

A digital wireframe cityscape in shades of blue, with a bright light source on the left creating a lens flare effect. The buildings are represented by a grid of lines, giving a sense of depth and perspective.

Real estate investments in the Netherlands, Belgium, Luxembourg and Switzerland

General tax aspects

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Introduction

Loyens & Loeff has a long standing tradition and a unique market position in real estate for its integrated way of working with tax lawyers, attorneys and civil law notaries. With almost 400 tax specialists we have by far the largest and broadest tax practice of any law firm in Europe, if not worldwide. Our tax practice covers all areas of tax law applicable to the Netherlands, Switzerland, Belgium and Luxembourg and is intertwined with almost all our other practices.

This document is primarily intended to provide a high-level overview of the main attention points for tax-efficient structuring of investments in Dutch, Belgian, Luxembourgish and Swiss real estate opportunities by foreign corporate investors. It is not intended to be exhaustive and in addition to the structures presented other alternatives may be available. This document should not be used or construed as tax advice.

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Abbreviations

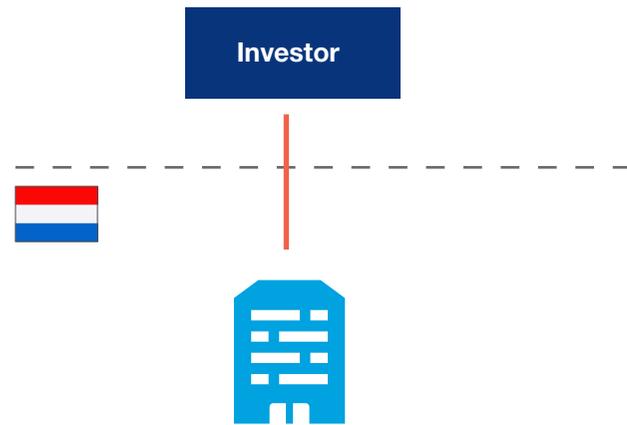
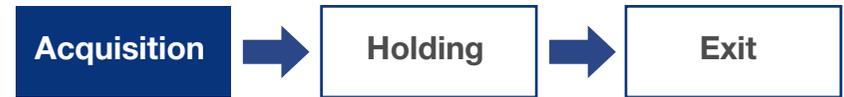
AIFM	Alternative Investment Fund Manager	RETT	Real Estate Transfer Tax
AIFMD	Alternative Investment Fund Managers Directive	RECGT	Real Estate Capital Gains Tax
CIT	Corporate Income Tax	SHL	Shareholder Loan
Coop	Cooperative	SICAF	<i>Société d'Investissement à Capital Fixe</i>
EBITDA	Earnings Before Interest, Taxes, Depreciation and Amortization	SICAV	<i>Société d'investissement à Capital Variable</i>
GAAP	Generally Accepted Accounting Principles	SIF	Specialised Investment Funds
GP	General Partner	BE-REIT	Belgian Real Estate Investment Trust (" <i>Société Immobilière Réglementée / Gereguleteerde Vastgoed Vennootschap</i> ")
HoldCo	Holding Company	S-REIF	Specialised Real Estate investment Fund (" <i>Fonds d'investissement immobilier spécialisé / Gespecialiseerde vastgoedbeleggingsfonds</i> ")
MBT	Municipal Business Tax	VAT	Value Added Tax
MLI	Multilateral Investment	WHT	Withholding Tax
PropCo	Property Company		
RAIF	Reserved Alternative Investment Fund		
REIT	Real Estate Investment Trust		

Part A

The Netherlands

Acquisition phase

Asset deal

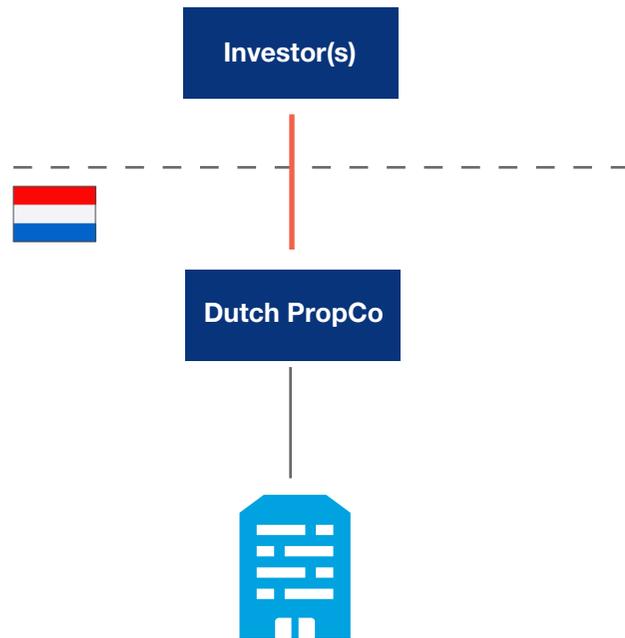
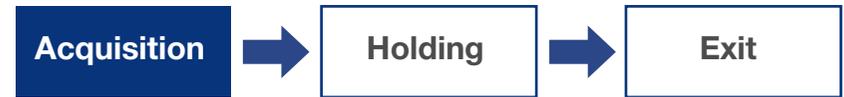


- In principle no VAT is due upon an asset deal, unless: (i) the transaction concerns a transfer of new real estate (i.e. less than 2 years after first moment of use) or building land; or (ii) both parties opt for a VAT taxed transfer (only possible if certain conditions are met, depending on the purpose of the real estate).
- Acquisition of an asset (e.g. full ownership, economic ownership and/or usufruct) is subject to RETT (general rate 6%¹, reduced rate of 2% for residential real estate). Certain exemptions are available, e.g. upon the transfer of new real estate.

¹ This rate is expected to increase to 7% as per 1 January 2021.

Acquisition phase

Share deal

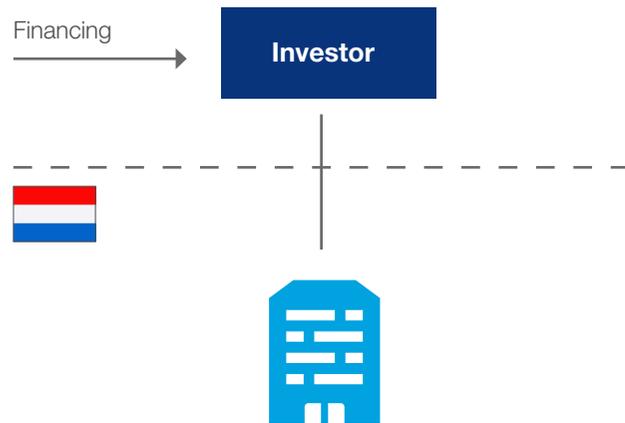


- No VAT is due on the acquisition of shares of Dutch PropCo.
- In principle, the acquisition of the shares in Dutch PropCo is subject to 6%¹ RETT (2% for residential real estate), calculated on the fair market value of the real estate (in)directly held by the PropCo.
- Structuring possibilities are possible upon share deal: no RETT if a single party, independent from other shareholders, acquires less than 1/3 of the shares of Dutch PropCo. Highly suitable for club deals if investors are unrelated.
- No step-up in basis for the asset(s) of Dutch PropCo.

¹ This rate is expected to increase to 7% as per 1 January 2021.

Holding phase

Direct investment

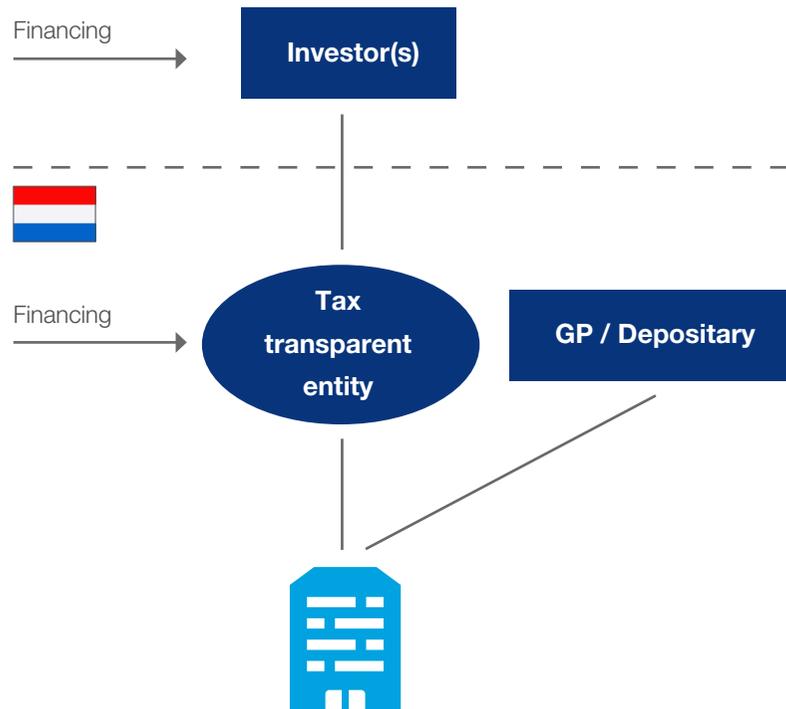


- Investor is liable to non-resident CIT on real estate income and capital gains at the standard CIT rate of max 25% (as from 2021: 21.7%).
- Investor is subject to registration and tax filing obligations in the Netherlands.
- Interest on loan financing is generally tax deductible until 30% of EBITDA (with a minimum of EUR 1m); higher leverage is possible but then interest is not fully deductible. However, interest that is non-deductible based on the EBITDA rule can be carried forward indefinitely.
- No Dutch WHT on profit distributions.
- Certain investors (such as pension funds, charities, public entities and investment funds) may be eligible for an exemption from CIT.
- Investor is liable for real estate tax (levied annually by municipalities). Rate varies between municipalities, the taxable basis is the WOZ value which is in general close to market value and revised annually.
- A landlord levy applies to the investor that (on a group basis) has more than 50 rented residential properties with a rent not exceeding social housing ceiling. The levy is 0.562% (2020) on the total amount of the WOZ value minus 50 times the average WOZ value of the residential properties rented by the investor.



Holding phase

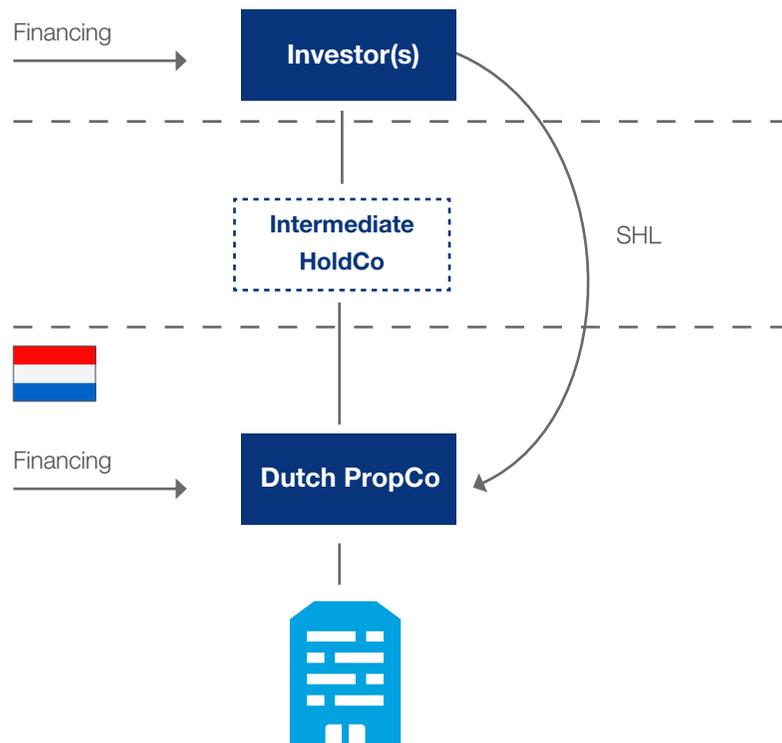
Direct investment through tax transparent entity



- Tax transparent entity is disregarded for Dutch CIT purposes.
- General partner (GP) / depository holds legal title to the real estate.
- Investor(s) are each liable to non-resident CIT on their pro-rata part of the real estate income and capital gains at the standard Dutch CIT rate of max 25% (as from 2021: 21.7%).
- Interest on loan financing is generally tax deductible to the extent these are attracted for the financing of the real estate until 30% of EBITDA (with a minimum of EUR 1m); higher leverage is possible but then interest is not fully deductible. However, interest that is non-deductible based on the EBITDA rule can be carried forward indefinitely.
- No Dutch WHT on profit distributions.
- Certain investors (such as pension funds, charities, public entities and investment funds) may be eligible for an exemption from CIT.
- GP/Depository is liable for real estate tax (levied annually by municipalities). Rate varies between municipalities, the taxable basis is the WOZ value which is in general close to market value and revised annually.
- A landlord levy applies to the GP/depository that (on a group basis) has more than 50 rented residential properties with a rent not exceeding social housing ceiling. The levy is 0.562% (2020) on the total amount of the WOZ value minus 50 times the average WOZ value of the residential properties rented by the GP/depository.

