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Comparison of the main tax and regulatory aspects concerning Spanish real estate investment vehicles

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			BANK ASSET FUNDS (FABs)	SPANISH REAL ESTATE INVESTMENT TRUST ('SOCIMIs')	Unregulated LUXCo	DUTCHCo (BV)	FIIs (1)	UNREGULATED SPANISH Co	SPECIAL DWELLINGS (HOMES) LEASE CIT REGIME (2)
TAX	CORPORATE INCOME TAX	INVESTMENT REQUIREMENTS	Regime only applicable to real estate assets acquired to the Spanish "bad bank" (Sareb) and for a duration of 15 years.	Main business activity must be (i) acquisition and promotion of urban real estate assets for their lease, (ii) holding of the shares of other SOCIMI or foreign vehicles with the same corporate purpose and similar mandatory profit distribution regime, (iii) holding of the shares of other entities (foreign or not) whose main corporate purpose is the acquisition of real estate assets for their lease with the same mandatory profit distribution regime and asset composition profile and (iv) the holding of stake of Spanish real estate collective investment vehicles. At least 80% of the value of the assets must be invested in the abovementioned assets and at least 80% of the annual income must derive from lease or dividends from the investment in the abovementioned companies. There is a minimum holding requirement of 3 years. In the case of real estate assets they must have been leased during at least 3 years (or offered to lease, but up to 1 year maximum computation in this case).	If unregulated standard holding company - SOPARFI - object extended to real estate investments no specific investor/investment requirements should apply.	None	The exclusive corporate purpose must be the investment in any type of urban real estate assets for their lease. At least 100 unit-holders/shareholders. As a general rule, 3 year minimum holding requirement of the real estate assets.	None	Main business activity must be the lease of dwellings located in Spanish territory (either constructed, promoted or purchased). Other activities are possible, always provided that lease income represents at least 55% of total annual income or, alternatively, that 55% of the value of the assets of the company is eligible to produce income subject to the below 4.5%/3% tax rate.
		TAX RATE	1%	0% as a general rule. However, 19% taxation over dividends paid to shareholders with stake of at least 5% when such dividends are exempt or subject to tax at a rate of less than 10% at the level of the beneficiary.	Luxembourg maximum aggregated corporate income tax rate of 29.22%, unless exemptions apply under Luxembourg participation exemption or DTT. Under Lux DTTs Luxembourg generally grants relief for double taxation through exemption.	A Dutch incorporated entity is subject to Dutch corporate income tax at a general tax rate of 25% provided that the right to levy taxes corresponds to the Netherlands. The Netherlands shall provide the DutchCo with a tax exemption if, based on the tax treaty between the Netherlands and Spain, the right to levy taxes with regard to real estate income corresponds to Spain.	1%	30%	4.5% for lease income (3% if lessee handicapped under certain requirements).
		GENERAL REMARKS	N/A	Once fulfilled with any applicable legal requirements, there is the obligation to pay out as dividends (i) 100% of dividends received from investee companies, (ii) at least 50% of profits from any transfers of real estate assets or investee companies and (iii) at least 80% of the rest of profits. Specific information obligations in the annual accounts apply. The legal reserve of SOCIMIs cannot exceed 20% of their share capital.	The activities developed by any Spanish third party servicers of the real estate assets and the powers granted to the same should be carefully implemented so as not to trigger a Spanish permanent establishment of LuxCo taxed at the rate of 30% over profits.	The activities developed by any Spanish third party servicers of the real estate assets and the powers granted to the same should be carefully implemented so as not to trigger a Spanish permanent establishment of LuxCo taxed at the rate of 30% over profits.	The application of the 1% tax rate is conditioned to the By-laws/Prospectus of the FIIs establishing the impossibility of paying out dividends. The 1% tax rate is also envisaged for those FIIs which comply with the above requirements and promote the building of homes for their lease, subject to additional requirements (i.e. promotion activities must not exceed 20% of the balance sheet, separate accounting of the assets and effective lease or lease offering during a minimum period of 7 years since construction).	N/A	The dwellings must be leased or offered to lease during 3 years. Otherwise, tax rate benefit must be paid back. The minimum number of dwellings is 8. Specific separate/differentiated accounting per dwelling is required.
