during the investment period**

Interest and foreign exchange differences incurred during the investment period for the funding of electricity market investments are added to the investment costs and are then amortised, as are the relevant fixed asset. As for the interest and foreign exchange differences incurred during the operational period, it is left to the discretion of the taxpayer to either directly amortise such amount during the relevant year or to use it as capital as part of the investment and allow it to be amortised in this way.

#### **General approach to the deductibility of the expenses**

The expenses are only deductible if they are directly related to the generation and maintenance of the business income of the recipient party in Turkey and if they are made in accordance with the arm's length principle. Turkish tax authorities are very strict about expenses and only allow them to be deducted from the corporate tax base if the services are actually provided and directly related to the recipient party's generation of business income in Turkey.

In order for expenses to be deemed as deductible expenses for corporate tax purposes, the aforementioned charges must be:

- directly related to the generation and maintenance of the recipient party's business income in Turkey;
- at arm's length;
- documented properly to be submitted upon request; and
- intended for the services given to the recipient party itself, and not for those services given to a third party (even if it is related party).

If the expenses are deemed non-deductible, the VAT amount paid as a reverse charge is also considered non-deductible.

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List any rules on the tax implications of discount sales or sales below the acquisition value.

As long as the discounts and sales before acquisition are in line with market conditions and reasonable in terms of the ordinary course of business, there is no specific tax implication.

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Rules on utilisation of tax losses.

Corporate losses may be carried forward for five (5) years but cannot be carried back.



# Ukraine

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# Space

## 1) to rent

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What is the definition of a lease on the local market?

A lease is a limited property right where the property owner allows the leaseholder to use the property for a pre-defined period of time against a consideration payable by the tenant.

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Can a foreign company rent a property directly or is a local SPV required?

Yes, but there may be certain tax disadvantages.

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Lease duration: long-term vs. short term.

There are no limitations as to lease term for buildings held in private property. The lease term for state and municipal property, other than for the lease of land, cannot be less than 5 years, unless a tenant offers a shorter term. The term for land leases cannot exceed 50 years. Typically, land leases are executed for 5, 10, 25 or 49 years, and leases of buildings for 3 to 5 years.

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Are there any requirements regarding the form of a lease agreement?

Building lease rights under lease agreements for a term of three years or more are to be notarised. By contrast, lease agreements for land only need to be executed in a written form (no notarisation is required).

Building lease rights under lease agreements for a term of three years or more must be registered with the State Register of Proprietary Rights to Immovable Property, as must lease agreements for land.

The formalities are identical for individuals and legal entities.

---

Does a lease agreement require registration with any authorities?

Building lease rights under lease agreements for a term of three years or more must be registered with the State Register of Proprietary Rights to Immovable Property, as must lease agreements for land.

If a building lease agreement for a term of under three years is notarised by the parties, then the lease rights must also be registered with the State Register of Proprietary Rights to Immovable Property.

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Is there a legal or tax difference between renting premises with or without fit-out?

Legally, the lease agreement will have to have detailed provisions regarding the rights and obligations of the parties in fit-out cases, as these are not sufficiently regulated by the underlying laws.

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Can we do turnover-based leases?

There are currently no legal restrictions with regard to turnover-based leases.

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What are the most common securities on the local market required from the tenant?

As a security, the tenants must usually provide a prepayment covering 3 to 6 monthly rents and/or a bank guarantee.

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Are there any stamp duties for lease agreements?

In general, there are currently no stamp duties for lease agreements on business premises. But if the agreement is notarised, a stamp duty (notary fee) of 0.01% of the total agreement value will be charged.

## 2) to buy

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Share deal vs. asset deal: statistic on the local market?

Both transactional structures are used. Usually, investors prefer share deals due to the preferential tax treatment, the reduced risk in relation to pre-emption rights, the possibility of transferring other property rights, etc.

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Are there any restrictions on the local market regarding direct acquisition of property by foreign nationals?

