EPRA | REPORTING

European Public Real Estate Association

Global REIT Survey 2016

EUROPE

France – SIIC

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation
SIIC	2003	Article 11 of the Finance Act for 2003. Official comments from the French tax authorities.

Article 11 of the Finance Act for 2003 (Law n° 2002-1575 of December 30, 2002) introduced a specific corporate income tax exemption regime applicable to listed real estate investment companies *(sociétés d'investissements immobiliers cotées,* SIICs) available upon election and subject to conditions. This regime is governed by articles 208 C, 208 C bis, 208 C ter and 219 IV of the French tax code (FTC). The SIIC regime has been amended by the Amending Finance Act for 2004, the Finance Act for 2005, the Amending Finance Act for 2006, the Amending Finance Act for 2007, the Finance Act for 2008, the Finance Act for 2009, the Amending Finance Act for 2009, the Finance Act for 2012, the Amending Finance Act for 2013 and the Amending Finance Act for 2014. In addition, the French tax authorities had published administrative tax guidelines on September 25, 2003, February 01, 2010, December 27, 2011, March 08, 2012 and on June 15, 2012. These are now all included in the French tax authorities' official comments published in the *Bulletin Officiel des Finances Publiques* BOI-IS-CHAMP-30-20-20140304 dated March 04, 2014.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
France	32	8	€ 49.357	1,93%

Top five REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Klépierre	€ 13.382	7.43%	3.97%	0.80%
Gecina	€ 8.468	20.27%	3.70%	0.49%
Foncière des Régions	€ 5.733	12.46%	5.11%	0.28%
Icade	€ 5.070	7.63%	5.41%	0.22%
Mercialys	€ 1.918	7.08%	6.36%	0.08%

* All market caps and returns are rebased in EUR and are correct as at 29 July 2016. The Global REIT Index is the FTSE EPRA/NAREIT Global REITs Index. *EPRA, August 2016.*

The SIIC regime has attracted a number of foreign companies such as Corio, and Wereldhave (Netherlands), Hammerson (UK), Cofinimmo, Montea and Warehouse de Pauw (Belgium).

2 Requirements

2.1 Formalities / procedure

Key requirements
- The election letter must be filed with the relevant tax office of the parent company with a list of the subsidiaries which also elect. - Subsidiaries list must be updated once a year.

To benefit from the SIIC regime, an eligible real estate investment company (i.e. the listed parent company) must file an election with the French tax authorities by the end of the fourth month of the financial year in which this company wishes to benefit from the SIIC regime.

This election may also be made by subsidiaries subject to corporate income tax provided (i) at least 95% of their share capital is directly or indirectly held by one or several listed parent companies that have themselves elected for the SIIC regime or jointly held by one or several SIIC parent companies and one or several SPPICAV (*Société de Placement à Prépondérance Immobilière à Capital Variable*) and (ii) their main object is identical to that of the listed parent company. The election letter must be filed with the relevant tax office of the parent company with a list of the subsidiaries which elect for the SIIC regime. The list must be updated every year, together with the company's annual corporate tax return.

A subsidiary that wishes to elect for the SIIC regime must also identify the parent company and file the election letter with the relevant tax office.

Due to the changes in the company's tax regime, the process of election results in a partial cessation of business. Therefore, the listed parent company and its elected subsidiaries must file a specific cessation tax return.

The election is irrevocable. Once it is made, the eligible companies may not waive it. The election is also considered global because it applies to all the properties and shares in the qualifying partnerships (subject to Article 8 of the FTC).

In the event where income and gains deriving from directly-held properties located abroad would not be exclusively taxable in the foreign jurisdiction where the property is located (under the applicable tax treaty), the SIIC election would apply to such properties. However, these properties, upon specific election, may be definitively excluded from the SIIC regime, either (i) on the date of election for the SIIC regime, or (ii) on the date of their acquisition if later. In this case, the profits deriving from these excluded properties will then be treated as part of the SIIC taxable sector.

2.2 Legal form / Minimum share capital

Legal form	Minimum share capital
- Joint stock company - Partnership limited by shares	EUR 15 million

Legal form

The parent company must be a corporation (*Société Anonyme*) or any other company whose capital is divided into stocks (*actions*) that can be listed (e.g. *Société en Commandite par Actions*). The SIIC regime does not require that the parent company be incorporated under French law or be a tax-resident in France.

