European Commercial Real Estate Lending Tax Guide

Commercial Real Estate Finance Council Europe®

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Contents

Preface

It is a historical reality that Lenders have often neglected to consider the full impact of tax in transactions they undertake. It is indeed not uncommon for the tax aspect to be entirely ignored in a Lender's structuring and due diligence process. Sadly the last few years have visibly demonstrated that tax can and does have material impacts on a Lender's position with this lesson learnt at the worst possible time, namely a loan workout. Lenders have relied on their Borrowers to structure their investments in a tax efficient manner and later realised that tax remains part of the equation, that laws do change and that their Borrowers do not apply an equity view to tax as much as property investment. In a low interest rate environment with property yields in excess of overall medium term borrowing rates, the tax impact is an ongoing issue; indeed with European government deficits as they are we should expect tax take to increase. Managing tax liabilities requires consistent diligence and an adherence to a set of clear rules.

Classic examples abound, a pan European flavour includes:

- The requirement in the UK to file for withholding tax exemptions on rent paid offshore
- The limitation of interest cost deductions in Germany based on EBITDA metrics
- The threat of legal change a few years ago in the Netherlands to disallow depreciation on buildings as a tax deduction, often the main tax shield for leveraged deals
- The continued existence in Italy of withholding tax on interest paid to EU banks notwithstanding general EU free market principles
- The priority ranking nature of capital gains tax in Ireland to a traditional mortgage
- The payment and future recovery of VAT on certain property acquisitions in Spain necessitating a bridge finance structure

Whilst it is generally the case that in most European jurisdictions a first ranking mortgage grants a Lender a first claim on the property, this does nothing to ensure the underlying structure is as bankruptcy remote as possible and that the cash flows the Lender expects to see can actually be delivered.

It is for all these reasons that CRE Finance Council Europe in association with Ernst & Young has developed a document that seeks to achieve only two things. Firstly, it seeks merely to illustrate the myriad of issues that a Lender actually does need to consider. Secondly, it seeks to provide a template letter of instruction to Lenders to allow them to seek appropriate professional advice and ensure that, as best as possible, their business appropriately caters for the reality that tax does matter.

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1. Introduction

This document sets out, in general terms, common tax issues that prospective lenders should consider in their lending decisions to real estate investment structures.

Managing the tax exposure of a structure involves striking a balance between two extremes:

- A simple structure that is easy to operate, and minimises compliance costs, but that is not tax efficient; or
- A complex structure that, while theoretically effective, requires adherence by non-tax experts to strict and inflexible procedures that, from a commercial perspective, may appear arbitrary and highly impracticable. Such structures may be difficult to manage in practice and are likely to be subject to challenge by the tax authorities..

Managing the tax profile of a structure is a lifetime process, where compliance with tax rules and regulations is as pertinent as the quality of the advice received on its establishment.

This document takes a high level approach to the situations that may arise, and should be considered when examining a debtor's tax position. For example, Germany and several other countries have recently introduced very detailed and prescriptive rules that restrict how much interest may be deducted (generally to a maximum of EBITDA or EBIT), whether or not that interest is sourced from unconnected parties. In the course of this report, we will not discuss the detail of such rules, but will flag them up as an issue that you should be aware of.

The purpose of this document is to frame the considerations and questions you should be asking when presented with a property investor's operations and structures, i.e. it is intended to act as a starting point outlining principles and concerns, and should not be treated as a comprehensive check list that addresses all tax risks that could arise.

2. Executive Summary

- Managing the tax position of an investment structure is a complex issue that requires informed and careful management.

- A key first step is to assess the operational risk that a property investment structure may present. A non-exclusive list of risk factors and considerations could include:-

  - What is the general quality of investment management?
  - How is tax advice obtained?
  - Is there evidence of a large number of open and unresolved tax issues?
  - Has all tax planning been implemented in accordance with relevant legislation?
  - Is someone taking a global oversight of tax strategy?
  - Do operations take place in jurisdictions in which the tax authorities are known to take an a strong line with perceived non-compliance?

