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REITs: a comparative approach throughout Europe

Introduction

Over the past few years, new REIT regimes have been introduced in Europe, in particular in the UK, Germany (G-REITs) and more recently in Italy (the SIQ: società di investimento immobiliare quotate) to meet the growing demand from investors for tax efficient real estate investment vehicles. Concurrently, existing REIT regimes have been subject to improvements, for example, in the Netherlands in 2007, and in France, where the SIIC regime has been amended annually since its adoption in 2003.

The purpose of this summary is to provide an overview of the key rules governing REITs in six European countries (UK, Netherlands, Italy, Belgium, France and Germany). The comparative study would not have been comprehensive without considering the tax treatment of REIT shareholders, both resident and non-resident of the country in which the REIT is incorporated. The summary provides a comparison of the REIT regimes taking into consideration both legal and tax aspects. These rules were updated on 1 December 2007 and have been further elaborated on by CMS lawyers practising within the Real Estate and Tax Practice Groups of the CMS Alliance. The present document contains information of a general nature and should not be relied on for investment decisions. Clients should consult their CMS contact to obtain further advice.

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Comparison of REIT type structures in Europe

United Kingdom (REIT)



Date introduced: 2007

Legal form and minimum share capital

- ✓ The company must be UK tax resident and not dual resident (unless treaty allocates residence to UK under a “tie-break clause”). It must not be an open-ended investment company (OEIC).
- ✓ Minimum allotted share capital is £50,000 of which at least one quarter of its nominal value plus the whole of any premium must be paid up.
- ✓ The issued share capital must consist of one class of ordinary shares but it may also issue non-voting fixed-rate preference shares.
- ✓ REIT should not be “close” company, unless the only reason is that it has a collective investment scheme limited partnership as a participator.
- ✓ REIT may not enter into any financing arrangements that are non-commercial which includes profit-linked or asset-linked loans but loans where the interest rate reduces as profits increase or the interest rate increases as profits decrease are permitted. Debt convertible into ordinary shares is permitted.

Mandatory Stock Exchange listing?

The ordinary shares must be listed on a recognised stock exchange (London Stock Exchange’s Main Market but not AIM).

Investor restrictions?

A tax charge will arise if the REIT pays a dividend to a company or body corporate that is beneficially entitled (directly or indirectly) to 10% or more of the share capital or dividends or controls (directly or indirectly) 10% or more of the voting rights in the REIT unless “reasonable steps” have been taken to prevent the possibility of such a dividend being paid. HM Revenue and Customs (HMRC) has set out in detail the steps that would satisfy the “reasonable steps” test.

Qualifying activities	<ul style="list-style-type: none"> Qualifying activities essentially means carrying on a property rental business including development with a view to holding the property as an investment (although there are some specific rules in this area). There are also some specific activities and items of income that would be generally regarded as property rental income but which are specifically excluded. Profits from qualifying activities must be at least 75% of total profits and assets involved in the qualifying business must be at least 75% of total assets. The business must include at least three rental properties. No one property must represent more than 40% of the total value of the properties involved in the property rental business. Intra-group lettings or lettings to a company the shares in which are stapled to the shares of a member of the group will be non-qualifying business if the lettings would be regarded as “owner-occupied” property under GAAP. Investment in non-UK assets, non-UK companies and non-UK REITs is permitted. However, the REIT would not obtain any credit for overseas tax in respect of overseas property held directly while distributions from a non-resident company would be taxable in the hands of the REIT.
Internal or external management?	Either permitted.
Do hotels form a permitted asset class for a REIT?	In principal yes. Of course, a REIT may not occupy the hotels that it owns so that owner-operated hotels cannot be REIT properties. Where the ownership of hotel properties is separated from the ownership of the operating businesses REIT status should be possible but care needs to be taken with management contracts.
Gearing restrictions and ratios?	There are no absolute borrowing restrictions. However, a tax charge will arise, if, in any accounting period, the income profits (before financing costs and capital allowances) from the tax-exempt business do not cover the related financing costs by at least 1.25.
Whether distribution of income is mandatory?	At least 90% of the profits (excluding capital gains) of the tax-exempt business must be distributed unless prohibited by UK statute or an overseas enactment that has been prescribed by UK regulations.
Timing of distribution	On or before the REIT’s normal filing date for the company’s tax return in respect of the relevant financial year.

