

THE REAL ESTATE
INVESTMENT
STRUCTURE
TAXATION
REVIEW

Editors

Giuseppe Andrea Giannantonio and Tobias Steinmann

THE LAWREVIEWS

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This article was first published in August 2019
For further information please contact Nick.Barette@thelawreviews.co.uk

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THE LAWREVIEWS

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
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www.TheLawReviews.co.uk

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Enquiries concerning editorial content should be directed
to the Publisher – tom.barnes@lbresearch.com

ISBN 978-1-83862-026-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ARENDETT & MEDERNACH SA

ARTHUR COX

CHIOMENTI

CUATRECASAS

EPRA

GIDE LOYRETTE NOUEL AARPI

GLEISS LUTZ

HOMBURGER AG

HOUTHOFF

MACFARLANES LLP

ZEPOS & YANNOPOULOS

CONTENTS

PREFACE.....	v
<i>Giuseppe Andrea Giannantonio and Tobias Steinmann</i>	
Chapter 1	FRANCE..... 1
<i>Laurent Modave and Bertrand Jouanneau</i>	
Chapter 2	GERMANY.....23
<i>Johann Wagner</i>	
Chapter 3	GREECE.....35
<i>Marina Allamani and Myrto Stavrinou</i>	
Chapter 4	IRELAND.....57
<i>Fintan Clancy and Brian O'Rourke</i>	
Chapter 5	ITALY76
<i>Giuseppe Andrea Giannantonio and Gabriele Paladini</i>	
Chapter 6	LUXEMBOURG.....101
<i>Thierry Lesage and Stéphanie Maschiella</i>	
Chapter 7	NETHERLANDS123
<i>Rob Havenga and Sandrine Lekkerkerker</i>	
Chapter 8	PORTUGAL.....142
<i>Diogo Ortigão Ramos and Gonçalo Bastos Lopes</i>	
Chapter 9	SPAIN.....161
<i>Meritxell Yus and Carolina Gómez</i>	
Chapter 10	SWITZERLAND183
<i>Stefan Oesterhelt and Jan Seltmann</i>	

Contents

Chapter 11	UNITED KINGDOM	203
	<i>Kirsten Prichard Jones</i>	
Appendix 1	ABOUT THE AUTHORS.....	223
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	231

PREFACE

The real estate sector plays a crucial role in the global economy and social environment.

In particular, the commercial property sector offers the infrastructure needed for the growth and development of entrepreneurship and business, including offices, shops, industrial and logistics premises, and hotels. In Europe alone, commercial real estate represents a business of US\$8.1 trillion.

Business operators often prefer to rent the spaces for carrying out their activity. Therefore, commercial properties are generally held as investments by third-party investors, who buy commercial properties and rent them to business operators.

The real estate sector is also a fundamental source of employment. In 2017, the European real estate sector employed 4 million people, more than the car manufacturing and telecommunications sectors combined. Moreover, it provides residential accommodation and is seen as a tool to meet social and public needs. New types of properties are emerging and have been increasingly included in investment portfolios, such as healthcare, senior living, education and student accommodation.

In this context, attracting new resources and investment from institutional investors, such as pension funds, insurance companies and sovereign wealth funds, is important for the improvement of the real estate sector. In particular, it is desirable that those investors are involved both in financing large development projects and in investing in properties held for rent.

Based on market practice, investments from foreign institutional investors are mainly carried out indirectly, rather than through direct acquisitions, especially through non-listed real estate funds, property companies and real estate investment trusts (REITs).

However, within Europe, the role of the real estate sector as an economic, employment and social catalyst needs to be supported by a legislative framework that increases transparency and competitiveness, and simplifies and standardises bureaucratic processes.

Within the European Union, legislation for the real estate sector differs from country to country and is strictly connected to the location of the real estate properties. For example, transfer taxes due for the disposal of real estate assets are applied based on national tax rules; in addition, in certain countries property taxes due on the ownership of real estate properties are determined and managed by local municipalities and not uniformly at a national level.

Furthermore, income deriving from direct investments in real estate properties under double taxation treaties is taxed in the state where the properties are located and, thus, in certain circumstances, there are negative tax consequences.

In response, national legislators are seeking to introduce and regulate new types of specialised vehicles for investment in real estate properties that may benefit from tax exemptions or other advantageous tax allowances for both direct and indirect tax purposes.

The aim of this volume is to provide a useful guide to those international and institutional investors willing to invest in real estate properties located in Europe, illustrating in a comparative manner different alternatives for the establishment of investment platforms in Europe and investment vehicles at a local level. In particular, each chapter provides insights from leading experts on the tax considerations and investment opportunities based on the specific national legislation.

We would like to thank the authors of this volume for their extensive expertise and for their effort to ensure the successful outcome of this work. We hope that the reader finds this volume useful and we would be grateful to receive any comments and suggestions for its improvement.

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July 2019

FRANCE

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I OVERVIEW

i Investment vehicles in real estate

Vehicles commonly used in France for the investment in real estate properties include both unregulated and regulated vehicles.

Unregulated vehicles are usually in corporate form, such as the simplified joint-stock company (SAS). Entities that are in principle transparent for tax purposes are also often used, e.g., the private property company (SCI), or, in certain specific circumstances the general partnership (SNC). The SCI is a corporate form that is well suited to the operation of one or more buildings but is not suitable for the development of an investment company open to a large number of shareholders.

Regulated vehicles may be listed vehicles such as listed real estate investment companies (SIIC) or non-listed vehicles such as collective investment funds in real estate (OPCI) or real estate investment trusts (SCPI). OPCIs themselves may have two forms either that of a SPPICAV (open-ended investment company with predominantly real estate assets) and that of an FPI (real estate investment fund).

The choice of vehicle depends on facts and circumstances relating to the investors status, nature of transaction, term of expected return and tax issues (e.g., registration duties and VAT).

ii Property taxes

Income taxes

The ownership and the disposal of real estate assets in France triggers the following income taxes in France depending on whether the owners are individuals or companies, and on whether they are French tax residents.

- a* for French companies subject to corporate income tax (CIT), any income derived from real estate assets (e.g., rental income and capital gains arising from its disposal) is subject to CIT;
- b* for French individuals, any income derived from real estate assets triggers individual income tax; and
- c* for non-residents, any rental income derived from real estate assets located in France is subject to CIT or individual income tax, but capital gains arising from the disposal of shares in land-rich entities or the sale of real estate assets are subject to different withholding taxes.

¹ Laurent Modave and Bertrand Jouanneau are partners at Gide Loyrette Nouel AARPI.

Property taxes

The ownership of real estate assets located in France may be subject to various property taxes such as property tax and the annual 3 per cent tax on French real estate.

In addition, individuals (whether French or foreign) may be subject to the real estate wealth tax.