There are no specific limitations as regards to ownership of buildings by foreign nationals and companies, but there are some limitations on ownership of land. Foreign nationals and companies are not allowed to own agricultural land. Non-agricultural land may be owned by foreigners only when it is located under buildings owned by them. In urban areas, foreign companies may also acquire ownership of non-agricultural land for the purposes of building business-related facilities.

The law has set a "moratorium on the disposal of agricultural land" which prohibits the sale and purchase, alienation or change in the designated use of privately-owned land designated to be used for commercial agricultural production and individual farming. This prohibition is to remain in force until 1 January 2019.

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Are there any historical title issues to observe when buying a property?

When buying a property, the buyer should make sure that the seller has legal title to the property, which is being sold. This information is made available online by the State Register of Proprietary Rights to Immovable Property. If the title is found to be correct, there should be no issues, including historical title issues.

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Are there any requirements regarding the form of the land purchase agreement / share purchase agreement?

Land purchase agreements must be executed in writing, be notarised and concluded according to the Ukrainian law.

If a share transfer is carried out, the share purchase agreement must be executed in writing but need not be notarised. For the purposes of state registration of the new shareholder with the Unified State Register of Legal Entities, Individual Entrepreneurs and Civic Organisations, a share transfer act must be executed in writing and notarized.

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How are titles (to property / shares) transferred on the local market? Is the title subject to title registration?

Transfer of title both to property and to shares requires registration.

If an asset deal is carried out, the title to property becomes effective from the date of its registration in the State Register of Proprietary Rights to Immovable Property. The State Register of Proprietary Rights to Immovable Property is in electronic form and is managed by the Ministry of Justice of Ukraine.

If shares in an LLC are transferred, the parties can agree in the share purchase agreement upon the point in time in which the title to shares in an LLC is transferred. However, the transfer of title becomes final and effective against third parties when new shareholders are registered in the Unified State Register of Legal Entities, Individual Entrepreneurs and Civic Organisations.

For transfers of shares in a JSC, the title to such shares is deemed to have been transferred to the buyer when the shares are recorded as having been placed on the buyer's securities account, as opened by a custodian.

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Is real estate transfer tax payable on the acquisition of real estate? Is the sale of a "real estate company" subject to RETT in your jurisdiction?

No real estate transfer tax is payable in Ukraine.

However, both state duty and pension fund duty are charged at a rate of 1% of the value of the real estate, as determined at the point in time at which the sale is registered.

State duty is payable by the seller of real estate; pension fund duty is payable by the buyer of real estate.

The sale of real estate is generally subject to 20% VAT. However, the sale of undeveloped land and residential real estate (apart from the first sale) is exempt from VAT.

Sale of a "real estate company" (its share(s)) is not subject to VAT.

### 3) to construct

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Are there any restrictions on the local market regarding direct construction by foreign nationals?

A foreign construction company may operate either through its subsidiary licensed in Ukraine or indirectly through agreements with licensed Ukrainian contractors.

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Can only an owner request the necessary permits for construction, or is this option also available to tenants?

The necessary permits for construction can be requested by both the owner and the tenant after the owner gives written consent to construction.

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What permits are required for construction of properties?

The object's classification determines what approval procedure is required. The construction classification for buildings and structures is based on the risk management principles. The following characteristics should be taken into consideration to determine the object's classification:

- possible consequences for the health and safety of persons who permanently or temporarily reside at, or outside, the construction object;
- quantification of possible material losses; and
- possibility that a cultural object or transportation infrastructure will be lost.

Depending on the degree of possible negative consequences, the object can belong to one of the following three classes of consequences:

CC1 – lower class of consequences,  
CC2 – medium class of consequences, and  
CC3 – high class of consequences.

For construction of a CC1 object to commence, notification that construction works will be commenced is required. The construction of objects in the CC2 and CC3 classes requires a construction permit.

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Are there any surprising costs, levies or other charges related to construction?

