THE

# Real Estate Investment Structure Taxation Review

Third Edition

**Editors**

Giuseppe Andrea Giannantonio and Tobias Steinmann

THE LAWREVIEWS

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# THE REAL ESTATE INVESTMENT STRUCTURE TAXATION REVIEW

THIRD EDITION

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Giuseppe Andrea Giannantonio and Tobias Steinmann

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# 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 €7 trillion.

Business operators often prefer to rent the spaces used 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 four 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 increasingly been included in investment portfolios, such as healthcare, senior living, education and student accommodation. In addition, urban regeneration has become a key element of all the decisions taken at EU level, boosting city renovation and the residential sector. In such respect, the recovery fund and NextGenerationEU will play a key role in supporting this transformation.

In this context, attracting new resources and investment from institutional investors such as pension funds, insurance companies and sovereign wealth funds is crucial for the improvement of the real estate sector. In particular, it is desirable that those investors are involved in both financing large development projects and 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, and especially through specialised vehicles like non-listed real estate funds, listed property companies and real estate investment trusts.

The pandemic emergency caused by covid-19 in 2020 has also affected the real estate sector. Although, generally, any disturbance to private real estate valuations is normally only revealed over time, listed real estate stocks suffered sharp falls in 2020 now restarting to peak in 2021. This is because of the role the sector plays in the real economy and for this specific reason it is widely considered that the coronavirus crisis may also have lasting effects on real estate usage; for example, because new public health regulations will be introduced. Accordingly, the post-crisis landscape in which we are now starting to live would be characterised by higher demand in alternative real estate sectors and for alternative assets,



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accelerating a process of transformation that was already ongoing. It is considered therefore that, in the long run, this will all contribute to the fundamental attractiveness of real estate as a long-term investment asset class.

We agree that 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.

However, within the European Union, the differing impact of the covid-19 crisis is exacerbating differences between the interventions made by legislators in the individual jurisdictions, with allowances, tax credits and other tax provisions introduced and applied very differently from one state to another. Generally, these disparities reflect the level of impact the pandemic has had in particular jurisdictions, the economic policies followed by their respective governments and the level of resources available to achieve those aims.

Correlatively, national legislators will need to adapt any new provisions to those pre-existing types of specialised real estate investment vehicles that currently benefit from tax exemptions or other advantageous tax allowances, for both direct and indirect tax purposes.

Given this presently rather fragmented scenario, 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, and to illustrate in a comparative manner possible alternatives for the establishment of investment platforms in Europe and investment vehicles at a local level. In particular, each country-specific chapter provides insights from leading experts on key tax considerations and investment opportunities based on the relevant national legislation. Furthermore, in this edition, we have sought to provide indications of any allowances and facilitations introduced temporarily in response to the current economic crisis that may also present investors with investment opportunities in specific countries.

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

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June 2021



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**Chapter 1**

# BELGIUM

*Ariane Brohez, Christophe Laurent and Antoine Béchaimont*[1]

## I OVERVIEW

### i Investment vehicles in real estate

The most used unregulated corporate vehicles for real estate investments are the public limited liability company (SA/NV), the limited liability company (SRL/BV) and the ordinary limited partnership (SCS/CommV). The SCS is the most flexible vehicle from a corporate law standpoint, and is not subject to capital protection rules.

Regulated vehicles are the Belgian SREIF (FIIS/GVBF), which is an institutional fund, and the Belgian REIT (SIR/GVV), which is a listed vehicle.

For an institutional investor, the choice between the unregulated vehicles or the FIIS depends on its own status and on the characteristics of the transaction.

### ii Property taxes

***Acquisition and disposal***

Share deals are not subject to transfer tax, stamp duty or VAT, unless the tax administration demonstrates an abuse.

Asset deals are either subject to transfer tax or VAT. When the real estate qualifies as 'new building' for VAT purposes, the transfer of a property right may (when the owner is not a professional developer and opts for VAT taxable transaction) or must (when the owner is a professional developer) be subject to 21 per cent VAT. A building is deemed new for VAT purposes until 31 December of the second year following its first use or occupancy. Heavy refurbishment allows for qualification as 'new building' either when:

*a* a drastic modification of essential elements, being the nature, structure or destination, whatever the costs of the works might be, is executed; or

*b* modifications are executed for which the cost of the works (excluding VAT) is equal to at least 60 per cent of the market value of the building (excluding ground) at the end of the works.

When VAT does not apply, the purchase of an asset or the granting of usufruct is subject to 10 per cent (in Flanders) or 12.50 per cent (in Brussels and Wallonia) transfer tax computed on the higher of the agreed price or the market value. Long-term lease rights and rights to build are subject to 2 per cent transfer tax computed on the total of the fees paid to the owner over the full duration of the right increased by the charges contractually borne by the beneficiary.

1 Ariane Brohez and Christophe Laurent are partners, and Antoine Béchaimont is senior associate at Loyens & Loeff.



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***Holding period***

Unregulated vehicles, as well as Belgian establishments of foreign investors in the case of direct acquisition of real estate assets, are subject to corporate income tax. The net revenues, after depreciation and tax-deductible expenses, are subject to 25 per cent corporate income tax. In the case of a direct acquisition by foreign investor, no profit branch tax applies. Capital gains realised upon disposal are subject to 25 per cent corporate income tax, subject to a rollover regime in the case of reinvestment of the price in qualifying assets.

The tax burden differs for regulated vehicles. Entering into such a vehicle (e.g., by conversion of a regulated vehicle) triggers the 'exit tax' – the taxation of the latent gain on the asset at a rate of 15 per cent. Going forward, investment proceeds will not be subject to corporate income tax but taxation will be shifted to the investors via a compulsory yearly dividend distribution, which will trigger withholding tax based on applicable tax treaty.

## II ASSET DEALS VERSUS SHARE DEALS

### i Legal framework

Transactions are executed via acquisition of shares, acquisition of ownership or acquisition of a 99-year long-term lease right.

*a* Asset deal. An investor can acquire the full ownership, a long-term lease or usufruct right over a real estate asset. Such acquisition must be performed by notarial deed and transcribed to the mortgage register to be made enforceable towards third parties.

*b* Share deal. In a share transaction, the purchaser should acquire the shares of an SPV and at the same time inherit all assets and (hidden) liabilities of the company. Extensive due diligence is therefore required upon acquisition. The share transaction takes the form of a private agreement and the inscription of the transfer in the share register. No notarial deed is required. Belgian law does not know the concept of 'real estate company' (a company whose main assets consist of real estate and which would be treated, mainly for tax purposes, differently from an ordinary company). Consequently, the tax regime applicable to share transactions is not subject to deviating rules.