	TAXATION OF FOREIGN INVESTORS	DIVIDENDS / LEASE INCOME	Exempt	Exemption if EU Parent-Subsidiary Directive applies (1 year holding and stake of at least 5%). Otherwise, 21% withholding tax or applicable reduced Double Tax Treaty (DTT) rate. However, no withholding tax applies to foreign REITs which shareholders benefit from the 0% tax rate of the SOCIMI.	Lease income subject to tax at a 21% rate. It is possible to deduct expenses in the case directly linked to the Spanish sourced income.	Lease income subject to tax at a 21% rate. It is possible to deduct expenses in the case directly linked to the Spanish sourced income.	N/A. Not possible to pay out dividends under the FIIs CIT regime.	Exemption if EU Parent-Subsidiary Directive applies (1 year holding and stake of at least 5%). Otherwise, 21% withholding tax or applicable reduced Double Tax Treaty (DTT) rate.	Exemption if EU Parent-Subsidiary Directive applies (1 year holding and stake of at least 5%). Otherwise, 21% withholding tax or applicable reduced Double Tax Treaty (DTT) rate.
		CAPITAL GAINS	Exempt	In principle, taxable at the rate of 21%. Applicable DTT may exempt taxation.	Capital gains subject to tax at a 21% rate. It is possible to deduct purchase and sale costs for these purposes. Not possible to offset gains and losses.	Capital gains subject to tax at a 21% rate. It is possible to deduct purchase and sale costs for these purposes. Not possible to offset gains and losses.	As a general rule taxable at the rate of 21%. Applicable DTT may exempt taxation.	Taxable at the rate of 21%. Applicable DTT may exempt taxation.	Taxable at the rate of 21%. Applicable DTT may exempt taxation.
	INDIRECT TAXATION	TRANSFER TAX	No Transfer Tax applies.	(If transferor is not an entrepreneur or VAT exemption cannot be waived e.g. second transfer of dwellings); 6%-10% (depending on region) payable by purchaser. However, a tax credit of 95 % of the tax quota is applicable to the acquisition of (i) dwellings for lease and (ii) land for promoting dwellings for lease, subject to the compliance with the aforementioned minimum asset holding period.	(If transferor is not an entrepreneur or VAT exemption cannot be waived e.g. second transfer of dwellings); 6%-10% (depending on region) payable by purchaser. No Luxembourg transfer tax applies on real estate located outside Luxembourg.	(If transferor is not an entrepreneur or VAT exemption cannot be waived e.g. second transfer of dwellings); 6%-10% (depending on region) payable by purchaser. 6% Dutch real estate transfer tax only applicable in case of Dutch real estate.	(If transferor is not an entrepreneur or VAT exemption cannot be waived e.g. second transfer of dwellings); 6%-10% (depending on region) payable by purchaser. However, a tax credit of 95% of the tax quota is applicable to dwellings and land if certain minimum holding period requirements are met by the FII.	(If transferor is not an entrepreneur or VAT exemption cannot be waived e.g. second transfer of dwellings); 6%-10% (depending on region) payable by purchaser.	(If transferor is not an entrepreneur or VAT exemption cannot be waived e.g. second transfer of dwellings); 6%-10% (depending on region) payable by purchaser.