Whether distribution of capital gains is mandatory?

No requirement to distribute capital gains.

Conversion charge?

2% of the market value of the properties that enter the REITs regime. The REIT may elect to pay the conversion charge in four annual instalments (0.5% of the charge for the first instalment, 0.53% for the second, 0.56% for the third and 0.6% for the final instalment).

Taxation of income at level of REIT (i.e. whether full tax transparency of REIT is available?)

- ▮ The REIT is exempt from corporation tax on income profits from qualifying activities.
- ▮ The REIT is treated as a resident for DTA purposes.

Taxation of gains at level of REIT

Capital gains arising from the disposal of assets involved in the qualifying business are exempt.

Registration duties

Stamp Duty Land Tax at 4% (for properties of £500,000 or more) is payable on acquisitions of real property. However, overall costs may be reduced where property is acquired through a corporate or other vehicle.

Withholding taxes on distribution

Subject to deduction of tax at the basic rate (currently 22% but scheduled to be reduced to 20% from 6 April 2008). However, payment may be made gross where the REIT reasonably believes that the beneficial owner of the dividend is within a specified class of shareholder, which includes UK resident companies, charities and pension funds. In the case of a non-resident shareholder the rate may also be reduced under a relevant DTA.

Netherlands (BI)



Date introduced: 1969

Legal form and minimum share capital

- Public limited company (NV) with minimum share capital €45,000.
- Private limited company (BV) with minimum share capital €18,000.
- Mutual investment fund.
- An entity incorporated in another country is also acceptable under certain conditions.
- It must be resident in an EU Member State, the Netherlands Antilles, Aruba, or in a State with which the Netherlands has concluded a tax treaty.

Mandatory Stock Exchange listing?

- Not required.
- A BI can be regulated or non-regulated. A regulated BI is an investment institution within the meaning of the Financial Supervision Act. A listed BI is a regulated BI, but also non-listed BIs can qualify as a regulated BI.

Investor restrictions?

- Detailed restrictions, which are different for regulated and non-regulated BIs.
- A single entity, alone or together with related entities, which is subject to tax, may not hold 45% or more in a regulated BI.
- At least 75% of the shares in a non-regulated BI must be held by individuals, and/or entities which are not subject to tax on profits, and/or regulated BIs.
- The shares in a BI (either regulated or non-regulated) may not be held, via non-resident mutual funds or entities with a capital divided into shares, for 25% or more by entities resident in the Netherlands.
- An individual may not hold 5% or more in a non-regulated BI.
- An individual may not hold 25% or more in a regulated BI.

Qualifying activities

- The exclusive activity must be portfolio investment activities (real estate and/or non-real estate).
- In deviation from the above rule, a BI is allowed:
 - (i) to undertake project development activities with respect to real estate for its own portfolio through a normally taxed subsidiary, and
 - (ii) to invest in improvement and enlargement of real estate, provided that the investment is lower than 30% of the so-called WOZ value (which is close to market value) of the real estate prior to the investment.
- Investment in foreign real estate is permitted, subject to the same conditions as the conditions which apply for investment in Dutch real estate.