Holding phase

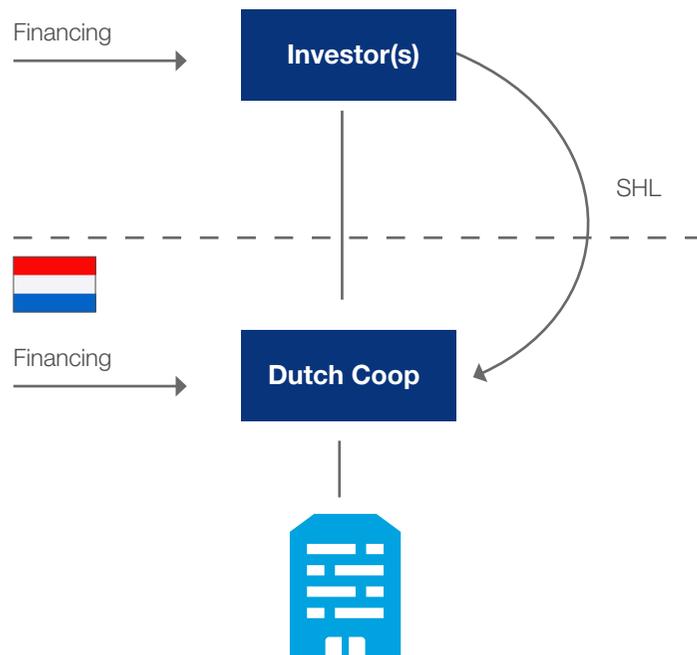
Indirect investment with Dutch PropCo



- Dutch PropCo (and not Investor(s)) is liable to CIT at the standard Dutch CIT rate of max 25% (as from 2021: 21.7%) on real estate income and capital gains.
- Interest on loan financing at the level of the Dutch PropCo is generally tax deductible for CIT purposes until 30% of EBITDA (with a minimum of EUR 1m); conditions of SHL should be at arm's length.
- In principle, 15% WHT on dividend distributions, although a full domestic exemption may under circumstances apply to distributions to parent company in an EU / tax treaty jurisdiction provided there is no 'abuse'.
- No Dutch WHT on genuine interest payments, although the Netherlands will introduce a conditional WHT on payments to certain related parties in low tax jurisdictions or in case of abuse.
- Application of non-resident CIT regime for Intermediate HoldCo and/or Investor(s) to be considered.
- Dutch PropCo is liable for real estate tax (levied annually by municipalities). Rate varies between municipalities, the taxable basis is the WOZ value which is in general close to market value and revised annually.
- A landlord levy applies to the Dutch PropCo that (on a group basis) has more than 50 rented residential properties with a rent not exceeding social housing ceiling. The levy is 0.562% (2020) on the total amount of the WOZ value minus 50 times the average WOZ value of the residential properties rented by the Dutch PropCo.

Holding phase

Indirect investment with Dutch Coop

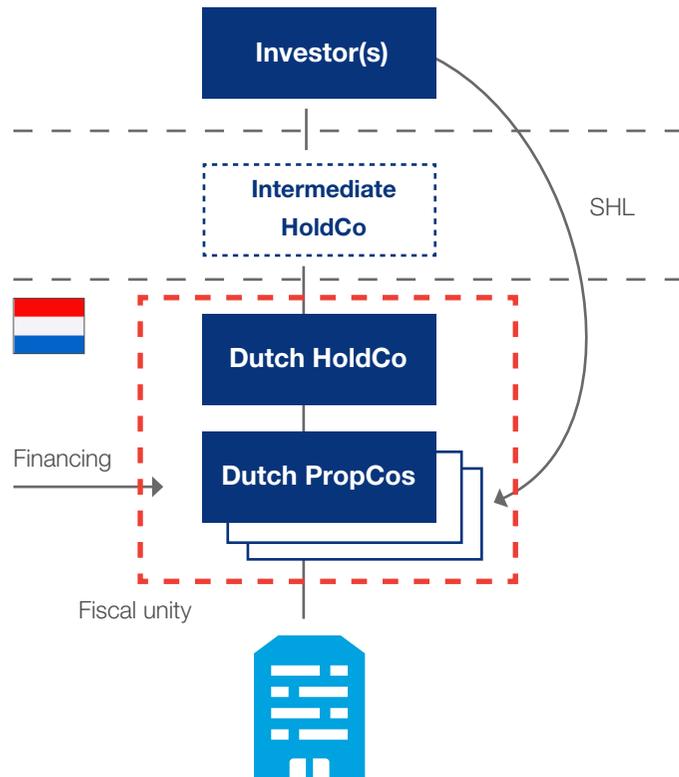


- Dutch Coop is liable to CIT at the standard Dutch CIT rate of max 25% (as from 2021: 21.7%) on real estate income and capital gains.
- Interest on loan financing at the level of Dutch Coop is generally tax deductible for CIT purposes until 30% of EBITDA (with a minimum of EUR 1m); conditions of SHL should be at arm's length.
- In principle, no Dutch WHT on profit distributions by Dutch Coop.*
- No Dutch WHT on genuine interest payments, although the Netherlands will introduce a conditional WHT on payments to certain related parties in low tax jurisdictions or in case of abuse.
- Application of non-resident CIT regime for Investor(s) to be considered.
- Dutch Coop is liable for real estate tax (levied annually by municipalities). Rate varies between municipalities, the taxable basis is the WOZ value which is in general close to market value and revised annually.
- A landlord levy applies to the Dutch Coop that (on a group basis) has more than 50 rented residential properties with a rent not exceeding social housing ceiling. The levy is 0.562% (2020) on the total amount of the WOZ value minus 50 times the average WOZ value of the residential properties rented by the Dutch Coop.

* Assuming that Coop only holds direct real estate.

Holding phase

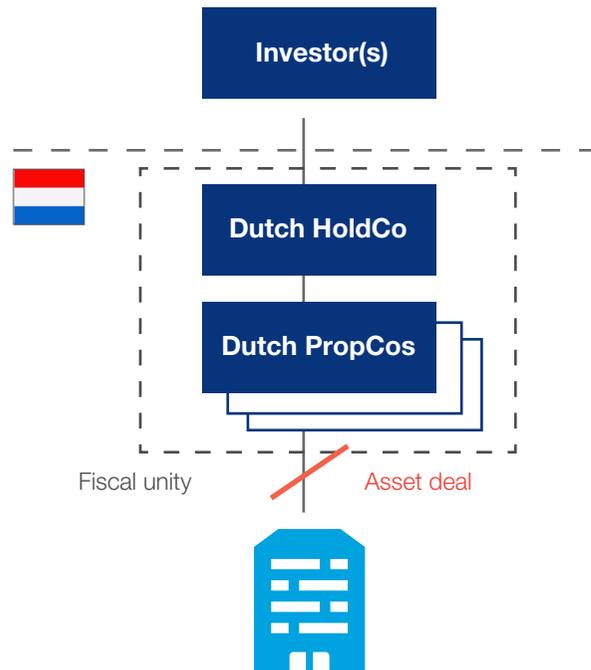
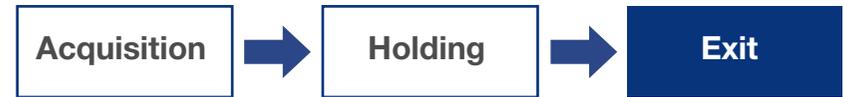
Indirect investment with tax consolidation



- For multiple real estate targets, a tax efficient Dutch fiscal unity (tax consolidation) may be considered.
- HoldCo and PropCos are each liable to CIT on their worldwide income (real estate income and capital gains).
- Annual taxable income (profits and losses) of HoldCo and PropCos are pooled for CIT purposes; companies of the fiscal unity are considered to be one taxpayer.
- Transactions within fiscal unity are in principle disregarded for CIT purposes, although there are some exceptions.
- Certain interest deduction limitations may apply. Conditions of SHL should be at arm's length.
- Application of non-resident CIT regime for Intermediate HoldCo and/or Investor(s) to be considered.
- Dutch PropCos are liable for real estate tax (levied annually by municipalities). Rate varies between municipalities, the taxable basis is the WOZ value which is in general close to market value and revised annually.
- A landlord levy applies to the Dutch PropCos that (on a group basis) have more than 50 rented residential properties with a rent not exceeding social housing ceiling. The levy is 0.562% (2020) on the total amount of the WOZ value minus 50 times the average WOZ value of the residential properties rented by the (group of) Dutch PropCos.

Exit phase

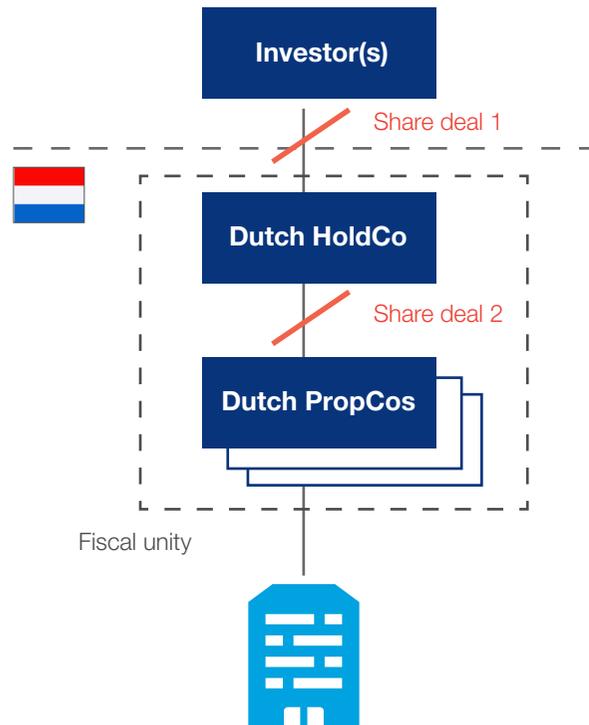
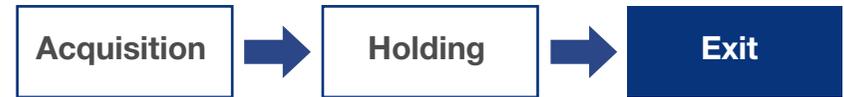
Asset deal



- Capital gains on the disposal of real estate (asset deal) by Dutch PropCo(s) are taxable at the standard Dutch CIT rate of max 25% (as from 2021: 21.7%).
- Structuring possibility: profits can be pooled with losses (if any) of other PropCos in the fiscal unity.
- Capital gains may be added to a reinvestment reserve, postponing CIT on the profit and reducing the (depreciable) book value of the real estate in which a qualifying reinvestment is made.
- In principle no VAT is due upon an asset deal, unless: (i) the transaction concerns a transfer of new real estate (i.e. less than 2 years after first moment of use) or building land; or (ii) both parties opt for a VAT taxed transfer (only possible if certain conditions are met, depending on the purpose of the real estate).

Exit phase

Share deal



Share deal 1

- Under domestic law the Netherlands will only tax capital gains of a non-resident Investor in tax abusive situations (application of non-resident CIT rules to be considered). However, an applicable tax treaty may limit the taxation of such capital gains (subject to anti-abuse rules in the treaty or MLI).
- No Dutch VAT is due on the transfer of shares of Dutch HoldCo.

Share deal 2

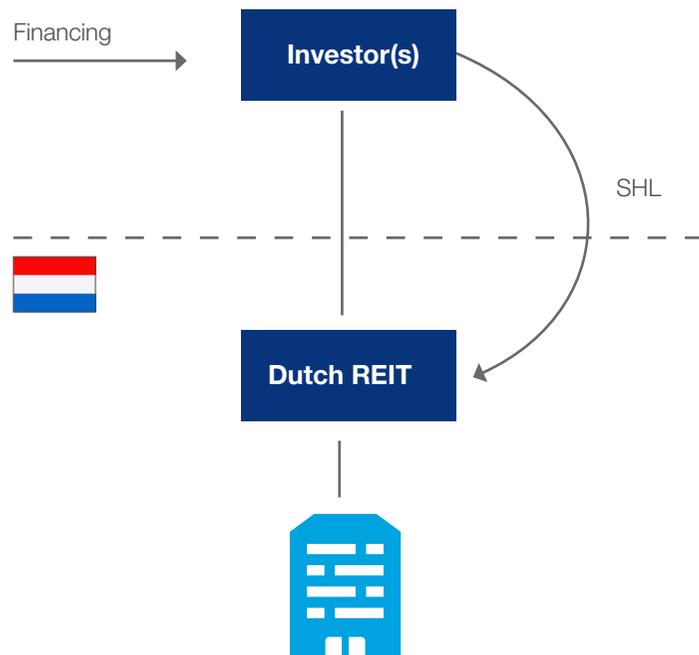
- Disposal of the shares in the Dutch PropCo(s) is generally exempt for CIT purposes under the application of the participation exemption. This exemption is also available without a fiscal unity.
- No Dutch VAT is due on the transfer of shares of Dutch PropCo(s).

The Netherlands

Capita Selecta

Investment Fund

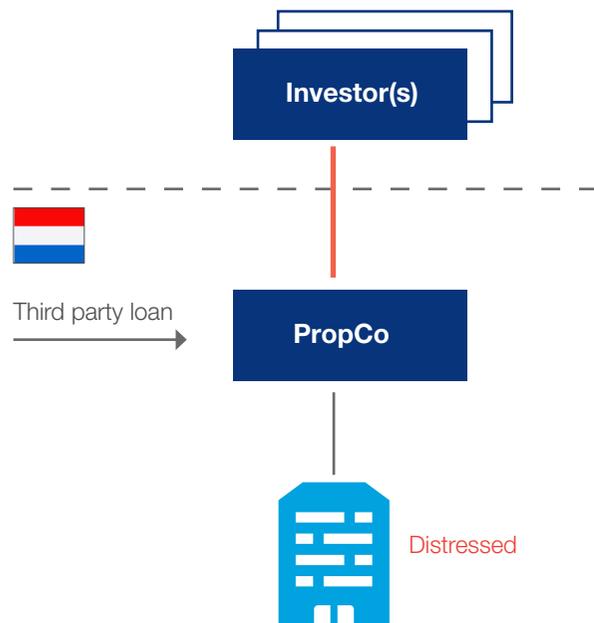
Property fund (Dutch REIT)



- The Dutch REIT is a tax neutral regime through which qualified investors can pool their investments in real estate.
- The Dutch REIT is liable on CIT for its worldwide income (including real estate income) at a rate of 0%.
- Dividend distributions are in principle subject to 15% Dutch dividend WHT. This rate may be reduced under prevailing tax treaties.
- A Dutch REIT will have to distribute all of its annual tax profits to its shareholders within eight months after the end of the financial year.
- No Dutch WHT on genuine interest payments, although the Netherlands will introduce a conditional WHT on payments to certain related parties in low tax jurisdictions or in case of abuse.
- The application of the Dutch REIT regime is subject to certain requirements (shareholders requirements, distribution obligation, debt levels, etc.).
- A Dutch REIT does not have to be listed.