CET

Investment vehicles may fall within the scope of CET, which has two components: a 'real estate contribution', the CFE, and an 'added value contribution', the CVAE. The CFE and the CVAE are payable on an annual basis.

Indirect taxes on sale of real estate assets

The sale of real estate assets triggers registration duties and other fees, mainly the real estate transaction formalities fee (CSI) and notarial fees. Furthermore, the acquisition of real estate assets may be subject to VAT depending in particular on whether the seller is a VAT payer and whether the real estate assets were built less than five years ago. In this respect, the application of VAT may impact the rate of registration fees.

II ASSET DEALS VERSUS SHARE DEALS

i Legal framework

Real estate assets may be acquired either as a direct purchase of the real estate assets or the purchase of a private company owning the real estate assets (by way of a share purchase agreement).

Both structures are common in practice and an analysis must be done on a case-by-case basis taking into account the following aspects: tax impact (e.g., capital gains tax, VAT and registration duties); due diligence effort (more significant in case of share deals); and risk assumption, whereby the purchaser must assume risks related only to the real estate assets (asset deal) or related both to the real estate assets and the owning company (share deal).

ii Corporate forms and corporate tax framework

Corporations

The most common unregulated commercial property companies used in France for investment in real estate properties adopt the SAS corporate form, governed by Articles L. 227-1 et seq. of the French Commercial Code. This choice is due in particular to the flexibility offered by this corporate form, compared to other commercial companies.

CIT rates

An SAS is subject to CIT under standard conditions.

The standard CIT rate is currently 28 per cent for profits below €500,000 and 31 per cent thereafter (32.02 per cent if the social contribution applies).² This rate is, however, subject to significant changes since it should be reduced to 25 per cent by 2022 (25.82 per cent if the social contribution applies).

Net taxable income

An SAS is subject to CIT on a tax base equal to the accounting income resulting from the profit-and-loss account, duly adjusted according to the tax rules (e.g., expenses deductible for tax purposes).

As a general rule, expenses are deductible for tax purposes provided that they are incurred in the direct interest of the company; related to normal business management (not excessive or fictitious); recorded in the company's accounts (with relevant supporting documents such as invoices); and not incurred as a counterpart to fixed assets (including real estate assets).

Acquisition costs

From a French GAAP perspective, the transfer costs (such as registration duties, notary's fees, real estate transaction formality fees and valuation fees) related to the acquisition of a real estate asset can be either immediately deducted by the purchaser as an expense or included in the gross value of the property. From a tax standpoint, the same rule applies, except when transfer costs are borne by the seller.

Depreciation of the real estate asset

The value of the real estate asset booked in the accounts of the SAS must be allocated between the land, which cannot be depreciated, and the built elements, which can be depreciated. The built elements are depreciated pursuant to the component method: the depreciation schedule is broken down by component and each component must be depreciated over its useful life.

Loss in the value of land may only be taken into account by way of provisions for impairment.

Interest deduction

Interest arising from loans is deductible subject to compliance with the French interest deduction rules, and in particular with the following rules.

Interest rate limitation

Pursuant to Article 39(1)(3°) of the French Tax Code (FTC), interest on loans granted by direct shareholders is deductible from the borrowing company's taxable income:

- a* if the share capital of the borrower is fully paid up; and
- b* up to the level of the average effective floating rate, published every quarter, on bank loans with a minimum maturity of two years (1.47 per cent for the 2018 calendar year).

² This 3.3 per cent contribution is based on the amount of CIT less an allowance of €763,000. In this respect, it only applies to companies whose CIT is higher than this amount.

In principle, where the loan is granted by a related entity,³ the interest rate limitation also applies but a deduction of interest equal to a higher rate may be allowed if that rate was agreed between the entities at arm's length. In this respect, according to the guidelines published by the French tax authorities, the borrowing entity is deemed to have proved that the interest rate borne is at arm's length if it is able to provide a binding fee quotation from third party financial institutions for loans having the same characteristics as at the date of subscription of the shareholder loan.

Anti-hybrid limitation

Article 212(I)(b) of the FTC provides that interest paid or accrued in a given year by a French company to a related entity can only be deducted if the French payer can demonstrate that the lender is liable in respect of the interest income to a corporate income tax burden at least equal to one-quarter of the French regular CIT.

General deduction threshold

The Finance Law for 2019 has substantially modified the rules restricting the deduction of financial expenses with effect from 1 January 2019, in order to implement EU Anti-Tax Avoidance Directive (ATAD) rule.

Under these new rules, the aggregated net financial expenses⁴ of a company are deductible up to €3 million or up to 30 per cent of its adjusted earnings before interest, tax, depreciation and amortisation (EBITDA), whichever is higher.

In the event that a related party debt-to-equity ratio of 1.5 is exceeded at the level of the borrowing company, a fraction of the aggregate net financial expenses of the company is deductible only up to €1 million or 10 per cent of the adjusted EBITDA, whichever is higher.

A broad range of financial expenses are included in the scope of this new limitation. Indeed, financial expenses are defined as interest over any kind of debt including in particular capitalised interest included in the balance sheet value of a related asset.

However, the fraction of non-deductible net financial expenses can be carried forward under certain conditions.

Partnerships

Investment by unregulated non-commercial companies is mainly made through SCIs. SCIs are in principle transparent for tax purposes: no direct tax is chargeable at the company level and instead the partners are taxed on their share of profits according to their own tax rules.

SCIs may however elect for the application of CIT. SCIs are also subject to CIT if they carry out a commercial activity (e.g., property trading). Therefore, in order to keep their tax transparent status, SCIs are mainly used to hold buildings in view of renting them out.

3 According to Article 39(12) of the FTC, two entities are to be regarded as related if one of the entities directly or indirectly holds the majority of the other entity's share capital or has de facto decision-making powers in that entity, and both entities are under the control of the same third entity.

4 Financial expenses net of financial income.

iii Direct investment in real estate

Indirect taxes on purchase

Registration duties and other fees

Registration duties and other fees on purchase are as follows for real estate assets built more than five years before the sale:

- a* Registration duties: 5.81 or 5.09 per cent depending on the department where the property is located (subject to certain exemptions, e.g., commitment to build: €125; or commitment to resell: a reduced rate of 0.715 per cent);
- b* Real estate transaction formality fee (CSI): 0.10 per cent;
- c* Notary's fees: 0.814 per cent excluding VAT (before negotiation); and
- d* an additional tax of 0.6 per cent on transfers of offices, commercial premises and storage located in the Ile-de-France region.

The acquisition of 'building plots' and real estate assets built within the previous five years benefit from a reduced rate for registration duties of 0.715 per cent and are exempt from the 0.6 per cent additional tax if the sale is subject to VAT on the total price (and not on the margin).

VAT

The acquisition of real estate assets located in France may be subject to VAT depending on the transaction's legal and material features (e.g., date of completion of the building, scale of works carried out on that building), and whether the seller is a VAT payer.

