



## Real Estate tax alert Belgium

### Law introducing new real estate investment fund adopted by Belgian Parliament

On 20 July 2016, The House of Representatives ('Kamer' / 'Chambre') adopted the Draft Program Law (II) (the '**Law**'), which, amongst others, introduces a new real estate investment fund ('**REIF**'), the "*FIIS*" / "*GVBF*" ("*Fonds d'Investissement Immobilier Spécialisé*" / "*Gespecialiseerd VastgoedBeleggingsFonds*").

The Law completes the existing legal framework for alternative investment funds, anticipating a Royal Decree further defining the legal characteristics of the REIF, which is expected for September (the '**Royal Decree**'). Once the Royal Decree is adopted, it will be possible to effectively set up a REIF. Notably, the Law defines the tax regime applicable to the REIF.

With the introduction of the REIF, Belgium aims to position itself as an attractive location for real estate investors. Primary targets are international investors and asset managers seeking a platform to pool their European and international investments in a flexible and efficient way. Also, investors owning properties located in Belgium are offered a tool to restructure their operations in a tax effective and financially efficient manner. Finally, the REIF clearly creates a momentum for corporates with an important Belgian real estate portfolio to rethink their real estate strategy.

General legal characteristics

The definition of the exact framework of the REIF is still subject to the adoption of the Royal Decree (and the advice of the State Council). However, it is expected that the main characteristics would be as follows.

The REIF is a closed-end real estate fund only open to institutional and professional investors. This means that it cannot be directly held by private individuals but only by qualifying legal entities (pension funds, insurance companies, corporates meeting certain thresholds, companies accepted as professional investors by the Belgian Financial Services and Markets Authority ('**FSMA**'), etc.). Securities issued by the REIF cannot be quoted on a stock market. Further, the REIF is subject to AIFMD regulations and exceptions applying thereto.

In general, the REIF is a very flexible vehicle and subject to only a few regulatory restrictions, making it quite competitive compared to other EU real estate fund vehicles:

- There is no minimum investors requirement (e.g. it is possible to have only 1 shareholder);
- There are no risk spread criteria;
- There is no oversight by the FSMA;
- There is no required pre-accreditation process with the FSMA (only a request for inscription with the Ministry of Finance has to be sent)
- There are no leverage limitations;
- The amount of investment categories is rather broad (real estate properties, real estate certificates, shares in other REIFs, shares in foreign real estate companies,...);
- Loan financing of its subsidiaries is allowed.

Some restrictions apply though. The REIF normally has a duration of 10 years. However, this period can be extended with subsequent periods of 5 years subject to unanimous decision by the shareholders (with a *de facto* unlimited duration potential in case there is only 1 shareholder). The minimum asset value of the properties in the REIF (after 2 accounting years) must amount to EUR 10,000,000. Furthermore, the fund must annually distribute at least 80% of its profits (subject to off balance sheet corrections). Purely development related activities are prohibited within the REIF.

REIFs will be subject to IFRS accounting, which implies a fair value measurement for its investment properties.

## Main tax characteristics

The REIF is subject to corporate income tax, but on a very limited basis. This means that, in practice, its income and capital gains are not subject to tax. Upon assumption of the REIF status, or contribution of properties into an existing REIT (e.g. through contribution in kind, (de-)merger, etc.), latent capital gains (after compensation with carried forward tax attributes) are subject to a so called 'exit tax' of 16.995%, which is half of the Belgian statutory corporate tax rate.

The tax treatment of dividends distributed by the REIF to its shareholders will depend on the individual situation of the latter.

- *Belgian* corporate shareholders will not be able to claim participation exemption in relation to dividends received by the REIF, in view of its tax status. Yet, they will be able to use tax assets to shelter these dividends.

- Withholding tax will apply for dividend distributions to *non – resident* investors, unless an exemption (e.g. for foreign pension funds) or reduction under the relevant Double Tax Treaty applies. In addition, no withholding tax will be levied to the extent the dividend stems from income other than Belgian dividends or Belgian real estate income (e.g. dividends from foreign subsidiaries). Considering the specifics of its tax regime, the REIF will normally be able to invoke the double tax treaties.

Furthermore, the REIF is subject to an annual subscription tax of 0.01%, but generally only to the extent Belgian investors hold its shares. The management of the REIF is exempt of VAT.

**For whom will this vehicle be relevant?**

### **Asset Management Industry**

It is clear that the REIF serves as an ideal platform to structure pan-European real estate investments for asset managers operating for international investors. Indeed, the fund benefits from a very light regulatory framework and submission process combined with an efficient tax regime for cross border investments.

### **International investors owning Belgian real estate**

For international real estate owners, the attractiveness of the REIF will largely depend on whether or not they are able to convert their existing real estate portfolio into an efficient holding structure (taking into account any withholding tax and local tax treatment on REIF dividends). In addition, investors may see an opportunity in 're-leveraging' existing real estate portfolios with currently low debt capacity due to low book values under Belgian GAAP, considering that the REIF will book its investments at fair value under IFRS.

### **Belgian real estate investors and corporate real estate owners**

Due to the fact that the REIF is subject to a distribution obligation (of 80%), that its dividends do not qualify for Belgian participation exemption and that it cannot be directly owned by private individuals, the REIF will, at first sight, only be an attractive investment structure in a specific number of cases. Examples include Belgian pension funds, corporates with substantial unrecognised tax assets, investors that are internationally organised in a way that enables an efficient upstream of dividends from the REIF, etc.

This being said, the REIF offers a momentum for property rich corporate players to rethink their real estate strategy. It can be a tool to *de-leverage* (by selling a part of the shares of the REIF). It can be tool to *re-leverage* (i.e. attract more leverage into the corporate structure). Also, in the context of potential new interest deduction limitations under BEPS / EU ATAD (Anti-Avoidance Tax Directive), the attractiveness of the REIF may increase knowing that pure rental payments to such fund should normally *not* be subject to these limitations.

### **Expected new legislation affecting Belgian REITs**

Please note that new legislation is also expected soon affecting Belgian *REITs* (which are stock quoted entities, as opposed to the REIF) by, notably, making it easier for them to create joint

ventures with other real estate owners and broadening the asset classes in which REITs can invest.

## Contacts

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