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EPRA Global REIT Survey 2023

A comparison of the major REIT regimes around the world.

2023

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2023

1 General introduction

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	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 30 December 2002) introduced a specific corporate income tax (CIT) 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, the Finance Act for 2019 and the Finance Act for 2021.

In addition, the French tax authorities (FTA) published administrative tax guidelines on 25 September 2003, 1 February, 2010, 27 December, 2011, 8 March, 2012, and 15 June, 2012. These are now all included in the FTA's official comments published in the Bulletin Officiel des Finances Publiques BOI-IS-CHAMP-30-20-04/03/2014 dated 4 March, 2014, (and updated on 3 March, 2021, BOI-IS-CHAMP-30-20-40). However, since the computation of the taxable result of the SIIC is subject to the standard CIT rules unless specified otherwise, many disposals regarding the SIIC are included in the French administrative guidelines relating to entities subject to CIT under ordinary rules.

1.1 Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR_m)	% of Global REIT Index
France	28	8	43.122,24	1,64%

1.2 Top five REITs*

Company name	Mkt Cap (EUR_m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Gecina	7.199,44	15,77%	5%	0,41%
Unibail Rodamco Westfield	6.681,28	-1,03%	0%	0,40%
Klepierre	€6.486,58	29,21%	11%	0,38%
Covivio	4.051,36	-12,35%	9%	0,17%
Icade	2.889,56	-10,01%	9%	0,10%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

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).

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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 opted - 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 letter with the French tax authorities by the end of the fourth month of the tax year for which this company wishes to benefit from this regime.

This election may also be made by subsidiaries subject to CIT 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 elected for the SIIC regime. The list and the company's annual corporate tax return must be updated every year.

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 (Articles 221 and 201 of the FTC – see 3.2 Transition regulations for the tax consequences of such cessation of business). Therefore, the listed parent company and its elected subsidiaries must file a specific cessation tax return.

The election is irrevocable and takes effect from the first day of the tax year during which it was realised. 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 (sociétés de personnes) subject to Article 8 of the FTC (see 3.2. Transition regulations for the consequences of the option).

If 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 provisions of the applicable tax treaty), the SIIC election would apply to such properties. However, these properties, upon specific election, may be excluded from the SIIC regime, either (i) on the date of the 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.

The revenues deriving from properties located abroad and exclusively taxable in the foreign jurisdiction where they are located (under provisions of the applicable tax treaty) do not benefit from the SIIC regime in France since such revenues are not liable to CIT in France.

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2.2 Legal form/minimum share capital

Legal form	Minimum share capital
- Joint-stock company and simplified stock company - Partnership limited by shares	EUR 15 million (except for subsidiaries of a listed parent company opting for the SIIC regime)

Legal form

The parent company opting for the SIIC regime 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 the parent company to be incorporated under French law or be tax-resident in France. Indeed, the parent company can be a foreign company whose running and functioning rules are similar to the French SIIC regime.

Foreign companies that are listed on an EU-regulated stock exchange (or in any stock exchange functioning under the same rules as EU-regulated stock exchanges) and that comply with other SIIC conditions may elect for the SIIC regime as a parent company with respect to their French direct or indirect qualifying operations. To be eligible for the SIIC regime, the French tax authorities require that the foreign company has a permanent establishment (PE) in France and is subject to French CIT. The foreign company's French assets and shares of qualifying French subsidiaries are booked as assets of the PE for French tax purposes.

In order to qualify for the SIIC regime, the subsidiary company must (i) be subject to French CIT, either due to its legal form or pursuant to a tax election; (ii) 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 tax year in which the SIIC regime was applied for or together by one or several SIIC and one or several SPPICAV (or foreign companies subject to a similar tax regime); and (iii) have a SIIC activity (see 2.4 Asset level/ activity test).