The construction process requires the specialised technical supervision of a licensed firm or an engineer, whose services usually cost approximately 5-10% of the construction costs.

The construction of an object in a residential area requires that obligatory fees be paid to the city's social and transport infrastructure. The sum of the fee is determined by a formula but may not be more than 10% of the general value of construction for non-residential objects and may not be more than 4% for residential objects.



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Once the construction permit has been issued, does the investor have to construct the permitted building within a certain term?

The construction permit is valid for the whole construction process and its validity is not limited in time.

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Can an investor transfer a construction permit to another investor?

Yes, the construction permit can be transferred within 3 days. It is obligatory to issue a notification of the transfer.

---

Are any additional special operation permits required for certain types of retail activity?" (e.g. foods, pharmaceutical, alcohol & tobacco, etc.)

In order to start a new business, a declaration of conformity with fire safety must be registered with the state authority.

To sell goods of animal origin, a special exploitation permit must be obtained for the facilities. A sanitary control permit is also required.

The sale of pharmaceuticals in Ukraine is subject to licensing. The sale of pharmaceuticals without this certificate of quality is prohibited.

A license is also required to sell alcohol and tobacco.

# Staff

## 1) to employ

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How are local nationals usually hired (employment contract vs. service contract)?

They normally perform work for an employer on the basis of an employment agreement, whilst service contracts are considered to be the exception (in practice used mostly for consultants and freelancers hired to perform certain projects).

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What is the duration of employment contracts on the local market?

The law distinguishes between employment agreements and employment contracts. Employment agreements can be concluded for an indefinite period, a definite period or for the period required to complete the given amount of work. As a rule, employment agreements are concluded for an indefinite period. Employment contracts can only be concluded for a definite time and in cases prescribed by the law (and with certain categories of employees, such as directors).

---

Are there any restrictions regarding the execution of definite term employment contracts?

Employment agreement may only be concluded for a definite term if the nature of the employee's work or the employee's interests makes it impossible to establish an employment relationship for an unlimited term.

Employment contracts can only be concluded for fixed term if this is agreed upon by the parties. Employment contracts may only be concluded if this is expressly allowed by the law.

---

Are there any special rules for employment contracts of directors / board members?

Directors/board members may perform work based on an employment contract.  
The employment contract with the director/board member should include the term of agreement, rights, obligations and responsibilities, remuneration, termination of the employment contract and other terms as agreed upon by the parties.

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Is there a collective bargaining agreement applicable nationally to retail in Ukraine?

No, there is no national collective bargaining agreement applicable to retail in Ukraine.

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Are there any restrictions regarding the employment of foreign nationals?

A company wishing to employ foreign nationals should obtain work permits for them.

Work permits are issued to the legal entities employing foreign nationals only if there are no qualified Ukrainian nationals in the relevant sphere who are suitable for the position in question or if there are significant grounds for the employment of such foreign nationals as specialists. This requirement will be abolished as of 27 September 2017 when the legislative amendments comes into force.

In order to work in the representative office of a foreign company in Ukraine, a foreign national needs to receive a service card from the Ministry of Economic Development and Trade.

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Types of employment of foreign nationals: direct employment vs. secondment / posting.

Both types of employment are possible. Obtaining of work permit is required in any case.

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Is there a minimum time a foreign national can stay and work in the local market without having to obtain any type of permit?

Foreign nationals must have a work permit to carry out work. Foreign nationals can stay in Ukraine for the period of time specified in their visas (usually not longer than 90 days within a period of 180 days).

---

Are there any special (more favourable) procedures for employment of foreign management staff?

The legislative change that came into force on 27 September 2017 provides favourable conditions for categories such as highly paid foreign employees (receiving not less than 50 minimum monthly salaries). The work permit for such persons can be issued for a maximum period of 3 years (as opposed to the general term, which constitutes 1 year).

## 2) to pay

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How are salaries and other benefits determined in Ukraine?

