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REAL ESTATE  
NEWS**

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## French capital gains tax Watch out: New rules

By Prof. Robert Anthony

Ouch! Watch out! Are you aware of the substantial increases in French property capital gains taxes for private clients? It now stands at 48.3% for non-Europeans and 34.5% for Europeans, before taper relief with questions raised on double taxation deductions!! Capital gains tax in France or “impôt sur les plus values” is a tax payable on the sale of properties, land, buildings, and shares subject to any available exemptions, allowances and deductions.

There are two kinds of capital gains tax, depending on the type of transaction:

- Personal properties, land, buildings, - Impôt sur les plus-values immobilières.
- Shares - Impôt sur les plus-values mobilières.

Both individuals and companies are liable for capital gains tax, although different rules apply. In this review we are focussing on capital gains tax as it applies to individuals not as it applies to property held by those who buy and sell it commercially.

The sale of real estate is fully liable to capital gains tax, including exchange properties and those sold on the basis of a life annuity rather than a capital sum.

Concerning territoriality, in general, most countries have a taxation treaty with France under which capital gains on the sale of property in France is taxed in France.

For taxation purposes, the applicable rate for gains on real estate will depend upon your country of residence.

The various rates of capital gains, depending on your residency, are as follows:

If you are a resident of France then the applicable tax rate is 34.5%. This amount comprises of capital gains tax at the rate of 19%, plus 15.5% social charges.

If you are not resident in France, but you are resident in the EEA (European Economic Area), then the applicable tax rate is the same - 19%, plus 15.5% social charges, giving a total rate of 34.5%.



### New rules apply to property sales

This rule applies to all sales since 17th August 2012, when non-residents became liable for social charges. The rule equally applies to residents of Norway, Iceland and Liechtenstein.

You should take note, however, that you may also be liable for capital gains tax in your home country. The extent of the liability will depend on the terms of any tax treaty that exists. Those who are neither resident in France nor the EEA pay capital gains tax at the rate of 33.3% plus 15.5% social charges, giving a total rate of 48.3%.

It is not clear how foreign jurisdictions will treat the deduction where there is a social charge for a tax credit.

If you are based in a tax haven that does not have a tax agreement with France the basic rate that applies is 50%, plus 15.5% social charges. Again, as with EEA residents, you may be also be liable in your home country.

In France, in all cases of the sale of real estate the tax is applied at the time of the sale in the offices of a notary, and it will be deducted from the sale proceeds before payment is passed over. Non-residents (whether from inside or outside of the EEA) are also required to appoint a fiscal representative agent on the sale of property.

*Author's profile see next page*



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# Germany: property prices are on the rise, rents are stable

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**By Dr. Reinhard Nacke**

Unlike other European countries, property prices are on the rise again in both Western and Eastern Germany. From March 2007 to August 2012 the price for new residential properties rose by nearly 25% whilst rents only increased moderately. In some cities the rise over the last couple of months could be described as dramatic. Some analysts are convinced that in this regard the German bubble may yet burst. The reason for the dramatic development is easily explained: people are insecure about investing in equities and funds which have proven loss-making and returns on interest generated through conservative investments such as instant access savings accounts have decreased steadily. For many, the acquisition of property seems to be a good choice of investment again. Indeed, buying properties to

let may be profitable as rents in Germany are relatively stable. Therefore it is often the case some people opt to rent a flat rather than to acquire property. However, in order for investors to make the right investment choices they should be aware that whilst property prices are on the rise throughout the whole of Germany there is a difference between the Western and Eastern regions of the country. Property prices are higher in Western Germany than they are in East-

ern Germany which is due to the tendency to move to the West. Nevertheless, there are exceptions; the cities of Leipzig and Dresden are growing and therefore offer profitable investments. In the western part of the country residential property prices are especially high in Southern Germany (Bavaria, Baden-Wuerttemberg) and in the large cities (i.e. Munich, Dusseldorf).

When considering investing in non-residential properties in Germany, investors

should take note that fluctuations in prices and demand are more common place than in residential properties. It should be borne in mind that for investment purposes it is advisable to acquire non-residential properties in the larger cities where rents are higher than in middle-sized towns. Of course the actual purchase price plays a major role here. It should also be noted that these prices are not rising like those of residential properties.