In order to qualify for the SIIC regime, the subsidiary company must be subject to French corporate income tax, either due to its legal form or pursuant to a tax election. As mentioned above, it must be at least 95% directly or indirectly held by one or several listed SIIC parent companies having validly elected for the SIIC regime during the entire financial year in which the SIIC regime was applied for or together by one or several SIIC and one or several SPPICAV.

Foreign companies which are listed on an EU-regulated stock exchange and which comply with other SIIC conditions may elect for the SIIC regime as parent, with respect to their French direct or indirect qualifying operations. In order to be eligible for the SIIC regime, the French tax authorities require that the foreign company has a permanent establishment in France and be subject to French corporate income tax. The foreign company's French assets and shares of qualifying French subsidiaries are recorded as assets of the branch for French tax purposes.

Minimum share capital

The share capital of the listed parent company must amount to at least EUR 15 million.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
- Shareholders must not hold more than 60% of share capital or voting rights. - At the time of election, 15% of the share capital and voting rights must be held by shareholders, who individually own less than 2%.	Yes

Shareholder requirements

A single shareholder (other than a SIIC parent) or a group of shareholders acting jointly (*agissant de concert)* pursuant to article L. 233-10 of the French Commercial Code (i.e. persons who have entered into an agreement in order to buy or sell voting rights, or to exercise voting rights in order to implement a policy in relation to a company) must not hold, either directly or indirectly, more than 60% of the share capital or voting rights of the listed parent company. This "60% shareholders test" must be met on a continuous basis (temporary breaches resulting from takeovers, exchange offers, mergers or conversions or redemptions of bonds into shares are allowed subject to conditions).

At least 15% of the listed parent company's share capital and voting rights must be held by shareholders who individually own, directly or indirectly, less than 2% of such share capital and voting rights. This condition aims to ensure a minimum level of free float before the company can elect for the SIIC regime. It has to be met on the first day of the first year of application of the SIIC regime.

Listing requirements

The parent company must be listed on an EU-regulated stock exchange.

2.4 Asset level / activity test

Restrictions on activities / investments
- Principal activity restricted to rent out the property. - No required asset level. - Real estate development may not exceed 20% of the gross book value.

In order to be eligible for the SIIC regime, the principal activity of the company must be restricted to property acquisition and/or construction with the aim to rent out the property as well as direct or indirect portfolio investments in partnerships (*sociétés de personnes*) or other companies liable to corporate income tax, having business activities and goals similar to the SIIC.

The listed parent company and its subsidiaries may also engage in activities other than just passive investments. However, these activities must remain ancillary to the principal qualifying activity. Income from these activities is fully taxable. Qualifying ancillary activities are most notably comprised of the following:

- the financial leasing of properties (*crédit-bail immobilier*) entered into before 2005, provided that the net book value of the outstanding portfolio of the properties does not exceed 50% of the total gross asset value of the company (financial leasing contracts entered into after January 01, 2005, is a qualifying leasing activity eligible to the SIIC regime). This applies to entities that are lessee under a financial lease and grant a sublease to tenants;
- other activities such as real estate development or real estate brokerage, provided that the gross book value of the relevant assets does not exceed 20% of the total gross asset value of the company. For the purpose of this 20% test, the value of properties subject to financial leases is disregarded. If these qualifying ancillary activities are performed through subsidiaries, then only the book value of the participation and current-account receivables would be considered for the purpose of the 20% test.

If the SIIC parent company or subsidiary entered, after 2005, into a financial lease for a building that is sub-let to tenants, this activity is considered as an eligible activity. By contrast, as mentioned above, a financial lease which was entered into before 2005 does not qualify.

The regime is also applicable with respect to assets which the listed parent company and elected subsidiaries enjoy a usufruct right to, or which they leased under certain long-term leases (*baux emphythéotiques*) or building leases (*baux à construction*).

The qualifying activity may be conducted outside of France, either directly or through subsidiaries.

The listed parent company's subsidiaries electing for the SIIC regime must have the same business purpose as SIICs.

The SIIC regime may also apply to the listed parent company's shares in a partnership, if such partnership has a corporate business purpose identical to that of a SIIC. There is no percentage participation requirement with respect to partnerships that engage in qualifying activities.