Foreign investors can acquire directly real estate assets without being required to incorporate a local acquisition company.

These types of acquisition are common practice, but their consequences from a taxation and accounting standpoint require case-by-case analysis.

### ii Corporate forms and corporate tax framework

***Corporate forms***

It is common practice for investors to set up a real estate company for each investment. This allows them to ring-fence their investment and facilitates future exits.

The most used unregulated corporate forms for Belgian real estate companies are:

*a* the SA/NV;

*b* the SRL/BV; and

*c* the SCS/CommV (this type of vehicle is not subject to capital protection rules, including the prohibition of financial assistance).



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The most flexible vehicle is the SCS/CommV; however, it requires two types of shareholders: the GP and LP, the GP having unlimited liability for the debts of the SCS/CommV. The SA/NV and SRL/BV can have one shareholder whose liability is limited to its contribution to the company.

Belgian unregulated vehicles are subject to corporate income tax; the same applies to Belgian establishments consisting of Belgian real estate owned directly by foreign companies. The main characteristics under the current state of the law are summarised below.

***Corporate income tax rate***

The statutory corporate income tax rate for tax year (TY) 2021 is 25 per cent.

*Taxable base*

As a rule, accounting law (Belgian GAAP) governs corporate tax treatment, unless the tax law departs from it. The taxable base therefore consists primarily of the accounting results for the year, to which are added:

*a* the dividends distributed;
*b* the disallowed expenses (i.e., accounting expenses that are not (fully) deductible for tax purposes as listed by tax law); and
*c* the transfer pricing adjustments.

In accordance with Belgian GAAP and confirmed by specific tax rules, a matching principle applies. Accordingly, costs related to, for example, a contract, like a credit facility, are to be spread (and therefore deducted) over the duration of this contract.

The negative tax result shall be transferred to the company's carried-forward tax losses. These tax losses can be carried forward without any time limitation, but are subject to a yearly limitation on use, as given below:

*a* no limitation up to €1,000,000 of taxable income; and
*b* 70 per cent of taxable income above €1,000,000.

*Depreciation*

The acquisition price, increased by the ancillary acquisition cost, is recorded as a fixed asset. This fixed asset, ground excluded, is depreciable over 20 to 33 years depending on the underlying type of asset (e.g., logistics, office, retail). Such depreciation is a tax-deductible expense. The same applies to capital expenditure, it being understood that the depreciation period could be shorter depending on the lifetime.

*Most relevant tax-deductible costs*

Apart from depreciation, the most relevant tax-deductible costs are:

*a* maintenance and repair costs to the extent they qualify as operating expenses;
*b* only accruals and provisions corresponding to either a contractual obligation (agreed upon during the taxable period or a preceding period) or a legal or regulatory obligation (other than deriving from accounting law);
*c* financing costs (e.g., at arm's-length interest paid on (mortgage) loans);
*d* at arm's length fees stemming from the real estate, such as asset management fees and letting fees; and
*e* property taxes.



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*Most relevant disallowed expenses*

The most relevant disallowed expenses are:

*a* the corporate income tax due;

*b* the regional taxes (e.g., tax applying on non-residential surfaces located in the Brussels Region); and

*c* financing costs that are:
- not at arm's length; or
- above the 30 per cent-EBITDA threshold.

*Interest deduction*

Interest borne to maintain or acquire taxable income is tax-deductible subject to the limitations set out below.

*a* Intragroup loan interest is deductible for CIT purposes to the extent the loan provides for market conditions. Belgian tax laws do not provide for standard ratios (e.g., loan to value or interest service coverage ratio) to be complied with regarding the financial position of the debtor; nor does it provide for a standard at arm's length interest rate.

*b* Net borrowing costs (financing expenses less financing income) of a taxpayer will only be deductible up to the highest of 30 per cent of the (taxable) EBITDA of the Target Company or €3,000,000, subject to group provisions.

*c* The thin capitalisation rule providing for a 5:1 debt-to-equity ratio still applies:
- in respect of interest payments made to beneficial owners that are either not subject to income tax or that are subject to income tax on this interest income, but that are significantly more advantageous than the Belgian common tax regime (i.e., 'tainted loans'); and
- in respect of interest that benefits from the grandfathering clause under the above EBIDTA limitation.

*Tax consolidation – intragroup transfer*

As from TY 2020, Belgian parent and subsidiary companies or Belgian sister companies (i.e., qualifying taxpayersi) will be allowed to transfer tax losses of the year between them, allowing profit-making companies to offset their taxable base against the transferred tax losses, through an intragroup transfer agreement.

Qualifying taxpayers are Belgian companies and foreign companies established in the EEA that meet the requirement of a minimum 90 per cent capital affiliation, namely, a direct participation of at least 90 per cent or both companies are held for at least 90 per cent by a common Belgian or EEA parent. The companies concerned must have been affiliated during an uninterrupted period of five taxable periods, including the taxable period concerned, and have the same financial year starting date, and either the same financial year end date as the Belgian taxpayer or an earlier end date due to liquidation.

Subject to the specific case of termination of activities, the intragroup transfer is also only allowed between Belgian taxpayers, namely, Belgian companies and Belgian establishment of foreign companies established in the EEA. In other words, when it is referred to a foreign company, the transfer occurs with its Belgian establishment.

Tax consolidation shall be achieved through the transfer of losses of the year between Belgian taxpayers of the same group in accordance with an agreement specifying the conditions for the intragroup transfer (e.g., the Belgian taxpayer must pay to the qualifying taxpayer a compensation corresponding to the tax saving resulting from the intragroup transfer).



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*Transfer pricing adjustments*

The Belgian tax authorities handle transfer pricing issues as 'abnormal or benevolent advantages':

*a* When a company receives an abnormal or benevolent advantage from a related party at variance with the arm's-length principle, no loss or deduction can be offset against this advantage. This rule applies to payments received (e.g., excessive interest or fee received, part of the sale price received in excess of the arm's-length price), but also on savings (e.g., interest saved due to an interest-free loan). Abnormal or benevolent advantages received will therefore always constitute the minimum taxable base of the beneficiary. This minimum taxable base gives rise to an effective cash-out, being equal to the amount of the advantage received multiplied by the applicable CIT rate. The received advantage, consisting of a saving, shall increase the carried-forward tax losses.

*b* A company granting an abnormal or benevolent advantage in breach of the arm's-length principle must add this advantage (e.g., excessive interest or fee paid) to its taxable income, but only to the extent this advantage has not been taken into account in determining the Belgian recipient's taxable income.