VAT is based on EU law and is in principle a neutral tax. Depending on the purchaser's business activities, VAT paid on the acquisition of real estate may be recovered by offsetting it against VAT collected on other transactions (e.g., property rents) or by directly claiming a refund from the tax authorities.

The following operations are subject to VAT according to Article 257 of the FTC:

- a* the supply of land defined as a 'building plot' by a taxable person acting as such; and
- b* the supply of a new building by a taxable person acting as such (i.e., buildings completed less than five years previously, regardless of whether they are the result of new building or works on existing buildings that involved raising their height or significant renovation).

The VAT base is in principle the sale price. In specific cases, the VAT base is the margin of the transaction, namely the difference between the price of the initial acquisition and the price of the subsequent sale, if it is established that the acquisition did not give rise to a right to deduct VAT (e.g., the sale of a building plot acquired from a taxpayer not subject to VAT). The standard VAT rate of 20 per cent applies.

Transactions exempt from VAT (i.e., the sale of land that is not defined as a 'building plot' or the sale of a building completed more than five years earlier) result in principle in the loss of the right to deduct input VAT. In addition, if input VAT deduction is granted at the time of the acquisition of the assets or during the holding of the assets, that deduction is, however, subject to the condition that the relevant asset is used for the purposes of taxable supplies over a certain period of time (20 years for real estate assets). Changes affecting the VAT status of the assets such as a non-taxable transfer entail the obligation for the taxable person to adjust input VAT deducted at the time of the acquisition or during the holding of the asset.

To avoid these disadvantages, the supplier may elect to subject real estate transactions to VAT under the standard conditions (or they may charge back the VAT regularisations to the acquirer). The election must be stated in the acquisition deed.

In practice, however, the majority of transfers occur under the suspension regime set out in Article 257 *bis* of the FTC when the real estate is transferred through a 'universality of business'. When the building is used for a rental activity, the application of the VAT neutrality regime is subject to the following conditions:

- a* the property must be leased at the time of its acquisition;
- b* both the seller and purchaser must have validly elected for VAT on rents; and
- c* the property must be recorded as fixed assets in the books of the seller (and not as trading stock) and must also be recorded as such in the books of the purchaser.

Under that regime, the purchaser is deemed to be the seller for the purposes of VAT and, accordingly, these conditions are usually reflected in the acquisition deed.

French taxes levied as a consequence of real estate ownership in France

Real estate wealth tax

The former wealth tax (ISF) was abolished by the Finance Law for 2018 and replaced by a wealth tax assessed on real property and real property rights only (IFI).

Real estate wealth tax applies to individuals (whether French or foreign) who own real estate assets directly or indirectly through real estate companies or real estate investment funds (subject to specific exemptions, e.g., interests in SIIC are excluded from the tax base if a taxpayer holds less than 5 per cent of the share capital and voting rights) to the extent that their overall net value exceeds the threshold of €1.3 million. All taxable assets must be assessed at their fair market value on 1 January of the relevant year.

French tax residents are subject to real estate wealth tax on their worldwide assets, whereas non-residents are subject to real estate wealth tax only on their assets located in France. Real estate net wealth tax is assessed according to progressive rates from 0.5 to 1.5 per cent.

Property tax

French property tax applies both to developed and undeveloped property located in France. This is a direct local tax that is payable annually by the legal owner of the property on 1 January of the relevant year.

The tax on developed property is assessed on the notional rental value of the property determined by the local official land registry. The tax is obtained by multiplying half of this rental value (to take into account management, insurance, depreciation, maintenance and repair costs) by coefficients determined annually by the local authorities.

The tax on undeveloped property mainly applies to privately owned land and forestry. It is also assessed on the notional rental value of the property and is obtained by multiplying 80 per cent of that rental value by coefficients determined by the local authorities.

The FTC provides for some exemptions. For instance, publicly owned buildings used for public services that do not generate income, buildings used for public religious worship, property owned by foreign states used for housing diplomatic missions are exempt from the tax on developed property. Newly developed properties also benefit from a temporary exemption of two years (under certain conditions).

Annual 3 per cent tax on French real estate

All entities (regardless of their nationality, and including trusts, partnerships or comparable organisations with or without legal personality) that, directly or indirectly, own real estate assets located in France are in principle subject, every year, to a tax equal to 3 per cent of such assets' fair market value, as determined on 1 January of each year.

For these purposes, an entity is deemed to own a real estate asset indirectly where it owns an equity interest in a lower-tier entity which itself owns the asset (either directly or through any number of tiered intermediary entities).

All intermediary entities in an ownership chain are jointly liable for the payment of any 3 per cent tax due by any higher-tier entity in that chain.

However, the FTC provides for various exemptions from the 3 per cent tax: international organisations, sovereign states, their political and territorial subdivisions, as well as any legal entities, organisations, trusts or comparable institutions in which they hold a controlling interest. SPPICAVs and FPIs are also exempt from this tax, provided that they are not constituted in the form of a professional OPCI.

Entities established in a jurisdiction that has concluded a tax treaty with France containing a tax administrative clause are entitled to full exemption under the standard disclosure procedure, by either filing an annual return or making an undertaking to provide the French tax authorities with certain items of information upon their request. The information to be provided is the following:

- a* the situation, nature and market value of the French real estate on 1 January;
- b* the identity and address of the stockholders, shareholders or other members holding more than 1 per cent in the declaring entity; and
- c* the number of stocks, shares or other rights held by each of the stockholders, shareholders or other members holding more than 1 per cent in the declaring entity.

Direct taxes arising during ownership and on disposal of real estate

Income taxes during ownership

Rents from real estate assets are subject to direct taxation in France. The tax regime will vary depending on the nature of the investor.

In this respect, CIT applies to most companies owning real estate assets located in France, whether the company is tax resident in France or abroad. A number of arm's-length expenses and costs may be deducted against the company's taxable rental income.

When real estate assets are owned by individuals (directly or through a tax transparent company), the solution will depend on whether individuals are French tax resident or not. French tax residents are subject to the progressive scale of individual income tax (maximum 45 per cent marginal rate) and welfare contributions (17.2 per cent).

Non-resident individuals are also subject to the progressive scale of individual income tax but at a minimum rate of 20 per cent, unless they can prove that the rate of individual income tax on all of its French or foreign income would be lower than 20 per cent, in which case this lower rate is then applicable to their French income. Welfare contributions also apply at the rate of 7.5 per cent for individuals who are resident in an EU Member State or in Iceland, Norway, Liechtenstein or Switzerland and at the rate of 17.2 per cent for individuals who are resident in other countries.

Income taxes on disposal

Income taxes will arise on the disposal of French real estate assets. The tax regime will also depend on the nature of the investor.

The capital gains made by French companies on the disposal of real estate assets are subject to CIT at the standard rate. Individuals who are French tax residents are subject to individual income tax at a specific rate of 19 per cent and welfare contributions (17.2 per cent) but they may benefit from a deduction based on the length of time the property was held.