# High Value UK Residential Property Urgent action required

By David Rodney

The UK Budget in March 2012 announced tax measures affecting UK residential property. This article concentrates on two proposals set to take

effect in April 2013 which apply to **residential properties valued at more than £2m and held within 'structures'**. Structures may be in place to avoid inheritance tax and/or stamp duty land tax. In view of increasing values, anyone hold-

ing residential property worth more than £1.5m should consider the impact of the proposals. Commercial properties are not affected.

**An annual charge on UK residential property held by 'non-natural persons', whether UK resident or not.** Broadly, it will apply to corporate bodies but not trustees and established property development companies (see table on the left). *...next page*

## Bands and tax payable

Property value band	£2m-£5m	£5m-£10m	£10m-£20m	£20m +
Annual tax	£15,000	£35,000	£70,000	£140,000

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**Citroen Wells'** partners include specialists with years of practical knowledge regarding the financial problems facing property investors, dealers and developers, both individual and corporate. Our clients range from large property development groups to private individuals with property investments, landlords, builders and other professional services in the construction industry. We offer a range of high quality accounting, financial and business services to all of our clients. We firmly believe that it is our busi-

ness to know our clients' business, so that we can really work to the best of our abilities.

**David Rodney** is a Chartered Accountant, Chartered Tax Adviser, member of the Faculty of Taxation and a Registered Auditor. He brings a great deal of energy and a wealth of experience to his work. David specialises in advising family businesses and individuals on monetary and taxation issues, including a large number of clients from overseas, "Non-Doms", and deals with most other general practice work. He heads Citroen Wells' barristers and chambers department working closely with fellow partner, David Marks. Together they sit on a sub-committee of the Bar Council advising on taxation and related matters. Forensic accounting is another of David's specialities. He has provided many expert reports and given evidence in Court. His clients range from multinational companies to fledgling businesses in their infancy; from legal practices to trusts; from overseas businesses carrying



David Rodney

on business or owning property in the UK to individual traders; from distributors to business consultants; all across a wide range of industries, trades and professions. At the tender age of 20, David became a Chartered Accountant. Not only was he the youngest ever to qualify, he was also a prize-winner by attaining 5th place in the country in his final exams.



### A capital gains tax charge on disposals from April 2013 of UK residential property by non-resident 'non-natural persons'.

Broadly, it will apply to corporate bodies and also to trustees whether corporate or not. Currently such persons are outside the scope of UK capital gains tax.

The charge will apply to gains on UK residential property where the consideration exceeds £2m. It will also apply to the gains on disposals of assets (of whatever form) that represent directly or indirectly such residential property. In view of

increasing values, anyone holding property worth more than £1.5m should consider the impact of the proposals.

The new charge will apply to the total gain accrued during the whole ownership of the property (and not only the gain accrued after implementation of the new charge in April 2013). The rate of charge has not yet been specified.

### Planning

The new measures bring a major

change to the tax cost of holding high-value UK residential property. Prospective purchasers need to decide how they should hold UK residential property. Existing owners need to know how much the proposals will cost and should consider restructuring ownership. Draft legislation is imminent, but planning should start now to enable unwinding of structures by April 2013: identify properties and structures; line up appropriate professional help; obtain any landlord consents.

# Can we actually still speak about a “Greek estate property market”?

By Vassiliki Tsigarida

The recent Law 4093/2012 (“Memorandum III”) has imposed major horizontal cuts to salaries and pensions. The purchasing power of the average Greek citizen is in free-fall and this leads, among other economic and social con-

sequences, to an alarmingly extended stagnancy in the volume of sales and lease transactions. At the same time the number of units remaining closed and unexploited steadily rises.

Despite this gloomy recessionary period, several Greek estate experts appear to have invested in a revival due to the

upcoming new tax law. This will mean that numerous tax burdens on property will be replaced by a single tax and in view of the dramatic increase of unemployment rates and the bad estate loans the suspension of foreclosures of domiciles will be extended for one more year, until the end of 2013.