Minimum share capital

The share capital of the listed parent company must amount to at least EUR 15 million. This condition does not apply to the subsidiaries of a listed parent company or of one or several SPPICAV (or foreign companies subject to a similar tax regime) that opt for the SIIC regime under the abovementioned conditions.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
- Shareholders must not hold more than 60% of share capital or voting rights except for subsidiaries of a SIIC parent company - At the time of the election, 15% of the share capital and voting rights must be held by shareholders, who individually own fewer than 2%	Yes

Shareholder requirements

A single shareholder (other than a SIIC parent company or a SPPICAV for SIIC being eligible as SPPICAV subsidiaries) 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 to buy or sell voting rights, or to exercise voting rights aiming 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 SIIC parent

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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).

Failure of this test leads to the suspension of the SIIC regime. If the 60% condition is fulfilled again before the end of the tax year, the SIIC regime can apply again from the opening of the next tax year, and the suspension of the regime consists of cessation of business (see 3.2 Transition regulations). In addition, a permanent failure to this test (including after the closing of the tax year) leads to the exit of the SIIC regime (see 2.7 Sanctions in the case of breach of the SIIC regime conditions).

However, the '60 % shareholders test' does not apply to the portion of the SIIC's share capital owned by (i) another French SIIC or (ii) a foreign company whose functioning and tax regime are similar to French SIICs' ones, provided that such companies are not acting jointly.

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 only has to be met on the first day of the first year of application of the SIIC regime (and no longer after that date).

Listing requirements

The parent company must be listed on an EU or EEA-regulated stock exchange. It can also be listed on any stock exchange under the condition the functioning rules of this stock exchange are the same as the EU and EEA's ones (European Directive 2004/39/CE).

2.4 Asset level/activity test

Restrictions on activities/investments
- Principal activity restricted to property acquisition and/or construction with the aim of renting out the property as well as direct or indirect portfolio investments in partnerships (sociétés de personnes) or other companies liable to CIT, having business activities and corporate purposes similar to the SIIC's ones - No required asset level - Ancillary activities must not exceed 20% of the SIIC's assets' gross book value

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 of renting out the property as well as direct or indirect portfolio investments in partnerships (sociétés de personnes) or other companies liable to CIT, having business activities and purposes similar to the SIIC's ones. The eligible rental activities are those realised for residential, commercial or industrial purposes. Such activities can be either carried out in France or abroad and will only benefit from the SIIC regime under the condition they are, in principle, taxable in France (see 2.1 Formalities/procedure).

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

- The financial leasing of properties (crédit-bail immobilier) 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. This applies to entities that are lessors; and

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- 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 this 20% test, the value of properties subject to financial leasing 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.

Each of these two ratios must be met for each tax year covered by the option for the SIIC regime at the end of the sixth month following the opening and at the closing date of the tax year. Thus, in a situation where the tax year corresponds to the civil year, these ratios must be respected on both the 30 June and 31 December dates.

Please note that before the modification of the French administrative guidelines in July 2020, the 20% ancillary activity test was to be met throughout the year, which implied that particular attention to the ratio was to be given notably in the case of a sale of an asset. The modification exposed allows more flexibility to the SIIC in the management of their assets.

Supposethe SIIC parent company or subsidiary entered into a financial lease for a building as a lessee that is sub-let to tenants. In this case, this activity is considered an eligible activity no matter if the SIIC entered into the financial lease before or after 1 January, 2005. Nevertheless, only revenues deriving from financial leasing agreements entered into after 1 January, 2005, benefit from the CIT exemption (i.e., are eligible for the SIIC regime).

The exploitation of a parking lot qualifies as an eligible activity only when the parking lot is ancillary to an eligible real estate rental activity.

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

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

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

The SIIC regime may also apply to the listed parent company's shares in a partnership if such partnership has a corporate purpose identical to the SIICs. 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 CIT may elect for the SIIC regime when at least 95% is held by one or several listed companies that have themselves elected for the SIIC regime.

2.5 Leverage

Leverage
Several French tax rules limit the deduction of financial expenses (e.g., maximum deductible tax rate, anti-hybrid mechanism amended as of 2020, new thin capitalisation and general interest deduction limitation since the 2019 Finance Act)

The French SIIC regime does not provide for specific leverage restrictions. However, French several interest deduction limitation rules apply to companies elected for the SIIC regime, affecting their tax-exempt income, which is subject to profit distribution obligations (see paragraph 2.6 below).

