

The Specialised Real Estate Investment Fund (SREIF)

Fonds d'investissement immobilier spécialisé (FIIS) *Gespecialiseerde vastgoedbeleggingsfonds (GVBF)*

The Specialised Real Estate Investment Fund (**SREIF**) is subject to the Law of 19 April 2014 relating to the alternative investment funds and their managers (**AIFM Law**), the Program Law II of 3 August 2016 (**SREIF Law**) and the Royal Decree of 9 November 2016 relating to the specialised real estate investment funds (**SREIF Decree**).

The SREIF aims at providing asset managers and institutional investors with a flexible and efficient fund vehicle for their real estate investments, in Belgium and abroad. The investment in a SREIF should also qualify as real estate investment for the purposes of Solvency II.

The SREIF is a closed-end non-tax transparent fund whose main characteristics, as further detailed below, are as follows:

- Light regulatory regime with no FSMA approval
 - SREIF can be incorporated by one single eligible investor
 - Investments in real estate, broadly defined, but without compulsory diversification requirement or leverage limits
 - SREIF accounts are mandatory under IFRS (exclusion of Belgian GAAP)
 - SREIF is subject to a yearly distribution obligation
 - The duration of a SREIF is limited to 10 years with extension possibility
 - Specific tax regime
-

1 Eligibility requirements

1.1 AIFM Law

When the SREIF has more than one single eligible investor, the SREIF is an **AIF** and its manager shall be subject to the provisions of the AIFM Law except when the investors in the SREIF are its manager or its parent companies or subsidiaries, or subsidiaries of its parent companies (“intragroup exception”) provided that none of these investors is an AIF. A “light” regulatory regime is available for small AIF when the assets under management do not exceed 100,000,000 EUR (with leverage) or 500,000,000 EUR (without leverage).

When the SREIF only has **one single eligible investor**, and provided that its incorporation documents especially mention that the SREIF will only have one single eligible investor as per relevant ESMA guidelines, or when the SREIF can benefit from the aforementioned intragroup exception, it can **opt** for an **AIF status** provided for in Part III (non-harmonised AIF) of the AIFM Law. This option is required to benefit from the specific tax status. In a nutshell, this means that the SREIF is subject to the provisions of the Belgian Companies Code (with this specificity that the SREIF might have only one shareholder) and must have a minimum share capital of 1,200,000 EUR. The manager of such a SREIF shall not be subject to (other) obligations, without prejudice to its obligations under the AIFM Law (or equivalent in another Member State) in case it manages other SREIF or AIF subject to the AIFM Directive.

1.2 Eligible investors

The shares or partnership interests in a SREIF can only be subscribed or offered to corporate institutional investors as further listed in Annex. In addition, note that Belgian corporates can opt to be treated as institutional investors. The SREIF can be incorporated by **one single eligible investor**.

1.3 Eligible investments

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

- Belgian and foreign real estate assets, as well as rights *in rem* on these assets;
- Shares of foreign real estate companies holding foreign real estate assets;
- Shares of Belgian (institutional) BE-REIT;
- Shares of Belgian SREIF;
- Shares of Belgian or foreign AIF investing in real estate;
- Shares of EEA REITs (as further defined by SREIF Decree);

- Options on real estate assets;
- Real estate certificates;
- Rights under real estate leasing; note however that the activity of 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);
- Concession rights granted by a public body; and
- Loans to subsidiaries, and guarantees or security to the benefit of subsidiaries.

The SREIF is also allowed to invest in **shares in a Belgian real estate company** but it is obliged to either merge this company, or to convert this company into a SREIF or an institutional BE-REIT within 24 months.

The SREIF is subject to a **minimum investment volume of at least 10,000,000 EUR** at the end of the second financial year following its inscription on the SREIF list. This is an one-off assessment based on the acquisition value or the appraised value used to compute the exit tax.

Promotion, understood as a main or ancillary activity implying a forward sale or a sale within 5 years after construction, is **strictly prohibited**.

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

2 Operational aspects

2.1 No FSMA approval

The scope of application of the AIFM Law and the obligations applying to the manager of the SREIF, depend on the SREIF investors and, as the case may be, assets under management as mentioned above.

The SREIF itself is not subject to the approval or direct supervision of the FSMA.