The amount of minimum salary is prescribed by law. Salary and other benefits are also determined by: individual employment agreements, employment contracts, employer's general acts and the applicable collective agreements.



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Does local law envisage a minimum salary and other payments?

The minimum salary is prescribed on the national level by the Law "On the 2017 State Budget" and amounts to 3723 UAH (~ EUR 112) per month and 22,41 UAH (~ 0,67 EUR) per hour.

According to the Labour Code, extra payments shall be granted for working during weekends, at night and for overtime work.

Extra payments for special working conditions related to special burdens at work, unfavourable environmental influences and danger at work can be determined by works agreements.

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Do foreign nationals fall under the local employment rules and regulations?

Yes.

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What are the current personal income tax rates in Ukraine?

Employment income is subject to personal income tax ("PIT") at a flat rate of 18% and also to a "temporary tax contribution to Ukraine's military", set at 1.5%.

In addition to the gross salary, the employer is obliged to pay 22% of SSC for the employees. Application of SSC is limited to a maximum "SSC taxable" amount. This is UAH 55,845 (~ EUR 1,700), equal to 15 times the minimal salary.

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What are the Personal Income Tax implications for foreign nationals working in Ukraine?

Foreign national employment income sourced in Ukraine is subject to Ukrainian PIT and SSC, unless exemptions under double tax agreements apply.

If foreign nationals are employed locally in Ukraine, the obligation to withhold PIT and SSC lies with the employer.

For income received from abroad, Ukrainian tax residents (even if they are foreign nationals) are obligated to calculate, pay and declare PIT themselves.

### 3) to train (local nationals)

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Does training of retail personnel require an employment contract?

Trainees who are students of specialised colleges or universities may conclude a traineeship contract for up to 6 months. An employment contract may also be concluded and it may include a probationary term (1 month for non-managerial workers, 3 months for others). This period can be extended to up to 6 months upon approval by the trade union in question.

---

Is it possible to enter into a limited employment contract in the local jurisdiction for training retail personnel? If yes, for how long?

A traineeship agreement may be concluded for no more than 6 months. The conclusion of an employment agreement for a definite time can be justified by the nature and purpose of employment, which in this case is the training of personnel.

---

Is it possible to terminate an employment contract for training purposes without grounds?

No. The traineeship agreement can be amended by additional agreement between the parties.

Employment agreements with trainees during the probation period can be terminated upon 3 days' notice if the trainee does not meet the criteria for the position.

Employment agreements may not be terminated without grounds, except during the probation period.

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Do trainees enjoy the same protection as full employees?

Yes, they enjoy the same level of protection.

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Is it possible to agree two subsequent training contracts?

No. After the term of the definite employment agreement has expired, an employment agreement for an indefinite period must be concluded with the same employee.

---

Once the training is finished, is a new employment contract required?

A new employment contract can be concluded if both the employer and the employee wish to continue employment. The expiration of the term of the employment contract does not, however, entail an obligation to conclude a new contract.

If the employee continues to perform their work after the expiry of a definite term employment contract, this implies that an agreement for a new employment contract for an indefinite term was concluded.

---

Is a trainee entitled to severance payment after termination of employment?

The legislation governing traineeship contracts does not provide for severance payments.

Severance payment after termination of the employment agreement is only required in certain cases as prescribed by law.

# Set-up

## 1) to incorporate

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What is the most common form of company in the local market, especially for real estate transactions?

The most commonly used type of companies for real estate transactions in Ukraine is the limited liability company (LLC).

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Are there any restrictions for a foreign national to incorporate a company in the local market?

There are no restrictions on a foreign national incorporating the company on the local market.

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How long does it usually take to fully set up the most common company in the local market?

The registration procedure takes 3 days after an application for registration of the company has been duly submitted. This also includes registering with the state tax authority as a VAT payer and obtaining a VAT number.

Additionally, it usually takes another week for a regular bank account to be opened, after which the company may be considered fully active.