First of all, the deduction of interest paid to a shareholder is limited to a rate not exceeding the annual average rate of interest charged by financial institutions on variable interest rate loans to enterprises with a duration exceeding two years (Article 39, 1-3° and 212 (I) of the FTC). The Central Bank of France determines the maximum tax rate and it is published every trimester in the Official Journal (for

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companies with a tax year corresponding to the civil year, the rate was 2.27% for 2022). This limitation applies to all shareholders. Related entities (under the definition of Article 39, 12° of the FTC) may deduct a higher interest paid provided that (i) it corresponds to the rate that the company could obtain from an independent financial institution under similar circumstances and (ii) it is duly documented.

In this framework, the proof of the arm's length character of the practised rate, if higher than the maximum rate of the year, can be provided by any means. Even if the FTA consider the only documentation to be accepted to be an offer from an independent financial institute for a similar loan (notably in terms of the amount of capital, duration and interest) and of the same date the intragroup loan was settled, the French Administrative Supreme Court (Conseil d'Etat) has confirmed the proof of the arm's length character can be provided by any means, notably by reference to the bond market (CE, opinion, July 10, 2019, n° 429426, SAS Wheelabrator Group). In this respect, it is possible to use public rating software to analyse the credit rating of a borrower company (CE, December 11, 2020, n°433723, Sté BSA; CE, December 22, 2022, n°446669, Sté SAS Willink).

After specifying that the market rate is assessed in the light of the company's own characteristics and not those of the group to which it belongs (CE, 18 March, 2019, n° 411189, Sté Siblu), the French Administrative Supreme Court has considered that the assessment of the risk profile of the borrowing company can be carried out considering the consolidated economic and financial situation of this borrowing company and of its subsidiaries. The economic and financial situation of the subsidiaries influences the risk profile of their parent company, as their solidity may contribute to improving it and their fragility to deteriorating it (CE, 29 December, 2021, n°441357, Sté Apex Tool Group). However, it should be noted that this reasoning only applies in this context. It does not apply in the opposite case, e.g., when the subsidiary, and not the parent company, is the borrower. Indeed, in a recent decision, the French Administrative Supreme Court has specified that the borrower's parent's own data is not relevant to the assessment of this risk profile in this situation (CE, 20 September, 2022, n°455651, Sté HCL Maître Pierre).

For the computation of the taxable result of tax years closed in 2019, a specific anti-hybrid financing provision applies to loans granted by related entities of the borrowing company (former Article 212 (I)(b) of the FTC). Under this provision, a French borrower is not allowed to deduct the interest when the lender is not liable for the interest income to a CIT equal to at least 25% of the ordinary French CIT.

For tax years opened from 1 January, 2020, the aforementioned disposal has been suppressed and replaced by a new anti-hybrid mechanism in order to comply with ATAD I and ATAD II Directives. This new disposal is, in particular, applicable where:

- Payment under a financial instrument giving rise to a deductible expense in the residence country of the payor without inclusion in the taxable income in the residence country of the beneficiary, where the mismatch outcome is attributable to the differences in the tax characterisation of the instrument or the underlying payment. This situation is qualified when the mismatch is due to a different characterisation of the instrument, a difference in allocation of the payment between the two countries, the difference of qualification of a permanent establishment (or in the attribution or qualification of a payment to a permanent establishment);
- There is a double deduction resulting from a payment given due to the double attribution of an expense, permanent establishment mismatch or double residency qualification; or
- The transfer of a hybrid instrument mismatch generates a tax credit in two (or more) countries with the application of only one withholding tax.

In this context, it results from the French administrative guidelines that the absence of taxation in the beneficiary's State because of his tax status does not justify the scheme's application (BOI-IS-BASE-80-20-10-15/12/2021, n°40). Therefore, income received by a SIIC should not de facto lead to the rejection of the corresponding expense deduction in the State of residence of the debtor on the sole ground that the SIIC is exempted from CIT on all or part of its income.