		VAT	(If sale not VAT exempt); 21% (applies to urban land, real estate assets under construction and second transfer of real estate assets when VAT exemption can be waived); 10% (new dwellings).	(If transferor is an entrepreneur and sale not exempt); 21% (applies to urban land, real estate assets under construction and second transfer of real estate assets when VAT exemption can be waived); 10% (new dwellings).	(If transferor is an entrepreneur and sale not exempt); 21% (applies to urban land, real estate assets under construction and second transfer of real estate assets when VAT exemption can be waived); 10% (new dwellings).	(If transferor is an entrepreneur and sale not exempt); 21% (applies to urban land, real estate assets under construction and second transfer of real estate assets when VAT exemption can be waived); 10% (new dwellings).	(If transferor is an entrepreneur and sale not exempt); 21% (applies to urban land, real estate assets under construction and second transfer of real estate assets when VAT exemption can be waived); 10% (new dwellings).	(If transferor is an entrepreneur and sale not exempt); 21% (applies to urban land, real estate assets under construction and second transfer of real estate assets when VAT exemption can be waived); 10% (new dwellings).	(If transferor is an entrepreneur and sale not exempt); 21% (applies to urban land, real estate assets under construction and second transfer of real estate assets when VAT exemption can be waived); 4% (new dwellings).
	LOCAL TAXATION	URBAN LAND TAX	Upon transfer of the real estate assets, the holding period is not calculated from the date of acquisition to Sareb but from the original holding period of the aided bank which transferred the real estate asset to the Sareb.	Accrues upon the transfer of urban land, payable by the seller and taxation linked to the cadastral value and the holding period of the real estate asset.	Accrues upon the transfer of urban land, payable by the seller and taxation linked to the cadastral value and the holding period of the real estate asset.	Accrues upon the transfer of urban land, payable by the seller and taxation linked to the cadastral value and the holding period of the real estate asset.	Accrues upon the transfer of urban land, payable by the seller and taxation linked to the cadastral value and the holding period of the real estate asset.	Accrues upon the transfer of urban land, payable by the seller and taxation linked to the cadastral value and the holding period of the real estate asset.	Accrues upon the transfer of urban land, payable by the seller and taxation linked to the cadastral value and the holding period of the real estate asset.
		REAL ESTATE TAX	Accrues annually. The tax rate varies between municipalities, but it ranges between 0. 4% and 1.1% of the cadastral value of the real estate asset.	Accrues annually. The tax rate varies between municipalities, but it ranges between 0.4% and 1.1% of the cadastral value of the real estate asset.	Accrues annually. The tax rate varies between municipalities, but it ranges between 0.4% and 1.1% of the cadastral value of the real estate asset.	Accrues annually. The tax rate varies between municipalities, but it ranges between 0.4% and 1.1% of the cadastral value of the real estate asset.	Accrues annually. The tax rate varies between municipalities, but it ranges between 0.4% and 1.1% of the cadastral value of the real estate asset.	Accrues annually. The tax rate varies between municipalities, but it ranges between 0.4% and 1.1% of the cadastral value of the real estate asset.	Accrues annually. The tax rate varies between municipalities, but it ranges between 0.4% and 1.1% of the cadastral value of the real estate asset.
REGULATORY / CORPORATE	MAIN FEATURES		Hybrid vehicle between Spanish securitization funds and collective investment funds. No legal personality. No minimum number of investors in each FAB. Issuance of securities by a FAB is permitted. FABs can be admitted to trading on an official secondary market and may only be subscribed by professional investors (minimum par unitary value shall be EUR 100,000).	SOCIMIs must be a public limited company ("sociedad anónima") and they must include in their corporate name the abbreviation "SOCIMI, S.A.". Minimum share capital of EUR 5 million. Shares must be registered. No limit to indebtedness. In general their shares must be traded on a regulated market or on a multilateral trading system in Spain or in any other member state of the European Union or in the European Economic Area, or on a regulated market in any other country with which there is an effective exchange of tax information.	Unregulated. Either public limited liability company (S.A.), private limited liability company (S.àr.l.) or partnership limited by shares (S.C.A.). Other types of commercial companies can be envisaged on a case-by-case basis. Minimum capital of EUR 12,500 (S.