- This initial assessment should inform the level of detail and review required to assess for any specific tax risks. Real estate investment structures typically encounter the following tax issues as common risks:-

  - The tax strategy has been implemented incorrectly owing to lack of due care and attention, and is therefore rendered ineffective.
  - The tax deductibility of interest (both internal and external) is restricted.
  - The write-off of underperforming loans triggers unexpected tax charges.
  - Changes in the profile of investors can trigger tax charges at investment level.

- Actions carried out by investors on their own account can trigger tax charges/investigations at investment level.

- ‘Offshore structures’ (i.e. where real estate is held in a company tax-resident in another, more tax favourable, country) can be incorrectly operated in practice, with often significant negative tax consequences.

- Adopting an inappropriate tax profile for VAT/GST purposes on property rentals can significantly reduce the attractiveness to certain tenant classes.

- Real estate transfer taxes could have been triggered by restructuring of the investment structure.

- Structuring and tax planning to manage withholding tax liabilities and tax leakage on repatriation of cash to the investors proves ineffective.

3. Deductibility of Interest and Other Costs

Virtually all jurisdictions will seek to tax the rental profits from properties situated within them. Most property investors will therefore seek to minimise profits at the property SPV level, which in turn minimises the tax paid on these profits.

A generally accepted principle is that interest paid on financing a real estate business can be deducted against the rents received. To prevent abuse of this principle (i.e. by over gearing the business to extinguish net rental income), most jurisdictions have anti-avoidance provisions in place that can restrict the deductibility of debt interest.

Obviously, a reduced deduction for interest increases the amount of tax payable, and hence erodes post-tax returns to investors.

The worst-case commercial risk is that a property SPV in a cash flow neutral or negative situation, owing to a heavy debt burden, finds itself faced with a tax liability it does not have the cash to pay, having paid all its cash out in interest.

We discuss below some common situations in which the tax treatment of interest/loan amounts may become commercially relevant, and why tax due diligence by a prospective lender is advisable.

Transfer Pricing/Thin capitalisation

These rules are now almost ubiquitous. How they are implemented varies significantly from place to place, but the key principle is that a taxpayer should not be able to acquire a tax benefit by entering into a loan agreement with a connected party that is underwritten on non-commercial terms.

In practice, this is most commonly achieved by comparing the loan terms to that which a hypothetical third-party lender would be prepared to lend on (i.e. an 'arm's length basis'), and allowing deductions only to that extent.

Several jurisdictions have 'safe harbour' provisions which simplify this test by setting out in legislation parameters in which they will consider loans to be 'arms length', e.g. a certain debt:equity ratio, interest rates in a certain range, de minimis limits for the rules to apply.

'Interest stripping' rules

Over the past decade, several countries (notably including Germany and Italy) have moved away from targeting perceived abuses involving connected party debt, and are seeking to restrict what they see as erosion of their local tax base by use of excessive debt (be it from an unconnected third party or otherwise.)

How the rules work varies from country to country, but the common theme emerging to restrict the maximum tax deduction for interest to a certain percentage of EBIT/EBITDA or some similar metric. Germany, for example, restricts (in most cases) interest deductions to 30% of EBITDA.

Loan write-offs

The tax treatment of loan write offs/rescheduling is typically a complex one, and tax advice specific to the jurisdiction should be taken in advance of any significant loan restructurings. Generally speaking, the release of a loan will produce an accounting credit to the profit and loss account of the debtor, and advice should be taken on whether this release is taxable or not.

4. Investor-Level Risks

Very often, a key tax risk lies not in the actions or inactions of the property investor, but in the actions and behaviours of its owners. The consequences of these can cascade down the chain of ownership and produce undesired and unexpected consequences at the level of the property investment that its managers have no ability to prevent.