Internal or external management?	<ul style="list-style-type: none"> Either permitted. In case the BI is a regulated BI, directors of the BI as well as more than half of the members of the supervisory board of the BI, may not also a director or a supervisory director of an entity which, alone or together with a related entity, holds at least 25% of the shares in the BI, and they may neither be employed by that other entity. This condition is not applicable if that other entity is a regulated BI itself.
Do hotels form a permitted asset class for a REIT?	Yes, but a BI is not allowed to operate/manage a hotel.
Gearing restrictions and ratios?	Debt may not exceed 60% of the fiscal book value of real estate and 20% of the fiscal book value of other investments.
Whether distribution of income is mandatory?	100% of annual profits (except for capital gains) have to be distributed to the shareholders.
Timing of distribution	Within eight months following the end of the financial year.
Whether distribution of capital gains is mandatory?	<ul style="list-style-type: none"> No. Capital gains and losses can be attributed to a tax free reserve and do not fall under the distribution obligation.
Conversion charge?	Upon conversion of a non-BI into a BI, the difference between fair market value and tax book value of assets will be subject to corporate income tax at the standard rate (25.5%).
Taxation of income at level of REIT (i.e. whether full tax transparency of REIT is available?)	<ul style="list-style-type: none"> Subject to tax at special rate of 0%. BI is treated as a resident for DTA purposes.

Taxation of gains at level of REIT

- ▮ Subject to tax at special rate of 0%.
- ▮ Capital gains can be allocated to a tax free reinvestment reserve.

Registration duties

- ▮ None.
- ▮ Note that a 6% real property transfer tax is due on the acquisition of 1/3 or more of the shares in a BI in case its assets consist for 70% or more of Dutch real estate.

Withholding taxes on distribution

- ▮ 15% subject to reduction under applicable tax treaty.
- ▮ Tax free reinvestment reserve for capital gains is not subject to withholding tax, because it is treated as paid in capital.

Italy (SIIQ)



Date introduced: 2006

Legal form and minimum share capital

Joint-stock company resident in Italy. SIIQ (società di investimento immobiliare quotata) is organised following the same corporate governance model used for the Italian joint stock companies. Italian stock exchange requires a minimum (expected) market capitalisation for admission of real estate companies to the regulated stock markets MTA and Expandi at €200 million.

Mandatory Stock Exchange listing?

Yes. But the SIIQ regime may apply also to unlisted stock companies resident in Italy that mainly carry out real property lease activities, if the shareholder is a SIIQ company listed on Italian capital market that, even jointly with other SIIQ companies, holds more than 95% of the voting rights and more than 95% of the profit participating rights.

Investor restrictions?

- ✓ Should not have any shareholder owning directly or indirectly more than 51% of the voting rights and of the profit participating rights.
- ✓ At least 35% of the shares is held by shareholders which do not own directly or indirectly more than 2% of the voting rights and of the profit participating rights.

Qualifying activities

- ✓ SIIQ should mainly carry out a real property lease activity, i.e.
 - (i) the real property assets owned and leased out should represent at least 80% of the total assets,
 - (ii) in each fiscal year, the revenues arising from such real property assets lease activity should represent at least 80% of the income (taking into account distributed dividends from participated SIIQs and other companies that mainly carry out real property lease activity).

Internal or external management?

SIIQ is organised following the same corporate governance model used for the Italian joint stock companies. Therefore, the structure of the SIIQ is influenced by the internal management which is based on the administrative body appointed at the shareholders' meeting and by the directors' liabilities to the shareholders.

Do hotels form a permitted asset class for a REIT?	Yes, but non-real estate asset cannot represent more than 20% of SIIQ assets. The company opting for the SIIQ regime must keep separate books for real estate rental activity and for other activities. Income arising from non-real estate activities is ordinarily taxable.
Gearing restrictions and ratios?	Finance law for 2007 does not provide any provisions for restricting the gearing of a SIIQ. This aspect can be ruled by a decree.
Whether distribution of income is mandatory?	At least 85% of the annual net profit deriving from the real estate lease business and from the participated SIIQs and companies is to be distributed to shareholders.
Timing of distribution	Annually.
Whether distribution of capital gains is mandatory?	Included in the 85% of the annual net profits to be distributed.
Conversion charge?	Substitute tax at the rate of 20% on the fair market value of the real estate assets which are destined to the lease activity. The substitute tax may be paid out over five years. However, the company may opt to apply the ordinary income tax regime under certain specific rules.
Taxation of income at level of REIT (i.e. whether full tax transparency of REIT is available?)	<ul style="list-style-type: none"> ✓ Exemption from corporate tax and regional tax (IRAP) of the income realised by the SIIQ through real estate lease activity. ✓ The exemption is extended also to the dividends arising from the participated SIIQs and companies. ✓ The SIIQ is considered as a resident for DTA purposes.
Taxation of gains at level of REIT	Currently, no rules establish if capital gains on disposal of real estate properties held for lease and capital gains on disposal of interests in SIIQ, may qualify as "income from the real estate lease activity" and may benefit from the exemption from IRES and IRAP.