Share deal

Distressed real estate



- PropCo holds distressed real estate. Investor(s) envisage to acquire the real estate through the acquisition of the shares in PropCo.
- PropCo is liable to CIT on its worldwide income (including real estate income and capital gains) at a rate of max 25% (as from 2021: 21.7%).
- The transfer of the shares of the PropCo to the Investor(s) does not trigger a revaluation of the tax book value of the real estate. Therefore, an increase in value of the real estate is tax exempt to the extent the tax book value of the real estate is higher than the fair market value upon the acquisition of the shares. This allows for a lower capital gain upon an exit through an asset deal.
- In principle 15% WHT on dividend distributions by PropCo, which may be reduced under tax treaties; no WHT on interest.
- No Dutch WHT on genuine interest payments, although the Netherlands will introduce a conditional WHT on payments to certain related parties in low tax jurisdictions or in case of abuse.
- A capital gain on the disposal of the shares of PropCo is not subject to Dutch CIT (unless non-resident CIT regime applies).

The Netherlands

Annexes

Annex 1

Real estate profit determination

General	For real estate owned by a Dutch corporation or attributed to a (deemed) Dutch business, any annual income (in general, rent less financing costs, depreciation and other cost) and any capital gains derived from such real estate together constitute taxable income that is subject to CIT. Net profits are taxed at a general CIT rate of 25% (16.5% on the first EUR 200,000 of profits); these rates will be reduced to respectively 21.7% and 15% in 2021. There is no difference between operational income and taxable capital gains for CIT purposes.
Depreciation	<p>The depreciation of real estate is in principle tax deductible. The depreciable basis is the cost of the real estate, excluding land, less the residual value. In the case of buildings, the residual value is, in practice, set at nil. The potential depreciation should be applied in a linear fashion over the expected economic life of the real estate. This has to be determined on a case-by-case basis.</p> <p>However, depreciation is only possible insofar the tax book value of the real estate exceeds a certain minimum value (the WOZ-value). The WOZ-value is annually determined by the municipalities and is an approximation of the fair market value. Therefore, in practice there is only minimal room for the deduction of depreciation for tax purposes. Extra-ordinary impairments to a lower going-concern value may be possible, even below the WOZ-value.</p>
Interest deduction	In principle, interest on loans attributable to investments in Dutch real estate is tax deductible, but the deduction of net borrowing costs is limited to the highest of: (i) 30% of the earnings before interest, taxes, depreciation and amortization (EBITDA) and (ii) an amount of EUR 1 million. Terms of an SHL should be at arm's length in order to prevent any interest and loss deduction restrictions. However, interest deduction restrictions may apply under the application of the CIT law, in particular in case of share transactions.
Reinvestment reserve	Under circumstances, it is possible to add the profits from the sale of real estate to a reinvestment reserve. This postpones paying CIT on the profit and reduces the (depreciable) book value of the real estate in which a qualifying reinvestment is made.

Annex 2

Transfer tax, VAT & real estate tax

Transfer tax	The acquisition of Dutch real estate is, in principle, subject to 6% ¹ transfer tax, calculated over the fair market value of the real estate which is at least the purchase price paid. A reduced rate of 2% applies to the acquisition of residential real estate. Transfer tax is payable on the acquisition of the legal ownership or the economic ownership. The acquisition of real estate that is new or is acquired within 2 years following the date that the real estate is taken into use as a business asset is exempt from transfer tax. Real estate transfer tax may also be due in case of transfer of shares in a real estate company. There are a number of exemptions from real estate transfer tax that may apply, e.g., for intragroup reorganizations, depending on the facts and circumstances.
VAT	The general VAT rate is 21%. The transfer of real estate and the rights to which real estate is subject are exempt from VAT. However, the transfer of new real estate - no later than 2 years after the first moment of use - as well as the transfer of a building site is subject to VAT. In principle, leasing of real estate is a VAT exempt activity. For commercial real estate, an election can be made for a VAT taxed lease. This election can be made to the extent the building is leased to tenants that are subject to VAT for their commercial activities, allowing for the investor to reclaim VAT paid.
Real estate tax	Municipalities in the Netherlands levy an annual tax on properties within their area. Owners and users are both liable to this real estate tax. The rate of the real estate tax varies between municipalities and is based on the WOZ-value of the real estate. The WOZ-value is in general close to market value and is revised annually.
Landlord levy	A landlord levy applies to (groups of) owners that have more than 50 rented residential properties with a rent not exceeding social housing ceiling. The levy is 0.562% (2020) on the total amount of the WOZ value minus 50 times the average WOZ value of the residential properties rented by the (group of) owners.

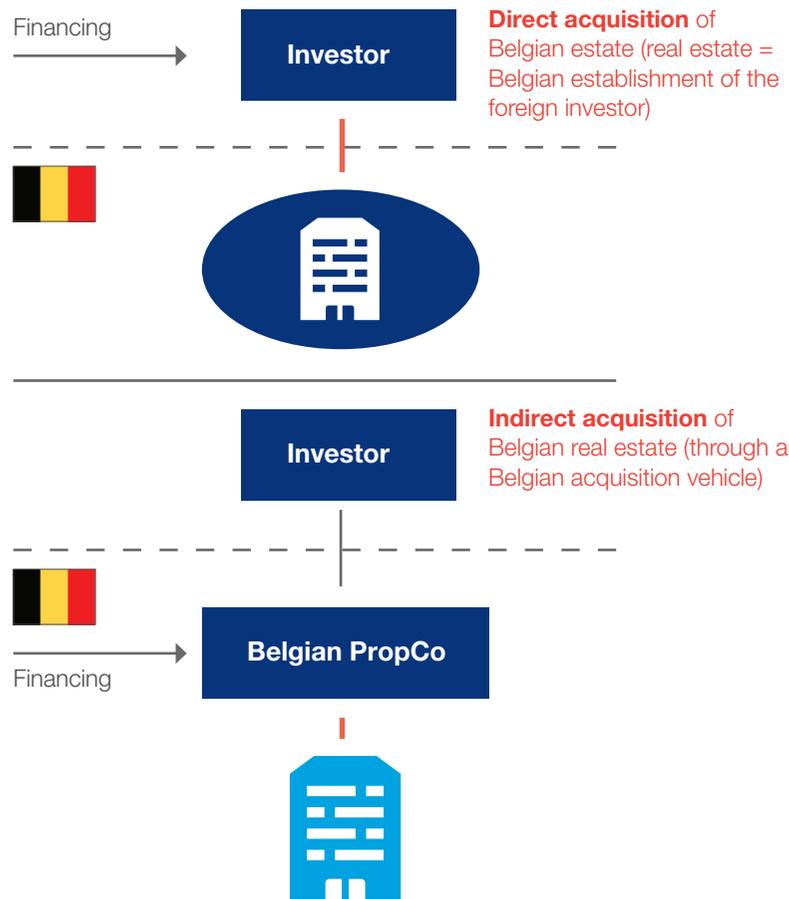
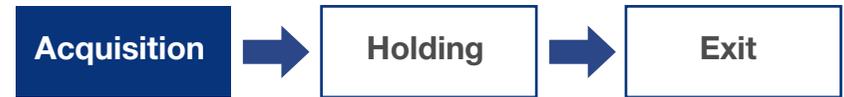
¹ This rate is expected to increase to 7% as per 1 January 2021.

Part B

Belgium

Acquisition phase

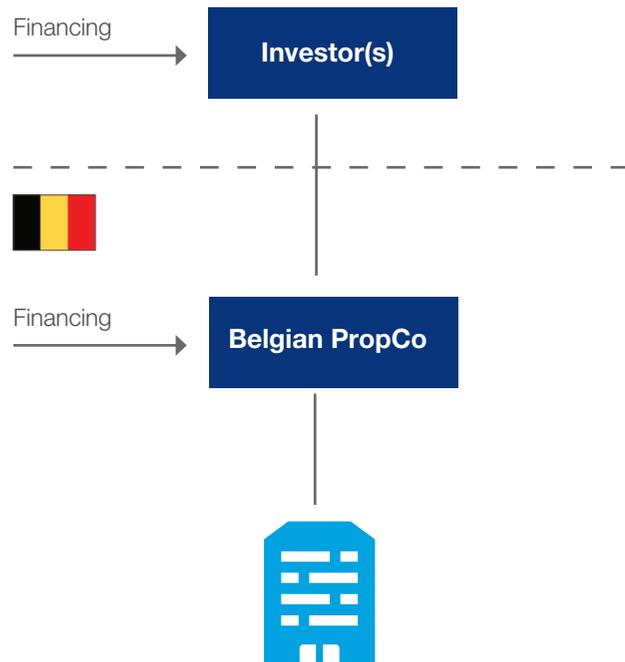
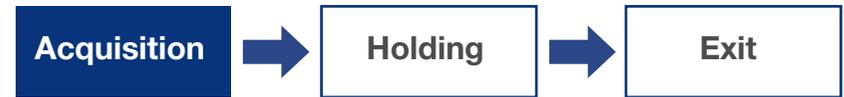
Asset deal



- Acquisition of the full ownership, residual property right or usufruct right on a real estate asset is subject to RETT at the rate of 10% (Flanders) or 12.50% (Brussels and Wallonia), computed on the higher of the purchase price of the asset or its fair market value.
- Acquisition of the long-term lease right or right to build on a real estate asset is subject to RETT at the rate of 2%, computed on the total of the agreed lease terms (over the duration of the right) increased by the charges borne by the lessee (usually assessed at 5% of total agreed lease terms).
- 21% VAT instead of RETT in case of “new building” (either compulsory or optional depending on the VAT status of the seller), (fully or partially) *recoverable* by the purchaser depending on its VAT status (whether it performs VAT taxable activities or not).
- Step-up in basis of the asset.
- No financing or collateral restrictions.

Acquisition phase

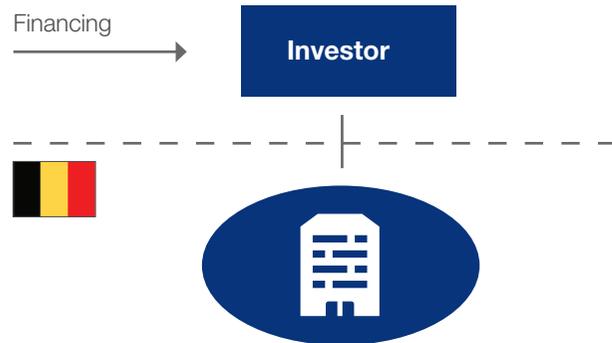
Share deal



- Not subject to RETT / VAT.
- Market practice: 50% of the latent capital gain tax on the real estate asset is discounted from the shares' price (% subject to negotiations).
- No step-up in basis for the asset.
- Financing or collateral restrictions (leverage capacity, financial assistance for certain type of corporations).

Holding phase

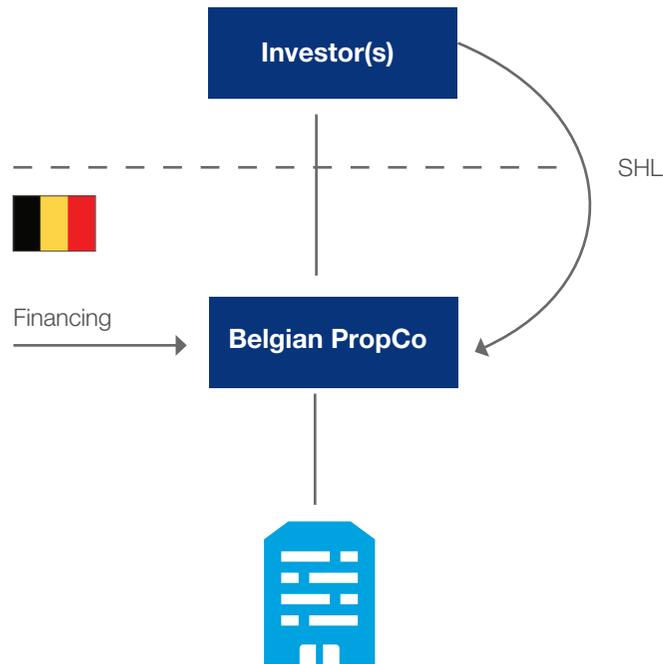
Direct investment



- Net rents subject to 25% non-resident CIT.
- Investor is subject to registration and tax filing obligations in Belgium.
- Non-resident CIT for a Belgian establishment is largely computed the same way as CIT for a regular company (see indirect investment).
- No profit branch tax on the net repatriated income.
- Renting-out of (commercial) real estate is not subject to VAT, but several exceptions and special regimes exist. New optional VAT regime, subject to conditions, for the renting-out of non-residential real estate is available since 1 January 2019.
- Regular leases subject to a 0.2% RETT and leaseholds subject to 2% RETT.