Knowing the details and tax circumstances of the investors into an investment can therefore be just as important as knowing details of the investment itself.

There is a broad variety of circumstances in which the actions of the investors might cause issues for the property structure. However, we set out below some common issues that can arise.

Change of Control

When companies are sold from one owner to another, anti-avoidance rules in many jurisdictions seek to catch two broad classes of transactions:-

a. Where an attempt is made to avoid transfer taxes etc. by selling a corporate wrapper rather than an underlying asset, or

b. The sale of surplus tax attributes (e.g. losses, tax depreciation pools) from one party to another. For example, a bankrupt group of companies will generally leave its administrators/receivers in possession of significant tax losses (trading losses, asset writedowns, etc.) that the group is, obviously, no longer in a position to use.

It should be noted that despite the intent of these rules, commercial transactions at the level of the investors can be caught that trigger unexpected tax consequences. For example, moving the parent company of a group into a trust could trigger German real estate transfer tax in respect of its German properties; or a consortium of investors acquiring control of a UK group could potentially jeopardise the availability of the brought forward losses therein.

It is difficult to set out a general principle here, but if you become aware of a proposed significant change in the ownership of an investment structure, it may be worth investigating further to ensure this does not jeopardise its tax attributes, or trigger an unexpected tax charge.

Disclosure to Tax Authorities

In the current economic environment, tax authorities worldwide are taking a more stringent approach to auditing taxpayers. In addition, in response to the ever-increasing globalisation of business and political pressures surrounding ‘tax havens’, there has been a significant move to extend both the theoretical scope and the practical use of information exchange agreements, which allow the sharing of information between tax authorities.

It may well be the case, therefore, that disclosures made by an investor in the course of an enquiry into their affairs could lead to attention being focussed by the tax authorities onto the investments they have made.

In a well-run investment structure, this should not present a significant risk, bar the management time and costs associated with handling the tax authority's queries, but it should be apparent that where you may have concerns about a structure's tax risks, the probability is that others may do as well.

Majority Investors

Most property investment structures (for example, a limited partnership) are set up such that operational control remains with the fund manager, even though the majority of the economic returns from the structure flow through to the investors.

To combat tax avoidance, most tax systems have special rules that cover companies under 'common control'. However, how a particular tax system may define 'control' has typically evolved away from a simple definition into a complex mechanistic test.

The practical effect of this is that we recommend investigating a structure where one investor owns a majority of the economic interest (even if they are otherwise a passive investor) to ensure that this does not present a tax issue in either the countries of the investment or of the specific investor.

French '3% tax' and Analogues

As discussed in Section 5 of this report, there can be substantial legitimate tax efficiencies to operating a property structure from an offshore company. Several jurisdictions have, in an attempt to combat the benefits of offshore status, introduced taxes whose purpose is not so much to raise revenue, but to penalise non-disclosure of the ultimate owners of the structure to the relevant fiscal authority.

In France, for example, holders of French real estate are obliged to pay 3% of the value of the market value of their property holdings at 1 January each year. In practice, provided that disclosure is made of the ultimate beneficial owners, and that these owners are resident in a country that has a tax treaty with France, the 3% tax is mitigated. Otherwise, the 3% is levied on the investment structure, not the investors. There is therefore a strong motivation for the investment manager to disclose ownership.

Since the introduction of this tax, most fund agreements now incorporate a clause allowing the cost of any 3% tax charges (e.g. where an investor is from a country without a tax treaty with France, such as many Middle Eastern countries) to be allocated against the returns that the specific investor receives. In the absence of such a clause, an investor in one jurisdiction can erode the returns made by the investment structure. (In France, an investor subject to such a charge causes a 3% tax charge only in proportion to their economic holding of the structure, which mitigates this risk. In other countries, including Greece, there is no such pro-rating.)