***Registration duties***

Occupational agreements (e.g., commercial or office leases) are subject to a 0.2 per cent registration duty, calculated on the aggregate lease terms increased by the charges that are contractually borne by the lessee (these charges are generally estimated between 5 per cent and 10 per cent of the aggregate lease terms).

***VAT***

As a rule, 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

*a* shopping centres;

*b* parking spaces;

*c* VAT leases pertaining to new buildings;

*d* rights *in rem* on new buildings;

*e* provision of hotel accommodations; and

*f* granting of the right to perform a professional activity.

Since 1 January 2019, an optional regime to subject commercial leases to VAT has been available. Under commercial lease, the letting of the premises is exclusively used by the tenant for its economic activity, granting such tenant the quality of a VAT taxable person (even without the right to deduct input VAT). This option is subject to the following conditions:

*a* the letting must concern a new building (or part thereof), meaning buildings for which VAT on construction or refurbishment cost has become chargeable for the first time on 1 October 2018 at the earliest;

*b* the option must be agreed upon by both landlord and tenant; and

*c* the option must be valid for the entire duration of the lease.

This option allows the landlord to deduct input VAT on the construction or refurbishment cost, but shall, at the same time, extend the VAT clawback period to 25 years.



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### iii Direct investment in real estate

***Corporate income tax in the hands of the seller***

Capital gains realised on Belgian real estate are, as a rule, subject to corporate income tax, at a rate of 25 per cent in Belgium. This taxable capital gain can, however, be offset with tax-deductible costs or carry forward losses.

Under certain conditions, however, the seller may benefit from a tax deferral regime. The conditions for benefiting from this roll-over relief are:

*a* the asset on which the capital gain is realised must have been booked as a fixed asset for at least five years at the time the asset is sold;

*b* the taxpayer must reinvest the sale price in depreciable assets used in Belgium for business purposes; and

*c* The reinvestment must occur within a three-year period that can be extended by two supplementary years if the reinvestment consists of a building, plane or boat.

In such cases, the taxation of the capital gain is spread out over the depreciation period of the newly acquired assets.

***Corporate income tax in the hands of the purchaser***

Upon the acquisition, the assets will be booked in the hands of the purchaser for their acquisition value plus the acquisition costs. In other words, the purchaser will benefit from a stepped-up basis and will be able to depreciate these assets (land excluded) from their market value.

***Foreign companies investing directly in Belgian real estate***

According to the Belgian Model Tax Treaty, which follows the OECD Model Tax Treaty in this respect, the right to tax income from (the transfer of) immovable property belongs to the state in which the property producing such income is located. Non-resident entities are subject to 'non-resident income taxation', which is levied on their Belgian-source income resulting from the transfer or the renting of a real estate asset located in Belgium.

No profit branch tax applies on the net repatriated income from the Belgian real estate.

***Transfer taxes***

The sale of real estate in full ownership (or the sale of residual property rights) and the granting of a usufruct right are subject to 10 per cent (Flemish Region) or 12.5 per cent (Brussels Capital and Walloon Region) transfer taxes unless VAT applies. The taxable base equals the acquisition value of the real estate or its fair market value, whichever is higher.

Long-term lease rights are subject to 2 per cent registration duties computed on the aggregate of the lease terms for the entire duration of the right plus the costs to be borne by the long-term lessee, unless VAT applies. Transfers of such long-term lease right are subject to the same registration duties computed on the lease terms, and costs still due until termination of the right increased by the consideration paid to the transferor.

***VAT***

As a rule, the acquisition or granting of property rights over Belgian real estate are not subject to VAT, but are subject to transfer taxes. This means that the seller will not have to charge any VAT to the purchaser, but that it will also not be able to deduct the input VAT, if any, paid



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upon construction (or acquisition) of the real estate. However, the acquisition or granting of property rights over Belgian real estate qualifying as a 'new building' for VAT purposes may or must be subject to VAT instead of transfer taxes.

*a* New building. Only the purchase of (or granting of a property right over) a building (with adjacent land) that qualifies as new for VAT purposes can be subject to VAT. A building will be deemed 'new' for Belgian VAT purposes until 31 December of the second year following that of its first occupancy or appropriation. Heavy refurbishment allows for qualification as a new building for VAT purposes if the refurbishment affects the essential elements (nature, structure, purpose) of the building. If there is doubt regarding such essential elements, the VAT authorities accept that the refurbished building is considered new for VAT purposes whenever the cost price of the refurbishing (not counting VAT) amounts to at least 60 per cent of the sale value of the building (not counting land) after refurbishment.

*b* Status of the supplier. In the case of a new building, the question of whether the transfer can be performed under VAT depends on the status of the supplier. If the supplier is a professional constructor, the transfer must be subject to VAT. A professional constructor is a person who regularly transfers, for a price, new buildings or rights *in rem* on new buildings that he or she has built or acquired subject to VAT, before expiry of the period during which the building is considered new. In other cases, the transferor can opt to subject the transfer to VAT.

***Security package***

The registration of a mortgage as well as the transfer of a mortgage, further to the transfer for consideration of the mortgage-backed receivable or loan, is subject to a 1 per cent registration duty and 0.3 per cent mortgage fee. Certain transfers are exempt. Other securities, such as mortgage mandate, pledge of receivables and bank account, are not subject to those taxes, except a documentary tax of €0.15. The registration of a pledge of movable assets triggers a registration fee of €500.

Note that a pledge of shares can have adverse tax consequences. This is because pledged shares are, as a rule, not considered when determining the thresholds to be met with respect to dividend and interest-withholding tax exemptions. However, the Belgian Ruling Commission has confirmed that this rule does not apply to pledges that exclude the transfer of ownership rights (e.g., voting rights).

### iv Acquisition of shares in a real estate company

***Corporate income tax in the hands of the seller***

When selling shares in a Belgian company whose (main) assets are in real estate, the realised capital gain on shares should benefit from an exemption from corporate income tax in Belgium. This tax advantage for the seller often leads to the granting of a discount for deferred tax liability when computing the share price in accordance with the following market standard formula: NE – NBV + AV – DTL (NE = net equity of the company; NBV = net book value of the real estate asset; AV = agreed value of the real estate asset; and DTL = discount for deferred tax liability that usually corresponds to 12.5 per cent (50 per cent of the currently applicable CIT rate) of the positive difference between AV and NBV.



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***Corporate income tax in the hands of the purchaser***

Upon the acquisition, the share deal does not have tax consequences as such in the hands of the purchaser.