Holding phase

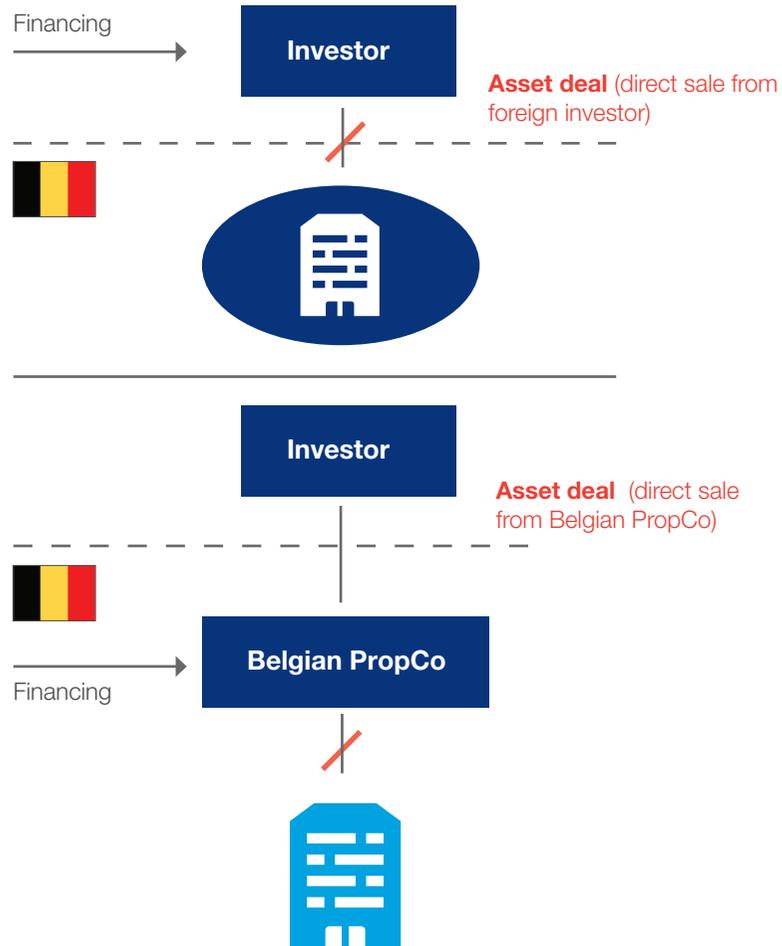
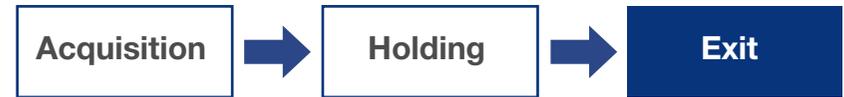
Indirect investment with Belgian PropCo



- Belgian PropCo is liable to standard CIT at the rate of 25% on net real estate income.
- Arm's length interest on loan financing is generally tax deductible up to the higher of 30% of qualifying EBITDA or EUR 3m subject to group provisions.
- Carried-forward tax losses deductible up to EUR 1m plus 70% of the remaining taxable result exceeding EUR 1m.
- Transfer of losses within a group of companies allowed since 2019, subject to qualifying participation since at least 5 years.
- Dividend WHT exemption or reduction available in EU context and international context.
- Interest WHT exemption or reduction available in EU context and international context.
- WHT exemptions and reductions require an assessment on a case-by-case basis to determine (i) the existence of tax avoidance motives, (ii) the artificial character of the structure and (iii) the beneficial ownership.
- Renting-out of (commercial) real estate is not subject to VAT, but several exceptions and special regimes exist. New optional VAT regime, subject to conditions, for the renting-out of non-residential real estate is available since 1 January 2019.
- Regular leases subject to a 0.2% RETT and leaseholds subject to 2% RETT.

Exit phase

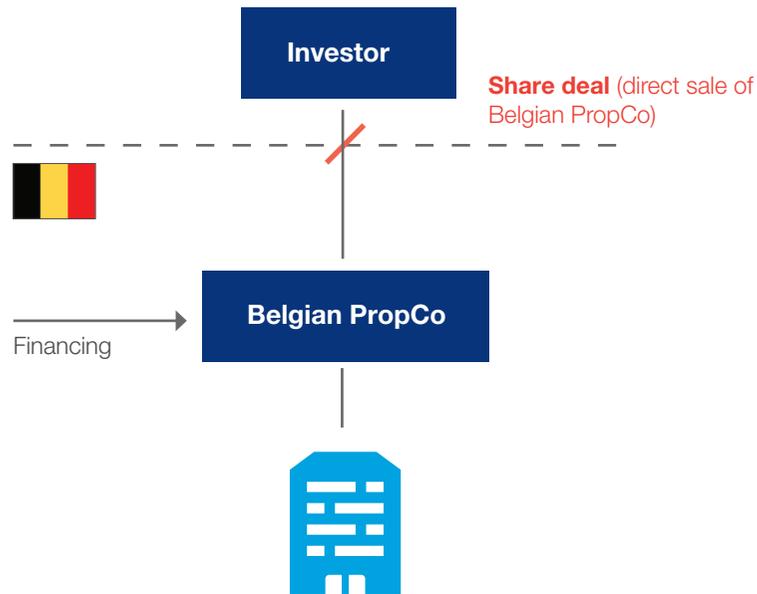
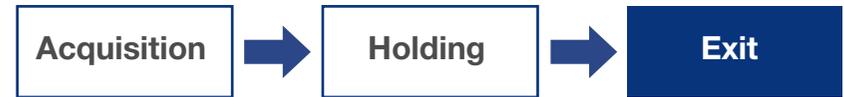
Asset deal



- Belgium always granted taxation powers in case of asset deal.
- *Net* capital gain on the sale of the real estate asset subject to 25% CIT, but roll-over relief available subject to conditions.
- No profit branch tax on the net repatriated income.

Exit phase

Share deal



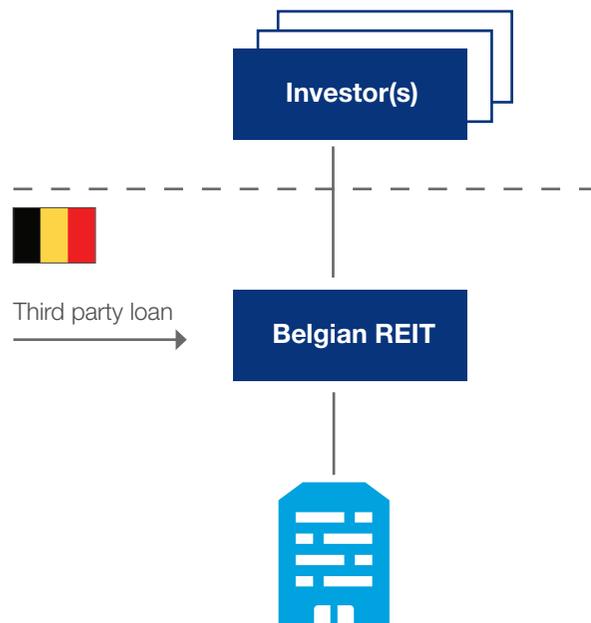
- Under most applicable tax treaties, Belgium is not entitled to tax capital gains in case of a share deal on a real estate company (i.e. no real estate preponderance clause).
- Under Belgian domestic law, capital gains upon the sale of shares are fully tax exempt (subject to conditions). Unlike numerous countries, Belgium does not assimilate the sale of shares in companies whose main asset(s) consist(s) in real estate, to the sale of real estate for both corporate income tax and RETT purposes.
- Liquidation surpluses (i.e. unwinding of the intermediary Belgian acquisition holding) treated as dividend.
- Dividend WHT exemption or reduction available in EU context and international context.
- WHT exemptions and reductions require an assessment on a case-by-case basis to determine (i) the existence of tax avoidance motives, (ii) the artificial character of the structure and (iii) the beneficial ownership.

Belgium

Capita Selecta

Investment Funds

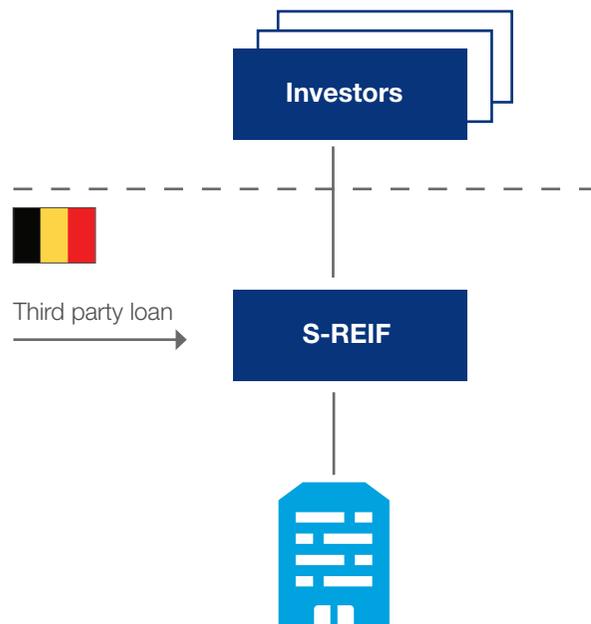
Real estate investment trust (BE-REIT)



- Regulated investment vehicles with a minimum 30% floating and diversification requirement.
- Not subject to AIFMD.
- Financial statements in IFRS.
- Compulsory yearly distribution obligation.
- Same status available for non-listed subsidiaries, without diversification requirement.
- LTV ratio of max 65% and interest cost ratio of max 80% of the total operational and financial income.
- Exit tax at a rate of 15% upon conversion or (partial (de-))merger of a regular company into a BE-REIT.
- Formally subject to CIT but on a reduced taxable base that does neither include investment proceeds (e.g. rental income, capital gains, interest income), or excessive borrowing costs pursuant to ATAD.
- Dividends: WHT exemption (1) for foreign pension funds, (2) for redistribution of foreign source income to non-resident corporations (without condition of taxation), and (3) for Belgian corporate shareholder (10% minimum participation and minimum holding period of 1 year). If not applicable, 30% WHT (15% for healthcare REITs), subject to reduction based on tax treaty (0% to max 15%).
- Interest: WHT exemption or reduction available in EU context and international context.
- WHT exemptions and reductions require an assessment on a case-by-case basis to determine (i) the existence of tax avoidance motives, (ii) the artificial character of the structure and (iii) the beneficial ownership.

Investment Funds

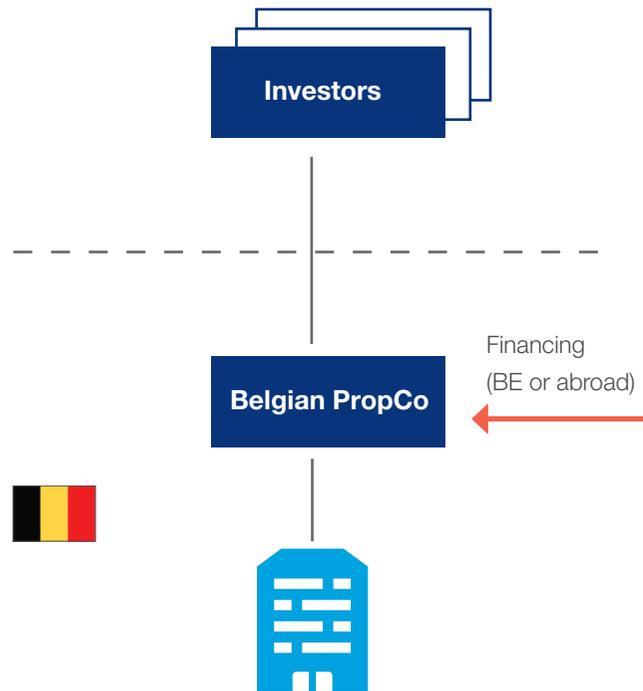
Real estate institutional fund (S-REIF)



- Specialised real estate investment vehicles without compulsory diversification requirement nor leverage limits.
- Shareholder test: only one or more institutional investors.
- Subject to AIFMD in case of capital raising (exemption in case of single investor and joint-venture)
- Financial statements in IFRS.
- Compulsory yearly distribution obligation.
- Qualification as “real estate” for Solvency II.
- Exit tax of 15% upon conversion or (partial (de-))merger of a regular company into a S-REIF.
- Formally subject to CIT but on a reduced taxable base that does neither include investment proceeds (e.g. rental income, capital gains, interest income) or excessive borrowing costs pursuant to ATAD.
- Dividends: WHT exemption (1) for foreign pension funds, (2) for redistribution of foreign source income to non-resident corporations (without condition of taxation), and (3) for Belgian corporate shareholder (10% minimum participation and minimum holding period of 1 year). If not applicable, 30% WHT subject to reduction based on tax treaty (0% to max 15%).
- Interest: exemption or reduction available in EU context and international context.
- WHT exemptions and reductions require an assessment on a case-by-case basis to determine (i) the existence of tax avoidance motives, (ii) the artificial character of the structure and (iii) the beneficial ownership.

Financing

Security package



- Mortgage subject to 1% registration duties and 0.3% mortgage fee computed on the amount inscribed; other security interests not subject to taxes (e.g. mortgage mandates, pledges).
- 1% registration duties on transfer of mortgage in case of transfer of receivable for consideration (e.g. syndication, securitisation) unless an exemption applies (e.g. transfer to certain debt funds) or adequately structured (e.g. endorseable grosse).
- Mortgaged bonds can be envisaged.
- Pledge of shares and of receivables are common practice and not subject to tax; attention is required for the drafting of pledge of shares.

Belgium

Annexes

Annex 1

Real estate profit determination

General	CIT is levied at the standard CIT rate of 25% on the total worldwide income earned by a resident company (i.e. an incorporated body enjoying legal personality), including distributed dividends. All income earned by a resident company is taxable business income, and the taxable base of a resident company is determined on the basis of its annual financial statements drawn up in accordance with Belgian GAAP. Unlike other countries, Belgium does not implement the concept of a “separate fiscal balance sheet”, and civil and accounting law overrides tax law unless the tax law contains express derogations.
Taxable base	The net rent is taxable at the statutory rate of 25%, i.e. gross rent less the following major deductible items: <ul style="list-style-type: none"> - accounting depreciations on the real estate asset; - property tax; - overhead and maintenance expenses; and - interest expenses.
Roll-over relief for capital gain on real estate asset	Upon sale of the real estate asset, a tax deferral regime may apply. The conditions for benefiting from this roll-over relief are: <ul style="list-style-type: none"> - the asset on which the capital gain is realised must be recorded as a ‘fixed asset’ (<i>immobilisation / vast actief</i>) for at least 5 years at the time the asset is sold; - the taxpayer must reinvest the sale price in depreciable assets used in Belgium for business purposes; and - the reinvestment must occur within a 3-year period that can be extended by 2 supplementary years if the reinvestment consists of a building, plane or boat.