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**ASnetwork** (comprising of Accounting Solutions S.A. and Audit Services S.A.) provides a full range of accounting, payroll-administration, tax and legal consulting services. ASnetwork employs more than 90 highly-qualified tax consultants, accountants and lawyers, who add value to our clients' businesses through a proactive approach of the issues identified. In the area of real estate property ASnetwork provides specialized tax services and also undertakes due diligence projects with property (ownership titles, encumbrances, lease agreements) and environmental (e.g. photovoltaics' licensing) aspects.

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ously, she worked for several years, as a legal consultant of PricewaterhouseCoopers S.A. and as a freelance lawyer. She is a graduate of Athens Law School and Ruprecht-Karls Universitaet Heidelberg, holding a Master degree (LLM) in capital-market law. She was admitted in the Piraeus Bar Association in 2003 and ever since she practices law mainly in the following areas: Corporate, civil, labor, social security and immigration.



Concerns have been also expressed with regard to the proposed taxation of leases, but the relevant provisions have not been crystallized yet.

Finally, the Ministry of Environment is preparing a new Bill, which will introduce pioneering provisions regarding spatial planning and environmental protection. At the same time also under consideration is that several minor urban-planning discrepancies will no longer de facto exclude the issuance of ownership titles.

While the above law initiatives seem

to be on the right track and may contribute to the recovery of the local estate market, the good intentions of the legislator will not suffice, unless they are combined with the loyal application of the relevant rules as well as the kick-start to the Greek economy.



Law initiatives may contribute to the recovery of the greek local estate market

# Spousal Joint Tenancy in U.S. Real Property can cause U.S. Gift Tax

By Alexandre M. Denault

When a married couple purchases real property in the U.S., they typically take title in a form of joint tenancy for a variety of practical and financial reasons without focusing on the U.S. federal tax issues related to the source of funds used for the purchase. When at least one of the spouses is not a U.S. citizen, this can lead to significant U.S. federal gift tax

ramifications.

The purchase of U.S. real property by a married couple when at least one spouse is not a U.S. citizen does not trigger the imposition of U.S. federal gift tax regardless of the amount and source of the funds provided by each spouse. Upon the sale or division of the property, however, a taxable gift may occur to the extent that the sales proceeds are not allocated proportionately between the spouses based on their con-

tributions toward the purchase price.

A gift of U.S. real property by any individual to a non-U.S. citizen spouse is subject to U.S. federal gift tax to the extent that the gift exceeds the spousal annual exclusion of \$100,000 USD indexed for inflation (2012: \$139,000; 2013: \$143,000). Accordingly, it is important for spouses and their advisors to consider the U.S. federal tax consequences when purchasing and selling U.S. real property.



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**Cantor & Webb P.A.** is considered one of the leading boutique law firms focused exclusively in representing high net worth private international clients and their businesses in the areas of tax planning, estate planning, wealth preservation, commercial and property matters. Servicing predominantly Latin American, Caribbean and European clientele with a team of seven attorneys and a staff of more than sixteen multi-lingual paraprofessionals, accountants and administrative assistants, we have established a legal concierge oriented practice which caters to the unique needs of our international private clients. The firm was recently awarded the highest ranking possible (Tier 1) by U.S. *News Media Group* and *Best Lawyers* in the area of

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# The high range Real Estate Market in the Costa del Sol

By José Luis Rodríguez

Only a few years ago, the construction of High Range holiday homes was a small segment of the real estate market in the Costa del Sol. Actually, this segment is the only one that survives, generating wealth and employment in an area that comprises Marbella, Benahavís and Estepona (Costa del Sol, Southern Spain).

The High Range Houses combine creative design, high levels of comfort, large areas (normally more than 500 m<sup>2</sup>), quality of construction materials used, creation of new spaces, domotics and other features.

The construction of these houses involves more than 30 different companies and a diverse field of professionals: brokers, bankers, lawyers, notaries and registrars, architects, engineers, various technicians, builders, painters, carpenters, gardeners and many other pre and post construction suppliers (also maintenance and domestic service, security companies, etc.).