Registration duties

- ▮ The contribution of real property to SIIQs and participated companies is subject to registration duties in the fixed amount of €168, provided that the contributed assets are mainly leased.
- ▮ Sales and other contributions are subject to registration duties according to ordinary rules although, under certain circumstances, cadastral and mortgage taxes may benefit from a 50% reduction.

Withholding taxes on distribution

- ▮ Dividends deriving from the real estate lease activity distributed by a SIIQ to its shareholders, other than other SIIQs, are normally subject to a 20% withholding tax.
- ▮ Net profit related to specific residential building lease contracts may benefit from a 15% rate, subject to certain conditions.
- ▮ Some exemptions are also provided (e.g. UCITS).
- ▮ Such withholding tax is not final on dividends distributed to:
 - (i) individual entrepreneurs, if the participations are related to their business activity, and
 - (ii) resident companies, including partnerships, and permanent establishments in Italy of non-resident companies.
- ▮ In all other cases, the withholding tax is final.

Belgium (SICAFI)



Date introduced: 1995

Legal form and minimum share capital

A company with limited liability, resident in Belgium or a limited partnership with shares with minimum share capital €1.25 million.

Mandatory Stock Exchange listing?

Yes. The SICAFI must be listed on the Belgian Stock Exchange. Minimum 30% free float.

Investor restrictions?

None.

Qualifying activities

- ✓ The main activity must be passive investment in real estate.
- ✓ No more than 20% of total assets may be invested in a single property.
- ✓ Investment through subsidiaries carrying on qualifying activities is permitted.
- ✓ Developments are allowed, but cannot be sold within five years of completion.
- ✓ Investment in foreign real estate is permitted.

Internal or external management?

Either permitted.

Do hotels form a permitted asset class for a REIT?

Yes, however the SICAFI cannot manage hotels.

Gearing restrictions and ratios?

Debt must not exceed 65% of assets (at time of loan agreement) and interest expense must not exceed 80% of income.

Whether distribution of income is mandatory?

Minimum 80% of net profit.

Timing of distribution

Annually.

Whether distribution of capital gains is mandatory?

No requirement to distribute capital gains provided that they are reinvested within four years.

Conversion charge?	Tax at a reduced rate of 16.995% on unrealised gains.
Taxation of income at level of REIT (i.e. whether full tax transparency of REIT is available?)	<ul style="list-style-type: none"> Real estate income is excluded from taxable income but SICAFI is normally subject to standard rate of corporation tax (33.99%). The SICAFI is treated as resident for DTA purposes.
Taxation of gains at level of REIT	Exempt if capital gains on qualifying real estate income and exempt if the holding time condition is met.
Registration duties	10% or 12.5% real property transfer tax (registration duties).
Withholding taxes on distribution	<ul style="list-style-type: none"> 15% subject to reduction under applicable tax treaty. No withholding tax if SICAFI has invested more than 60% of assets in Belgian residential accommodation.

France (SIIC)



Date introduced: 2003

Legal form and minimum share capital

An entity that is listed on the French Stock Exchange with minimum share capital €15 million.: Sociétés Anonymes (SA) and Sociétés en Commandite per Actions (SCA) – limited partnership with shares. No requirement for the SA or SCA to be incorporated or resident in France but must be subject to French corporate income tax.

Mandatory Stock Exchange listing?