5. Offshore Structures

Virtually all jurisdictions seek to tax, in some way, real estate physically located within their borders. However, it is often the case that significant tax efficiencies can be accrued by holding a property in an offshore structure, i.e. that the company or other entity holding the property is located in another jurisdiction that does not tax (or taxes lightly) assets located outside its borders.

For example:-

- If a UK real estate investment is held by a UK company, rental profits and any capital gain on selling the property is subject to UK corporation tax (at a current rate of 26%). If, however, the same property is held by a Jersey company, then only rental profits are subject to UK income tax at 20%, while capital gains are exempted entirely (this treatment does require application to HMRC to obtain – failure can lead to the tenant withholding 20% from gross rental payments). Jersey would not tax either source of profits.

- In Germany, rental profits and capital gains on German property are generally always subject to federal-level corporate income tax at a rate of c. 15.8%. However, German Länder also typically levy an additional Trade Tax on profits arising from a 'permanent establishment' (very broadly, a fixed place of business) within their borders. This can almost double the effective tax rate paid on a German property investment. With care, however, a permanent establishment in Germany can be avoided (and so any trade tax liability as a consequence), and this is best achieved by use of a non-German company.

The key point is that securing these tax efficiencies requires a company to be non-resident in a particular jurisdiction. This is not just a matter of incorporating a company in an appropriate country.

The precise test to be satisfied, and the nature of the requirements to be satisfied, varies from country to country. However, the broad outline common to all of them is no control or management over the company's affairs should be exercised from within the physical boundaries of the jurisdiction within which the property is located.

We recommend careful attention is paid to this issue should you become aware of any of the following. None of these are, in themselves, 'red flags' but they are situations in which the management of the investment structure needs to take greater care to minimise the risk

- The ultimate investors are themselves resident in the country of the underlying asset;

- The investment managers themselves have substantial operations in the country in which the asset is located;

- Key individuals involved in the investment management process are nationals of or resident in the relevant country; or

- There is a general weakness in the investment manager's processes and procedures that might lead to inadvertent breaches.

6. VAT, Sales Taxes and Real Estate Transfer Taxes

The indirect taxation of real estate is typically complex, as it involves at least three stakeholders; the owner of the property, the fiscal authorities and the counterparty in the taxable transaction. One of the key practical risks, therefore, is not so much that tax is unexpectedly payable, but that tax is unexpectedly payable by a third-party

We set out below some broad circumstances in which the risk is elevated:-

Unexpected Sales Tax/GST/VAT on Rents

In a typical jurisdiction, particularly those with a VAT/GST, the treatment of the supply of property-related items (e.g. rentals, construction work, etc.) is complicated. Typically, particularly in respect of commercial property, the landlord is able to substantially affect whether VAT/GST is charged or not.

VAT/GST Recovery Issues

One of the key principles applicable to VAT/GST is that the tax is levied at every step in a supply chain, but that a recipient of a supply who uses that supply to generate further taxable supplies is able to recover the VAT/GST they have suffered in making that supply.

If we consider how these principles apply to property, the two key risks should become apparent:-

a. The property owner is unable to recover all of its VAT/GST (if there are substantial construction costs involved, e.g. in a development-type project, this can substantially impact on the economics of the deal.)

b. Certain classes of commercial tenants (principally banks, insurance companies and other financial institutions) are generally unable to recover the majority of their VAT. If confronted with the choice between tenanting two equivalent properties; one of which will be subject to VAT on its rent, the other not, then this tax consideration will undoubtedly factor into their commercial decision-making process. (Conversely, however, a typical commercial tenant will be able to recover all of its VAT, and bar the cash flow issue on having to pay and then recover VAT, will typically not be so concerned about this issue.)

In summary, we recommend that any due diligence/modelling work on an investment structure should seek to establish the VAT/GST basis of how it operates/is intended to operate, as this is one of the key areas in which there is scope for an inappropriate operating model, or failings in compliance, to significantly impact on the expected economic returns an investment is able to generate.