In terms of employment generation, the construction of only one High Range



High Range holiday homes in the Costa del Sol: the only segment that survives

Home (defined as a construction costing in excess of 1 million euros) can generate more than 50 jobs plus another 150 jobs indirectly and an average investment of 4

million euros.

In 2011, around 60 High Range houses were built in this area, generating a business volume of around 250 million euros, as well as 1,000 direct jobs and approx. 3,000 indirect jobs.

Finally, this sector generates high added value in respect of its intensity in design, technology and specialised manpower, as well as being highly sustainable in respect of the environment. It is a business compatible with the quality and exclusivity image that the brand "Marbella" projects to the rest of the world.

We have a treasure in Spain: a productive sector based in the current top three pillars in the European Union: design, technology and sustainability. Marbella, Estepona and Benahavis must consider the residential tourism sector of High Range Homes as one of the basic foundations of the brand "Marbella", supporting the natural development of the construction sector and reactivating those mechanisms that ease the granting of Licenses, the investment and the employment generation.



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# Investment in the mining industry in Mexico

By **Rodolfo Sánchez-Arellano**

According to information from the Mexican Geological Survey, Mexico has 23 sites classified as giant (world class) and six labelled super giants. Backed by the strong price of metals, mining investment in Mexico offers an excellent opportunity.

Mexico's Constitution provides that the lands and waters within the national territory belong to the Mexican State. The use and exploitation of such national resources by private parties are only permitted pursuant to concessions granted by the Federal Government. Mining concessions over ore deposits may be granted only to Mexican nationals, Mexican companies, ejidos (land granted by the government to individuals for agricultural and ranching purposes), agrarian communities, townships and indigenous communities. Foreign participation in the ownership of such companies must comply with provisions of the Foreign Investment Law, which currently does not impose any limitations with respect to mining, except for radioactive materials.

Concessions are granted over "free land" pursuant to the "first in time, first right" principle, provided all other re-

quirements under the Mining Law and its regulations are met. "Free land" means any land within the national territory, except for (i) zones incorporated into mineral reserves; (ii) land covered by existing concessions and allotments; (iii) land covered by pending applications for mining concessions and allotments; (iv) land covered by mining concessions granted through a bidding process and

those derived there from which have been cancelled; and (v) land covered by mining lots from which no concessions would be granted due to the cancellation of the bidding process.

The mining rights covered under a concession do not include direct ownership or possession rights over the surface where the ore deposits are located.



By **Rodolfo Sánchez Arellano**

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**NEW CORPORATE APPROACH**



Mining industry in Mexico

# Sales of U.S. Real Property by Nonresidents

By **Kenneth Lobo**

Non-U.S. tax professionals proposing a home country estate plan for a client often recommend the sale of U.S. real estate to a related entity. The goal is to conform ownership of the real estate to an estate plan in the home country. Regrettably, several pitfalls can be encountered.

If the transfer is structured to be taxable, 10% of the sale price must be withheld from the seller's proceeds. Failure to withhold and pay over the tax results in penalties and interest that are automatically imposed.

Where the withholding tax exceeds the final tax on the gain, the I.R.S. may issue a withholding certificate that caps the withholding tax at the latter amount. Obtaining the withholding certificate from the I.R.S. can take 4-8 months. It will be issued only if a U.S. Tax ID number appears on the application, and the process to obtain the number is cumbersome.

Once the certificate is issued, implementation costs will be encountered. These include land transfer taxes, title insurance, and title company professional fees passed through to the client. In these circumstances, advisers should confirm that a proposed purchase of U.S. real estate is structured correctly, taking into account not only current U.S. income tax exposure but home country estate planning.



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# Adjustment of rental prices for retail space in The Netherlands

By **Joost Donkersloot**

As stated in my previous contribution, in Dutch rental law, there is a distinction between two types of business space. On the one hand there is retail

space and on the other office space or other space. Only for retail space is there a legal procedure to fix a rental price, if the parties fail to reach an agreement. In a tenancy agreement it is also possible that the rent is automatically linked to

the consumer price index. This applies to both types of business space. Furthermore, parties can agree to a procedure to adjust the rental price in the tenancy agreement. For retail space, this is with the restriction that the agreed proce-



cedure is not less favourable than the legal procedure.