The SIIC must be listed on the French Stock Exchange but 95% subsidiaries of the SIIC carrying on qualifying activities can elect for the same regime.

Investor restrictions?

Should not have any shareholder owning more than 60% of the SIIC (alone or acting in concert with others). At least 15% of the shares upon opening day of fiscal year of election must be held by shareholders which do not own directly or indirectly more than 2% of the voting rights and rights to the profits.

Qualifying activities

- Principal activity must be passive real estate investment (rental activity) but any ancillary activities (e.g. development) are permitted to the extent they do not exceed 20% of the SIIC's gross assets. 50% of gross assets can be represented by financing leasing.
- The tax exemption does not apply to the ancillary activities.
- Investment in foreign real estate is permitted, but does not benefit from the favourable tax treatment.

Internal or external management?

Either permitted.

Do hotels form a permitted asset class for a REIT?

Renting out hotel buildings is permitted and qualifies (but operating hotel businesses does not).

Gearing restrictions and ratios?

None (but practical limitations due to status of listed company).

Whether distribution of income is mandatory?	<ul style="list-style-type: none"> 85% of net rental income from real estate and 100% of dividends from qualifying subsidiaries. No distribution requirements on income from ancillary activities required
Timing of distribution	Operating income should be distributed before the end of the tax year following the year in which it was realised and capital gains should be distributed before the end of the second tax year following the year in which they were realised.
Whether distribution of capital gains is mandatory?	Yes, 50% of gains arising from the sale of real estate or shares in qualifying subsidiaries or shares in real estate partnerships.
Conversion charge?	16.5% tax charge on unrealised gains relating to qualifying assets payable in instalments over four years but carry forward losses may be used.
Taxation of income at level of REIT (i.e. whether full tax transparency of REIT is available?)	<ul style="list-style-type: none"> Exempt from corporate tax on rental income, dividends from qualifying subsidiaries and capital gains upon disposal of qualifying assets. Non-eligible activities are fully taxable. The SIIC is considered as a resident for DTA purposes.
Taxation of gains at level of REIT	Exempt if capital gains from disposal of qualifying assets/participations in qualifying holdings. Other gains are taxable.
Registration duties	<ul style="list-style-type: none"> Acquisition of real estate or acquisition of shares in an unlisted real estate company is subject to transfer tax at around 5%. Transfer of SIIC shares is exempt. Capital contributions are not subject to proportional transfer taxes.
Withholding taxes on distribution	<ul style="list-style-type: none"> 25% subject to reduction under applicable tax treaty. If shareholder owns at least 10% of SIIC capital and is not subject to tax in his home country on the dividend, a 20% penalty will be applicable at the SIIC level upon the dividend. According to the FTA, this penalty cannot be reduced under DTA.

Germany



Date introduced: 2007

Legal form and minimum share capital

- ✓ Stock corporation of AG (Aktiengesellschaft) with minimum share capital €15 million.
- ✓ G-REIT must have its statutory seat and place of effective management in Germany.

Mandatory Stock Exchange listing?

Yes, within three years after incorporation as a pre-REIT on a stock exchange in a Member state of the EU or the EEA.

Investor restrictions?

- ✓ On admission to a stock exchange, at least 25% of the shares must be widely held.
- ✓ Following notification, the amount becomes at least 15%.
- ✓ “Widely held shareholding” requires that an investor holds less than 3% of the shares.
- ✓ No investor may directly hold 10% or more of a G-REIT.

Qualifying activities

- ✓ Limited to the acquisition of the ownership and similar rights in domestic or foreign real estate, to the management and sale of real estate, and the acquisition, holding, management and sale of interests in real estate partnerships.
- ✓ At least 75% of a G-REIT’s gross income must be derived from the rental or lease of real estate property or from the sale of real estate. G-REIT must consist of at least 75% of domestic or foreign real estate property.
- ✓ Investment in foreign real estate is permitted.
- ✓ Cannot invest in existing properties that are predominantly, i.e. more than 50% of the floor space, used for residential purposes.
- ✓ Holding shares in foreign REITs whose shares are traded at a public market is not allowed
- ✓ Advisory service to other parties must exceed 20% of the gross revenue of REIT-AG and must be located in a subsidiary of the REIT. The activities of such subsidiary should not represent more than 20% of the REIT’s assets.