***Corporate income tax in the hands of the target company***

Article 207 of the Income Tax Code (ITC) must be kept in mind, which provides for unavailability of the tax deductions carried forward (e.g., tax losses, notional interest deduction) in the case of a change of control of a Belgian company. There are no fixed guidelines with respect to real estate acquisitions in the form of a share deal, and therefore the further availability of tax deductions must be assessed on a case-by-case basis, it being understood that in most cases the transfer occurs on a going-concern basis and therefore does not trigger Article 207 ITC.

***Indirect taxes***

A share deal is not subject to transfer taxes or stamp duty, even if the sole or main asset of the target company whose shares are sold consists of real estate. A share deal is not subject to VAT.

***Belgian general anti-abuse rules***

Unlike numerous countries, Belgium does not assimilate the sale of shares in companies whose main assets consist of real estate with the sale of real estate for both corporate income tax and registration duty purposes. Consequently, a share deal on an unregulated real estate company will not trigger any adverse tax consequences: no registration duties, no VAT, no stamp duty and no taxation of the latent capital gain on the real estate asset.

The question raised is whether the general anti-abuse rules (GAAR) would allow the re-characterisation of a share deal into an asset deal, and consequently would lead to corporate income tax being due on the latent capital gains and to registration duties being due on the real estate asset value.

In accordance with European case law, the preparatory parliamentary works of the Belgian GAAR and the administrative guidelines provide that tax abuse is made of two components:

*a* an objective component: the contrariety of the aims of a legal provision to the intention of the legislator. The taxpayer chooses a particular structuring, perfectly legal, while the aims of the tax law and the intention of the legislator was not to promote this type of structuring. In short, the taxpayer uses a structure that allows it either to fall outside the scope of a legal taxing provision or to fall inside the scope of a legal exempting provision, while those legal provisions were not made for it.

*b* a subjective component: the essential goal of the taxpayer when choosing this structuring is to obtain a tax advantage.

Accordingly, this GAAR requires that the Belgian tax administration demonstrates a tax abuse, the first component being an objective element, namely, the contradiction with the aim or the objectives of the legislator. In this regard, the Belgian legislator has always, repeatedly and without any doubt, expressed its will (1) not to assimilate shares of a real estate company to the real estate asset and (2) to exempt share deals at the corporate income tax



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as well as for registration duties purposes. On this basis, share deals should generally not be in contradiction with the aim or the objectives of the legislator, meaning that the objective element of the tax abuse is not present.

## III REGULATED REAL ESTATE INVESTMENT VEHICLES

### i Regulatory framework

Specialised real estate investment funds (SREIFs) are subject to the Law of 19 April 2014 relating to alternative investment funds and their managers (the AIFM Law), Program Law II of 3 August 2016 (the SREIF Law) and the Royal Decree of 9 November 2016 relating to specialised real estate investment funds (the SREIF Decree).

SREIFs are aimed at providing asset managers and institutional investors with a flexible and efficient fund vehicle for their real estate investments, in Belgium and abroad.

#### *Overview of available legal forms*

A SREIF is a closed-end fund with fixed capital, and must be structured as a corporation (the available corporate forms are the SA/NV and the SCS/CommV).

#### *AIFM Law and AIF qualification*

A SREIF is an alternative investment fund (AIF) that falls under one of the following categories.

*a* First category. The fund raises capital from a certain number of investors, without public issue, with a view to investing them in real estate in accordance with an investment policy in the interest of the investors. The fund is an AIF in the sense of the AIFM Directive and has opted for investment in real estate. In such a case, the AIFM Law fully applies to the fund and its managers, it being understood that a 'light' regulatory regime is available for a small AIF when the assets under management do not exceed €100 million (with leverage) or €500 million (without leverage and without right to reimbursement within five years as from the initial investment).

*b* Second category. The fund is not an AIF in the sense of the AIFM Directive because either (1) it does not fall within the scope of application or benefits from an exemption or (2) it is owned by one single investor or constitutes a joint venture. In such a case, the fund opts for AIF status in the sense of the AIFM Law and limits its investments to real estate. This option is required to benefit from the specific tax status: this means that the manager of such a fund shall not be subject to (other) obligations, without prejudice to its obligations under the AIFM Law (or equivalent in another Member State) if it manages other AIFs in the sense of the AIFM Directive.

#### *Eligible investors*

Shares or partnership interests in a SREIF can only be subscribed or offered to corporate institutional investors as further listed by Royal Decree and by the MiFiD legislation. In addition, all corporations can opt to be treated as institutional investors.

#### *Eligible investments*

A SREIF can only invest in real estate, defined as follows:

*a* Belgian and foreign real estate assets, as well as rights *in rem* on these assets;



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*b* all the shares in Belgian companies owning real estate, provided that these companies are either merged into the SREIF or have opted for the SREIF regime within 24 months from the acquisition;
*c* shares in foreign real estate companies holding foreign real estate assets;
*d* shares in Belgian (institutional) B-REITs;
*e* shares in Belgian SREIFs;
*f* shares in Belgian or foreign AIFs investing in real estate;
*g* shares in EEA REITs (as further defined by the SREIF Decree);
*h* options on real estate assets;
*i* real estate certificates;
*j* rights under real estate leasing; however, the activity of a lessor under a leasing with a purchase option can only be ancillary (with an exception for real estate assets dedicated to public interest, including social housing and teaching);
*k* concession rights granted by a public body; and
*l* loans to subsidiaries and guarantees or security to the benefit of subsidiaries.

A SREIF is subject to a minimum investment volume of at least €10 million at the end of the second financial year following its inscription on the SREIF list.

Real estate development, understood as a main or ancillary activity implying a forward sale or a sale within five years after construction, is strictly prohibited.

No compulsory diversification requirement or leverage limits apply to SREIFs, but a SREIF may freely decide to apply these types of limitations as part of its investment policy.

***Financial statements and control***

A SREIF must draw its (consolidated) financial statements in accordance with International Financial Reporting Standards (IFRS) and is subject to a yearly audit by an auditor recognised by the Financial Service and Markets Authority (FSMA). The approval or direct supervision of the FSMA applies to the manager of the first category of SREIF, and to the managers of the second category to the extent they manage other AIFs in the sense of the AIFM Directive. The tax authorities are competent to monitor the compliance of the SREIF with the provisions of the AIFM Law and the SREIF Decree.

***Distribution obligation***

The SREIF is subject to a yearly distribution obligation amounting to at least the positive difference between (1) 80 per cent of its net profit (computed in accordance with the rules set forth in Annex A to the SREIF Decree) and (2) the net reduction of the SREIF indebtedness in the course of a financial year. Realised capital gains, provided they are reinvested within four years, are exempted from this distribution obligation.