In such a case, the 25% CIT due on the capital gain is spread over the depreciation period of the newly acquired assets.

Annex 2

Transfer tax, VAT and property tax

Transfer tax

The acquisition of the full ownership is subject to 10% (Flemish district) or 12.50% (Brussels and Walloon districts) RETT computed on the higher of purchase price or market value; the same applies to residual property rights (*tréfonds*) and to a usufruct right (*droit d'usufruit / recht van vruchtgebruik*). Long-term lease rights (*droit d'emphytéose / erfpachtrecht*) and rights to build (*droit de superficie / opstalrecht*) are subject to 2% RETT computed on the total of the agreed lease terms (over the duration of the right) increased by the charges borne by the lessee (usually assessed at 5%).

The transfer of a long-term lease right or a right to build is subject to 2% RETT on the price paid to the transferor increased (i) by the total of the lease terms remaining to be paid until termination of the right and (ii) by the charges borne by the lessee (usually assessed at 5%).

VAT

The renting-out of (commercial) real estate is not subject to VAT, with as a consequence an absence of right to deduct the input VAT. However exceptions or special regimes apply for shopping centres, parking spaces, VAT leases pertaining to “new” buildings, rights in rem on “new” buildings, provision of hotel accommodations and granting of the right to perform a professional activity. A new optional VAT regime, subject to conditions, is available since 1 January 2019 for renting-out of non-residential real estate and warehouse spaces.

New buildings (with adjacent land) can or must be sold with 21% VAT instead of RETT, depending on the quality of the seller for VAT purposes. The same applies to the granting of a right in rem (*droit réel / zakelijk recht*) on such building. A building (with adjacent land) is new for VAT purposes until 31 December of the second year following that of its first occupation or utilisation. Subject to strict conditions, renovated buildings may qualify as “new” for VAT purposes.

Property tax

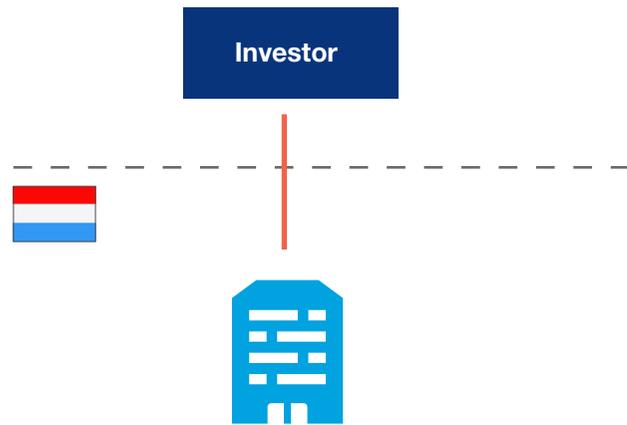
Belgian municipalities and districts levy an annual tax on properties within their area, computed on the cadastral income being the estimated rental value of the property. Full property owner and holder of a right in rem are liable for this property tax, which is usually recharged to the tenants. Such a re-charging is prohibited by law for residential leases.

Part C

Luxembourg

Acquisition phase

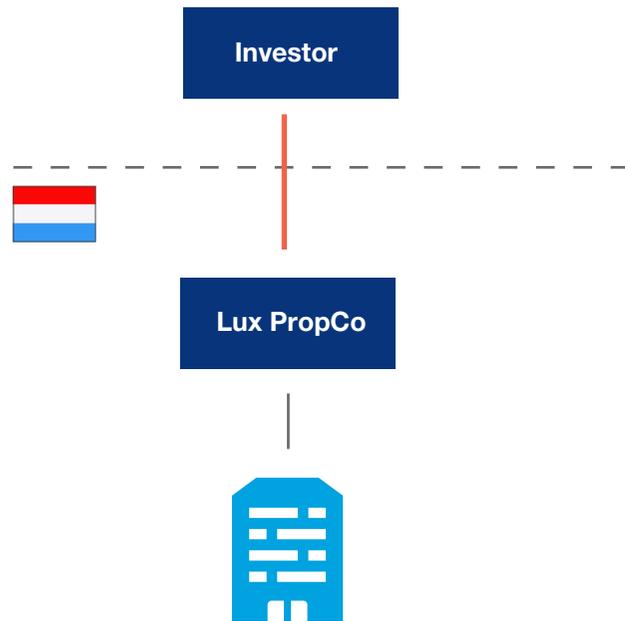
Asset deal



- In principle no VAT is due for an asset deal, unless (i) the transaction is a transfer of real estate which is not yet constructed; or (ii) both parties opt for a VAT taxed transfer (only possible if certain conditions are met, depending on the purpose of the real estate).
- The acquisition of immovable property located in Luxembourg is subject to registration duties. The registration duty in principle amounts to 6% of the fair market value of the real asset, plus a 1% transcription tax. A municipal surcharge of 50% on the value of the registration duties is also due where the commercial property is located within the municipality of Luxembourg City (i.e. combined maximum rate of 10%).
- A reduced rate may be applied where immovable property is contributed to a company in exchange for shares. In such cases, the combined rate of registration duties amounts to 1.1% to 1.4% (depending on the municipality in which the immovable property is located). Certain exemptions are available, e.g. upon the transfer in the framework of a 'restructuring transaction'.

Acquisition phase

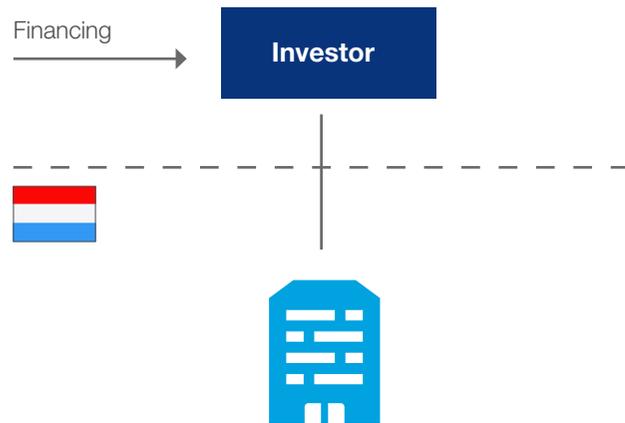
Share deal



- No VAT is due on the transfer of shares of Lux PropCo.
- The acquisition of the shares in Lux PropCo should not be subject to any registration duties.

Holding phase

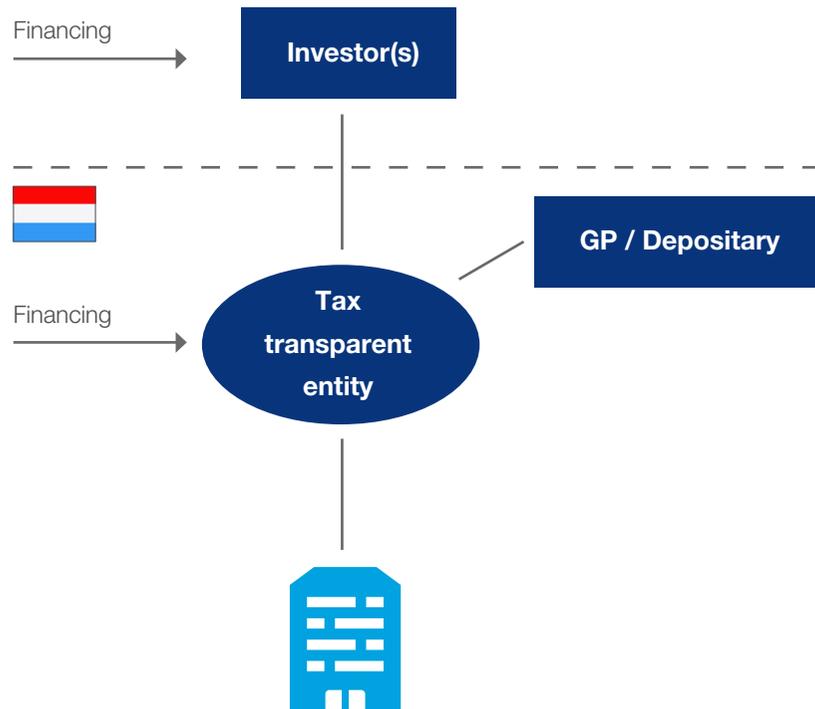
Direct investment



- The development with the sole purpose of selling should lead to a permanent establishment in Luxembourg: Investor liable to CIT and MBT on revenue derived from real estate property at the combined Luxembourg tax rate of max 24.94% (rate in Luxembourg City in 2020).
- If no commercial activity is carried out in Luxembourg: Investor subject to Luxembourg CIT rate of 18.19% on its Luxembourg-sourced income in 2020.
- As from the tax year 2019, interest on debt financing of a domestic permanent establishment is generally tax deductible up to the higher of 30% of EBITDA or EUR 3 mln; higher leverage is possible but then interest may not be fully deductible.
- No Luxembourg WHT on profit distributions.
- Investor subject to 0.5% / 0.05% net wealth tax on the company's unitary value, limited to the Luxembourg based assets. A rate of 0.5% will be applied up to a net wealth of EUR 500 million. A reduced rate of 0.05% will be applied to the excess.
- Luxembourg property tax on the unitary value of the real estate, calculated by multiplying the tax base with a communal rate which may vary from year to year.

Holding phase

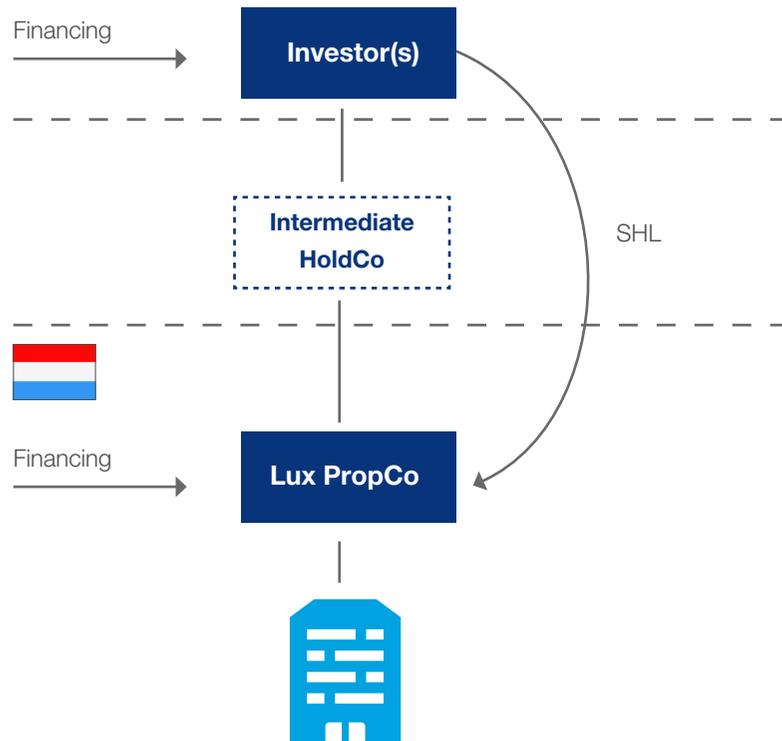
Direct investment through tax transparent entity



- Tax transparent entity disregarded for CIT purposes but may be subject to 6.75% municipal business tax (rate for Luxembourg City in 2020), if it carries out a commercial activity or it is 'deemed commercial'.
- Investor(s) each liable to non-resident CIT on their pro-rata part of the real estate income and capital gains at the standard CIT rate of 18.19% in 2020.
- As from the tax year 2019, interest on debt financing of a domestic permanent establishment is generally tax deductible up to the higher of 30% of EBITDA or EUR 3 mln; higher leverage is possible but then interest may not be fully deductible.
- No Luxembourg WHT on profit distributions.
- Luxembourg property tax is due in a similar manner as for a direct investment.
- Investor(s) each liable to net wealth tax on their pro-rata part of the unitary value of the transparent entity at a rate of 0.5% if domestic net wealth does not exceed EUR 500 mln. A reduced rate of 0.05% will be applied to the portion of the net wealth exceeding EUR 500 mln.

Holding phase

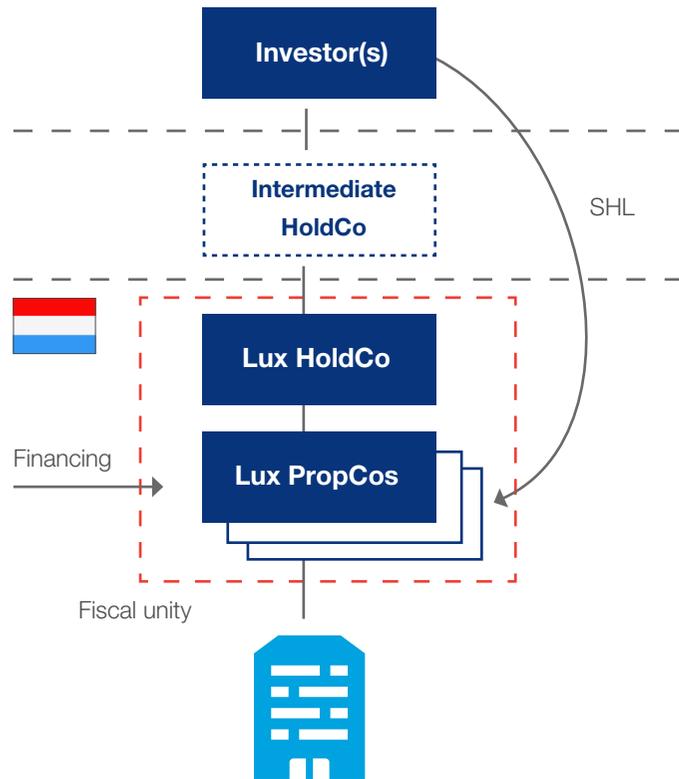
Indirect investment with Luxembourg PropCo



- Lux PropCo (and not Investor(s)) is liable to CIT and MBT at the standard Luxembourg combined rate of 24.94% (rate for Luxembourg City in 2020) on its worldwide income (real estate income and capital gains).
- As from the tax year 2019, interest on debt financing is generally tax deductible up to the higher of 30% of EBITDA or EUR 3 mln; higher leverage is possible but interest may not be fully deductible. Terms & conditions of shareholder loan (SHL) should be at arm's length.
- In principle, 15% WHT on dividend distributions (exemptions and reductions may be available; furthermore, an Intermediate HoldCo may limit such WHT).
- No Luxembourg WHT on at arm's length interest payments.
- Lux PropCo (and not Investor(s)) is liable to property tax as well as net wealth tax.