Internal or external management?

Either permitted.

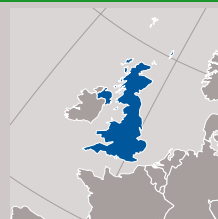
Do hotels form a permitted asset class for a REIT?

- ✓ Yes, but non-real estate rental activities cannot represent more than 20% of its assets (see below).

	<ul style="list-style-type: none"> ▮ In case the REIT renders property-related services for consideration to third parties, such activities need to be pursued by a wholly-owned corporate subsidiary of the REIT which will not benefit from the REIT's tax exemption. Such service companies must not represent more than 20% of the REIT's assets (determined on the basis of the REIT's consolidated IFRS or US GAAP accounts) and the proceeds from these ancillary services must not exceed 20% of the total revenues of the REIT.
Gearing restrictions and ratios?	A G-REIT may take out loans of up to 60% of its fixed assets.
Whether distribution of income is mandatory?	A G-REIT must annually distribute at least 90% of its income to its shareholders.
Timing of distribution	By the end of the following fiscal year.
Whether distribution of capital gains is mandatory?	Yes, but 50% of the capital gains derived from the sale of real estate can be allocated to a reserve (with the consequent reduction in distributable profit).
Conversion charge?	<ul style="list-style-type: none"> ▮ For purchases concluded after 31 December 2006 but before 1 January 2010, only 50% of the capital gains are subject to taxation. The real estate must have been part of the seller's domestic fixed assets for at least five years. ▮ Real estate transfer tax at the rate of 3.5%
Taxation of income at level of REIT (i.e. whether full tax transparency of REIT is available?)	<ul style="list-style-type: none"> ▮ Exempt from corporate income tax and trade tax, provided that G-REIT is resident in Germany under a tax treaty. The tax exemption is automatically withdrawn on breach of certain situations. ▮ G-REITs are not considered as a resident for DTA purposes.
Taxation of gains at level of REIT	Exempt.
Registration duties	None.
Withholding taxes on distribution	25% plus 5.5 solidarity surcharge thereon, i.e. 26.375% without any exemption.

Tax at REIT shareholders level

United Kingdom (REIT)



Domestic shareholders

Taxation of dividends

Distributions from the tax-exempt profits (including capital gains) of the REIT will generally be treated as UK property income in the hands of the shareholders for UK corporation and income tax purposes (rather than dividend income).

Taxation of capital gains on disposal of shares

Taxable under the normal capital gains tax rules.

Foreign shareholders

Taxation of dividends

- ✓ No additional tax to the applicable withholding tax (see above).
- ✓ The REIT may suffer a tax charge if it pays a dividend to a company or body corporate with a 10% or more holding (see above under Investor restrictions).

Taxation of capital gains on disposal of shares

Gains arising to non-UK resident investors on the disposal of shares in the REIT should not be taxable in the UK in the absence of any trading “permanent establishment” of the investor in the UK to which the shares are attributable.

Netherlands (Bi)



Domestic shareholders

Taxation of dividends

- Corporate shareholder cannot benefit from participation exemption in respect of distributions from a BI, therefore fully taxable at the standard rate (25.5%).
- Individual shareholder generally will be taxed on a “deemed income” basis: effectively 1.2% tax payable on average value of shares. Individual can credit Dutch WHT against income tax liability.

Taxation of capital gains on disposal of shares

- Corporate investor cannot benefit from participation exemption; gain is therefore fully taxable at the standard rate (25.5%).
- Individual is generally taxed on a “deemed income” basis; capital gain itself is not taxed.