àr.l., fully paid-up, maximum 40 shareholders) or EUR 31,000 (S.A. and S.C.A., paid up to 1/4th, no maximum number of shareholders). S.A. and S.C.A. may borrow under private placement and public offer (private placement only for S.àr.l.). Listing possible for S.A. and S.C.A.	A limited liability company (besloten vennootschap met beperkte aansprakelijkheid, "B.V.") offers a large degree of flexibility in the governance structure. No minimum share capital is required. The incorporation will be able to take place in one day. In the event that a listing of shares is intended, we advise to use a public limited company (naamloze vennootschap, "N.V."). Also other Dutch types of vehicles can be interesting from a tax perspective e.g. the limited partnership (commanditaire vennootschap).	FIIs are non-financial collective investment institutions, which can be organised as a public limited company (a management company can be appointed) or as a fund (a management company must be appointed). Main business activity must be acquisition of urban real estate assets for their lease (several limits to the investment are applicable). It could be broadly said that FIIs value depends in a significant way on their assets value. At least 100 unit-holders and minimum capital of EUR 9 million will be required for either organizational forms.	Public limited company (S.A.) or limited liability company (S.L.).	N/A
	REGIME APPLICABLE		Law 9/2012 of 14 November 2012 on the restructuring and resolution of credit institutions (formerly Royal Decree-Law 24/2012), Royal Decree 1559/2012, of 15 November, which establishes the legal regime applicable to asset management companies and secondarily securitisation funds and collective investment funds regime.	Law 11/2009, of 26 October that regulates the legal and tax regime of Spanish real estate investment trusts ('SOCIMIs'), as amended by Law 16/2012 of 27 December and subsidiarily Legislative Royal Decree 1/2010 of 2 July, which approved the revised text of the Spanish Companies Act.	N/A	Dutch Civil Code (Burgerlijk Wetboek) and the Financial Supervision Act (Wet op het financieel toezicht). Several useful exemptions apply from the regulatory supervision.	Law 35/2003 of 4 November, on Collective Investment Schemes and Royal Decree 1082/2012, of 13 July, that develops Law 35/2003 on Collective Investment Schemes.	Legislative Royal Decree 1/2010 of 2 July, which approved the revised text of the Spanish Companies Act.	N/A
	GENERAL COMMENT		FABs can be divided in several compartments. A Spanish regulated management company of securitization funds must be appointed. FABs can be created at the initiative of the Sareb, at the request of an investor or at the initiative of an structuration of investment funds, as a structured product for their clients.	In Spain the multilateral trading system for shares is the MAB. Main MAB's listing requirements: Irrespective of any substantial shareholders, companies which apply for listing on the MAB should: (i) be public limited companies; and (ii) reach a free float of at least EUR 2,000,000 distributed among at least 50 shareholders, whose individual stake may not exceed 5%. At this time, the multilateral trading system and the Spanish Securities & Exchange Commission (CNMV) are studying a relaxation of the existing trading requirements for SOCIMIs. Liquidity in SOCIMIs is convenient, since there is freedom to enter and to exit at any time. The amendment introduced by Law 16/2012 softens the initial regulation, mainly by (i) the improvement of the tax regime and (ii) the possibility of trading their shares in a multilateral trading system, with the main goal of reducing the differences between SOCIMIs and REITS and making this vehicle more popular.	There are several other Luxembourg vehicles used for real estate investments. Semi-regulated investment funds, investment vehicles for risk capital, securitization, etc. This is a case by case analysis.	Collective investment schemes are regulated in the Netherlands. However, useful exemptions apply from the license requirement and on-going obligations. Please note that the AIFM Directive will be implemented into Dutch legislation in July 2013.	FIIs are not UCITS. At the time of its acquisition none of the FII's assets may exceed 35% of the equity. Indebtedness ratio may not exceed 50% of the equity. Urban real estate assets of the unit-holders leased or acquired by the FII may not exceed 25% of the equity. FIIs liquidity is relative, since the exit of a FII is possible only in certain moments (liquidity windows), normally 4 per year. Generally, FIIs are used for long-term investments, not for short term investments. Popularity of FIIs has recently decreased.	These unregulated S.A.s/S.L.s have traditionally been the vehicle most commonly used for holding Spanish real estate properties.	N/A

(1) FIIs are Spanish collective investment institutions that can either take the form of funds or companies and only invest in real estate properties.
(2) This is a special regime from which only certain Spanish unregulated corporates can benefit.