In order to obtain its status, the SREIF must be registered under the SREIF list held by the Tax Administration. The request must contain the following documents and statements:

- Copy of the articles of association;

- Copy of publication in the Belgian Gazette;
- Statement that the conditions of the SREIF Decree and the AIFM Law are fulfilled; and
- Evidence of the appointment of the custodian, if required by the AIFM Law.

The Tax Administration must confirm the registration within 30 days from the request, or receipt of the complete application file.

In case of infringements to the SREIF Decree and/or AIFM Law that are not remedied, the Tax Administration can decide to strike the SREIF off the list. An administrative recourse is open to the SREIF in such a case.

2.2 Overview of available legal forms

The SREIF must be structured as a corporation, with a minimum share capital of 1,200,000 EUR, for which the available corporate forms are the public limited liability company (*société anonyme / naamloze vennootschap*), the limited partnership by shares (*société en commandite par actions / commanditaire vennootschap op aandelen*), and the ordinary limited partnership (*société en commandite simple / gewone commanditaire vennootschap*).

The SREIF is a closed-end fund with a fixed capital.

2.3 Distribution obligation

The SREIF is subject to a **yearly distribution obligation** amounting to the positive difference between (i) 80% of its net profit (computed in accordance with the rules set forth in Annex A to the SREIF Decree) and (ii) the net reduction of the SREIF indebtedness in the course of a financial year.

Realised capital gains, provided they are reinvested within 4 years, are excluded from this distribution obligation.

A detailed computation method is enclosed as Annex A to the SREIF Decree.

2.4 Accounts, control and information

The SREIF must draw its (consolidated) financial statements in accordance with **IFRS** and is subject to a yearly audit by an auditor recognised by the FSMA.

The net asset value of the SREIF and the fair value of its real estate investments have to be assessed by an independent appraiser at least once a year. This fair value assessment is compulsory in case of merger, de-merger, contribution of a line of business or universality, and upon purchase and sale if the value of the transaction is above 1% of the consolidated net asset of the SREIF. This compulsory fair value assessment is however not required if the last appraisal is not older than 6 months and the assets do not require a new assessment.

If the purchase or sale price differs more than 5% from the valuation, to the prejudice of SREIF, a justification is required in the financial report.

The (potential) investors in the SREIF must be provided with a placement memorandum covering at least the following aspects:

- Name, duration, manager, custodian (if any);
- Investment policy including, as the case may be, hedging, diversification, leverage;
- Distribution policy;
- Manager's remuneration and expenses (and determination methodology);
- Publicity;
- Closing date of accounting year;
- Dissolution events;
- Conditions to amend the placement memorandum; and
- Conditions to issue new shares.

The investors shall receive a yearly financial report.

2.5 Duration

The duration of the SREIF is limited to 10 years, it being understood that this duration can be extended, each time for a 5-year period, subject to a decision taken by the unanimity of the votes at the general assembly of the investors, with a quorum of 50%. This possibility to extend must be provided for in the articles of association of the SREIF.

At the end of this time period, the SREIF is automatically put into liquidation and must dispose of its assets. In other words, the sale of (all) the real estate asset(s) does not have to take place before the expiry of this 10-year period.

The SREIF remains subject to the AIFM Law, the SREIF Law and the SREIF Decree, including the specific tax regime, until closing of the liquidation.

3 Specific tax regime of the SREIF

3.1 Exit tax

Upon conversion of a regular real estate company into a SREIF or upon merger of such a company 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 12.75%. The latent gain is computed on the basis of the appraised value of the real estate asset, excluding rights and taxes, and the tax losses of the Belgian company should be available for off-setting, subject to the minimum taxable base provided for by the tax legislation.

When a Belgian real estate asset is contributed to the SREIF (as a single asset or as part of a contribution of a line of business or universality), the capital gain realised by the transferor is also subject to the exit tax in its hands, but the transferor cannot claim the roll-over regime.

3.2 Corporate income tax and treaty protection

The SREIF is **formally subject to corporate income tax** at the statutory rate of 29.58%, but on a reduced taxable base:

- the abnormal or benevolent advantages received;
- the disallowed expenses (other than capital loss and write-off on shares); in this respect, the tax and financial impact of certain regional taxes (e.g., office tax and COBRACE tax in Brussels) should not be underestimated and attention must be paid to transfer pricing and interest deductibility restrictions; and
- 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 corporate income tax.**

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

3.3 Annual property tax

Belgian real estate assets held by the SREIF are subject to the annual property tax (*précompte immobilier / onroerende voorheffing*). This tax is usually recharged to the retail and office tenants, on the basis of the lease agreement provisions, but cannot be recharged to the residential tenants as a matter of law.