Holding phase

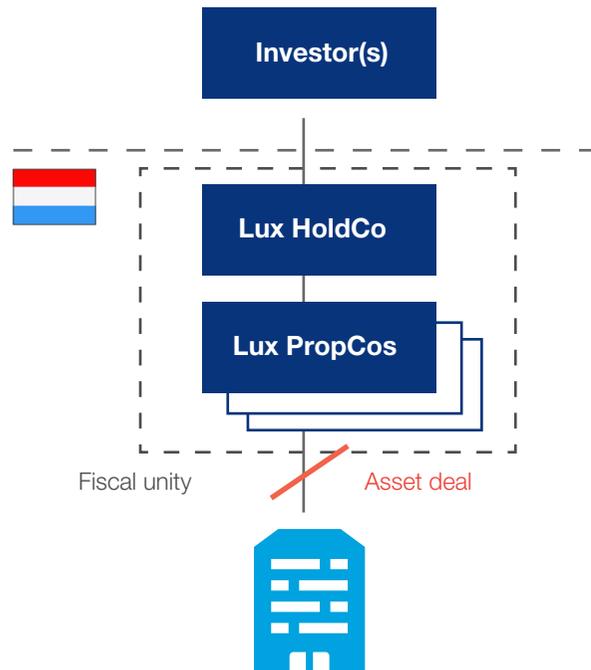
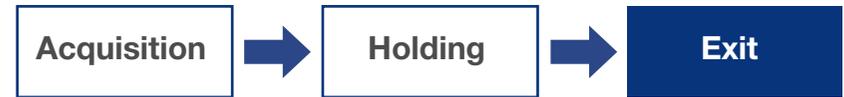
Indirect investment with tax consolidation



- For multiple real estate targets, a Luxembourg fiscal unity (tax consolidation) may be considered.
- Lux HoldCo and Lux PropCos are each subject to CIT/MBT on their worldwide income (real estate income and capital gains) and should each comply with Luxembourg filing obligations.
- Annual taxable income (profits and losses) of Lux HoldCo and Lux PropCos are pooled for CIT/MBT purposes; the head of the fiscal unity is liable for the group's CIT/MBT.
- For the constitution of a fiscal unity, certain conditions should be met (i.e. minimum (in)direct holding of 95%, upon request for a minimum period of 5 years).
- No Luxembourg WHT on at arm's length interest payments.
- In principle, 15% WHT on dividend distributions (exemptions and reductions may be available; furthermore, an Intermediate HoldCo may limit such WHT).
- Interest deduction limitation rule applies by default at the level of the fiscal unity. However, an election can be made for the application of the rule on a stand-alone basis.

Exit phase

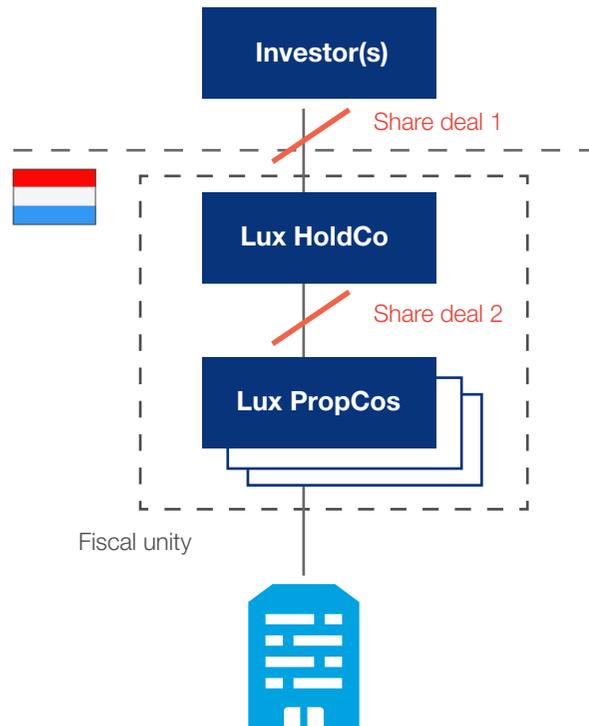
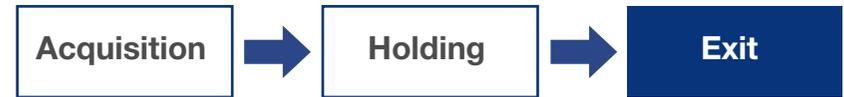
Asset deal



- Capital gains on the disposal of real estate (asset deal) by Lux PropCo(s) are taxable at the standard Luxembourg combined tax rate of 24.94% (rate for Luxembourg City in 2020).
- Structuring possibility: profits can be pooled with losses (if any) of other Lux PropCos in the fiscal unity.
- Roll-over facility available, postponing CIT on the profit and reducing the (depreciable) book value of the real estate in which a qualifying reinvestment is made.

Exit phase

Share deal



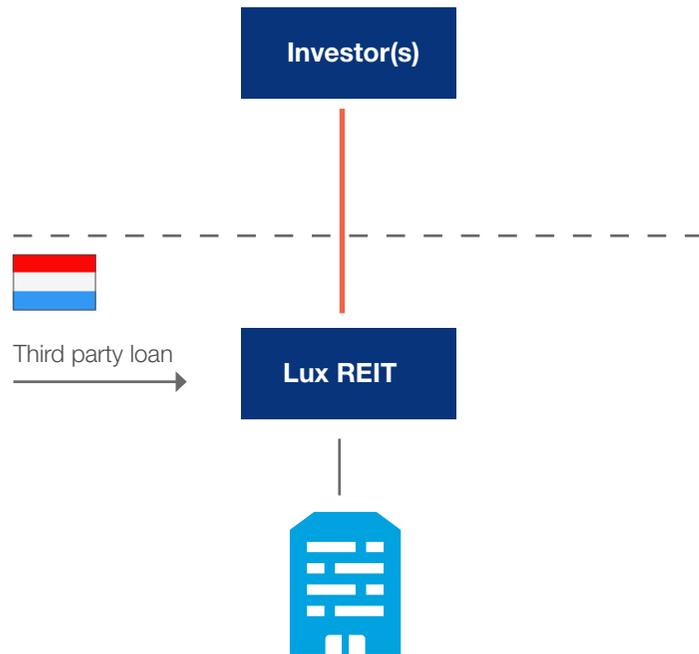
- **Share deal 1:** Under domestic law Luxembourg will only tax capital gains of a non-resident Investor when there is a disposal of a significant shareholding (i.e., more than 10%) in a Luxembourg resident company within six months of the acquisition of the shareholding (subject to tax treaty protection).
- **Share deal 2:** Disposal of the shares in the Lux PropCo(s) is generally exempt for CIT/MBT purposes under the application of the Luxembourg participation exemption. It is not required that there is a fiscal unity for this exemption. A disposal of shares within 5 years after constitution of the fiscal unity will cause a breach of the conditions for the application of the fiscal unity and stand-alone taxation has to be established retroactively.

Luxembourg

Capita Selecta

Investment Funds

Property fund (Luxembourg REIT)



- Regulated investment vehicles (SICAVs, SICAFs, and SIFs) are exempt from Luxembourg income and net wealth tax. Distributions made by them are not subject to Luxembourg withholding tax. Unit / shareholders are not subject to Luxembourg non-resident taxation.
- The same tax treatment applies to unregulated reserved alternative investment funds (RAIFs) managed by an AIFM.

Luxembourg

Annexes

Annex 1

Real estate profit determination

General

CIT is levied at the rate of 18.19% in 2020 on the total worldwide income derived by a resident company or on the Luxembourg-sourced income derived by a non-resident company (i.e. an incorporated body enjoying legal personality), including distributed dividends. All income earned by a company is taxable business income, and the taxable base of a resident company is determined on the basis of its annual financial statements drawn up in accordance with Luxembourg GAAP. Adjustments for Luxembourg tax purposes are possible.

In addition, a municipal business tax applies for Luxembourg resident companies or non-resident companies carrying out a business through a Luxembourg permanent establishment. This tax varies depending on the municipality in which a business is carried out. A rate of 6.75% applies in Luxembourg City, providing for a combined tax rate of 24.94% for companies resident in Luxembourg City in 2020.

Luxembourg resident companies as well as non-resident companies are subject to a 0.5% net wealth tax if net wealth does not exceed EUR 500 mln. A reduced rate of 0.05% will be applied to the portion of the net wealth exceeding EUR 500 mln. Such tax is levied on the company's unitary value. For non-resident companies this unitary value is limited to specific Luxembourg based assets. For the purpose of this tax, real estate situated in Luxembourg is valued at its individual unitary value which is determined according to its market value calculated back to 1941 (i.e., a very low taxable base compared to its current fair market value). Any debt used to finance the real estate is a liability which should be taken into account when determining the unitary value for net wealth tax purposes. As a consequence, it may significantly lower the net wealth tax base.

Taxable base

The net rent is taxable at the statutory rate of 24.94% in 2020 (in Luxembourg City), i.e. gross rent less the deductible items such as:

- property tax;
- overhead and maintenance expenses;
- interest expenses; and
- depreciations.

Roll-over relief for capital gain on real estate asset

Upon sale of the real estate asset, a tax deferral regime may apply.

To benefit from this roll-over relief, the following conditions should be met:

- the asset on which the capital gain is realized must be recorded as a 'fixed asset' (immobilisation) for at least 5 years at the time the asset is sold;
- the taxpayer must reinvest the sale price in depreciable assets used in a permanent establishment of the taxpayer in Luxembourg or any other EEA Member State for business purposes, to the extent the taxpayer remains resident in an EEA Member State and complies with the roll-over relief requirements provided by the law; and
- the reinvestment must occur within the same financial period but under certain circumstances this may be extended by 2 supplementary years.

In such a case, the 24.94% CIT (in Luxembourg City) due on the capital gain is spread out over the depreciation period of the newly acquired assets.

Annex 2

Transfer tax, VAT and property tax

Transfer tax

Acquisition of immovable property located in Luxembourg is subject to registration duties. The registration duty is 6%, plus a 1% transcription tax. A municipal surcharge of 50% on the value of the registration duties is also due where the commercial property is located within the Luxembourg City municipality (i.e., combined maximum rate of 10%). A reduced rate may be applied where immovable property is contributed to a company in exchange for shares. In such cases, the combined rate of registration duties amounts to 1.1% to 1.4% (depending on the municipality where the immovable property is located). Certain exemptions are available, e.g. upon the transfer in the framework of a 'restructuring transaction'.

A 'restructuring transaction' includes the contribution, by one or several companies, of all their assets and liabilities or one or several lines of business, to one or several companies, as long as such contribution is mainly made in exchange for shares issued by the acquiring companies and representing their capital.

VAT

In principle no VAT is due for an asset deal, unless (i) the transaction is a transfer of real estate which is not yet constructed; or (ii) both parties opt for a VAT taxed transfer (only possible if certain conditions are met, depending on the purpose of the real estate).

Property tax

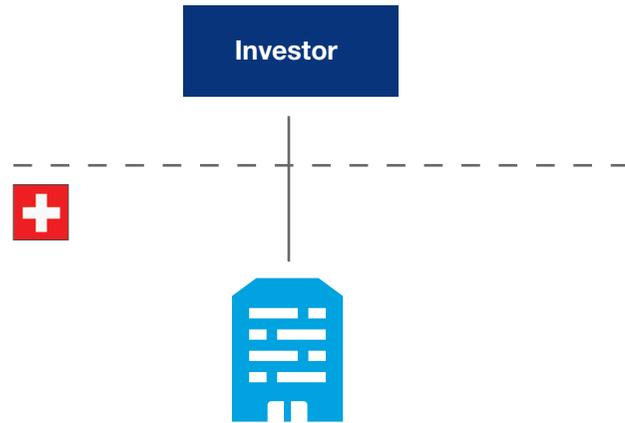
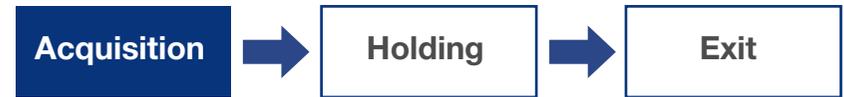
Luxembourg property tax on the unitary value of the real estate, calculated by multiplying the tax base with a communal rate which may vary from year to year. The unitary value is determined according to its market value as per its introduction in 1941 (i.e., a very low taxable base compared to its current fair market value).