Sale of Shares Triggers Unexpected Transfer Tax Liability

A sub-set of the above relates to real estate transfer tax. Historically, this has usually been levied on the direct sale of real estate. However, as transfer taxes on the sale of shares have historically been either non-existent or much lower, an increasingly common approach is to sell the shares in an SPV holding the property rather than the property directly.

Many jurisdictions have introduced statutory overrides where, if the underlying substance of a transaction is the sale of land or buildings, the sale of the SPV is subject to real estate transfer taxes.

It should generally be apparent when these rules are likely to come into direct effect. However, there can be cases in which transactions higher up the chain of ownership in a property structure can trigger transfer tax liabilities in respect of properties held further down the chain.

Tax Planning to Minimise Transfer Tax Liability is Ineffective

Governments have sought to take advantage of rising property prices by increasing the various duties and taxes payable on the sale of real estate. In the United Kingdom, for example, the rate on commercial properties worth more than £500,000 has gone from 0.5% in 1996 to 4% at the current date.

Should you become aware that an investment structure is implementing tax planning in respect of transfer taxes, we recommend that this is one of the areas on which any due diligence/investigation is focused, both around the technical aspects of the planning, and whether the requirements of this planning have been successfully implemented.

7. Cash Repatriation and Withholding Taxes

When implementing an investment structure, consideration should be given to the tax impact of repatriating profits to investors. This is particularly important where investors are tax exempt bodies.

Withholding Taxes

Many jurisdictions levy withholding taxes on the payment of interest, dividends & royalties. Typically, most careful investment structures will ensure that withholding taxes are minimised. Below, we set out some common approaches taken, and also note where failure points commonly occur.

Tax Treaties

To minimise double taxation (i.e. where two countries would otherwise tax the same item of income), a substantial network of double tax treaties has evolved. Typically, these treaties allow a resident of one country that receives income from another to be subject to tax only in their home country (or, failing that, applies a maximum rate to that which can be levied by the other country). The growth in this network has been facilitated by the OECD, which has developed a model treaty and guidance thereon to assist in this process.

However, a pronounced trend in recent years is that many countries are starting to limit the availability of treaty benefits in response to perceived abuse of the treaty network.

Therefore, many jurisdictions require that a company claiming treaty benefits is able to show:-

- that the company has substance (i.e. that it is not just a name on a piece of paper and has genuine commercial activity), and/or
- that it is actually the beneficial owner of the income it receives. This can catch back-to-back financing arrangements – if a company receives interest income, only to lend it on immediately to another company, arguably it is never beneficial owner of this interest income.

In practice, with care and attention by the managers of an investment structure these requirements can be met, but they do need to take care that the tax structure is supported by commercial reality..

A well-managed and advised investment structure should have this as one of their key tax risk management strategies. If there are concerns about the general approach to corporate governance of the investment structure, then this should be one of the areas in to which any investigation should take place.

Hybrid Instruments

A hybrid instrument is, broadly, an instrument that is considered equity in the jurisdiction of holder, but as debt in the jurisdiction of the issuer (or, of course, vice versa). This is possible because many jurisdictions draw the line between debt and equity in a different place.

It is generally beneficial for such hybrid instruments to be considered debt in the country making the payments (as interest is generally deductible for tax purposes), but as equity in the receiving country (both for tax purposes, and also for the commercial goals of the investors).

Furthermore, where a country levies withholding tax on dividends, but not on interest (as, for example, Luxembourg does) such hybrid instruments form an essential part of an investment structure's cash repatriation strategy.

Hybrid instruments, however, do present certain risks:-

- Administrative complexity – hybrid instruments can be awkward to operate in practice.
- Anti-avoidance legislation – Several jurisdictions have introduced anti-avoidance legislation to combat use of hybrid instruments. This should have been taken into account when establishing an investment structure.