---

What are the registration steps?

Firstly, a general meeting of the founders needs to be held and the articles of association must be adopted. All founders' statutory representatives or their proxies must sign the minutes of the general meeting of the founders and the articles of association. The future director must personally sign an order of appointment.

Once all incorporation documents have been executed, they need to be filed with the state register of the companies. The documents should be submitted to and registered with the state register, fiscal authorities (including VAT taxpayer registration), whilst a pension fund should be set up within 24 hours. The company will obtain an extract from the state register once the documents have been processed.

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What other actions may be required for the company to become fully operational?

A regular bank account must be opened after the company is entered into the state register.

---

Does a company performing retail activities on the local market require any additional permits / licences?

The selling of certain products such as pharmaceuticals, alcohol and tobacco is subject to licensing in Ukraine. To start a new business, a declaration of conformity with fire safety must be registered with the state authority. Retail activities connected with products and materials that can damage people's health require a sanitary control permit.

---

What other forms of companies are present in Ukraine?

In addition to limited liability companies, the following types of companies can be established in Ukraine:

- companies with additional limited liability,
- private joint-stock companies,
- public joint-stock companies,
- general partnerships, and
- limited partnerships

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How can an Ukrainian company be closed down?

The most common option is regular liquidation, which means a closure on the basis of a decision by the shareholders.

In cases of insolvency, the company is closed down in a bankruptcy procedure managed by the bankruptcy administrator.

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How long does it usually take for an Ukrainian limited liability company to be wound-up / liquidated?

The liquidation procedure normally takes between 12 to 18 months. It often takes longer with larger companies.

## 2) to appoint

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Are there any particular conditions that a person has to meet to be appointed as a director/board member on the local market? In particular, can a foreign national be a director/board member of a local company?

A foreign national can be a director/board member of a Ukrainian company. The company must acquire a work permit for them. The employment contract with the director/board member is then concluded and the company information in the trade register must be amended to include information about the new director.

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Does a director/board member need to be employed by the company? Or can they have a different type of agreement (e.g. management agreement) with the local company?

A director/board member needs to be employed with the company and have an employment contract.

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Is a director/ board member required to be physically present on the local market?

No. A director/board member is not required to be continuously physically present in Ukraine.

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Does the director/board member require any special permits to work and stay in the local market?

A foreign national acting as a director/board member requires a work permit and residence permit.

The director of the representative office of a foreign company in Ukraine who is a foreign national requires a service card, issued by the Ministry of Economic Development and Trade, as well as a residence permit.

---

Is it obligatory to pay remuneration to a director/ board member in your jurisdiction? What are the tax effects of such remuneration?

Legally speaking, remuneration for directors/board members is not obligatory unless they are employed by the company.

They may receive remuneration through a management contract (a form of a civil contract). Such remuneration is taxable.

The directors and board members may also be employed by the company through an employment contract. Their salary is taxed with PIT and SSC in the same manner as a regular salary.

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What is the procedure for appointment/dismissal of a director/board member?

The director/board member in an LLC/JSC is appointed by a simple majority vote of the shareholders' meeting, as captured in the minutes of the meeting. The order to appoint the director/board member is then issued.

The dismissal of director / board member in LLC requires the participant's resolution, or - if so prescribed by the charter – the decision of the supervisory board. Unless set out otherwise in the articles of association, the dismissal of directors/board members in LLCs requires a shareholders' meeting and a vote, to be captured in the minutes of the meeting.

The dismissal of a director/board member in a JSC can be set out in the articles of association or contract with them. The default procedure prescribes that the dismissal is carried out by the supervisory board.

### 3) to pay taxes:

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What are the applicable corporate tax and VAT rates?

The corporate income tax (CIT) rate is 18%.

VAT rates: general rate 20% and reduced rate 7%.

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Is VAT grouping or consolidation for corporate tax purposes available?

No VAT grouping or consolidation for CIT purposes is available.