In the application of the Finance Act for 2018 modified by the Finance Act for 2020, the ordinary French CIT is reduced to 25% as of 2022. The French CIT rate is mentioned below for the last three years:

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Tax years opened as from:	Turnover of the company (EUR)	Proportion of the taxable result (EUR)	CIT rate applicable
January 1, 2021	Up to 250m	Total taxable result	26.5% (27.37% with social contribution)
January 1, 2021	Up to 250m	Total taxable result	26.5% (27.37% with social contribution)
	Beyond 250m	Total taxable result	27,5% (28,41%with social contribution)
January 1, 2022	No matter the turnover	Total taxable result	25% (25.83% with social contribution)
January 1, 2023			

In addition, a reform of the rules on the deductibility of financial expenses has been settled by the Finance Act for 2019. From a general standpoint, the former thin capitalisation rules and the general interest deduction limitation on the net financial expense have been merged into one scheme provided for in Article 212 bis of the FTC.

According to this new scheme, the companies subject to CIT shall limit the deduction of their net financial expenses at the highest amount of EUR 3 million and 30% of their EBITDA retreated (Tax EBITDA) (standard threshold) or at the highest amount of EUR 1 million and 10% of the Tax EBITDA if they are thin-capitalised (limited thresholds). The financial expenses added back to their taxable result can be carried over to the following tax years.

In this framework, the financial expenses (after the application of the mechanism of the limitation of financial expenses rate, Article 212 (I) of the FTC) and financial products mean interest on all forms of debt to interest on any form of debt (i.e., financial interest related to sums of money left or put at the disposal of the company or by the company). This includes notably payments under profit-participating loans, alternative financing arrangements, notional interest amounts under derivative instruments or hedging arrangements, financial leases, etc.

A company should be considered in a thin capitalisation position when its total debt towards related entities exceeds one and a half of its equity (fonds propres) (so-called 'debt ratio'). Nevertheless, a safe harbour clause shall apply in such a case. Indeed, a company for which the amount of debts exceeds 1.5 times the amount of equity (fonds propres) is not in a situation of thin capitalisation if it can prove that its debt ratio at its stand-alone level is lower than the same ratio determined at the level of the consolidated group to which it belongs. In this respect, the company's debt ratio will be considered equal to that of the consolidated group if its ratio is higher than that of the group by a maximum of 2%.

For the application of this safe harbour clause, the perimeter of the consolidated group and the ratio should be determined from the data published in accordance with the French standards relating to the preparation of annual and consolidated accounts (French GAAP) or other international accounting standards adopted in the European Union (IFRS). Therefore, it results that only companies which published consolidated accounts can benefit from the safe harbour clause and that only fully consolidated companies (global integration) must be included in the consolidated group.

For the application of this scheme, the French administrative guidelines have made important reference to the accounting rules for the definition of equity (fonds propres) or the perimeter of the consolidated group (in particular by reference to the global integration under accounting definition).

Provided the company is not in a thin-capitalisation position when the net financial expenses are lower than EUR 3 million or 30% of its tax EBITDA, no limitation of deduction will be applied according to the

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new mechanism.

In this situation, the text allows for the possibility to carry forward and, over a period of five tax years, the deduction capacity unused of the tax year in the application of the standard thresholds. This capacity corresponds to the spread between (i) the maximum between EUR 3 million and 30% of the tax EBITDA and (ii) the net financial expenses of the tax year.

Companies member of a consolidated accounting group and not in a thin capitalisation position can benefit from an additional deduction of 75% of the net financial expenses exceeding the standard thresholds, provided that the 'equity-to-asset ratio' of the company (i.e., the ratio between its equity and total assets, based on either the closing or opening balance sheet data for the tax year) is at least equal to, or is not lower by more than 2% of the same ratio determined at the level of the consolidated group.