3.4 Subscription tax

The SREIF is subject to a yearly 0.01% subscription tax (*taxe d'abonnement / abonnementstaks*) on the net amounts invested in Belgium.

3.5 VAT

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

4 Specific tax regime of the distributions

4.1 Investments in Belgian real estate

Dividends distributed to **Belgian corporate shareholders** shall be **taxed** in the hands of those shareholders in absence of participation exemption regime, subject as the case may be to the specific tax regime of the corporate shareholder concerned. A **withholding tax exemption** shall apply to dividends distributed to Belgian corporations subject to a minimum participation of 10% in the SREIF and a minimum uninterrupted holding period of 1 year.

Dividends distributed to a **foreign pension fund** that (i) is not conducting a business or a lucrative activity, (ii) is totally tax exempt in its country of residence, and (iii) is not contractually obliged to redistribute these dividends to a beneficial owner that cannot qualify for this exemption, benefit from a **withholding tax exemption**.

Dividends distributed to **foreign investors** shall be subject to **30% withholding tax** subject to **exemption or reduction** by virtue of the applicable **tax treaty**.

4.2 Investments in foreign real estate

Dividends distributed to **Belgian corporate shareholders** shall benefit from the **participation exemption** regime in the hands of those shareholders provided that:

- In case the SREIF holds directly 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
- In case the SREIF holds indirectly the foreign real estate assets through foreign company(ies): the foreign company meets the ‘subject-to-tax’ requirement under the Belgian participation exemption regime.

A **withholding tax exemption** shall apply to dividends distributed to Belgian corporations subject to a minimum participation of 10% in the SREIF and a minimum uninterrupted holding period of 1 year.

Dividends distributed to **foreign investors** shall benefit from a **withholding tax exemption** without underlying condition of taxation in the source state.

4.3 Breakdown of the income

In order to apply the aforementioned tax regime, the SREIF must classify its income in accordance with the breakdown enclosed to the SREIF Decree.

Annex – Corporate institutional investors

Professionals

- 1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:
 - a) Credit institutions
 - b) Investment firms
 - c) Other authorised or regulated financial institutions
 - d) Insurance companies
 - e) Collective investment schemes and management companies of such schemes
 - f) Pension funds and management companies of such funds
 - g) Commodity and commodity derivatives dealers
 - h) Locals
 - i) Other institutional investors
- 2) Large undertakings meeting two of the following size requirements on a company (stand alone) basis:
 - balance sheet total: 20,000,000 EUR;
 - net turnover: 40,000,000 EUR;
 - own funds: 2,000,000 EUR.

- 3) National and regional governments, public bodies that manage public debt, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.
- 4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

Eligible counterparties

- 1) Investment firms
- 2) Credit institutions
- 3) Insurance companies
- 4) UCITS and their management companies
- 5) Pension funds and their management companies
- 6) Other financial institutions authorised or regulated under Community legislation or the national law of a Member State
- 7) Undertakings exempted from the application of the directive 2004/39/CE under article 2(1)(k) and (l)
- 8) National governments and their corresponding offices including public bodies that deal with public debt
- 9) Central banks
- 10) Supranational organisations

For more information about this publication, please contact:

Ariane Brohez, Partner Real Estate & Real Estate Taxation

T: +32 2 743 43 21

E: ariane.brohez@loyensloeff.com

Christophe Laurent, Partner Real Estate & Real Estate Taxation

T: +32 2 743 43 05

E: christophe.laurent@loyensloeff.com

Antoine Béchaimont, Associate Real Estate Taxation

T: +32 2 700 10 39

E: antoine.bechaimont@loyensloeff.com

Although this publication has been compiled with great care, Loyens & Loeff CVBA/SCRL and all other entities, partnerships, persons and practices trading under the name 'Loyens & Loeff', cannot accept any liability for the consequences of making use of this publication without their cooperation. The information provided is intended as general information and cannot be regarded as advice.