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Which payments to foreign countries are subject to withholding tax in your country and at which rates?  
Are exemptions available?

The following types of payments, when paid to foreign entities, are subject to a 15% withholding tax ("WTH"):

- dividends,
- interest,
- royalties,
- lease payments,
- proceeds from real estate sales on the territory of Ukraine,
- profits from securities transactions,
- profits from joint activity agreements or long-term agreements,
- broker's or agency fees, and
- other kinds of income derived by a foreign legal entity on the territory of Ukraine.

WHT on dividends, interest and royalties can be reduced or eliminated under double tax agreements.

No WHT applies to payments between domestic entities (tax residents of Ukraine).

---

Does your jurisdiction apply thin capitalisation rules? If so, please briefly explain.

Thin capitalisation rules apply to all loans received by resident companies from non-resident related parties where the debt is greater than 3.5 times the company's equity. Deductions from interest paid on such loans is limited to 50% of profits before tax (plus the amount of financial expenses and depreciation) for the relevant tax period. Non-deductible interest may be carried forward to future periods, but the carry forward amount is reduced by 5% annually.

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Please specify other rules that limit interest deductibility.

There are no other rules limiting interest deductibility.

---

List any rules on the tax implications of discount sales or sales below the acquisition value.

Price reductions or discounts due to early payments and discounts granted to the customer at the time of the supply reduce the VAT base. However, the VAT base cannot be lower than the acquisition value.

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Rules on utilisation of tax losses.

Tax losses can be carried forward indefinitely. However, the Ukrainian Parliament sometimes restricts the utilisation of tax losses carried forward. There are currently no restrictions on the carry forward of tax losses.







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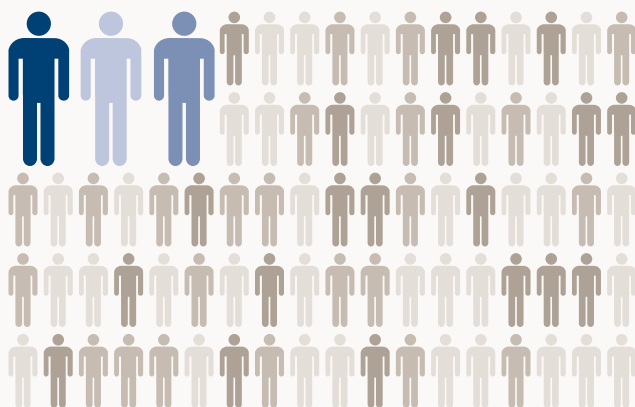
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# About CMS

48 new partners in 2017, taking the total to over 1,000



**Top rankings  
in 2017**  
M&A League Tables  
(by deal count)

**#1 Germany,  
CEE, Poland,  
DACH region**  
(Mergermarket)

**#1 Europe,  
Germany,  
Switzerland**  
(Thomson Reuters)

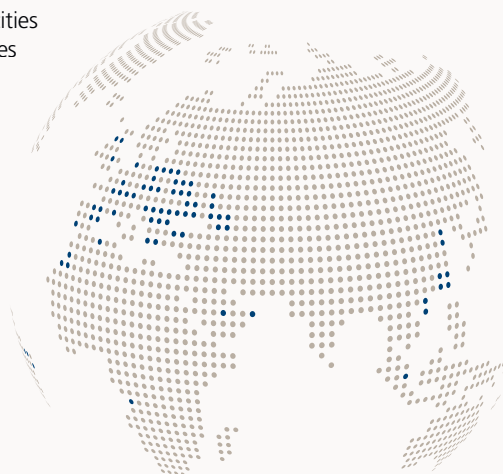
**Top 20  
Acritas**  
Global Elite  
Brand Index