Non-resident companies and individuals are subject to the withholding tax provided for in Article 244 *bis* A of the FTC. The withholding tax rates are the same as those specified above: the standard rate of CIT for companies and 19 per cent for individuals. Welfare contributions also apply at the rate of 7.5 per cent for individuals who are resident in an EU Member State or in Iceland, Norway, Liechtenstein or Switzerland and at the rate of 17.2 per cent for individuals who are resident in other countries.

Permanent establishment issues

The mere ownership and leasing of real estate assets in France by a non-resident company does not, per se, give rise to a permanent establishment (PE) in France.⁵

Income from French real estate assets and capital gains on their disposal are subject to French taxes, regardless of whether there is deemed to be a PE in France.

With respect to income from real estate assets located abroad, the French tax authorities consider that income received by a French owner company is to be included in the tax base for CIT if there is no link to a PE located outside France.

iv Acquisition of shares in a real estate company

Indirect taxes on acquisition of shares

Registration duties

The acquisition of shares triggers registration duties, but the applicable rate depends on whether the legal entity qualifies as a predominantly real estate entity.

According to Article 726(1)(2°) of the FTC, legal entities are deemed to be predominantly real estate entities for the purposes of registration duties if, regardless of their nationality, their shares are not traded on a regulated market and their assets primarily comprise, or have primarily comprised over the course of the preceding year, real estate properties or rights situated in France or holdings in other legal entities of any nationality, the shares of which are not traded on a regulated market, that are themselves predominantly invested in real estate. A legal entity's assets are deemed to be primarily comprised of real estate assets if the fair market value of the real estate assets represents more than 50 per cent of the fair market value of the entity's total assets at any time during the year preceding the transfer of the shares.

The sale of shares in a predominantly real estate entity is subject to a 5 per cent registration duty.

⁵ See French Administrative Supreme Court, 31 July 2009, No. 296471, *Sté Overseas Thoroughbred Racing Stud Farms Limited*.

The sale of shares in a non-predominantly real estate entity is subject to the following registration duties:

- a* Sale of shares in a joint-stock corporation (SA), SAS or partnership limited by shares (SCA): 0.1 per cent. For listed companies, registration duties apply only if the sale is evidenced by a deed.
- b* Sale of shares in other corporate forms, private limited company (SARL), SNC, civil society: 3 per cent of the purchase price minus a sum equal to the number of shares sold multiplied by €23,000 and divided by total number of the company's shares.

Registration duties are assessed on the sale price, or on the fair market value if higher.

VAT

There is no French VAT on the acquisition of shares in a real estate company.

Taxes on share income

Dividends paid by a French company to its shareholders are taxed as follows.

French shareholding companies (not transparent for tax purposes)

Dividends are in principle included in the taxable income subject to the standard CIT rate. Parent companies may, however, elect for the 'parent-subsidiary regime' under certain conditions, for example directly holding an interest of 5 per cent of the share capital of the distributing subsidiary for at least two years. In that case, dividends are exempt from CIT save for an add-back amounting to 5 per cent of the dividends received (or 1 per cent for companies in the same tax consolidated group).

French individual shareholders

Dividends are subject to the French flat tax (PFU) at the rate of 12.8 per cent or, if the taxpayer elects for the global progressive-rate taxation of all of their income, at the relevant tax bracket for individual income tax in the category of investment income in accordance with the rules applicable to income deriving from shares (with, where applicable, a 40 per cent allowance). However, subject to certain exceptions, before being subject to the PFU or, on electing the global approach, to the progressive income tax brackets, investors are subject to a 12.8 per cent mandatory non-final withholding tax. In practice, the rates of the flat tax and the mandatory non-final withholding tax are the same and, therefore, payment is made at the time of the withholding tax (except in the case of global election). Dividends are also subject to welfare contributions (17.2 per cent), meaning that dividends are taxed at an overall rate of 30 per cent if the PFU applies.

Non-resident shareholders

Subject to applicable double tax treaties, French-source dividends are in principle subject to a withholding tax at a rate of 30 per cent (Article 119 *bis* 2 of the FTC). By way of exception, the applicable rate is 12.8 per cent for non-resident individuals and, under certain conditions, 15 per cent for non-profit organisations and French or foreign

collective investment undertakings. In addition, no withholding tax applies under the EU Parent-Subsidiary Directive, as implemented in France (Article 119 *ter* of the FTC), provided that the non-resident shareholder, as beneficial owner of the dividends:⁶

- a* has one of the legal forms listed in the Annex to the Directive;
- b* has its place of effective management in an EU Member State or in Iceland, Norway or Liechtenstein;
- c* is liable to CIT (without the possibility of benefiting from an exemption or of electing for CIT);
- d* has held or undertakes to hold at least 10 per cent of the capital of the distributing company for at least two years; or
- e* holds a shares in a company that is subject to CIT at the standard rate.

Dividends paid in a non-cooperative state or territory may be subject to a 75 per cent withholding tax.

Taxes on capital gains

Preliminary remark: discount for latent capital gains tax

In the case of share deals, the purchaser may request a discount on the share purchase price because of latent taxation. The purpose of this practice is to offset latent tax liabilities, based on the unrealised capital gains on the company's real estate assets at the date of valuation of the company's shares. Indeed, the purchasers of shares in such a company may have to bear this tax liability in the event of a subsequent sale of the property by the company.

However, according to a recent court decision that has clarified the situation, no discount should be requested by the purchaser in the case of the acquisition of shares in a tax transparent entity such as an SCI, as such a purchaser should be entitled to cancel any latent tax liabilities on the real estate asset through a dissolution without liquidation of the SCI immediately after its acquisition.⁷

Income taxes on disposal of shares

The taxation of capital gains on shares of French companies is as follows.

French companies holding shares (not tax transparent)

Capital gains realised on the sale of shares in companies that are predominantly invested in real estate are subject to CIT under standard conditions (except for real estate listed companies for which a rate of 19 per cent applies under certain conditions: see Section IV.ii, 'Scope of the election').

6 However, after the implementation into French law of the new EU anti-abuse clause, the withholding tax exemption will not apply to dividends distributed 'in an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose [of this exemption], are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part. For the purposes of [these provisions], an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.'

7 After a period of some uncertainty, the French Administrative Supreme Court has just confirmed (Conseil d'Etat, 24 April 2019, No. 412503, *Société Fra SCI*) its *Quemener* case law (Conseil d'Etat, 16 February 2000, No. 133296, *Sté anonyme Établissements Quemener*).

Capital gains realised on the sale of shares in companies that are not predominantly invested in real estate are also subject to CIT under standard conditions but they may be eligible for the participation exemption regime if in particular the seller has held a 10 per cent interest for at least two years: in such cases, capital gains are exempt from CIT, save for an add-back amounting to 12 per cent of the capital gain. Thus, such a capital gain would be taxed at the effective CIT rate, which is 3.72 per cent in 2019 under currently applicable law (or 3.84 per cent if the social contribution applies).