***Duration***

The duration of the SREIF is limited to a maximum of 10 years, it being understood that this duration can be extended, each time for a five-year period, subject to a decision taken by the unanimity of the votes at the general assembly of the investors.

**ii Overview of the different regulated investment vehicles**

Only the SREIF is available.



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### iii Tax payable on acquisition of real estate assets

***Acquisition in asset deal***

The net capital gain realised by the seller shall be subject to corporate income tax at a rate of 25 per cent. The sale or the granting of a property right shall be subject either to transfer taxes or to VAT.

***Exit tax***

Upon option by an unregulated vehicle for the SREIF regime or upon merger of such an unregulated vehicle into a SREIF, the latent gain on the Belgian real estate and the tax-free reserves are subject to the exit tax at a rate of 15 per cent. The same applies to the contribution of real estate to a SREIF by a Belgian corporation.

The latent gain is computed based on the appraised value of the real estate asset, excluding transfer taxes. The tax losses of the Belgian company should be available for offsetting, subject to the limitation in use provided for by the tax legislation.

***Indirect taxes***

The option for the SREIF regime or the merger of an unregulated vehicle into a SREIF does not trigger transfer taxes or VAT.

### iv Tax regime for the investment vehicle

***Corporate income tax and treaty protection***

A SREIF is formally subject to corporate income tax at the statutory rate of 25 per cent, but on a reduced taxable base:

*a* the abnormal or benevolent advantages received;

*b* the disallowed expenses (other than (1) capital loss and write-off on shares and (2) excessive borrowing costs in accordance with the Anti-Tax Avoidance Directive provisions on interest deduction restriction). In this respect, the tax and financial impact of certain regional taxes (e.g., tax on office surfaces) should not be underestimated and attention must be paid to transfer pricing; and

*c* the special tax for secret commission (e.g., non-disclosed remuneration).

In other words, investment income (rental income, capital gains, dividends, and interest) is not subject to CIT.

This formal subjection to corporate income tax should allow the SREIF to claim treaty benefits from a Belgian standpoint.

***Subscription tax***

A SREIF is subject to a yearly 0.01 per cent subscription tax on the net amounts invested in Belgium (i.e., to the extent that the SREIF's shares are held by Belgian residents).

***VAT***

Management services invoiced to a SREIF benefit from a VAT exemption.



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### v Tax regime for investors

***Investments in Belgian real estate***

*a* Taxation of dividends: Dividends distributed to Belgian corporate shareholders do not benefit from the participation exemption regime and shall therefore be taxable in the hands of those shareholders, subject to the specific tax regime of the corporate shareholder concerned.

*b* Withholding tax: Dividends distributed by a SREIF are, as a rule, subject to 30 per cent withholding tax that can, however, be reduced by virtue of relevant provisions of domestic law or tax treaty:
- a withholding tax exemption shall apply to dividends distributed to Belgian corporations subject to a minimum participation of 10 per cent in the SREIF and a minimum uninterrupted holding period of one year; and
- dividends distributed to a foreign pension fund that (1) is not conducting a business or a lucrative activity; (2) is totally tax exempt in its country of residence; and (3) is not contractually obliged to redistribute these dividends to a beneficial owner that cannot qualify for this exemption, benefit from a withholding tax exemption.

***Investments in foreign real estate***

*a* Taxation of the dividends: Dividends distributed to Belgian corporate shareholders benefit from the participation exemption regime in the hands of those shareholders, provided that:
- the SREIF directly holds the foreign real estate assets: the foreign real estate assets are located in the EEA or a treaty country (with exchange of information clause) and the income generated by these assets has been subject to regular income tax; or
- the SREIF indirectly holds the foreign real estate assets through a foreign company or companies: the foreign company meets the 'subject-to-tax' requirement under the Belgian participation exemption regime.

*b* Withholding tax:
- a withholding tax exemption applies to dividends distributed to Belgian corporations subject to a minimum participation of 10 per cent in the SREIF and a minimum uninterrupted holding period of one year; and
- dividends distributed to foreign investors shall benefit from a withholding tax exemption without underlying condition of taxation in the source state (the look-through approach).

## IV REAL ESTATE INVESTMENT TRUSTS AND SIMILAR STRUCTURES

### i Legal framework

The regulated real estate company (REC) was introduced by the Law of 12 May 2014 (the BE-REIT Law) and the Royal Decree of 13 July 2014 (the BE-REIT Decree) as an alternative to maintain the attractiveness and competitiveness of Belgium. The status of institutional REC has been implemented as well.



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The main goal of a BE-REIT is the long-term holding and letting of real estate, including the active management of the real estate. Public BE-REITs and institutional BE-REITs are subject to FSMA supervision but fall outside the scope of the AIFM Directive.

A BE-REITs has a commercial activity, being the development and management of a real estate portfolio in its own corporate interest. This commercial activity is exercised by the BE-REIT itself, or by a subsidiary, meaning that the BE-REIT must have an operational team representing a substantial part of its employees, and must have direct relations with clients and service providers.

### ii Requirements to access the regime

#### *Regulatory status*

A BE-REIT is subject to the supervision of the FSMA, but falls outside the scope of the AIFM Directive and does not qualify as an AIF.

A BE-REIT must obtain a licence as a collective investment undertaking from the FSMA to be registered on the BE-REIT list. In this respect, the registration request comprises the information out of which the FSMA can assess the compliance of the BE-REIT with the BE-REIT Law and the BE-REIT Decree.

#### *Legal form*

The BE-REIT must be structured as a non-tax-transparent fund vehicle, namely, a public limited liability company, with a minimum share capital of €1.2 million.

#### *Eligible investors and listing*

The subscription and transfer of securities issued by BE-REITs are open to every investor, to the extent that at least 30 per cent of the issued share capital are publicly traded and that the BE-REIT is listed on a regulated market.

Listing can only occur after registration on the BE-REIT list and after the publication of a prospectus, subject to specific requirements.

The BE-REIT Law expressly provides the possibility for a BE-REIT to issue securities other than shares (e.g., bonds, convertible bonds) to the exclusion of profit shares.