It is possible to create joint ventures between two SIIC groups. Indeed, as mentioned above, a subsidiary subject to corporate income tax may elect for the SIIC regime when at least 95% held by one or several listed companies that have themselves elected for the SIIC regime.

2.5 Leverage

Leverage
Thin capitalisation rules.

The French SIIC regime does not provide specific leverage restrictions. However, French thin capitalisation rules and other interest deduction limitation rules apply to companies that have elected for the SIIC regime, affecting their tax exempt income, which is subject to profit distributions obligations (see paragraph 2.6 below).

The French thin capitalisation rules apply to loans granted by affiliated companies of the borrowing company and to loans granted by third-party lenders guaranteed by an affiliated company of the borrower (certain exceptions are however available). An affiliated party is defined as (i) a company that controls (or having a de facto control), directly or indirectly, more than 50% of the capital of the French borrowing company, or (ii) any company that is under the direct or indirect control of a person that also controls, directly or indirectly, more than 50% of the capital of the French borrowing company.

In addition to existing thin capitalisation rules, the Finance Act for 2013 has introduced a new general interest deduction limitation. Under the new rules, 25% (for financial year 2014 and onwards) of the net interest expenses borne by a company are non-tax deductible. The restriction applies to the net financial expenses (financial expenses minus financial income). In order not to impact on small and medium-sized enterprises, the restriction does not apply when net financial expenses do not exceed EUR 3 million.

The Finance Act for 2014 has introduced a specific anti-hybrid financing provision applying to loans granted by affiliated companies of the borrowing company. Under this provision, a French borrower is not allowed to deduct interest when the lender is not liable for the interest income to a corporate income tax equal to at least 25% of the ordinary French corporate income tax. Due to this rule, subsidiaries of SIIC may suffer a non deduction of interest relating to loans granted by the SIIC parent company or its subsidiaries having elected for the SIIC regime if such interest are not regarded as affected to a taxable sector at the lender level (which may be the case in certain circumstances).

2.6 Profit distribution obligations

Operative income	Capital gains	Dividends	Timing
95% of tax-exempt profits.	60% of capital gains.	100% of dividends.	See below.

Operative income

At least 95% of the tax-exempt profits realised during tax years closed as from December 31, 2013, derived from qualifying leasing activities (including profits realised by directly owned partnerships or pass-through entities), must be distributed before the end of the tax year following the year in which they are generated. Formerly this distribution obligation was 85% of these tax exempt profits.

Capital gains

At least 60% of the capital gains realised during tax years closed as from December 31, 2013, resulting from the sale of (i) rights relating to leasing contracts (ii) properties (including the sale of properties by directly held partnerships or pass-through entities) (iii) shares of qualifying partnerships or (iv) shares of corporate subsidiaries that have elected for the SIIC regime (including the sale of shares by a directly held partnership or a pass-through entity) must be distributed before the end of the second tax year following the year in which they have been realised. Formerly this distribution obligation was 50% of these tax-exempt gains.

Dividends

100% of the dividends received from SIIC’s subsidiaries which have elected for the SIIC regime must be distributed before the end of the tax year in which they are declared.

2.7 Sanctions

Penalties / loss of status rules
- Profit and gain exemption is denied for the financial year in which the distribution shortfall appears. - Unrealised capital gains subject to the exit tax upon election for the SIIC status are subject to corporate income tax at the standard rate (after deduction of the 16.5% or 19% exit tax paid at the time of election for the SIIC regime) and unrealised capital gains accrued during the period of the SIIC election must be taxed at a 25% tax rate in case the SIIC leaves the status within ten years following the SIIC election.

If a parent company or a qualifying subsidiary that has elected for the SIIC regime does not meet the minimum distribution obligation, the profits and gains exemption is denied for the financial year with respect to which the distribution shortfall appears. If the tax administration were to conduct a tax audit and reassess the exempt profits or gains, the reassessed amount would normally be fully taxable because it would not have been distributed in due time. However, the reassessed amount

should not be considered taxable if it is already covered by previous excess distributions of the 95% (85% previously) and 60% (50% previously) requirement based on initially reported profits and gains.