French individual shareholders

Capital gains realised on the sale of shares in non-transparent entities (whether predominantly invested in real estate or not) are in principle subject to the PFU at the rate of 12.8 per cent or, if the taxpayer elects the global progressive tax rate on all their income, at the relevant tax bracket for individual income tax. Capital gains are also subject to welfare contributions (17.2 per cent), meaning that capital gains are taxed at an overall rate of 30 per cent if the PFU applies.

Capital gains realised on the sale of shares in a tax transparent real estate entity, such as an SCI, are in principle subject to the same tax regime as applicable to a direct sale of the real estate asset: they are subject to individual income tax at a specific rate of 19 per cent and to welfare contributions (17.2 per cent), but they may benefit from a deduction for the duration of the holding of the shares.

Non-resident shareholders

Subject to applicable double tax treaties, capital gains realised on the sale of shares in companies that predominantly invest in real estate⁸ are subject to the withholding tax of Article 244 *bis* A of the FTC, namely the standard rate of CIT for companies and 19 per cent for individuals. Article 244 *bis* A applies for sales of shares in SIICs and SPPICAVs, provided that, in both cases, the transferor directly or indirectly holds at least 10 per cent of the share capital of the company whose shares are transferred.

Subject to double tax treaties, capital gains realised on the sale of shares in companies that do not predominantly invest in real estate, are in principle subject to the withholding tax of Article 244 *bis* B of the FTC only if the shareholder holds or has held (with their family members) at any time over the last five years a substantial shareholding, namely more than 25 per cent of rights to profits of the company whose shares are transferred.

In brief, registration duties are in principle lower and the taxation of capital gains is sometimes lower in the case of share deals. However, asset and liability guarantees may often be required by the buyer.

8 For the purposes of Article 244 *bis* A of the FTC, companies that predominantly invest in real estate are defined as French non-listed companies whose assets, at the end of the three financial years preceding the sale, mainly comprise real estate assets or rights, directly or indirectly.

III REGULATED REAL ESTATE INVESTMENT VEHICLES

i Regulatory framework

The OPCI was created by ordinance of 13 October 2005.⁹ OPCIs are unlisted real estate investment funds, having as their main object the acquisition or construction of properties for the purpose of letting or holding interests in companies with predominantly real estate assets.

ii Overview of the various regulated investment vehicles

Corporate forms and Articles of Association

As stated in Section I.i, OPCIs may have one of two forms, either that of a SPPICAV (open-ended investment company with predominantly real estate assets) and that of an FPI (real estate investment fund). SPPICAVs may have the corporate form of an SA or an SAS. The latter form is much more widely used in practice, owing to its flexibility compared to the SA. SPPICAVs are subject both to the special provisions of the Monetary and Financial Code and the general provisions applicable to SAs and SASs, with certain exceptions.

The FPI is a co-ownership of real estate assets, financial instruments and other assets, without having its own legal personality. The rules of the Civil Code on joint ownership and partnerships are not applicable to it.

In practice, virtually all existing OPCIs are SPPICAVs. With the exception of FPIs dedicated to furnished rented properties, FPIs have not been widely adopted in the market, doubtlessly owing to competition from SCPIs.

An OPCI's objects clause

The main objects of an OPCI are the direct or indirect investment in properties intended for rent, the construction of properties intended exclusively for rent, holding directly or indirectly such properties, carrying out works of any nature on these properties with a view to their letting and carrying out all operations required to use or resell the real estate assets that it holds. On the other hand, it cannot carry out transactions corresponding to property trading (the purchase of properties for resale) or real estate development (the construction of property for sale).

On an incidental basis, an OPCI may directly or indirectly acquire (with a view to renting them out) furniture and furnishings, equipment and all moveable property allocated to the real estate and required for its operation, use and exploitation by third parties.

The objects of an OPCI may also include the management of financial instruments and deposits. This possibility is essentially used by retail OPCIs, which need to have a purse of liquid assets in order to manage unit redemption requests from their unit holders.

Composition of assets and ratios

The property and rights that are eligible as assets of an OPCI are exhaustively defined by the CMF. For real estate assets, this list is particularly broad, since in essence it covers all real estate and real property rights, financial leasing contracts for real estate purposes, shares in unlisted real estate subsidiaries, and shares in listed real estate companies.

⁹ Ordinance No. 2005-1278 of 13 October 2005 defining the legal framework governing OPCIs and the method for transforming real estate investment companies (SCPIs) into OPCIs.

However, the list excludes holdings in entities, irrespective of their corporate form, in which the partners or members have unlimited joint and several liability for the debts of the entity. In practice, this exclusion concerns the SNC and the unregistered partnership (SEP).

A minimum of 60 per cent of an OPCI's assets must be real estate assets. This ratio must be met on 30 June and 31 December of each financial year, at the end of a period of three years following approval by the French financial markets authority (AMF). This quota must also be met at least seven times per fixed period of five years. If the OPCI directly or indirectly holds controlled interests, this is assessed on a consolidated basis, meaning as if the properties were directly held by it.

Legal framework

The legal framework governing the OPCI is defined by Articles L. 214-33 et seq. of the Monetary and Financial Code (MFC). Several items of secondary legislation complete the framework, in particular the AMF's General Regulation.

OPCIs are alternative investment funds (AIFs). The formation, transformation, merger, demerger and liquidation of an OPCI are subject to approval issued by the AMF. An OPCI's units or shares can only be marketed after obtaining this approval. The AMF also defines the conditions under which an OPCI must inform its subscribers and may be the subject of advertising and soliciting.

OPCIs that are 'opened to non-professional investors' are subject to strict rules, particularly in matters of risk spreading and asset ratios. Intended for the general public, these retail OPCIs are 'open' funds from which investors may withdraw by requesting the redemption of their units at net asset value.

On the other hand, the professional collective investment fund in real estate (OPPCI) is intended for professional investors. OPPCIs benefit from flexibility in numerous ways compared to the retail vehicle. In particular, they are not subject to any restriction concerning risk spreading and may therefore hold a single asset.

Involved parties

OPCIs are managed by an AMF-licensed portfolio management company, which represents it with respect to third parties and is under the supervision of a depositary.

The depositary, appointed by the OPCI, is a credit institution or investment firm, having its registered offices in France. Its duties mainly involve auditing the inventory of the OPCI's assets, acting as custodian for its non-real estate assets and ensuring the legality of decisions of the OPCI and of the management company. The depositary also provides for the payment of capital gains tax on behalf of unit holders for gains made directly or indirectly by the investment fund.

