

laws, transactions are supposed to be tax neutral, if such transactions qualify as tax exempt reorganisations. The classical forms of such reorganisations (mergers, de-mergers, conversions and transfers of assets and liabilities) have been defined in the Merger Act.

It is evident from recent real estate transactions that, despite the harmonisation, the Federal and Cantonal corporate income tax laws have adopted a broader interpretation of reorganisations than the Merger Act. It is common sense (and in principle covered by the tax laws) that a 'share to share deal', in German called Quasifusion, where a merger is economically performed by a shareholder exchanging his

shares in the target company for shares in the acquiring company, qualifies as a tax neutral reorganisation for income tax purposes. Some tax authorities, however, tend to qualify share to share deals differently for income tax, real estate capital gain tax or real estate transfer tax purposes. This can result in a situation where a share to share deal qualifies as a tax neutral reorganisation in one canton for all taxes, whilst another canton could deny the tax neutrality for the real estate transfer tax. Even though the real estate transfer taxes should be abolished for qualifying reorganisation as of 1 July 2009, it is strongly recommended to investigate the tax situation and consequences prior to the transaction.

## UKRAINE

Arthur Nitsevych

International Law  
Offices, Kyiv, Odessa  
nitsevych@  
interlegal.com.ua

# Commissioning Act

**A**ccording to the legislation of Ukraine for the owner of completed new buildings it is not enough only to complete the construction. The law provides special procedures for the owner to certify his property rights and enable him to dispose of his new property (in this case, completed building) in full.

The Commissioning Act is a very important final document of the new construction. It is a technical/permission document, but not a title document to real estate or land. The title document to new construction is the certificate on property right (the title certificate), which can be issued by the City Council on the grounds of the Commissioning Act, and subject to obligatory registration in the Bureau of Technical Inventarisation (BTI).

As of 1 January 2009 the new order is in force. It is envisaged by the Resolution of Cabinet of Ministers of Ukraine dated 8

October 2008, No 923. Before, approving new buildings for use was the competence of so-called 'working boards', which assessed the readiness of buildings for use, its compliance with technical engineering fittings, design documentation, etc. Now the board is required only to confirm the building's readiness. After the approval board confirms the building is ready for use, the inspectorate of State Architectural Construction Control should issue the certificate on compliance of the construction with design documentation, requirements of state standards and construction norms and rules within ten days. The building is considered to be approved and ready for use from the date such certificate is issued.

Thus, the procedure and time schedule for the commissioning of new buildings in Ukraine are considerably amended.