Foreign shareholders

Taxation of dividends

- No additional tax to the applicable withholding tax (see above), leave aside certain less common situations.
- BI cannot benefit from the EC parent/subsidiary directive.

Taxation of capital gains on disposal of shares

Capital gains on disposal of BI shares is not taxable, leave aside certain less common situations.



Domestic shareholders

Taxation of dividends

- Dividends deriving from the real estate lease activity are not subject to any further income tax in the hands of Italian resident individuals.
- Dividends deriving from the real estate lease activity received by Italian corporations or other entities are fully subject to income tax.

Taxation of capital gains on disposal of shares

- For individuals, capital gains are subject to ordinary income taxation. Partial exemption ordinarily applicable to qualifying participations does not apply.
- For corporations or other entities, capital gains realised are fully subject to ordinary income taxation without any exemption.

Foreign shareholders

Taxation of dividends

No additional tax to the applicable withholding tax (see above).

Taxation of capital gains on disposal of shares

- Non-Italian resident investors (other than Italian permanent establishments of non-Italian resident companies and entities) may benefit from certain domestic income tax exemptions on the capital gains realised upon sale of a non-qualified interest in a SIIQ, i.e. which does not exceed 2% of the total number of shares with voting rights at a general shareholders meeting or 5% of the share capital.
- In most cases, upon the applicable double tax treaties capital gains realised upon sale of the SIIQ shares are not taxable in Italy.

Belgium (SICAFI)



Domestic shareholders

Taxation of dividends

- Corporate investors cannot benefit from participation exemption in respect of distributions from SICAFI.
- Exception when SICAFI distributes (i) at least 90% of income and (ii) the underlying income is income from/gains on shares qualifying for participation exemption.
- For individual investors, no taxation. The withholding tax is final.

Taxation of capital gains on disposal of shares

- Not taxable for corporate investors when SICAFI distributes (i) at least 90% of income and (ii) the underlying income is income from/gains on shares qualifying for participation exemption.
- Fully taxable for individual investor at 33%, but exemption if the capital gain was realised within the limits of normal management of private assets.

Foreign shareholders

Taxation of dividends

- No tax other than the applicable withholding tax (see above).
- SICAFI cannot benefit from the EC parent/subsidiary directive.

Taxation of capital gains on disposal of shares

Capital gains arising on the disposal of SICAFI shares should not be taxable in Belgium when the company does not have any permanent establishment in Belgium.

France (SIIC)



Domestic shareholders

Taxation of dividends

- For corporate investors, distributions out of tax exempt income or gains are subject to tax at the standard rate.
- Participation exemption does not apply except for distributions paid out of taxable income/gains to qualifying parent company.
- For individuals, taxation on 60% of the dividends at standard rate of income tax.

Taxation of capital gains on disposal of shares

- Gains on disposal of shares in SIIC are taxed at the standard rate unless the gain arises on a disposal of a qualifying participation held for at least two years in which case the current rate is 15% (plus surcharge) as from 1 January 2005. Please note that based on the discussions in progress on the 2008 Finance Bill, it is expected that this 15% rate will be increased to 16.5% for sales taking place after 31 December 2007.
- For individuals, taxation at standard rate of 27%.

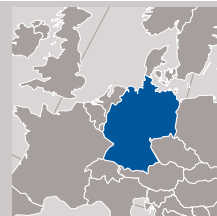
Foreign shareholders

Taxation of dividends

- No additional tax to the applicable withholding tax (see above).
- If shareholder owns at least 10% of SIIC capital and is not subject to tax in his home country on the dividend, a 20% penalty will be applicable at the SIIC level upon the dividend. According to FTA, this penalty cannot be reduced under DTA.
- SIIC dividends paid out of tax exempt profits cannot benefit from the EC parent/subsidiary directive.

Taxation of capital gains on disposal of shares

- Capital gains arising on the disposal of shares are subject to a flat rate tax of 16% where the non-resident has a substantial participation (entitlement to more than 25% of the profits of the SIIC at any time in the five years preceding disposal).
- This taxation is subject to tax treaty provisions which would allow France to tax (e.g. Italy, Spain).



