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Real Estate alert
Belgium

New real estate investment vehicle in the pipeline

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Belgian "Special Investment Structure" tailored to the needs of institutional real estate investors

As part of the Tax Shift measures, the Government envisages to introduce a new real estate investment vehicle for institutional and professional investors, the 'SIS' ("Speciale Investeringsstructuur" / "Structure d'Investissements Spécialisées"). To this end, the current framework for (public) Belgian real estate investment trusts (REITs) ("sicafis immobilières" / "vastgoedbevaks") would be adjusted (or a new legal framework would be created) in order to allow the set up of "private" REITs, held by institutional / professional investors, having no legal obligation for public emission and stock quotation. Some of the existing regulations for public REITs would be harmonised to avoid any inconsistencies with the requirements of the AIFM Directive (e.g. with regard to remuneration policy, risk management and rules regarding conflict of interest, etc).

The new "private" vehicle would have a limited duration. The existing institutional REIT regime ("sicafi immobilière institutionelle" / "institutionele vastgoedbevak"), which should be controlled by a public REIT, would be abolished (probably because in practice it has no real use anymore, considering that all formerly existing public REITs have been converted into Regulated Real Estate Companies ("Sociétés Immobilières Réglementées" / "Gereglementeerde Vastgoed Vennootschappen")). It appears that the existing regime for public and institutional Regulated Real Estate Companies would (logically) not be affected.

It is expected that these "Private REITs" would benefit from a tax regime, similar to the tax regime applicable to public REITs (limited taxable basis; exit tax of 16.995% upon entry of real estate into the fund through certain legal operations or accreditation of the REIT; dividends received from these vehicles will probably not benefit from the participation exemption; …).

This would imply that for institutional investors (beit resident or non – resident) an additional regulated vehicle would become available to invest in Belgian real estate, next to the existing stock quoted Regulated Real Estate Companies, that will probably allow to customize investment and risk / return profiles, against a higher liquidity risk. Potentially as well, the new vehicle could serve as a platform to pool real estate investments outside Belgium. Whereas in first instance the idea is to focus on real estate investments, the Government has indicated that it would examine whether the SIS could be extended to other asset classes as well (e.g. Private Equity investments).

Whether or not the SIS will become a success, will depend a.o. on the efficiency of its tax regime, and how it compares to similar investment vehicles abroad (such as the Luxembourg SIF). In this context, it is recommended that the Government reconsiders the recently introduced abolishment of any withholding tax credit on Belgian sourced dividends – to be increased from 25% to 27% under the Budget 2016 tax measures - in the hands of collective investment undertakings and Regulated Real Estate Companies, and equally allows such a credit to the SIS. Also, the withholding tax cost on profit repatration and the annual suscription tax that will apply to the SIS (e.g. the institutional REIT has a 0.01% subscription tax) will normally be taken into consideration by foreign investors when measuring its attractivity as an investment vehicle.

At the same time, and in order to be compliant with EU legislation, the Government envisages to open the beneficial tax regime as it applies to Regulated Investment Companies (“Sociétés Immobilières Réglementées” / “Gereglementeerde Vastgoedvennootschappen”) and public REITs (“sicafis immobilières” / “vastgoedbevaks”), to Belgian real estate subsidiaries of non – resident REITs and real estate funds (as is already the case e.g. in France and the Netherlands). How this will work in practice (e.g. will these subsidiaries have to be merged into the non – resident REIT in order for an exit tax to apply, or will they just have to convert into a new tax regime against payment of an exit tax), is still unclear today.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Mike Van Gils, Partner Global Business Tax, mivangils@deloitte.com, +32 2 600 65 79
- Kurt Debrier, Partner Global Business Tax, kdebrier@deloitte.com, +32 2 600 66 73

For general inquiries, please contact:

bedeloittetax@deloitte.com, + 32 2 600 60 00

Be sure to visit us at our website: http://www.deloitte.com/be/tax

Deloitte Belgium
Berkenlaan 8A, 8B, 8C
1831 Diegem
Belgium