In addition to this classic form of supervision, OPCIs are subject to periodic checks by real estate valuers. Real estate valuers are experienced professionals in property valuation, appointed by the OPCI or the management company after approval by the AMF. The role of the real estate valuers is to value the real estate assets, properties and real property rights that are held directly or indirectly via unlisted companies. The management company is responsible for valuing the real estate assets at market value, basing itself on the work carried out by the valuers.

iii Tax payable on acquisition of real estate assets

The tax regime for the OPCI's acquisition of real estate is not affected by its status as a regulated vehicle. Real estate capital gains tax, registration duty and VAT will apply under the standard legal conditions for the OPCI's real estate acquisitions.

iv Tax regime for the investment vehicle

Situation of SPPICAVs regarding corporate income tax

SPPICAVs are exempt from corporate income tax under Article 208(3°) *nonies* of the FTC. This exemption is not limited to income from their real estate activity but covers all of their profits. In return, SPPICAVs are obliged to distribute a large part of their profits each year, in order to ensure their taxation in the hands of the shareholders.

According to the authorities, this exemption is subject to the condition that the SPPICAV complies with 'the conditions of approval, investment and operation as provided for in Article L. 214-33 et seq. of the monetary and financial code, including compliance with the distribution requirements'.¹⁰ In other words, according to the authorities, infringing this condition would lead to the SPPICAV having to pay CIT.

Other than the distribution requirements described below, it is also necessary to be careful to comply with the legal framework set out above.

Distribution requirements

According to Article L. 214-69 of the Monetary and Financial Code, SPPICAVs must distribute:

- a* at least 85 per cent of their net rental income before the end of the fifth month of the financial year following that in which it was earned;
- b* at least 50 per cent of capital gains on the disposal of real estate assets before the end of the fifth month of the second financial year following that in which they were made; and
- c* 100 per cent of dividends paid to them by their real estate subsidiaries that are exempt from CIT, before the end of the fifth month of the financial year following that in which they were received.

Income not referred to above is not subject to any distribution requirements;¹¹ such income may be distributed or capitalised by the SPPICAV.

Situation of a SPPICAV's subsidiaries

If a subsidiary is a tax transparent SCI, the share of earnings to be passed on to the SPPICAV is exempt from CIT at its level.

10 BOI-RPPM-RCM-20-10-30-10-20160711, No. 150.

11 This concerns, in particular, the income from short-term financial investments, dividends distributed by listed real estate companies in which the SPPICAV is a shareholder (including where these listed companies have elected to apply the SIIC regime or benefits from equivalent status abroad), and income and capital gains pertaining to real estate assets located outside France.

If the subsidiary is an SAS or SARL having the same objects as a SIIC, it may elect to apply the tax regime laid down in favour of SIICs, provided at least 95 per cent of its capital is held by an SPPICAV, by several SPPICAVs jointly, or by one or more SPPICAVs and one or more SIICs.

v Tax regime for investors

Distributed earnings

Subject to certain specific rules, the taxation of distributed earnings follows the standard law set out above in the section on share deals.¹²

French-resident individuals who elect to apply the progressive tax rates for personal income tax, however, cannot benefit from the 40 per cent tax allowance, as distributed dividends arising from an SIIC's exempt income are expressly excluded from the benefit of the tax allowance by Article 158(3°)(b) *bis*.

Similarly, the parent company regime, which under certain conditions involves a virtually complete exemption for subsidiaries' dividends, is not applicable to the dividends of a SPPICAV to the extent that they are exempt from CIT.

As for the 30 per cent withholding tax provided for in Article 119 *bis* 2 of the FTC, applicable to non-residents, tax treaties generally do not allow shareholders to benefit from the reduced rate withholding tax specified in the treaties for income from SPPICAVs, since it is completely exempt from CIT and therefore they do not have the capacity of 'resident' for the application of the tax treaties. Exceptionally, certain tax treaties expressly provide for the situation of OPCIs and allow shareholders whose holding in the OPCi does not exceed 10 per cent to benefit from the lower rate of 15 per cent. That is the case for tax treaties concluded by France with the United States, the United Kingdom, Germany and China. It is also the case for the new tax treaty between France and Luxembourg, signed on 20 March 2018.

Capital gains on the sale of shares

The gains made on the sale or redemption of SPPICAV shares by shareholders who are natural persons are subject to the regime of capital gains tax on securities under the ordinary conditions of the law.¹³

Capital gains made by investors that are legal entities, on the sale or redemption of their shares, are included in profits taxable at the ordinary rate, because OPCi shares are expressly excluded from the scope of the participation exemption regime for capital gains.

As a general rule, the sale or redemption of OPCi shares or units is exempt from registration duty.

However, a 5 per cent transfer tax applies on:

- a the sale of shares in a SPPICAV when:
- the purchaser is a corporate entity or a fund that holds (or that will acquire, pursuant to such sale) more than 20 per cent of the shares in the SPPICAV; and
 - the purchaser is an individual who holds (or who will acquire, pursuant to such sale) more than 10 per cent of the shares in the SPPICAV; and

12 See Section II.iv, 'Taxes on share income'.

13 See Section II.iv, 'Income taxes on disposal of shares'.

- b the redemption of shares by a SPPICAV when:
- the investor from which the shares are redeemed is a corporate entity or a fund that holds more than 20 per cent of the shares in the SPPICAV;¹⁴ or
 - the investor from whom the shares are redeemed is an individual who holds more than 10 per cent of the shares in the SPPICAV.

IV REAL ESTATE INVESTMENT TRUSTS AND SIMILAR STRUCTURES

i Legal framework

The SIIC legal framework is a tax regime created by the Finance Law of 30 December 2002 with the aim of strengthening the attractiveness of France in real estate matters and facilitating the financing of tertiary sector real estate. It is grounded in Article 208C of the FTC, which lays down the conditions to be met to benefit from an exemption from CIT, and the obligations arising as a consequence.

The essential feature of this tax regime, inspired by the tax treatment of real estate investment trusts (REITs) in the United States, is that it institutes, for listed real estate companies, a system for taxing profits at the level of the shareholder, with the company itself not subject to CIT owing to its strictly real estate activities. To transfer the tax burden to shareholders effectively, SIICs are obliged to distribute a significant fraction of their profits every year.

As listed companies, SIICs are also subject to regulations applicable to the offering of securities to the general public and the admission of securities to trading in a regulated market.

However, the application of SIIC status is not otherwise tied in to a specific regulatory framework. In particular, SIICs are not subject to the rules applicable to AIFs.

ii Requirements to access the regime

Companies concerned

SIICs

Companies may elect to apply the SIIC regime if their shares are admitted for trading in an eligible regulated market,¹⁵ they have a registered capital of at least €15 million and their main object is the acquisition or construction of real estate with a view to its rental or the direct or indirect holding of interests in companies having an identical corporate object.¹⁶

SIICs are not subject to a requirement of exclusivity of their objects. Thus, the exercise of other activities on an incidental basis, not corresponding to their main object, such as that of real estate trading, property marketing and property development, will not cause them to lose the benefit of the legal regime. However, the income from these other activities will be

14 However, the 5 per cent duty does not apply to an investor from which shares are redeemed when such investor is itself an OPCI.