Domestic shareholders

Taxation of dividends

Fully taxable without further tax credit on income from foreign countries or companies.

Taxation of capital gains on disposal of shares

- ▮ Distinction between private investor and a corporation.
- ▮ Private investor:
 - Income tax if the period between the acquisition of the holding in G-REIT and the sale is less than one year.
 - With the tax reform 2008 the sale will be subject to income tax regardless of any holding period.
 - If the period exceeds one year, the sale is only taxable if the shareholder holds a participation of at least 1%.
- ▮ Corporation: fully taxable.

Foreign shareholders

Taxation of dividends

- ▮ No additional tax to the applicable withholding tax (see above).
- ▮ G-REIT cannot benefit from the EC parent-subsidiary directive since it is tax exempt.
- ▮ Most of the tax treaties do not apply.

Taxation of capital gains on disposal of shares

- ▮ Capital gains realised by a non-resident shareholder with less than 1% participation are not subject to tax in Germany.
- ▮ If the shares are attributed to a German permanent establishment, capital gains taxation is governed by general REIT principles.

Summary

Conditions to qualify

Most of the tax favourable REIT regimes are subject to a mandatory listing requirement on a Stock Exchange (with the exception of Dutch BI). In addition, to secure the status of a publicly owned investment vehicle, the legislation of most countries include provisions relating to investor restrictions so as to avoid the REIT be controlled by a single shareholder.

To qualify as a REIT, the assets of the company must be invested predominantly in real estate property and the income derived from the mere leasing of the real properties. Consequently, the REIT must only receive passive income. For instance, the development of real estate may be allowed as long as it is an ancillary activity, and the holding of commercial buildings such as hotels or shopping malls is also qualifying, subject to the condition that the REIT is not in charge of the operation and business management of the assets.

Tax regime of the REIT

Basically, the REIT regime provides for a corporate tax exemption on real estate income and capital gains derived from the sale of assets by the REIT. However, as a rule income generated from non-eligible activities (when permitted) is fully taxable. Additionally, the REIT must distribute the majority of its income (from 80% to 100% depending on the country), and in certain countries the mandatory distribution also extends to capital gains realised on the sale of the REIT's assets. In the majority of countries, gearing restrictions apply on the level of permitted debt financing, and in the absence of specific regulations, practical limitations may apply due to the listed status of company.

The adoption of the REIT regime entails a so called "conversion charge" in all the countries studied. Attention should be paid to this "entrance fee" which may result in a significant one off tax payment, the extent to which should be compared with the future tax exemption on the REIT income.

Tax treatment of shareholders of the REIT

This last item is of great importance given the fact that the income and capital gains realised by the REIT are essentially passed directly onto to the shareholder. An important distinction to make is whether the shareholder is resident or not of the country in which the REIT is incorporated.

As far as domestic shareholders are concerned, both dividends received and capital gains realised on the REIT shares are normally fully taxable. The domestic participation exemption is not applicable.

In the case of foreign shareholders, distributions from the REIT will be subject to a withholding tax levied in the REIT's country of incorporation. France has recently introduced an anti-abuse measure with respect to shareholders who are exempt from tax in their home country. Withholding tax on dividends may be reduced by applicable tax treaties (although this is not clear for all countries) but will generally not be eliminated by the EU parent subsidiary directive, as most countries consider that the directive is not applicable to REITs or forbid ownership above a certain level. Capital gains realised by foreign shareholders are normally not taxable in the REIT's country of incorporation. There are in certain cases, however, some exceptions (e.g. Germany, France and Italy). The recent OECD working paper on REITs, released in October 2007, announces a substantial renegotiation of tax treaties with a view to securing a minimum right for REIT income to be taxed in the source country, notwithstanding the current common tax treaty provisions on dividends and capital gains. Certain countries (for example, UK and France and Germany and France) have already begun to introduce new REIT specific provisions into their tax treaties.

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