#### *Eligible investments*

The principal activity of a BE-REIT consists of the active management of real estate assets. In this respect, BE-REITs are only allowed to invest in real estate, whether located in Belgium or not, which includes the following categories of assets:

*a* real estate and rights *in rem* on real estate;

*b* shares with voting rights in real estate companies (including intermediary holdings), whose share capital is held (directly or indirectly) for more than 25 per cent by the BE-REIT;

*c* option rights on real estate;

*d* shares in BE-REITs and in institutional BE-REITs, whose share capital is held (directly or indirectly) for more than 25 per cent by the BE-REIT;

*e* units of a foreign collective investment undertaking investing in real estate and registered on the Belgian FSMA list of foreign collective investment undertakings;

*f* units of a collective investment undertaking investing in real estate, established in the EEA and subject to an equivalent control;



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*g* real estate certificates;
*h* shares in EEA REITs;
*i* shares in REICs;
*j* shares in SREIFs; and
*k* subject to limitations, rights resulting from financial leases as defined by the IFRS and analogous rights of use.

Real estate development, understood as a main or ancillary activity implying a forward sale or a sale within five years after construction, is strictly prohibited.

As an exception, ancillary or temporary investments in transferable securities are allowed, to the extent that the articles of association authorise such investments. The BE-REIT may hold hedging instruments covering its financial risk to the extent that its articles of association authorise such transactions. Speculative transactions are not allowed. The hedging strategy must be disclosed in the BE-REIT's financial reports.

The list of authorised activities of a BE-REIT includes the execution, indirectly or in a joint venture, with a public partner, of design build finance agreements, design build finance maintain agreements, design build finance maintain operate agreements, or agreements for the concession of public works (i.e., participation in public–private partnerships).

The minimum participation required for investment in a joint venture is 25 per cent (plus one share) in the capital of the perimeter company, which can also opt for the status of institutional BE-REIT. For the BE-REIT, those participations (in absence of exclusive or joint control) cannot exceed 50 per cent of its consolidated assets.

It is prohibited for a BE-REIT to enter into a shareholder's agreement that derogates from the vote cast according to its participation (being at least 25 per cent plus one share) in a joint venture.

***Financial statements and control***

A BE-REIT must draw its (consolidated) financial statements in accordance with IFRS, and is subject to a yearly audit by an auditor recognised by the FSMA.

***Risk diversification***

The BE-REIT cannot invest more than 20 per cent of its consolidated assets into a single real estate project. A real estate project is defined as one or more real estate objects subject to the same investment risk. Under certain specific conditions, the BE-REIT can obtain a derogation of this rule from the FSMA, provided that the leverage limit does not exceed 33 per cent of its consolidated assets

This risk diversification requirement does not apply when an EEA Member State is the tenant, user or beneficiary of an infrastructure in the framework of a public–private partnership.

The risk diversification is assessed on an IFRS consolidated basis.

***Leverage***

BE-REITs are subject to a double leverage limit:

*a* a debt-to-asset ratio of 65 per cent at both statutory and IFRS consolidated level;
*b* an interest ratio of 80 per cent at both statutory and IFRS consolidated level; in other words, the interest expenses of the BE-REIT and its subsidiaries cannot represent more than 80 per cent of their annual operational and financial income.



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The BE-REIT and its subsidiaries are prohibited from mortgaging (or otherwise encumbering) a real estate asset for more than 75 per cent of its value. In an intra-group relationship, no mortgage or other collateral can be granted except for financing the real estate activities, and the total amount covered by such mortgages or collateral cannot exceed 50 per cent of the global fair value of the real estate assets held by the REIT and its subsidiaries.

The BE-REIT and its subsidiaries are prohibited from granting credit facilities and collateral to third parties.

These thresholds are calculated on an IFRS consolidated basis as well.

***Distribution obligation***

A BE-REIT is subject to a yearly distribution obligation amounting to at least the positive difference between (1) 80 per cent of its net profit (computed in accordance with the BE-REIT Decree) and (2) the net reduction of the BE-REIT indebtedness in the course of a financial year. No distribution is allowed if the (statutory or consolidated) indebtedness ratio already exceeds 65 per cent or will exceed this threshold because of the distribution.

Realised capital gains, provided they are reinvested within four years, are exempted from this distribution obligation.

***Institutional BE-REIT***

The institutional BE-REIT status is available to companies investing in 'immovable property', as defined above, or participating in public–private partnerships, provided that their share capital is owned, directly or indirectly, for 25 per cent+1 share by a BE-REIT. The capital of institutional BE-REIT is open to institutional or professional investors, but also to retail investors, subject to a minimum investment value of €100,000.

The status of an institutional BE-REIT is not optional, meaning that the BE-REIT must choose between having all its subsidiaries subject to this status or not. Once a retail REIT holds an institutional REIT and acquires or incorporates another company, this company has 24 months to apply for institutional REIT status.

***Social BE-REIT***

A type of non-stock listed BE-REIT is available to finance and promote investments in 'care', subject to their accreditation by the competent authority, and defined as infrastructures dedicated to:

*a* the housing or care of disabled persons;
*b* the housing or care of elderly persons;
*c* the care or help of youth persons;
*d* the collective welcoming and care of children under the age of three;
*e* the teaching and accommodation of students;
*f* the operation of a psychiatric institution; or
*g* the operation of a revalidation centre.

Social BE-REITs are incorporated as cooperative companies with a social purpose, having a minimum fixed capital of €1.2 million. The variable capital can be subscribed by retail investors, in a proportion to be determined by Royal Decree. Due to their corporate form, they guarantee a dividend of maximum 6 per cent (after deduction of the withholding tax)



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per year, but the exit is only structured as a buy-back of shares at nominal value. The social BE-REIT must build-up a liquidity reserve to execute these buy-back orders, which can themselves be limited.

The social BE-REIT is only allowed to invest in 'real estate and rights *in rem* on real estate' and in leasing. A debt-to-asset ratio of 33 per cent is applicable as leverage limit.

### iii Tax payable on acquisition of real estate assets

***Exit tax***

Upon conversion of an unregulated vehicle into a BE-REIT or upon merger of such a company into a BE-REIT, the latent gain on the Belgian real estate and the tax-free reserves are subject to the exit tax at a rate of 15 per cent, as for the SREIF.

***Indirect taxes***

The acquisition of a right *in rem* by a BE-REIT is subject to the same RETT as the ones applicable in case of a direct acquisition by an unregulated company.

### iv Tax regime

***Corporate income tax and treaty protection***

The BE-REIT is subject to the same CIT regime as the one applicable to the SREIF.

***Subscription tax***

The BE-REIT is subject to a yearly 0.0925 per cent subscription tax on the net amounts invested in Belgium (i.e., to the extent the BE-REIT's shares are held by Belgian residents). Institutional BE-REITs are subject to a yearly 0.01 per cent subscription tax.

***Tax on stock exchange***

Any transfer for consideration of shares of BE-REITs is subject to a tax on stock exchange transaction of 0.12 per cent and the share buy-back is subject to a tax on stock exchange transaction of 1.32 per cent when it concerns capitalisation shares. Institutional BE-REITs are exempted from this tax.