For SIICs, neither the 'equity-to-asset ratio' of the company itself nor that of the consolidated group to which it belongs should be adjusted for amounts relating to activities that are tax-exempt. Consequently, the financial autonomy ratios the company and of the consolidated group must be determined respectively from data for the company and the whole group's activity (BOI-IS-BASE-35-40-10-20-13/05/2020, n°280).

A thin-capitalised company must determine two bases of net financial expenses, each subject to its own rules of deduction:

- The first base corresponds to the portion of interest on (i) debts towards unrelated parties and (ii) towards related entities which do not exceed 1.5 times the equity (fonds propres).
- The second base corresponds to the portion of interest for the debts towards related entities exceeding 1.5 times the equity (fonds propres).

Regarding the first base of financial expenses, the portion of financial expenses will be deductible on a prorated basis of EUR 3 million or 30% of the tax EBITDA (standard thresholds). As regards the second base, the portion of financial expenses will be deductible on a prorated basis of EUR 1 million or 10% of the tax EBITDA (limited thresholds).

In addition, a deferral mechanism of added-back financial expenses and a carry forward of unused deduction capacity are included in the new mechanism. .

Regarding the SIIC in particular, the French administrative guidelines provide that the net financial expense deductibility limitation is only applicable to the taxable sector result of a SIIC subject to CIT. This means that, contrary to the former thin-capitalisation rules, the new scheme is not applicable to the tax-exempt result of a SIIC subject to distribution obligations. Therefore, no add-back shall be realised in the tax-exempt result subject to distribution obligations (the ratio used for the split of the financial expenses between the tax-exempt result subject to distribution obligations and the one of the taxable sector is not applicable to the portion of interest added back under this scheme) (BOI-IS-BASE-35-40-10-10-15/12/2021, n°10).

2.6 Profit distribution obligations

Operative income	Capital gains	Dividends	Timing
95% of tax-exempt profits	70% of capital gains	100% of dividends	See below

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Operative income

At least 95% of the tax-exempt profits realised during tax years closed as of 31 December, 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.

Capital gains

At least 70% of the capital gains realised during tax years closed as of December 31, 2018, resulting from the sale of (i) rights relating to leasing contracts regarding real estate assets, (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.

Dividends

100% of the dividends received from the SIIC's subsidiaries that have elected for the SIIC regime must be distributed before the end of the tax year in the SIIC parent company levies them.

Incomes arising from partnerships

Incomes arising from partnerships are deemed directly realised by the parent SIIC company and benefit from the tax exemption under the same distribution obligations. Thus, these incomes are spread between (i) qualifying rental activities, (ii) the sale of properties previously used for qualifying activities and (iii) dividends received from subsidiaries that have elected for the SIIC regime. Distribution obligations are then determined for each type of activity by applying the corresponding rate.

Limitation and capping of the distribution obligations

A SIIC's total distribution obligations for a tax year (i.e., the sum of the distribution obligations of the three tax-exempt sectors) are limited to the company's total tax result for this tax year, which is eligible for the tax exemption. The surplus distribution obligations do not have to be distributed. Even if the domestic tax law and administrative guidelines are not clear on whether the distribution obligations exceeding this first limitation must be carried forward or not for the computation of the future distribution obligations of the SIIC, it results from the examples given in the administrative guidelines that the surplus on the taxable result is not subject to carry forward (BOI-IS-CHAMP-30-20-40-03/03/2021, n°50, example 2).

Moreover, the SIIC's distribution obligations for a tax year are capped at the tax year's accounting result (i) decreased by previous accounting losses and the sums allocated to the legal reserve and (ii) increased by the retained earnings. When the total distribution obligations exceed this retreated accounting result, the surplus is deferred on the first following profitable year and the following ones. In any case, please note that the deferred distribution obligations must only be distributed if possible under the application of the aforementioned limitation and capping the distribution obligations of the following years (including the deferred amounts).

Capital gain for cancellation of stocks in the framework of a merger between SIICs

The special merger regime (art. 210 A of the FTC, i.e., tax regime entailing notably the tax deferral of the merger capital gains) applies to the restructuring operations between entities benefitting from the SIIC regime (either between the parent company and its subsidiaries having opted for the SIIC regime or between such subsidiaries).