Part D

Switzerland

Acquisition phase

Asset deal

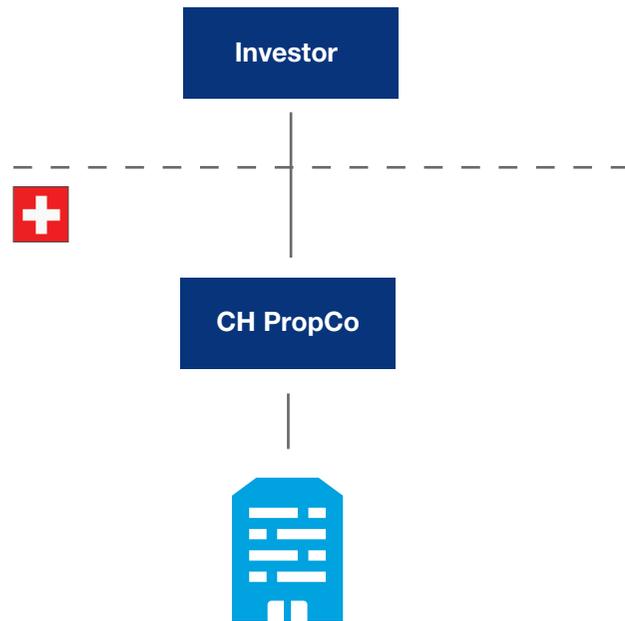
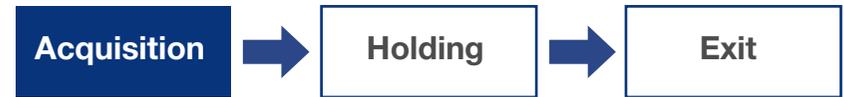


- Generally, the purchase of Swiss real estate will trigger real estate transfer tax, notary and registration fees for the notarization of the purchase agreement and registration in the landmark registry as well as potentially Swiss VAT.
- **Real estate transfer tax (RETT)** is a cantonal and/or communal tax based on a property's market value and range from 1% to 3.3%* depending on the canton. RETT is in most cantons borne by the buyer (seller is jointly and severally liable). Certain exemptions are made by the cantons.
- **Notary fees and land register fees:** Depending on the canton (ZH: 0.1%, BE: up to 0.9% max. CHF 30,825, GR: 0.1% max. CHF 15,000). Usually, the buyer and the seller of the property each bear half of the notary and land register fees.
- **VAT:** In principle, no VAT is due upon an asset deal in Switzerland. VAT may be charged if the seller voluntarily opts for VAT (opting in for VAT is only permitted if the buyer does not use the property exclusively for residential purposes).

* All tax rates are for illustration purposes only and may vary depending on the actual situation.

Acquisition phase

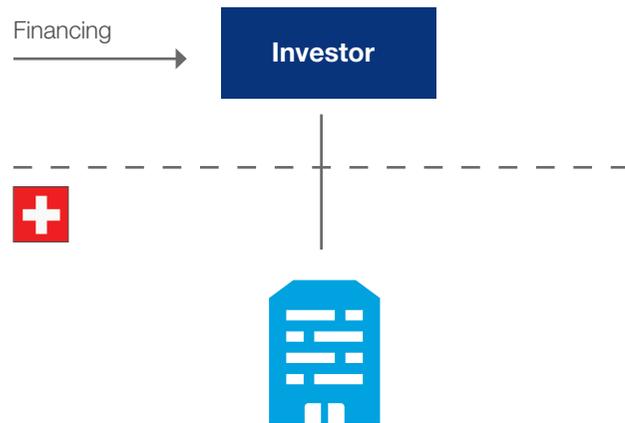
Share deal



- **Real estate transfer tax (RETT):** Only the shares in CH PropCo are transferred. It depends on the canton, if such economic change of ownership of the property is subject to RETT. (ZH: no RETT, BE:1.8%, GR: RETT on economic change of ownership of up to 2%)
- **Stamp duties:** The transferred shares of CH PropCo constitute taxable securities and therefore the transfer of those shares against consideration is subject to securities transfer tax, if either the buyer, the seller or an intermediary is a Swiss securities dealer. (Tax rate: 0.15% for securities issued by a Swiss resident)
- **Notary fees and land register fees:** Only the shares in CH PropCo are transferred and the owner registered in the land register remains the same. In conclusion, no notary and land register fees are due.
- **VAT:** No VAT is due on the acquisition of shares of Swiss PropCo (exemption without input VAT credit).
- **Step-up in monistic cantons** (e.g. ZH or BE): Whereas the seller is liable for real estate capital gains tax (**RECGT**) on the difference between fair market value (selling price) and investment costs (see Exit phase), the Investor/buyer is entitled to make a step-up on the investment costs of the acquired shares in the same amount.

Holding phase

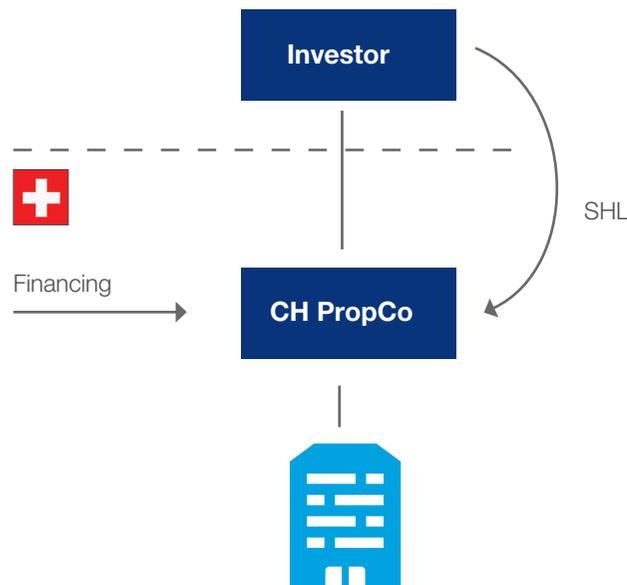
Direct investment



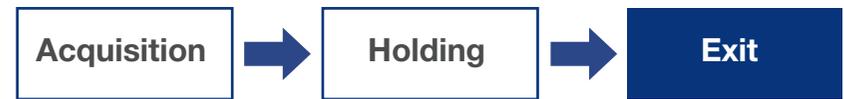
- **Tax filing/registration:** Legal entities which have neither their registered office nor their actual administration in Switzerland are liable to tax based on economic affiliation if they have ownership rights (or economically equivalent rights) in real estate in Switzerland. Therefore the Investor is subject to registration and tax filing obligations in Switzerland.
- **CIT:** Due to economic affiliation of the Investor to Switzerland, the Investor is liable to CIT on real estate income at standard CIT rate based on the worldwide income. Unrealized capital gains are not subject to (corporate) income tax. The CIT rate depends on the canton in which the property is located and ranges from 12-21% (e.g., effective CIT tax rate ZH: 21.2%; BE: 21.6%, GR: 14.02%, GE: 14%).
- **Capital tax:** The Investor is liable to capital tax. The capital tax rate depends on canton and commune. (Capital tax rate: ZH: 0.14% - 0.18%, BE: 0.12% - 0.16%, GR: 0.49%)
- **Real estate tax (RET):** Depending on the canton, a RET of up to 0.4% of the property value is due. (ZH: no RET is levied, BE: 0.15% max., GR: 0.2% max.)
- **WHT:** No Swiss WHT is due because of the direct holding of the property by the Investor.

Holding phase

Indirect investment

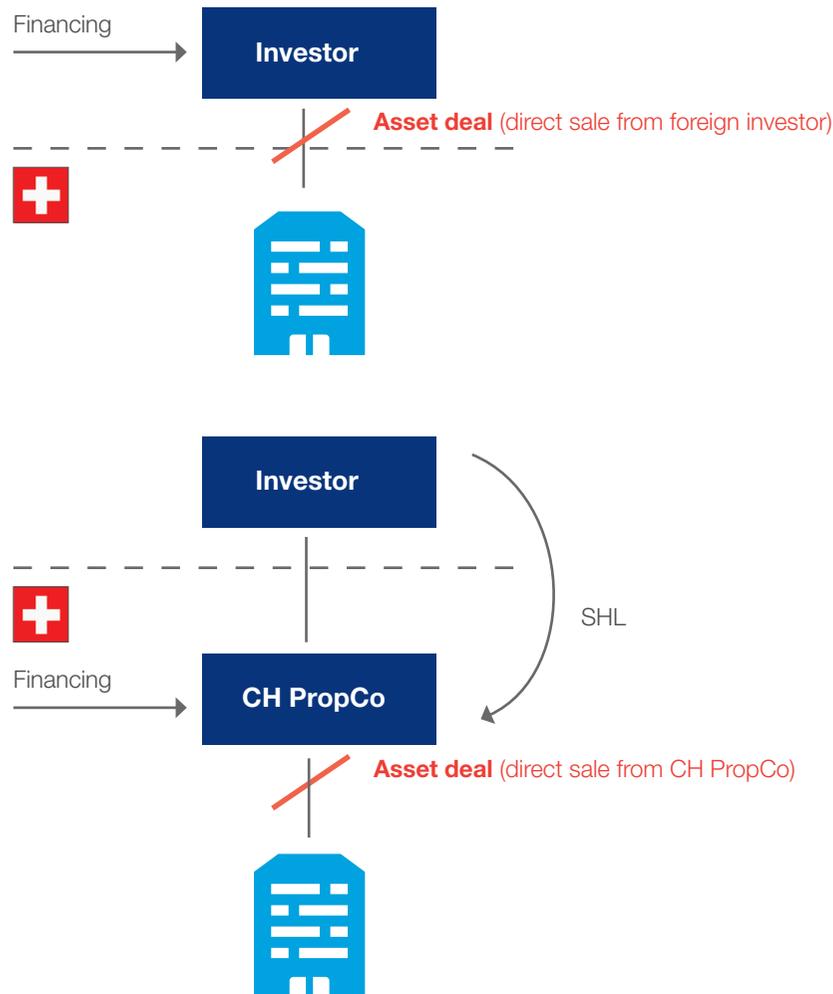


- **CIT:** CH PropCo (and not the Investor) is liable to Swiss CIT on its worldwide income. While the company is taxed at its registered seat, real estate income is taxed by the canton in which the property is located and ranges from 12-21%. (Effective CIT tax rate ZH: 21.2%; BE: 21.6%, GR: 14.02%, GE: 14.00%)
- **Capital tax:** CH PropCo is liable to capital tax at the standard rate. The capital tax rate depends on canton and commune where the property is located. (Capital tax rate: ZH: 0.14% - 0.18%, BE: 0.12% - 0.16%, GR: 0.49%)
- **Real estate tax (RET):** CH PropCo is liable to RET of up to 0.4% of the property value depending on the canton. (ZH: no RET is levied, BE: 0.15% max., GR: 0.2% max.)
- **Dividend WHT:** Switzerland levies a 35% dividend withholding tax on dividend payments made by CH PropCo. Depending on a potential double taxation agreement between Switzerland and the Investor's country of domicile, dividend payments may be partly or fully exempt from WHT. CH PropCo and the Investor can apply for the notification procedure (exemption at source) if the respective requirements under an applicable tax treaty are met and CH PropCo has obtained the required clearance from the federal tax administration.
- **Interest WHT:** Interest payments made by CH PropCo will not be subject to interest withholding tax if CH PropCo complies with the 10/20 non-bank lender rules (i.e., not more than 10 non-bank lenders as part of a direct financing).
- **VAT:** In general no VAT is due on renting a property in Switzerland. Under certain conditions it is possible to opt for VAT (if property is not used for residential purposes).
- **Interest:** on loan financing is tax deductible for CIT purposes at the level of CH PropCo, subject to the condition that the interest rates are at arm's length. Loans provided by the shareholders or other related parties will be re-characterized as equity for tax purposes if CH PropCo exceeds maximum debt ratios for tax purposes (thin capitalization rules). Interest payments made on such equity are a non-deductible item for tax purposes and will be subject to 35% withholding tax (which may be reduced based on an applicable double tax treaty).
- **Carried forward tax losses** are generally tax deductible for CIT tax purposes.



Exit phase

Asset deal



Monistic system (e.g. ZH or BE):

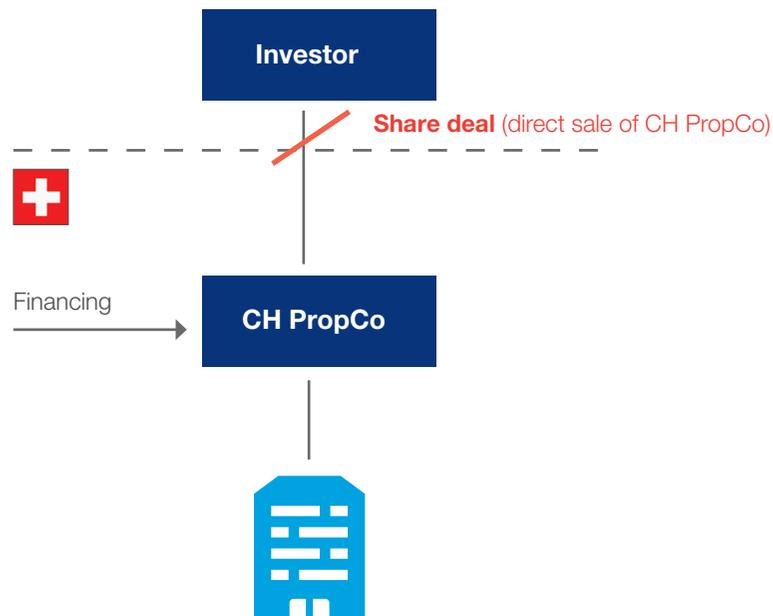
- **CIT: At federal level**, the difference between fair market value (selling price) and book value constitutes taxable income at the level of the Investor at an effective tax rate of 7.83%.
- **CIT: At cantonal level** the difference between investment costs and book value constitutes taxable income at the level of the Investor at cantonal tax rates (recaptured depreciation).
- **Real estate capital gains tax (RECGT):** Only levied at cantonal level. The cantonal tax rates are usually progressive and depend on the amount of taxable gain and on the holding period (higher tax rates for shorter holding periods). The tax rates are typically between 20-25%. The tax is borne by the seller. (ZH: max. 40% or up to 50% if held for less than 1 year (rate is lower for the first CHF100,000 capital gains; reduction of up to 50% due to holding period), BE: up to 8.1% (addition of up to 70% due to short holding period))
- **Real estate transfer tax (RETT):** Is usually borne by the buyer. (ZH: no RETT, BE: 1.8%, GR: up to 2%)
- **Notary and land register fees:** Depending on the canton (ZH: 0.1%, BE: up to 0.9% max. CHF 30,825, GR: 0.1% max. CHF 15,000). Usually, the buyer and the seller of the property each bear half of the notary and land register fees.
- **VAT:** Sale of property is considered a VAT exempt turnover. VAT is due if the seller voluntarily opts for VAT and the property is not used for residential purposes.