***VAT***

Management services invoiced to the BE-REIT benefit from a VAT exemption.

### v Tax regime for investors

The tax regime of the BE-REIT's investors is the same as the one applicable to the SREIF's investors. However, dividends distributed by the BE-REIT to its shareholders are subject to 15 per cent withholding tax (instead of a 30 per cent withholding tax) if the BE-REIT invests at least 60 per cent of its assets in real estate used for healthcare in the EEA.

### vi Forfeiture of REIT status

The BE-REIT status can forfeit (1) if the FSMA omits the BE-REIT from the BE-REIT list as a sanction (because the BE-REIT does not observe the laws, regulations or its articles of association on an ongoing basis, after recommendations to remedy to the situation), or (2) by request of the BE-REIT to be removed from the BE-REIT list.



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The forfeiture of BE-REIT status has the following tax consequences:

*a* the results of the year concerned remain subject (1) to the B-REIT tax regime until the forfeiture of the regime and (2) to the ordinary CIT regime as from this date;

*b* the share capital of the BE-REIT, in the sense of the corporate law legislation, shall be considered as fiscal capital for the purposes of CIT and withholding tax;

*c* the retained earnings, not yet distributed, of the BE-REIT, built-up under the BE-REIT status, shall be considered taxed reserves for the purposes of CIT and withholding tax; these retained earnings having been subject to their own tax regime; and

*d* the revaluation surplus corresponding to the latent gain that has been subject to the exit tax should be considered as a taxed reserve for the purposes of CIT and withholding tax, since this revaluation surplus has been subject to its own tax regime – the exit tax.

## V INTERNATIONAL AND CROSS-BORDER TAX ASPECTS

### i Tax treaties

***Permanent establishment and Belgian establishment***

Based on domestic law, foreign investors are subject to a 'non-resident income taxation' on their Belgian-source income, if such income can be allocated to a 'Belgian establishment'. This non-resident taxation in the case of a Belgian establishment shall, however, be subject to the presence of a 'permanent establishment' pursuant to the applicable double tax treaty.

The Belgian Model Tax Treaty follows the OECD Model Tax Treaty with respect to the definition of 'permanent establishment', without any reservation. Whether Belgian real estate constitutes a permanent establishment for the purpose of the application of tax treaties must be analysed based on factual elements.

The absence of a permanent establishment in Belgium for the purposes of the application of tax treaties does not necessarily result in the absence of a 'Belgian establishment', which existence creates tax obligations in Belgium.

While similar to the definition of 'permanent establishment' that appears in the OECD Model tax treaty, the term 'Belgian establishment' is somewhat broader than the OECD terminology. In this respect, old case law states that even the merely passive renting of Belgian real estate investments by a foreign entity constitutes a Belgian establishment when the Articles of Association of the foreign entity mention the exploitation of real estate in its corporate purpose.

The assessment of a 'permanent establishment' or a 'Belgian establishment' will, however, not be pertinent to determine which state has the right to tax income from (the transfer of) immovable property, but only to determine the source of movable income, for example, in the context of interest payments. As Article 6 of the OECD Model Tax Treaty takes precedence over Article 7 (business profits), income from Belgian real estate is therefore always taxable in Belgium, even if it does not constitute a permanent establishment.

***Income from immovable property***

According to the Belgian Model Tax Treaty, which follows Article 6 of the OECD Model Tax Treaty in this respect, the right to tax income from (the transfer of) immovable property belongs to the state in which the property producing such income is located.



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Non-resident entities are subject to a 'non-resident income taxation', which is levied on their Belgian-source income resulting from the transfer or the renting of a real estate asset located in Belgium, whether they are connected or not with a permanent establishment or a Belgian establishment.

*Taxation of capital gains*

Unlike numerous countries, Belgium does not assimilate the sale of shares in companies whose main assets consist of real estate with the sale of real estate for both corporate income tax purposes.

In this respect, Belgium reserved the right not to include paragraph 4 of Article 13 of the OECD Model Tax Treaty in its conventions. Subsequently, most of the tax treaties concluded by Belgium allocate the right to tax capital gains to the state of which the alienator is a resident, even in the case of a share deal on a company whose main assets consist of real estate.

We can, however, observe that paragraph 4 of Article 13 of the OECD Model Tax Treaty is being implemented more and more often in the case of renegotiation of older treaties concluded by Belgium.

*OECD Multilateral Instrument*

Belgium signed the OECD Multilateral Instrument (MLI) on 7 June 2017. The MLI entered into force for Belgium on 1 October 2019. For CIT, the MLI provisions will effect taxable periods that begin on or after 1 April 2020.

In line with its treaty policy, Belgium has chosen to not include Article 13(4) of the OECD Model in all of its Covered Tax Treaties, and has entered a reservation with respect to paragraph 1(a) of Article 9 MLI, which introduces a 365-day reference period for determining whether the value threshold that triggers the application of the analogous provisions of Article 13(4) of the OECD Model has been reached.

On the other hand, Belgium has not entered a reservation with regard to paragraph 1(b) of Article 9 MLI, which extends the scope of the existing provisions to holdings in entities such as partnerships and trusts. Subsequently, the scope of application of the provisions contained in the 10 tax treaties concluded by Belgium should be extended to cover transfers of interests in entities other than companies.

### ii Cross-border considerations

Under Belgian law, there are no restrictions on foreign investment in real estate. No specific incentive for foreign investment applies either.

One should, however, pay attention to EU rules on money laundering and on sanctions, since economic operator and services providers (e.g., lawyers, notaries) might be prevented from doing business with certain parties that are subject to restrictive measures or for which the KYC and client due diligence is not conclusive. This is, however, not typical for real estate and applies to any type of business.

### iii Locally domiciled vehicles investing abroad

*Belgium as place of establishment of funds or platforms*

Belgium may offer the following advantages for establishing a real estate fund or an investment platform.



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*a* An extensive tax treaty network that, in most cases, currently does not assimilate the sale of shares in companies whose main assets consist of real estate with the sale of real estate for corporate income tax purposes. Accordingly most of these treaties allocate the power to tax capital realised on shares to the state of residence of the seller (Belgium), where it should be tax exempt provided the underlying company complies with the 'subject-to-tax' requirements.

*b* Withholding tax exemptions for dividends distributions to foreign pension funds. Dividends distributed to a foreign pension fund that (1) is not conducting a business or a lucrative activity; (2) is totally tax exempt in its country of residence; and (3) is not contractually obliged to redistribute these dividends to a beneficial owner that cannot qualify for this exemption, benefit from a withholding tax exemption.