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The benefit of this regime is notably subject to the condition that the receiving company commits, in the deed of contribution, to realise the distribution obligations determined at the level of the transferring entity and not met at the date of the operation.

In addition, the capital gain arising from the cancellation of shares held in the absorbed company is exempted from CIT, provided the capital gain is distributed for 70% of its amount before the end of the second tax year following its realisation. Before 2021, this distribution obligation corresponded to 60% of the capital gain. The capital gains realised during previous tax years remain subject to the 60% distribution obligation.

2.7 Sanctions in case of breach of the SIIC regime conditions

Penalties/loss of status rules
- Tax exemption of profits and gains is denied for the tax year in which the distribution shortfall appears or when the exit of the SIIC regime occurs - In the case that the SIIC leaves the status within ten years following the SIIC election, unrealised capital gains subject to the exit tax upon the election for the SIIC status are subject to CIT at the standard rate (after deduction of the 16.5% or 19% exit tax paid at the time of the 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

Sanctions in the case of distribution obligations shortfall

If a SIIC company does not meet its distribution obligations, profits and gains exemptions are denied for the tax year in which the distribution shortfall appears.

Moreover, if the FTA were to conduct a tax audit and reassess the tax-exempt profits or gains, the reassessment would be fully taxable because it would not have been distributed in due time. However, the reassessment amount should not be considered taxable for the portion already covered by previous distributions in excess of the minimum distribution obligations. In any case, such reassessment would not question the benefit of the tax exemption regime for the corresponding year.

Sanctions in the case of a breach of the eligibility conditions

The exit from the SIIC regime occurs if the following conditions are no longer met:

- (i) minimum capital share, (ii) market listing, (iii) corporate purpose condition during the ten years following the option conditions; and
- 60% cap of majority ownership condition.

Such exit also triggers the exit of the SIIC Parent Company's subsidiaries.

If the listed parent company no longer fulfils the conditions for the SIIC regime within ten years following the SIIC election, then:

- The distributable income previously exempted from corporate income and existing at the date of the exit is subject to CIT under the general conditions and the standard rate;
- Unrealised capital gains on its real estate assets that had been subject to CIT at the reduced 'exit tax' rate (19% since 2009, 16.5% before – see 3.2) at the time of entry into the SIIC regime become subject to CIT at the standard rate applicable during the year of the exit (see above 2.5 for detailed standard CIT rates), after deduction of the 19% (or 16.5%) exit tax paid at the time of entry into the SIIC regime; and
- 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).

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Suppose the listed parent company no longer fulfils the conditions for the SIIC regime more than ten years after the SIIC election. In that case, the exit of the SIIC regime should take effect from the opening of the tax year during which the exiting event occurred and does not impact the benefit from the SIIC regime for the previous years (e.g., the exit does not entail additional CIT charge on the SIIC revenues exempted from CIT during the application of 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 tax year in which the loss of status takes place, regardless of whether such exit happens during the ten years following the date of election or later. 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 company.

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).

In the case of a merger of one SIIC with another, the special merger regime remains valid as the distribution conditions are executed by the absorbing company (see above 2.6 Profit distribution obligations). 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.

3 Tax treatment at the level of the REIT

3.1 Corporate income tax (CIT)

Election	Current income	Capital gains	Withholding tax
Cessation of business (see: 3.2)	Eligible income is tax-exempt	Eligible capital gains are tax-exempt	- In principle, domestic sourced income is not subject to withholding tax - The taxes withheld on foreign-sourced income could be credited if a double tax treaty allows

Current income

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

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

- Income is realised directly or through qualifying partnerships from qualifying leasing activities. The exemption regime is applicable to financial lease contracts (i) entered into force after January 1, 2005, when the SIIC company is the lessee, (ii) to sublease agreements regardless of the date of conclusion of the initial financial lease and (iii) to certain long-term leases (baux emphytéotiques) or building leases (baux à construction);
- Dividends received from qualifying subsidiaries that have elected for the SIIC regime and paid out of the tax-exempt income of such subsidiary; and
- The listed parent company may also benefit from the dividend exemption in respect of Dividends received from (i) another SIIC, (ii) 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.