## When?

Such procedure can be introduced after the end of the first agreed duration of the contract. As most contracts have an initial duration of five years it is therefore often the case that it is introduced after five years.

## How?

Although there is no obligation, the law assumes that parties will first try to agree among themselves on a new rent. The outcome should be a better one than one that is formally established by law, namely that the price does not correspond to that of comparable retail spaces, because this would be the criterion on which legal proceeding would be based. In order to get parties to negotiate, there is a step in the law that must be taken before legal proceedings can commence. Parties must jointly appoint an expert to prepare a rent valuation. Without such a rental value report, it is not possible to start the court proceedings. The law also provides a (short) procedure in the case of a party not wishing to contribute to the expert's report and thus frustrating the possibility of adjusting the rental price. When parties are unable to agree on the expert - or a party is not willing to cooperate - then the other party may file a request to the district judge to appoint an expert.



### Adjustment of rental prices for retail space in The Netherlands

Although the law does not formerly demand it, the expert's report should lead the parties to return to negotiations. It is possible to immediately establish legal proceedings and in those proceedings, the district judge is asked

to fix the rental price. The criterion is the price of comparable retail spaces. This is based on looking at paid rents over the past five years. Since the district judge is not an expert on rental prices, he will need an expert's report. A strange lacuna in the law here makes no specific demands on the expert's report prior to the proceedings before the district court. All that is needed is a report regardless upon what criterion it is based. As such, it is a sort of "entrance-ticket" to the legal proceedings. However, the expert advice on which the district judge will rely is the comparison of different retail prices in the market.

The above means that if the report is not based on retail price comparisons, the judge will have to call for another expert's report covering this aspect. This will cause more delay before the judge can reach a verdict.

The parties have the possibility to influence the result of the expert's opinion. The tenant will put forward examples where a low rent is paid while the landlord will try to do the opposite.

Before even approaching the other party in order to try to appoint an expert, it is advisable to first investigate for oneself the rents of similar premises in the respective area over the past years.

After all, if the expert's report shows that the rent should be adjusted contrary to the direction of what in which the claimant is aiming, the defendant will probably not hesitate to ask for a rent adjustment in the opposite direction.



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**TeekensKarstens lawyers notaries** is the largest legal services provider in the area called "Rijnland", centrally located between Amsterdam and The Hague and Utrecht, and just fifteen minutes from Amsterdam Schiphol Airport. From its offices in Leiden and Alphen aan den Rijn over fifty lawyers and (candidate) notaries operate and provide full service to mainly large and medium enterprises, (semi-) public sector and individuals. Hailing from the Netherlands and beyond.

**Joost Donkersloot** is based at TK in Leiden, where he holds the position of senior attorney at law in the practice group real estate, and he is also a member of the GGI Real Estate Practice Group. His core focus within

real estate is rental law and administrative law. In addition, he is specialised in the leisure business. He is also a member of TK DACH, the German desk, and consequently participates in GGI's German-speaking chapter. At the German-speaking chapter in 2011, he even entertained the guests by playing several songs of German's most popular performer, Herbert Grönemeyer.



# New Government in Mexico

## Foreign investment: Great expectations and opportunities

By Sergio Guerrero Rosas

With the arrival of the new President, Enrique Peña Nieto, on December 1st, there are great expectations with many anticipating a wave of excellent opportunities for investment.

Of the 260 commitments signed as part of Peña Nieto's election campaign, 90 were related to infrastructure and public transport; a clear show of his strategy for economic improvement and growth in Mexico. In fact, by the end of his 6-year term, Peña Nieto aims to have doubled investment in this area.

Furthermore, in visits to countries in the European Union, Peña Nieto has made clear the message that Mexico is now primed to become a place of opportunity for development and investment, both foreign and domestic, and has also reiterated his position on the importance of paving the way for private-sector participation in state-owned petroleum company Petróleos Mexicanos, in order for it to grow and strengthen.