*c* Withholding tax exemption for dividends distributions to corporate shareholders. Dividends distributed to corporates established in a treaty country should benefit from a withholding tax exemption subject to the same conditions provided for in the EU Parent-Subsidiary Directive:
- the parent company holds at least 10 per cent of the share capital of the Belgian distributing company and that participation has been (or will be) held in full ownership for an uninterrupted period of at least one year. Even if this one-year holding period requirement is not fulfiled at the time of the dividend distribution, the parent company can benefit from the exemption if it commits to hold this participation;
- the Belgian distributing company and its parent company are incorporated under one of the legal forms listed in the appendix to the EU Parent-Subsidiary Directive or under an analogous legal form;
- the parent company must be established in a country with which Belgium has entered into a tax treaty and, under the laws of the respective treaty country and in accordance with the tax treaties concluded by that country with third countries, be deemed to have its tax domicile in that country (no dual residence); and
- the Belgian distributing company and its parent company must be subject to corporate income tax or to a tax analogous to corporate income tax, without enjoying a tax regime that deviates from the common tax system; and

*d* Withholding tax exemptions for re-distribution of foreign-source real estate by SREIF. Dividends stemming from foreign-source real estate income distributed by a SREIF to foreign investors are exempt from withholding tax (the look-through approach).

***Business reasons, substance, and beneficial ownership***

One must take into consideration recent case law from the European Court of Justice (i.e., 'Danish cases') according to which EU law (e.g., the Parent-Subsidiary Directive and the Interest and Royalty Directive) cannot be relied on for abusive or fraudulent ends. Following that principle, a Member State must refuse to grant the benefit of the provisions of EU law where they are relied upon not with a view to achieving the objectives of those provisions but with the aim of benefiting from an advantage in EU law, although the conditions for it are fulfilled only formally.

In a nutshell, conduit companies that are artificially interposed as beneficiaries of interests or dividends, to benefit from the exemptions provided by the EU Directives, should be disregarded.



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## VI YEAR IN REVIEW

The year in review has been dominated by the covid-19 crisis, and relevant tax laws were meant to provide several support measures to the sectors the most affected by this crisis.

From tax communications, tax audits and case law, the attention of the tax authorities is currently focused on the following subjects.

*a* Interest deduction in debt-push down transactions. Over the past years, the courts of appeal of Antwerp and Ghent rendered decisions on the (non-)tax deductibility of interest in the case of leveraged dividend distributions and capital repayment. The Court of Cassation has recently ruled over the case presented to the Antwerp court. The Court of Cassation has confirmed that the interest borne in such a debt push-down transaction is not per se non-tax deductible. However, the Court also confirms that the deductibility of this interest is subject to compliance with the general tax deductibility requirement, being that the interest must be borne by the company with a view to acquire or maintain taxable income, and that the taxpayer must be capable of demonstrating that this requirement has been met. Although the case submitted was very specific (e.g., the loan was granted by the parent company of the company's shareholder) and not related to a real estate investment, it should be anticipated that such transactions will continue attracting the attention of the tax authorities. The taxpayers should therefore carefully document and describe the business rationale behind this type of leveraged distribution and justify the compliance with tax deductibility conditions.

*b* Withholding tax on dividends and interest. Based on domestic legislation (including the implementation of EU Directives) and tax treaties, many withholding tax reductions or exemptions can be applied to Belgian-source dividends and interest. These withholding tax reductions and exemptions are, most of the time, subject to compliance with formalities, like the Belgian payor in possession of a certificate confirming that the conditions to benefit from the exemption are met. In addition to the mere compliance formalities, the Danish cases have attracted the attention of the tax authorities. A special task force is focusing on performing audits on withholding tax exemptions and reductions applied by Belgian taxpayers to verify whether the recipient was effectively allowed to benefit from the exemption or reduction claimed, considering the Danish cases and whether the compliance formalities have been strictly complied with.

*c* Transfer pricing. The dedicated transfer pricing cell continues performing audits on intragroup financing to assess the at arm's length character of the interest applied. Benchmark analysis documented and performed well in advance is a real asset for taxpayers in their defence during such audits.

After a postponement because of the covid-19 crisis, DAC 6 and the obligation to report certain cross-border arrangements entered into force on 1 January 2021. Communication and guidance from the tax authorities remain limited at this stage.

## VII OUTLOOK

Market trends see the development of residential as an asset class for institutional investors and the boom of forward transactions due to lack of (qualitative) products compared to the available funds. In addition, the set-up of real estate funds as joint ventures between investors and developers is expected to increase, with a particular focus and interest on (future) residential assets.



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From an international tax standpoint, great attention will be directed to the announced new tax treaty between France and Belgium. It is expected that this tax treaty will mostly match the recent tax treaty between France and Luxembourg as far as real estate investments are concerned, with, as a ground-breaking modification, the introduction of the concept of a real estate company.



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**Appendix 1**

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Ariane Brohez is partner of Loyens & Loeff's real estate practice group in Belgium. During the past 15 years, she has developed particular experience in structuring real estate funds, real estate investments (acquisition and disposals) and real estate financing. Ariane assists clients in real estate transactions (portfolios, share deals, asset deals, sale and lease back, (re)financing), negotiating deals from initial offer or term sheet until closing, and advising on all tax, regulatory and legal aspects. She also specialises in Belgian corporate tax law and withholding taxes, including international tax developments and GAAR (general anti-avoidance rule), as well as in European law and Constitutional law.

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Christophe Laurent is a partner and heads the Belgian division of the Loyens & Loeff real estate practice group. Christophe advises on real estate investment structuring and leads negotiations on real estate transactions (both asset and share deals), including sale and lease back and real estate asset management (e.g., leases and all real estate-related contracts). He has acquired a reputation for excellence in tax aspects of real estate investments in Belgium, at the fund level (e.g., efficient fund structuring, tax forecasts, financing) as well as at the local level (due diligence, deal structuring), including tax and accounting aspects related to developments.

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Antoine Béchaimont is a senior associate of Loyens & Loeff's real estate practice group in Belgium. He specialises in real estate transactions and taxation. He has broad experience in structuring real estate investments in Belgium, and handles every accounting or tax topic related to fund-structuring (e.g., tax forecasts, financing, corporate income tax, withholding taxes, real estate transfer taxes) or to the transaction itself (e.g., due diligence, deal structuring). He also advises clients on accounting and tax aspects of development projects or public-private partnerships. Antoine has developed relevant expertise in the field of tourism and hotel industry as well.



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