Dualistic system (e.g. ZG):

- **CIT: At cantonal and federal level**, the difference between fair market value (selling price) and book value is subject to CIT at effective tax rates depending on the canton. (ZG: 12%)
- **Real estate capital gains tax (RECGT):** At cantonal and federal level no RECGT is levied on an asset deal with a legal entity selling the property.
- **Real estate transfer tax (RETT):** Same as in monistic system.
- **Notary and land register fees:** Same as in monistic system.
- **VAT:** Same as in monistic system.

Exit phase

Share deal



Monistic system (e.g. ZH or BE):

- **CIT: At federal and cantonal level**, the sale of the shares in CH PropCo does not trigger CIT at level of CH PropCo. CIT on the difference between fair market value and book value is deferred on federal level. CIT on the difference between investment costs and book value is deferred at cantonal level. If the tax becomes due, at cantonal level a step-up in the amount of the already paid property gains tax may be made.
- **Real estate capital gains tax (RECGT)**: The sale of the majority of the shares in a real estate company is considered an economic change of ownership. Only levied at cantonal level on the difference between fair market value (selling price) and investment costs. The tax rates are usually progressive and depend on the amount of the taxable gain and on the holding period (higher tax rates for shorter holding periods). They are typically between 20% and 25%. The tax is born by the seller. (ZH: max. 40% or up to 50% if held for less than 1 year (rate is lower for the first CHF100,000 capital gains; reduction of up to 50% due to holding period), BE: up to 8.1% (addition of up to 70% due to holding period)). Note that several tax treaties concluded with Switzerland provide for an exclusive taxation right for the state of residence of the seller, therefore preventing levying of RECGT in Switzerland (e.g., Luxembourg).
- **Step-up** (e.g. ZH or BE): Whereas the seller is liable for RECGT, the buyer is entitled to make a step-up on the investment costs of the acquired shares (see Acquisition phase).
- **Real estate transfer tax (RETT)**: Only the shares in CH PropCo are transferred. It depends on the canton, if such economic change of ownership of the property is subject to RETT. (ZH: no RETT, BE: 1.8%). RETT is in most cantons borne by the buyer (seller is jointly and severally liable). Certain exemptions are made by the cantons.
- **Stamp taxes**: The transferred shares of CH PropCo constitute taxable securities and therefore the transfer of those shares against consideration is subject to securities transfer tax, if either the buyer, the seller or an intermediary is a Swiss securities dealer. (Tax rate: 0.15% for securities issued by a Swiss resident).
- **Notary and land register fees**: Only the shares in CH PropCo are transferred and the owner registered in the land register remains the same. In conclusion no notary and land register fees are due.

Dualistic system (e.g. ZG):

- **CIT: At federal and cantonal level**, the sale of the shares in CH PropCo does not trigger any CIT at level of CH PropCo. CIT on the difference between fair market value and book value is deferred at cantonal and federal level.
- **Real estate capital gains tax (RECGT)**: At cantonal and federal level no property gains tax is levied on a share deal with a legal entity selling the shares.
- **Real estate transfer tax (RETT)**: Same as in monistic system.
- **Stamp taxes**: Same as in monistic system.
- **Notary and land register fees**: Same as in monistic system.

Switzerland

Annexes

Annex

Lex Koller

- Lex Koller restricts the acquisition of real estate by foreign individuals and legal entities.
- Foreign individuals and legal entities require a permit from the competent cantonal authority to acquire real estate.
- The permit can only be granted for the reasons provided for by federal law and, where applicable, by cantonal law.
- In principle, the following requirements must be fulfilled:
 - The acquirer is a person domiciled abroad;
 - the property is subject to approval; and
 - the acquired right is considered as property.
- Foreign legal entities and companies are: Legal entities domiciled abroad and legal entities which have their registered office in Switzerland, but are controlled by persons abroad. “Control by persons abroad” is assumed in particular if such persons hold more than one third of the capital, if they hold more than one third of the voting rights or if they have granted significant loans to the company.
- Subject to approval is in particular residential real estate. The possible permit reasons are rather limited.
- These rules apply for share and asset deals.
- No permit is required for the acquisition of shares which are listed on a Swiss stock exchange (SIX Swiss Exchange, BX Swiss).
- No permit is required for the acquisition of industrial premises (“Betriebsstättenliegenschaften”) like e.g. factory buildings, warehouses or storage areas, offices, shopping centres, retail shops, hotels, restaurants, workshops or medical practices.

Annex

Real estate capital gains tax (RECGT)

- There is no RECGT on federal level in Switzerland. Capital gains on the sale of private property held by a Swiss tax resident individual is tax-free on federal level.
- However, an RECGT is levied in all 26 cantons. Depending on the canton, either the monistic or dualistic system will apply with tax rates varying significantly depending on canton and duration of the investment with rates up to 60%.
- Two different systems are allowed with regard to the taxation of real estate gains:
 - **Monistic System:** Under the monistic system, all capital gains realized on real estate are subject to RECGT (i.e., both capital gains realized by a private individual and realized as part of a trade or business of a individual or a legal entity). The RECGT is levied in the difference of the sale price and the investment value (e.g., acquisition costs). The capital gain is then not subject to income or corporate income tax. Depreciations are however recaptured and subject to income or corporate income tax (i.e., difference between tax book value and investment value). The monistic system applies in the cantons of BE, BL, BS, JU, NW, SZ, TI, UR and ZH.
 - **Dualistic System:** Under the dualistic system, only profits from the sale of real estate held as private assets are recorded with the RECGT, while profits from the sale of real estate held as business assets are subject to CIT. This system applies in the cantons of AG, AI, AR, FR, GE, GL, GR, LU, NE, OW, SG, SH, SO, TG, VD, VS, and ZG.
- **Tax debtor:** The seller is liable for RECGT. In cantons with a dualistic system, legal entities are therefore not subject to a special tax on capital gains on real estate property. In principle, the seller is the person who is registered in the property register as the owner of a property. Since the economic transfer of ownership is treated in the same way as a sale, any person who has the power of disposal over real estate and transfers it in return for payment is also regarded as seller. (Furthermore, in BE and NE [and JU under certain conditions], persons entitled to dividends by law or by contract are treated as sellers.)
- Real estate capital gain is taxed at the time of the change of ownership. Note that tax authorities may have the possibility to secure the tax claim by way of mortgage on the relevant real estate.
- **Economic change of ownership**, i.e. a transfer of control of a property is only promised if all or the majority of the shares in the company are sold. In most cantons the sale of minority interests is not subject to RECGT, unless the shareholders deliberately cooperate with the buyer to give him or her ownership of the property (if the buyer acquires the majority of the shares as a result of the transaction). Exceptions: In the cantons of LU, VD, VS, NE and GE, the sale of minority interests is also subject to RECGT.

- **Timing and applicable tax rate:** There are two different systems of time measurement and tax rate determination. Most cantons assess each real estate capital gain individually. Other cantons assess the real estate capital gains of a certain period together:
 - Real estate capital gain is assessed individually. The applicable tax rate depends on the amount of each individual profit in connection with the period of ownership: ZH, LU, OW, GL, ZG, SO, SH, AR, AI, SG, TG, VS, NE and GE;
 - Real estate capital gain is assessed individually. The applicable tax rate depends exclusively on the period of ownership: UR, NW, FR, AG, TI und VD;
 - Real estate capital gain is assessed individually. The applicable tax rate depends on the period of ownership and investment ratio: BS;
 - Real estate capital gains are assessed together. The applicable tax rate is determined by the sum of all profits made during a certain period:
 - For the purpose of rate determination, all real estate capital gains achieved within the last 12 months are added up: BL;
 - For the purpose of rate determination, all real estate capital gains made during the same calendar year - or fiscal year for companies keeping accounts - are added up: BE, SZ, GR and JU.
- **Calculation of tax rates:** Usually depending on the amount of profit and period of possession.
- In most cantons tax rates are progressive depending on the amount of profit. Other cantons use a proportional tax rate.
- Some cantons (LU, OW, SO, SH, SG and JU) multiply the tax with a yearly defined tax base.
- Proportional (UR, OW, NW, FR, BS, AR, AG, TG, TI, VD, GE): Tax rate is independent of the amount of profit; Period of possession is considered: The shorter the ownership period, the higher the applicable tax rate.
- Progressive (ZH, SZ, GL, BL, AI, GR, NE, BE, SH, SG, JU, LU, SO, ZG, BS, VS; differences between cantons): Tax rate varies with the amount of profit made; long periods of possession lead to a discount.
- Cantons are obliged to tax short-term real estate capital gains more heavily (different rules in all cantons, e.g., ZH: 50% if held for less than 1Y).

Annex

Real estate profit determination

- **Calculation of profits:** Disposal proceeds (-) Investment costs (-) Legally stipulated deductions = Profit
- **Proceeds:** Selling price and all other services received by the seller from the sale of the property
- **Investment costs:** Purchase price + incurred value-enhancing expenses
- There are a lot of cantonal rules regarding the calculation of value enhancing expenses and the estimation of the purchase price if not identifiable
- **Deductions:** Change of ownership costs and the usual brokerage fees (further deductions under cantonal law)
- **Offsetting of losses:** A possible loss of business suffered by the company in the canton in which it has its registered office or in other cantons with business premises must be set off against the property gain.
- **Depreciation:** The depreciation of real estate is in general tax deductible.
- **Interest Deduction:** In principle, interest on loans attributable to investment in Swiss real estate is tax deductible.
- **Reinvestment reverse:** Under certain circumstances it is possible to add the profits from the sale of real estate to a reinvestment reverse. The cantons grant a tax deferral in certain situations. This means that the taxation of profits does not take place immediately but is deferred until the next taxable change of hand. When real estate is acquired by way of tax-suspended disposals, the price of the last taxable disposal remains decisive as the purchase price. However, such tax deferrals are partly granted on the basis of different criteria in each canton. The most important reasons can be inheritance, transactions between family members and reinvestment in a replacement property (many differences between cantons).

Annex

Real estate transfer tax (RETT)

- RETT is a transfer tax levied on the transfer of rights in rem (e.g., transfer of legal title in a real estate) as well as the transfer of the majority of shares in a real estate company.
- RETT is levied by the cantons and / or communes. No RETT is levied on federal level.
- It depends on the canton if the tax is born by the buyer or the seller or by both together.
- The tax is calculated on the purchase price (i.e., the fair market value of the transaction).
- SZ does not levy RETT or any transfer fees or land register fees.
- The cantons of AG, GL, SH, TI, UR, ZG and ZH do not levy a RETT. These cantons may however levy transfer stamp duties or land register fees.
- Please note that RETT and RECGT may apply at the same time. RETT is levied in the fair value of the transaction whereas RECGT is levied on the gain made as part of a transfer.

Annex

Real estate tax (RET)

- RET is a tax levied by the cantons and/or communes on the holding of real estate property. No RET is levied on federal level.
- It must be paid by the individuals and legal entities entered in the land register as owners or beneficiaries of a property.
- RET as such is levied in addition to wealth and capital tax, which already covers real estate. The tax liability is triggered by the mere holding of real estate property and is levied for the entire calendar year (without pro rata calculation).
- Generally, it is calculated on the basis of the full tax value of the property, i.e. without taking into account the debts charged to it. Property is taxable at the place where it is situated, no matter where the owner resides.
- An RET as such is levied in the cantons of BE, FR, AI, SG, GR, TG, TI, VD, VS, GE and JU.
- Certain cantons (ZH, SZ, GL, ZG, SO, BL and AG) do not levy this tax.
- Finally, some cantons (LU, OW, NW, BS, SH and AR) have a so-called minimum tax on property owned by legal entities and/or individuals, which is payable instead of ordinary income and capital taxes (or income and wealth taxes) if it is higher than the latter.
- Meanwhile the remaining cantons (NE, NW, SH, UR, TG and TI) have different systems.
- RET rates depend on the canton and range from 0.02% to 0.3% (e.g., BE: 0.15%, GE: 0.2%).
- The exact tax calculation (valuation of property at certain time, tax exemptions) depends on the canton.

Annex

VAT

- The general VAT rate is 7.7%.
- The transfer of real estate is exempt from VAT.
- VAT may be due if the seller opts for VAT. Opting for VAT is not possible if the real estate is used for residential purposes. The buyer may reclaim VAT as input tax deduction if property is used for VAT taxable activities.
- There is no VAT on the rental of real estate, unless the owner opts for VAT. Opting for VAT is not possible if the real estate is used for residential purposes.

Annex

Stamp taxes

- Switzerland levies several stamp taxes on federal level, such as the issuance stamp tax (Emissionsabgabe) of 1% on equity contributions by the direct shareholder and a securities transfer stamp tax (Umsatzabgabe) of up to 0.3% on the transfer of certain securities such as shares, bonds etc. if a Swiss securities dealer is a party or intermediary to the transaction and no exemption applies.
- Taxable securities are notably shares in Swiss or non-Swiss legal entities, bonds (including certain loan arrangements) and units in collective investment schemes.
- Swiss securities dealers are (a) banks, (b) Swiss resident individuals and legal entities which mainly trade taxable securities for third parties or who act in the capacity of investment advisors or portfolio administrators as intermediaries in the purchase and sale of taxable securities, or (c) Swiss resident legal entities whose assets, according to the latest balance sheet, consist of more than CHF 10 million of taxable securities.
- There are several exempt parties and exempt transactions.

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