If the listed parent company no longer fulfils the conditions for the SIIC regime, then the rental income and capital gains would become fully taxable from the beginning of the financial year with respect to which the loss of status takes place. For instance, this could occur in the case of de-listing or if the non-qualifying ancillary activities exceed the applicable threshold or if one shareholder – or a group of share holders acting in concert – owns more than 60% of the share capital or voting rights of the SIIC. In addition, if the loss of status occurs within ten years following the SIIC election, unrealised capital gains on its real estate assets that had been subject to corporate income tax at the reduced "exit tax" rate (19% since 2009, 16.5% before) at the time of entry into the SIIC regime, become subject to corporate income tax at the standard rate applicable during the year of the exit (see paragraph 3.2 below). This rate is currently 33.1/3%, plus the additional surcharges of 3.3% and 10.7%[1], making an effective tax rate of 34.43% or 38%, after deduction for the 19% (or 16.5%) exit tax paid at the time of entry into the SIIC regime.

Should one of the qualifying subsidiaries that elected for the SIIC regime no longer fulfil the conditions, it would lose the benefit of the leasing profits and gains exemption as of the beginning of the financial year in which the loss of status takes place. This could occur if, for example, more than 5% of its capital shares are sold to an unrelated entity that is not a SIIC parent.

If a loss of status were to occur, there would be as well as recapture of the latent gains which were recognised upon the initial election and which benefited from the exit tax of 16.5% or 19%.

In the case of a merger or acquisition of one SIIC by another SIIC, the exemption regime remains valid insofar as the distribution conditions are executed by the acquirer. In the case of acquisition, the target SIIC parent, which becomes a subsidiary as a result of that acquisition, must remain subject to the SIIC regime (as a subsidiary) for the remainder of the ten-year period from its own election as SIIC parent.

The following main sanctions also apply in the event of an exit from the SIIC regime:

- Undistributed earnings relating to tax-exempt profits are taxed at the standard corporate tax rate on the financial year when the listed parent company exits the regime;
- Unrealised capital gains accrued during the period of the SIIC election on the real estate assets are taxed at a special rate of 25% (subject to a rebate of 10% per civil year passed since the election for the SIIC regime);
- A specific mechanism applies when a SIIC does not meet the 60% shareholder test for a limited period of time (when that period is exceeded then the SIIC definitively exits the regime).

3 Tax treatment at REIT level

3.1 Corporate income tax

Current income	Capital gains	Withholding tax
Eligible income tax-exempt.	Eligible capital gains tax-exempt.	- In principle, domestic sourced income not subject to withholding tax. - The taxes withheld on foreign sourced income could be credited if a double tax treaty allows.

[1] Companies recording an annual turnover exceeding EUR 250 million are liable to an exceptional corporate income tax surcharge equal to 10.7% of the tax due. This surcharge applies for fiscal years closed until December 30, 2016.

Current income

The listed parent company and its qualifying corporate subsidiaries that have elected for the SIIC regime are, in principle, subject to French corporate income tax.

However, the following income is fully exempt from corporate income tax, provided that the distribution requirements are met:

- Income realised directly or through qualifying partnerships from qualifying leasing activities. The exemption regime is applicable to financial lease contracts entered into after January 01, 2005, and to certain long-term leases (*baux emphythéotiques*) or building leases (*baux à construction*).
- Dividends received from qualifying subsidiaries that have elected for the SIIC regime, and paid out from the tax-exempt income of such subsidiary.
- The listed parent company may also benefit from the dividend exemption in respect of dividends received from (i) an another SIIC, (ii) or a SPPICAV or (iii) a foreign REIT, provided the listed parent company holds at least 5% of the distributing entity's capital shares and voting rights for at least two years.

Capital gains

Capital gains arising from the sale or disposal of properties used for qualifying leasing activities, from the disposal of participation in qualifying partnerships or other pass-through entities, or from disposal of participation in qualifying corporate subsidiaries that have elected for the SIIC regime are fully tax exempt.

Capital gains are only considered tax-exempt if the acquirer is unrelated to the seller. Two entities are considered to be related to each other if one of the two directly or indirectly holds the majority of the capital shares of the other (or has de facto control), or if both of the entities are directly or indirectly under control of the same entity.