8. Change in Law or Practice

Owing to the current global economic situation, many governments find themselves running significant deficits, and as such, are keen to maintain their tax revenues to the maximum extent possible. However, in many cases it would be politically problematic to raise headline tax rates.

Therefore there has been a trend by some governments to:

- Introduce new anti-avoidance legislation to combat perceived abuses;
- Remove or severely restrict the availability and practical usefulness of long-standing tax reliefs; and
- Revisit the interpretation and approach to legislation to ensure greater certainty of treatment and a more robust compliance framework.

The above all, of course, form part of the normal evolution of a tax system, but the pace has been noticeably accelerated in recent years.

Therefore, although this is not a direct risk in itself, the current commercial and economic environment does significantly raise the risk that an investment structure has been unable to successfully cope with the consequently rapidly changing tax environment, triggering one of the specific risks outlined elsewhere in this document.

9. Fiscal Authority Actions for Non-Compliance

A well-run and tax compliant investment structure should generally not have cause to fear an investigation by tax authorities. Although the risk of a tax exposure should never be ruled out (either because tax planning has been put in place but is later held to be ineffective by the courts, or because there is a genuine disagreement on an ambiguous area such as an appropriate arm's length value on an intra-group transaction), provided care has been taken in establishing and operating a structure, these risks can be controlled (and in most cases, quantified).

However, the random audit or inspection remains a well used tool for jurisdictions seeking to defend their tax base.

Any investment manager should therefore operate on the assumption that prevention is better than cure, and should ensure that, on an ongoing basis, the controls and procedures it may put in place are documented and maintained in a contemporaneous fashion to ensure that defending against tax authority investigation can start from the best possible starting point.

An investment structure should carefully consider the approach of the jurisdictions in which it operates, and not necessarily assume that 'one size fits all' in managing its tax risk – its approach will need to be flexed on a jurisdiction by jurisdiction basis.

10. Inadequate Procedures and Controls

Managing tax risk should be a continuous process, not a set of one-off actions.

There are numerous situations in which either not seeking tax advice, or not taking the effort to implement it correctly, can present significant tax risks to a property investor.

Therefore, one of the key starting points for any investigation of a property investment structure's tax risk is to assess the quality of its procedures and controls. By its very nature, what an appropriate level of quality needs to be viewed in the round, but we set out below some issues that, if observed, may suggest further investigation is needed. We stress that none of the below are an infallible sign of inadequate controls and procedures (and vice versa, their absence should not be read as a clean bill of health), but more that poorly managed investments tend to have at least one of these issues arising:-

- **What is the quality of the investment management generally**? If financial/tenant management controls and procedures are inadequate, are their tax-related equivalents any better?
- **How is professional tax advice obtained?** For example, is a very large and complex structure taking advice from a suitably experienced firm of professional advisors?
- **Is there a large number of open and unresolved tax issues**? Particularly where there is little progress being made in reaching agreement with the tax authorities.
- **Are tax planning strategies taking priority over commercial realities?** A failure to structure tax planning around commercial realities is likely to trigger a challenge by the tax authorities in many jurisdictions.
- **Is there someone reviewing and coordinating tax from a global perspective**? It is often the case that something that is tax beneficial in one jurisdiction might cause problems in another jurisdiction on implementation (as a simple example, a high interest rate on a shareholder loan can reduce the tax in the company paying the interest, but could increase the tax bill of the company receiving it). If there is evidence of a 'silo' approach in the provision of tax advice, it may be worth investigating how tax advice is coordinated between countries.

Appendix A Template Letter

Dear [X]

TAX RISK ASSESSMENT

As previously discussed, we ask you to perform an assessment of the [Investment Structure] and whether its nature and operations present a material risk to the safety of the funding that we are considering providing.