**Mexico is now primed to become a place of opportunity for development and investment says Enrique Peña Nieto, new president of Mexico**

Europe already has significant investments in Mexico, from Germany and Spain especially, and if we consider the fast-growing, powerful middle class within the country's major cities, the signs would certainly support Peña Nieto's sentiments that Mexico is to un-

dergo an exciting economic period.

With the incoming government's drive for construction, development and economic growth, Mexico looks certain to become one of the most attractive and competitive areas for investment in the world.



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**Guerrero y Santana** is a Boutique Firm founded in January 2003 by a group of Tax, Audit, Consulting, Financial and Legal professionals that pursued to create a firm offering a complete service, with the objective of offering specialized advisory services to companies and individuals. At Guerrero y Santana, S.C. the experience, dynamism and professionalism of their partners converge in order to offer their clients the highest level of quality in the services provided, achieving optimal results in each of its specialized advisory services.

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# “Boom region” South America: Samba Brazil for investors...

By Tobias Wilhelm

## Invest in Brazil?

If the attribute “boom region” is true of any country, then it is certainly true of this leading South American nation. The fifth largest country in the world has just grown to become the sixth largest economy in the world and, amongst its population of more than 200 million, the middle class is growing rapidly. A positive trade balance, high currency reserves, low unemployment and prospects of two major sports events (2014 FIFA World Cup and the 2016 Olympic Games) complete the picture. Walser &



**Solarium Residence** – one of the projects Walser & Partner Group is administrating

Partner Group has built up close relations with Brazil for over 10 years and

has had an office in the northeast of the country since 2007.

Let me introduce two of the projects we administrate. This means Walser & Partner Group is doing the project management and taking care of the communication between the investors and the local developer.

**Solarium Residence** – Here, in a prime seaside location, a building with 228 apartments is being constructed for the Brazilian middle classes. Demand is high and sales have already passed the break-even point. The fact that a reduction in the price of raw materials (building materials) meant they could be bought at a considerably lower price than budgeted for has also helped.

**Sobral Shopping** – The cranes will soon be moved from «Sobral Shopping». The opening of the fully let shopping mall is planned for March 2013. The Sobral Shopping Center comprises around 150 shops, 20 restaurants, 5 cinemas and 900 underground parking spaces. A hotel and office complex is also incorporated in the centre.



Tobias Wilhelm

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**Walser & Partner Group** focuses on the areas of Financial Audit and Accountancy Services, Tax- and Management Consulting Trust and Wealth Management Services and Real Estate Development with offices located in Switzerland (Zurich, Freienbach and Zug), Dubai and Brazil. The Walser & Partner Group has more than 700 clients from 37 countries.

**Tobias Wilhelm** is acting as Managing Partner of Walser & Partner Group. He is holding the Swiss Federal Certificate of Fiduciary (graduated 2005) and has several years experience in international Management Consulting.

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International GGI Real Estate experts gather in Rome

# GGI Practice Group Meeting in Rome

By Dr. Reinhard Nacke

From 18-21 October 2012 the GGI World Conference took place in Rome. More than 300 participants from approximately 35 countries met in the Parco dei Principi Grand Hotel & SPA close to the Villa Borghese. During the conference also the Practice Group Real Estate had a meeting. 18 participants dealt with the following three main topics:

The first was a challenge, which Hans Klaasen from the Netherlands put up for discussion. It was the question how to help those lessors who before the background of the financial crisis cannot uphold their previous rent for business premises but want to avoid a devaluation of their real estate in their books, mainly in order to

avoid problems with their financing bank.

Thereafter Marco Walser from Switzerland gave an interesting speech about attractive investment opportunities in real estate projects in Brazil. Thereby he could recourse to extensive experiences he has had with own housing projects there.

Finally the author of this article reported about the development of real estate prices in Germany. It became clear that this development differs essentially from those in most other countries. Prices increase especially in the big cities rapidly, because people due to the financial crisis are looking for a safe harbour for their monies.

A lively exchange of views and different methods and laws in the different countries rounded off the meeting.



Lively exchange of views and experiences