The straight sales of properties among members of the same SIIC group or between members of a SIIC group and a SPPICAV may, however, benefit from an exemption under certain conditions (with a roll-over of the tax basis). In this respect, the tax treatment of the capital gain allocated to buildings will differ from the one allocated to land:

- Non-depreciable assets (e.g. land): for tax purposes, the acquirer takes over seller's basis. Capital gain upon a subsequent sale would therefore, for tax purposes, be computed from this rolled-over tax basis, which will increase the 60% distribution obligation;
- Depreciable assets (e.g. construction): for tax purposes, the acquirer has a stepped-up tax basis. However, the gain recognised in the transaction must be recaptured in the tax-exempt rental income (over 15 years generally, or over the residual useful life if construction represents more than 90% of the value of the depreciable assets). This recapture increases the exempt income and therefore the amount of the compulsory 95% distribution, which in practice offsets the increased depreciation allowances (which themselves reduce the exempt income and the distribution obligation).

Contribution on payment of dividends

Dividends paid by the listed parent company trigger in principle a 3% additional contribution to corporate tax at the level of the distributing company. The Amending Finance Act for 2013 provides for an exemption from this contribution for dividends distributed by the listed parent company up to the amount distributed in accordance with the SIIC distribution requirements.

Withholding tax

If a French listed company or a subsidiary receives foreign source income that is subject to French corporate income tax, the tax withheld could be credited if a double tax treaty allows. There is no actual cash refund for foreign tax withheld. In principle, outbound dividends paid by a SIIC to French tax residents are not subject to a withholding tax.

Accounting rules

The French *Comité de la Réglementation Comptable* adopted a Resolution on December 12, 2002 (Regulation CRC, December 12, 2002, n°2002-10) which devoted a large section of IFRS relating to depreciation and impairment of assets under French GAAP. French companies are required to prepare financial statements in accordance with these rules as from January 01, 2005. Accordingly,

French SIICs are also subject to the French GAAP rules regarding depreciation and property impairment.

3.2 Transition regulations

Conversion into REIT status
- Exit tax payment. - Tax losses carried forward are deductible from exit tax basis within certain limits. - Remaining losses are cancelled.

As a result of SIIC election, the listed parent company and its electing subsidiaries experience a cessation of activity and a tax regime change. Under ordinary tax rules, this would trigger immediate taxation of deferred profits and unrealised capital gains. Upon the transition, the following tax rules apply:

- The election for the SIIC regime triggers liability for an exit tax at a rate of 19% (16.5% before 2009) on unrealised capital gains on real estate assets and on interest in qualifying real estate partnerships owned by the listed parent company and its corporate subsidiaries electing for the SIIC regime. This exit tax is payable in four instalments (every December 15, for the first four years after election). Conversely, there is no taxation of the unrealised capital gains on participation held in qualifying corporate subsidiaries. However, there is a roll-over of tax basis on these gains;
- The unrealised capital gains on other assets are tax-exempt, but subject to roll-over tax basis;
- Prior tax losses, if any, may be offset against such taxable unrealised capital gains but should be capped to 50% of the fraction of the gains exceeding EUR 1 million.

The SIIC regime election does not trigger any taxation at the shareholder level.

3.3 Registration duties

Registration duties
- Notary and land security fees. - VAT and/or registration duties.

NB The rules described below are not SIIC-specific.

The French tax costs arising from property acquisition are:

- Notary fees equal to 0.814% of the property purchase price with a possible maximum 40% rebate for the part of the property exceeding EUR 10 million (as for non residential properties);.
- Land security fee amounting to 0.1% of the purchase price of the property;
- Depending on the nature of the property, either (i) a 20% VAT plus a 0.715% reduced registration duty, or (ii) registration duties at the standard 5.8% rate (5.09% in a few locations) (plus an additional tax on registration duties of 0.60% in case of transfer of office premises, commercial premises or warehouses located in the Ile-de-France region).

Property acquisition is either subject to VAT or registration duties in France:

- Pursuant to article 257 of the FTC, the French standard VAT of 20% applies to (i) transfers of properties that have been completed less than five years before the transfer date, (ii) property transfers of building land;
- The sale is subject to French registration duties at a rate of 5.8% (5.09% in a few locations) depending on the location of the property liquidated on a fair market value of the properties if (i) the properties were built more than five years ago, and (ii) it is not a building land.

The acquisition of shares or interests in French predominantly real estate subsidiaries or partnerships (*sociétés à prépondérance immobilière*) is subject to registration duties at the rate of 5% assessed on the sale price of the transferred shares or interests.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholders

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends and capital gains are taxed at the standard rate of 33.1/3% (plus surcharges). - Return of capital is normally tax-free.	- Capital gains and dividends are subject to French income tax. - The return of capital is normally tax-free.	N/A

Corporate shareholders

The tax treatment of French corporate shareholders receiving dividends from a SIIC differs depending on whether the dividends are paid out of taxable or tax-exempt income and gains.