Although the specific details of the areas we would like you to cover in your assessment are dependent on your best professional judgement and also on the circumstances of the jurisdictions involved, we would like to concentrate on the following key areas in your review:-

- An assessment of the quality of the tax advice that the [Investment Structure] has taken to date.
- Whether there have been, an announcement has been made in respect of, any material changes in tax law and/or practice that could invalidate this advice.
- Whether there are sufficiently strong procedures and controls to implement this tax advice successfully.
- Whether the tax assumptions made in models of income, costs and exit values are reasonable and prudent. [We intend to provide you with our assumptions and would seek you to confirm the resulting tax impacts are in line with our expectations.]
- A summary and brief description of any currently open tax issues, and an assessment of the potential exposure to which [Investment structure] is exposed in light of these.
- An assessment of the [Investment Structure's] financing structure, and whether this presents obstacles to the tax deductibility of interest and any practical obstacles that may be encountered in cash repatriation
- If any actions carried out at investor level are likely to trigger tax issues charges at the [Investment Structure] level.
- What are the tax consequences of the envisaged exit strategy(ies), and how is the [Investment Structure] managing these consequences?
- If the [Investment Structure] is appropriately treating its real estate portfolio for indirect tax purposes (e.g. has it opted to charge VAT/GST on its commercial rentals, has it put in place real estate transfer tax planning to minimise transaction costs on sale?)
- Please provide a list of initial and ongoing requirements that should be inserted in the financing documentation to ensure the rigorousness and validity of the [Investment Structure] is maintained
- Additional information sufficient to provide reasonable comfort that no material tax exposures not already identified from the above might exist.
- We would expect that your professional indemnity insurance meets the minimum required by your regulator. Furthermore, we would also expect that your professional indemnity insurance coverage applicable to the advice you will be providing us with is commensurate to value of this transaction. In order to assess whether such coverage is adequate for this transaction, please provide us with details as to your professional indemnity insurance coverage.

- The following wording must be included in the report:

  The [Lender], its employees, agents, successors and assigns may rely upon this report in evaluating a request for an extension of credit (the "Loan") to be secured by the [property/properties]. This information may also be used by any actual or prospective purchaser, transferee, assignee, or servicer of the Loan, any actual or prospective investor (including any agent or advisor thereof) in any securities backed by the Loan, any rating agency actually or prospectively rating any such securities, any trustee appointed in the context of the issuance of such securities, and any institutional provider(s) from time to time of any liquidity facility, hedging or credit support for such financing. In addition, this report or a reference to this report may be included or quoted in any offering circular, private placement memorandum or prospectus and [name of advisor] agrees to cooperate in answering questions by any of the above parties in connection with a sale, securitisation or other transaction involving the Loan and/or such securities. Accordingly, this report may be relied upon by any person falling within the abovementioned classes of person as if this report were addressed to that person specifically. This report has no other purpose and should not be relied upon by any other person or entity.

I trust the above performs a reasonable basis for you to report to us, but please do not hesitate to suggest alterations/expansions to our suggested scope of work above.

Yours [faithfully/sincerely]

About CRE Finance Council Europe:

CRE Finance Council Europe was formed in July 2004 and is part of the CRE Finance Council (CRE Finance Council®), an international trade association dedicated to promoting the ongoing strength, liquidity and viability of commercial real estate capital market finance worldwide. We have a presence in Europe, Japan and North America.

With over 60 member companies in Europe, CRE Finance Council Europe offers unparalleled leadership in the commercial real estate capital finance markets. As a global trade association, our diverse membership represents the full range of the industry's market participants, from senior executives at the largest money-centre banks and investment banks, rating agencies, insurance companies and investors to service providers.

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Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 152,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve their potential.

Our integrated Real Estate Practice is able to harness strong synergies across multiple professional services, including audit, tax and business advisory. This enables us to provide a wide range of services in response to a multitude of real estate issues, efficiently and seamlessly.

Our advice is objective and independent and our past experience includes work in all areas of real estate where we have been able to demonstrate that we are well positioned to assist with complex opportunities. In tax we provide structuring, compliance, planning and transaction support services.

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