15 Regulated markets having their registered office or head office in the European Union, in a state that is a member of the European Economic Area or located outside the European Economic Area on condition that they operate under rules identical to those laid down by Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

16 The sublet of properties possessed via financial leasing is in accordance with the main object of SIICs (Res., No. 2011/6, 12 April 2011; BOI-IS-CHAMP-30-20-10, No. 360).

taxable under standard conditions. According to the authorities, to be deemed incidental the value of the assets used to carry on this business should not exceed 20 per cent of the gross value of the SIIC's assets. It is also acceptable for SIICs to carry on, on an incidental basis, an activity taxable under the framework for real estate financial leasing as long as no more than 50 per cent of the SIIC's assets comprise the amount outstanding under financial leasing contracts for real estate.

The SIIC's capital or voting rights must not be directly or indirectly held for 60 per cent or more by one or more persons acting together within the meaning of Article L. 233-10 of the Commercial Code. This condition is to be assessed during each financial year in which the regime is applied. The capital holding limit must be complied with in the first financial year covered by the election. This condition does not apply to the fraction of capital held by an SIIC or by SIICs acting together (or foreign companies whose working and tax regime are comparable to the French SIIC).

If the 60 per cent threshold is exceeded during a financial year, the exemption regime is temporarily suspended, subject to certain exceptions, and the SIIC and its subsidiaries are subject to CIT under the ordinary conditions of the law for the financial year in which the 60 per cent threshold is exceeded.

Finally, SIICs are subject to a capital spread condition. Article 208(C) of the FTC provides that 15 per cent of the company's share capital and voting rights must be spread among persons who each hold, directly or indirectly, less than 2 per cent. However, this condition only needs to be met on the first day of the first financial year in which the regime is applied.

The SIIC's subsidiaries

If they are subject to CIT, an SIIC's subsidiaries having identical corporate objects may also elect to apply the SIIC regime as long as they are continuously held by at least 95 per cent by one or more SIICs over the financial year.

SIICs may also invest via subsidiaries in the form of tax transparent partnerships (SCI or SNC) with identical corporate objects, without any condition as to the minimum holding in their capital. In this case, the earnings of the partnership are allocated for tax purposes to the partners, proportionally to their interest in the partnership and the share of earnings falling to companies that are subject to the SIIC regime will be exempt from CIT at their end.

Electing to apply the regime

Terms of the election

The SIIC regime is applicable by election. This election must be notified to the competent tax office at the latest before the end of the fourth month following the opening of the financial year for which the company wishes to be subject to the SIIC regime. This election is global and irrevocable.¹⁷

Notification of election to apply the regime must be accompanied by the list of subsidiaries electing to apply the exemption regime and the commitment concerning capital gains for which taxation is deferred (see below). This list must be updated and provided annually at the time of filing the annual tax return.¹⁸

17 French Tax Code, 208(C)(III) para. 2.

18 French Tax Code, Ann. III, Article 46 *ter* A.

The regime applies with retrospective effect as of the first day of the financial year for which the election was made.¹⁹

Scope of the election

Electing to apply the regime is deemed to be a cessation of business for tax purposes, to the extent that the company in question ceases to be subject to CIT. This, as a rule, has the tax consequences of a liquidation, and in particular the immediate taxation of profits for the current financial year and the taxation of unrealised capital gains.

These tax consequences do, however, benefit from various forms of relief. For unrealised capital gains, although the principle remains that there is an exit tax for real property rights and shares in partnerships, the law provides for substantial mitigation. The tax is due at the reduced rate of 19 per cent and payment is spread linearly over four years. The first quarter is due on 15 December of the election year and the following instalments are due on 15 December of the next three years.

Electing to apply the regime is generally accompanied by a revaluation of the balance sheet, to make the carrying values coherent with the fiscal values used for calculating the exit tax. In this case, the revaluation variance is booked to liabilities on the net balance sheet for the exit tax.

iii Tax regime

SIICs and corporate income tax

The SIIC regime provides for exemption from corporate income tax for profits from the letting of real estate and the subletting of properties possessed under real estate financial leasing contracts or the possession of which is granted on a temporary basis by the state, a local authority or one of their public establishments. The exemption applies to capital gains on sales to persons that are not related within the meaning of Article 39(12) of the FTC²⁰ of real estate or real property rights, interests in partnerships or in subsidiaries subject to the SIIC regime, and rights pertaining to a financial leasing contract pertaining to real estate.

The exemption from CIT is subject to compliance with the distribution requirements described below.

If a given SIIC sells real estate assets to a related company that is also subject to the SIIC regime, capital gains are not exempt subject to the condition of distribution, but the transaction will nevertheless benefit from a regime of neutrality.

The SIIC and their subsidiaries must break down the corresponding income and expenses between their exempt and taxable sectors.

19 BOI-IS-CHAMP-30-20-20, No. 10.

20 By virtue of this Article, two undertakings are deemed related by dependency: where one holds directly, or via an intermediary, the majority of the share capital of the other or has de facto decision-making powers over it; where they are both, under the conditions defined above, under the control of a third undertaking.

Distribution requirements

Article 208(C) of the FTC makes the CIT exemption subject to compliance with the following distribution requirements:

- a* at least 95 per cent of tax-exempt profits from the letting and the subletting of real estate (e.g., financial leasing or temporary grant of possession by the State) must be distributed before the end of the financial year following that in which they were made; and
- b* At least 70 per cent²¹ of tax-exempt capital gains from the disposal of real estate, real estate rights, real estate financial leasing contracts or interests in partnerships or subsidiaries subject to the SIIC regime must be distributed before the end of the second financial year following that in which they were made.

Dividends from subsidiaries subject to the SIIC regime are also exempt from CIT, provided that they are entirely redistributed in the financial year following that in which they were received. The same applies to dividends received from another SIIC where the company benefiting from the distribution holds at least 5 per cent of the capital and voting rights in the distributing company for a period of at least two years.²²

Failure to comply with the distribution requirements leads to the CIT exemption being cancelled in its entirety, or partially where the profits for the exempt sector are subsequently adjusted upwards.

Profits from any incidental activities that do not benefit from the exemption are, correlatively, not subject to the distribution requirements that only apply to exempt profits.

iv Tax regime for investors

Distributed income

As for OPCIs, the taxation of distributed income follows the ordinary legal framework for the taxation of dividends.

The particularities described for OPCIs can be found again for SIICs. Thus, distributed dividends from the SIIC's exempt profits are expressly excluded from the benefit of the 40 per cent tax allowance for individuals who elect to apply the progressive tax rate for income tax, and the parent company regime is not applicable to the fraction of dividends distributed by the SIIC and taken from profits that were exempt from CIT.