Dividends paid out of the tax-exempt income and gains are fully subject to French corporate income tax at the standard rate. They are not eligible for exemption pursuant to the domestic parent subsidiary regime.

Dividends paid out of the taxable portion are also subject to corporate income tax at the standard rate. However, if the qualifying parent companies hold at least 5% of the shares of the SIIC for at least two years, it could be eligible for the domestic parent-subsidiary 95% dividend exemption.

A return of capital is normally tax-free. Any reduction of share capital or the distribution of share premium will be treated as a tax-free return only to the extent that all reserves or retained earnings have already been distributed. The latter condition does not apply in case of share redemption.

Capital gains earned on the sale of the listed parent company shares are subject to corporate income tax at the standard rate of 33.1/3% (effective tax rate of 34.43% or 38% for companies liable to the exceptional corporate income tax surcharge[2]). The rate could be reduced to 19% (effective tax rate of 19.63% or 21.66% for companies liable to the exceptional corporate income tax surcharge) pursuant to the long-term capital gain tax regime if the shares have been held for at least two years and can be considered qualified participation (e.g. treated as participating shares for accounting purposes, which generally requires shareholding of 5% at least).

Individual shareholders

Dividends paid out of the tax-exempt income and gains are subject to progressive tax rates of personal income tax (up to 49%) and to social contributions at a total rate of 15.5%.

Dividends paid out of the taxable income and gains are also subject to progressive tax rates of personal income tax (up to 49%), but on 60% only of their amount, as well as to social contributions at a total rate of 15.5%.

French individuals deriving capital gains from the sale of SIIC shares are subject to progressive tax rates of personal income tax (up to 49%) as well as to social contributions at a total rate of 15.5%. They may benefit from the mechanism of progressive rebate on the taxable gain subject to personal income tax available after a two-year holding period. This rebate amounts to 50% for securities held less than eight years and to 65% for securities held at least eight years.

A return of capital distribution is normally tax-free. However, any reduction of capital shares or share premium distributions will be treated as a tax-free return of capital only to the extent that all

[2] Companies recording an annual turnover exceeding EUR 250 million are liable to an exceptional corporate income tax surcharge equal to 10.7% of the tax due. This surcharge applies for fiscal years closed until 30 December 2016.

reserves or profits have already been distributed. The latter condition is not applicable to share redemption.

Withholding tax

In principle, dividends paid to French tax residents are not subject to a withholding tax.

However, a specific 15% withholding tax applies on dividends distributed by the listed parent company or its subsidiaries having elected for the SIIC regime:

- to the following French collective investment vehicles (*organismes de placement collectif*): UCITS (*OPCVM*), real estate collective investment schemes (*organismes de placement collectif immobilier*) and closed-end investment companies (*sociétés d'investissement à capital fixe*), or to foreign collective investment vehicles fulfilling the conditions to benefit from the general exemption of withholding tax on dividends (see 4.2),
- when such dividends are paid out of the tax-exempt revenues.

This withholding tax is not in lieu of corporate or personal income tax and may neither be offset or refunded.

4.2 Foreign shareholders

Corporate shareholder	Individual shareholder	Withholding tax
- Final withholding tax for dividends.	- Final withholding tax for dividends	- Generally 30% withholding tax (or a reduced treaty tax rate). - EU Parent-Subsidiary Directive not applicable.

Corporate and individual shareholders

Dividends distributed by a French parent company or a qualifying subsidiary having elected for the SIIC regime to non-resident shareholders are subject to a withholding tax at the rate of 30%. If the shareholders are resident of a treaty country, they may however benefit from an exemption or a reduced withholding tax rate which is generally equal to 15% and such withholding tax is often creditable against the income tax liability in their home jurisdiction.

However, the latest tax treaties concluded by France provide for specific provisions relating to distributions by REITs as advised by the OECD in the report Tax treaties issues related to REITs dated October 30, 2007 included in the 2008 update of the Model tax convention.