> 7,500 staff

> 4,500 lawyers

> 1,000 partners

Operating in 67 cities  
across 41 countries

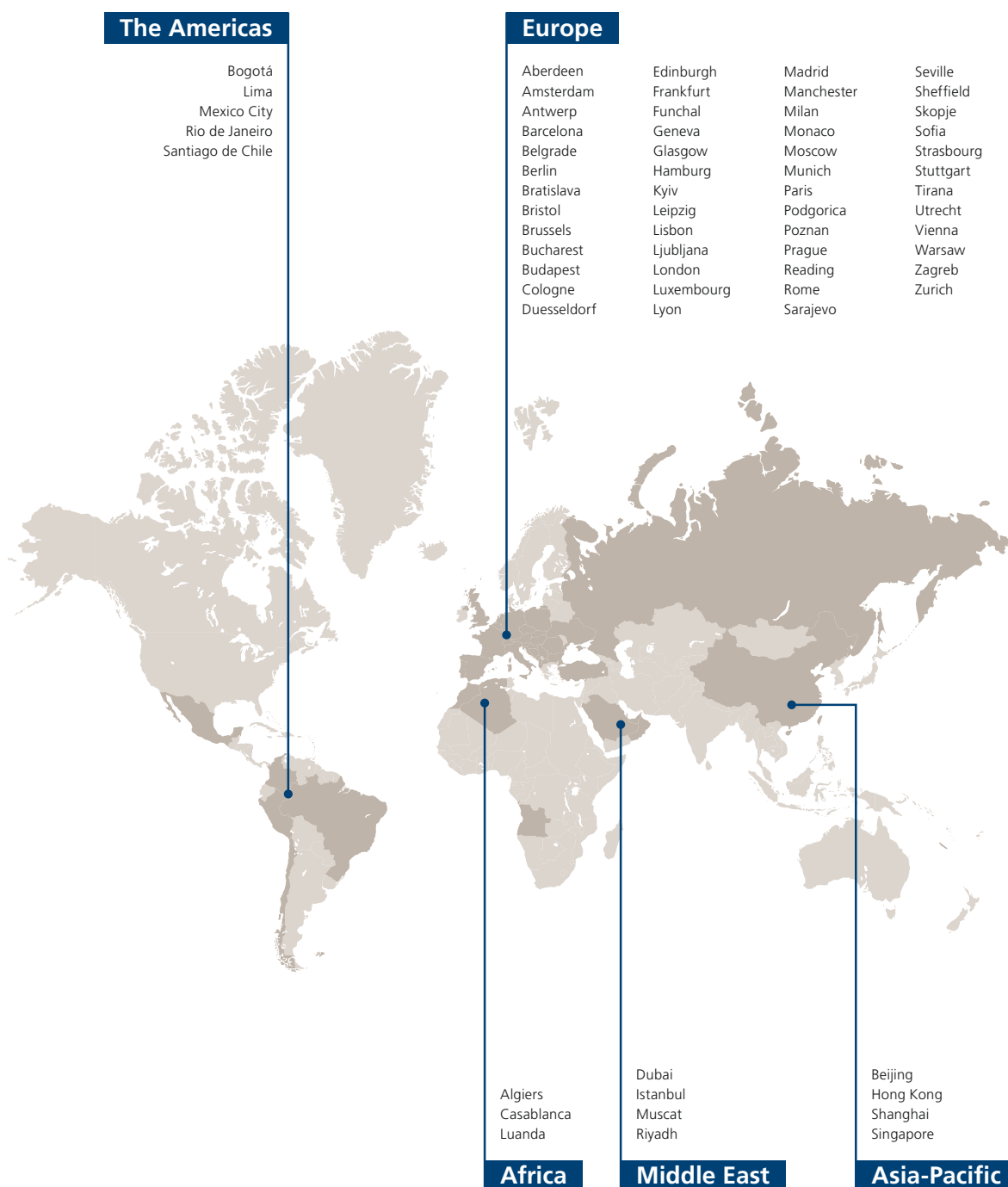


**EUR 1.3bn**  
turnover for 2017



Ranked  
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most global  
law firm  
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