The profits made in France by foreign companies via a PE having elected to apply the SIIC regime are subject to a withholding tax of 30 per cent under Article 119 *bis* 2 of the FTC, except where provided otherwise by tax treaties. Pursuant to Article 115 *quinquies* of the FTC, it is only possible for a company to avoid the withholding tax if it is established in the European Union and subject to corporate income tax there, does not benefit from the possibility of election or exemption from CIT and does not otherwise benefit from a specific exemption for profits made in France that are deemed to be distributed.

21 The Finance Law for 2019 increased the distribution obligation from 60 to 70 per cent as of 1 January 2019.

22 The same rule applies to dividends received by SIICs from foreign companies with an equivalent status or from SPPICAVs if the same conditions are met and if the earnings are fully redistributed during the financial year following that in which they were received.

For distributions paid out since 1 July 2007, where the income is distributed by an SIIC to a shareholder other than a natural person that directly or indirectly holds at least 10 per cent of rights to receive dividends from that company at the time of payment, and where the income received by that shareholder is not subject to CIT or an equivalent tax at the level of that shareholder, the SIIC making the distribution is required to pay a 20 per cent withholding from the amount in question. However, this withholding is not due if the distribution is made to a company bound by a requirement to fully distribute the dividends that it receives and in which the shareholders directly or indirectly holding at least 10 per cent of rights to receive dividends are subject to corporate income tax (or an equivalent tax) for these distributions.

Capital gains from share sales

Capital gains from the sale of shares in an SIIC are subject to the general regime of capital gains on the sale of securities.

For legal entities subject to CIT, a reduced tax rate of 19 per cent is applicable to capital gains on the sale of securities in listed companies predominantly holding real estate assets, if for the seller these securities were equity interests held for at least two years.

If that is not the case, the capital gains are included in the taxable profits subject to CIT at the standard rate.

If made by non-residents holding at least 10 per cent of the SIIC's share capital, capital gains on sale are subject to the withholding provided for in Article 244 *bis* A of the FTC.

v Forfeiture of REIT status

Exit from the regime

Exit from the SIIC regime will mainly occur in the following cases:

- a* a failure to comply with one of the conditions for access to the regime during the 10 years after election;
- b* a failure to comply with the 60 per cent condition by the end of the financial year in which the regime is suspended or under conditions that no longer allow for the suspension of the regime (i.e., it is the second time in which the 60 per cent threshold is exceeded); and
- c* a failure to comply with the conditions for the SIIC's access to the regime will also cause the exit of its subsidiaries that have elected to apply the regime.

Tax consequences

In the event of the definitive exit from the regime within 10 years after election, the SIIC is required to pay additional CIT on the capital gains that were subject to the exit tax. The capital gains taxed at the reduced rate of 19 per cent are taxed at the normal rate for CIT for the financial year in which the regime is exited, minus the tax paid at the reduced rate at the time of electing to apply the regime. The aim is to place the SIIC in the situation that it would have been in if these capital gains had not been taxed at the reduced rate.

Exit from the SIIC regime has retrospective effect from the first day of the financial year in which the regime is exited. The earnings of the company and its subsidiaries cannot, therefore, benefit from the regime of exemption subject to the condition of distribution for that financial year.

Profits that were previously taxed under the SIIC regime and that have not yet been distributed will be taxed under the standard legal conditions.

V INTERNATIONAL AND CROSS-BORDER TAX ASPECTS

i Tax treaties

France has an extensive double tax treaty network, having signed treaties with more than a hundred countries.

As a rule, these double tax treaties follow the OECD model treaty. In this respect, double tax treaties usually provide that income from real estate assets may be subject to tax in the state in which the real estate assets are located. As regards the taxation of capital gains, the source country also retains the right to tax capital gains from the alienation of immovable property situated in that country. The country where the taxpayer is actually resident should then provide relief from double taxation under the double taxation article of the relevant double tax treaty.

France deposited its instrument of ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) with the OECD on 26 September 2018 and the first changes came into force on 1 January 2019.

Some of the key changes to France's double tax treaties under the MLI are the adoption of:

- a* a principal purpose test;
- b* a definition of entities deriving their value principally from immovable property; and
- c* a minimum holding period of 365 days for the dividends favourable tax regime (exemption or rate limitation).

ii Cross-border considerations

French law does not provide specific restrictions on ownership or on investment by a non-resident person in real estate assets located in France.

VI YEAR IN REVIEW

Most of the important recent developments have been mentioned above.

The MLI took effect on 1 January 2019 for the double tax treaties signed by France with Australia, Austria, Israel, Japan, Lithuania, New Zealand, Poland, the Slovak Republic, Serbia, Slovenia, Sweden and the United Kingdom.

French interest limitation rules have undergone significant changes and they are likely to have an important impact on French real estate investors. As noted earlier, as from 1 January 2019, an interest limitation based on 30 per cent of EBITDA was introduced in line with ATAD.

In addition, the Finance Act for 2019 also implemented the general anti-abuse clause of ATAD into a new Article 205(A) of the FTC. This has strengthened the arsenal of anti-abuse measures already widely developed in French law.

Finally, the decision of the French Administrative Supreme Court delivered on 24 April 2019 should lead to restoring the market practice of transferring SCIs shares without a discount for latent taxation.

VII OUTLOOK

The French CIT tax rate will be lowered in the near future. It is expected that the CIT tax rate will be reduced to 25 per cent by 2022. Real estate investment companies will benefit from these lower tax rates.

Another development that may affect real estate investors is the renegotiation of the France–Luxembourg double tax treaty whose modification is in principle postponed to 1 January 2020. In particular, the new agreement will have an impact on French OPCIs and SIICs.

The new double tax treaty removes the advantage of holding exempt French real estate investment vehicles via Luxembourg. The current regime for dividends paid from income or gains derived from real estate assets and paid by French OPCIs and SIICs is as follows:

- a* dividends are exempt from CIT in Luxembourg;
- b* a withholding tax of 15 per cent applies if the beneficial owner directly or indirectly holds an interest representing less than 25 per cent of the share capital of the French vehicle; and
- c* a withholding tax of 5 per cent applies if the beneficial owner directly or indirectly holds an interest representing more than 25 per cent of the share capital of the French vehicle.

The following regime will apply as from 1 January 2020:

- a* dividends are subject to CIT in Luxembourg and benefit only from a tax credit;
- b* a withholding tax of 15 per cent will apply if the beneficial owner directly or indirectly holds a participation representing less than 10 per cent of the capital of this vehicle; and
- c* a 30 per cent withholding tax will apply if the beneficiary holds a participation representing 10 per cent or more of the capital of this vehicle (a gradual reduction of the rate to 25 per cent by 2022).

Disposal opportunities for OPCIs and SIICs should be considered until 31 December 2019.

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ISBN 978-1-83862-026-4