According to these provisions, the tax treaty reduced rates of withholding tax do not apply to dividends paid out of income or gains derived from immovable property by an investment vehicle:

- which distributes most of its income annually; and
- whose income and gains from such immovable property are exempted from tax;

where the beneficial owner of these dividends holds, directly or indirectly, 10% or more of the capital of the vehicle paying the dividends.

In such case, the dividends may be taxed at the rate provided for by French domestic law, i.e. at 30%. The 15% tax treaty withholding tax rate is thus applicable only for small investor – i.e. when the beneficial owner holds less than 10% of the capital of the vehicle.

France has included this provision in the tax treaties recently concluded (among others) with the United Kingdom (tax treaty dated June 19, 2008), Panama (tax treaty dated June 30, 2011), Andorra (tax treaty dated April 02, 2013), China (tax treaty dated November 26, 2013), Singapore (tax treaty dated January 15, 2015), Germany (tax treaty dated March 31, 2015) and Colombia (tax treaty dated June 25, 2015).

The 30% withholding tax does not apply on dividend payments made to collective investment vehicles established on the basis of foreign law, located in a member state of the EU or in another

state or territory that has concluded with France a convention on administrative assistance in order to fight against tax fraud and evasion, and which fulfil both the two following conditions:

- raising capital from a number of investors in order to invest in accordance with a defined investment policy in the interests of these investors;
- presenting characteristics similar to those of the following French collective investment vehicles (*organismes de placement collectif*): UCITS *(OPCVM*), real estate collective investment schemes (*organismes de placement collectif immobilier*) and closed-end investment companies (*sociétés d'investissement à capital fixe*).

However, when these dividend distributions are paid out of tax-exempt revenues, a specific 15% withholding tax is due.

EU corporate shareholders are not eligible for the withholding tax exemption pursuant to the EU Parent-Subsidiary Directive to the extent that the dividends are paid out of the tax-exempt revenues.

A return of capital is normally tax-free. However, any capital share reduction or share premium distribution will be treated as a tax-free return of capital only if all reserves or profits have already been distributed. This latter condition does not apply in case of share redemption.

Capital gains realised on the sale of the listed parent company shares are taxable in France at a flat rate of 19% (for all individual shareholders irrespective of their State of residence and corporate shareholders EU resident or resident of a State member of the EEA which has concluded with France a convention on administrative assistance in order to fight against tax fraud and evasion) or 33.1/3%, in case of substantial participation (more than 10%) and subject to double tax treaty. There are uncertainties as to whether capital gains on the sale of the listed parent company shares are taxable in France when the seller holds less than a 10% participation.

Capital gains realised on the sale of qualifying subsidiaries' shares that have elected for the SIIC regime are taxable in France at the standard rate of 33.1/3% and subject to double tax treaty.

4.3 Anti-abuse measures

Specific levy of 20%
Applicable to the dividends paid by the parent company to domestic or foreign shareholders under certain circumstances.

A specific levy regime applies under certain circumstances to the dividends paid by the parent company to domestic or foreign shareholders.

The parent listed company must assess and pay a 20% levy in respect of the dividends distributed if the beneficiary of the dividends (i) is a French or foreign taxpayer other than an individual (ii) which holds, directly or indirectly, at least 10% of the financial rights of the parent company at the payment date, and (iii) which is either exempt from any corporate tax on the dividends or subject to tax thereon at a low rate (i.e. a rate lower than 11.12%).

5 Tax treatment of foreign REITs and its domestic shareholders

Foreign REIT	Corporate shareholder	Individual shareholder
Election for SIIC regime possible.	Same treatment as domestic shareholders of SIIC.	Same treatment as domestic shareholders of SIIC.

Foreign REIT
In principle, the double tax treaties state that the income and gains deriving from property located in a foreign state are taxable in that foreign State.

Accordingly, the rental income of a foreign company is taxed in France as long as the relevant properties are located in France. In this respect, the foreign company can benefit from the SIIC exemption regime if it meets the applicable conditions and if it has validly elected for the SIIC regime (notably, the parent company and its corporate subsidiaries meet the SIIC requirements, see supra 2.2, 2.3 and 2.4). ■

Authors contact | France

Eric Davoudet
Tel. +33 (0)1 44 05 52 73
eric.davoudet@cliffordchance.com

Carole Truong
Tel. +33 (0)1 44 05 52 40
carole.truong@cliffordchance.com

CLIFFORD CHANCE

EPRA
Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com