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Capital gains

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

However, the French administrative supreme court has ruled that, in the situation where a sale of an asset eligible for the tax exemption (subject to an obligation of the distribution) is realised at a reduced price, the potential tax add back corresponding to the price reduction as a result of a tax audit is considered as a donation taxable at the standard CIT rate and not subject to any distribution obligation (CE, October 15, 2020, n° 425150, Sté Kerry; Paris Administrative Court, July 13, 2022, n° 20PA03017, Sté Kerry).

Capital gains are only considered tax-exempt if the acquirer is not related to the seller (under the definition of a related entity given by Article 39, 12 of the FTC). Two companies 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 companies are directly or indirectly under the control of the same company.

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 rollover 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 the sellers' basis. Capital gain upon a subsequent sale would, therefore, for tax purposes, be computed from this rolled-over tax basis, which will increase the 70% distribution obligation; and
- 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 obligations).

Incomes arising from partnerships

Income arising from partnerships is deemed to be directly realised by the parent SIIC company and benefits from the tax exemption under the same distribution obligations. Thus, these results should be spread between the different revenue categories of the SIIC parent company for the computation of the distribution obligations.

Withholding tax

If a French-listed company or a subsidiary receives foreign source income subject to French CIT, the tax withheld could be credited if the applicable double tax treaty allows for it. 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 Accounting Regulatory Committee (Comité de la Réglementation Comptable) adopted a Resolution on 12 December, 2002 (Regulation CRC, 12 December, 2002, n°2002-10) that 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 from 1 January, 2005.

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

3.2 Transition regulations for CIT purposes

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

As a result of the SIIC election, the listed parent company and its electing subsidiaries are subject to a cessation of activity and a change of tax regime. Under ordinary tax rules, this would, in principle, 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 the election). Conversely, there is no taxation of the unrealised capital gains on participation held in qualifying corporate subsidiaries. However, there is a rollover of tax basis on these gains;
- The unrealised capital gains on other assets are tax-exempt when attributed to an ancillary activity but subject to a rollover tax basis; and
- Prior tax losses, if any, may be offset against such cease of activity result, but the surplus cannot be used in the future (i.e., cannot be offset against the taxable or non-taxable result of the SIIC and will not be available in the situation of an exit of the SIIC regime).

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

3.3 Other tax costs

Other tax costs
- VAT and/or registration duties - Notary and land security fees

NB: The rules described below are not SIIC-specific.

The French tax costs arising from property acquisition are:

- Depending on the nature of the property, either (i) a 20% VAT plus a 0.715% reduced registration duty for real estate completed or renovated less than five years before the transfer date or (ii) VAT exemption (unless VAT option) and registration duties at the standard 5.8% rate (5.09% in a few locations) for real estate completed or renovated more than five years before the transfer date, plus an additional tax on registration duties of 0.60% in the case of a transfer of office premises, commercial premises or warehouses located in the Ile-de-France region;
- Land security fee amounting to 0.1% of the purchase price of the property; and
- Notary fees equal to 0.799% of the property purchase price.

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

- Pursuant to Article 257 of the FTC, the standard French VAT of 20% applies on the stipulated price

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(or current value if greater) to transfers of real estate that have been completed or renovated less than five years before the considered sale. In such a case, the 0.715% reduced registration duty rate applies;

- Sales of other real estates (built or renovated more than five years before the sale date) are exempt from French VAT (unless VAT option) and subject to French registration duties at a rate of 5.8% (5.09% in a few locations), plus an additional tax of 0.60% in the case of a transfer of office premises, commercial premises or warehouses located in the Ile-de-France region;
- Sales of building lands are subject to 20% VAT on (i) the stipulated price or (ii) the seller's margin, depending on whether the seller deducted the VAT burden on his acquisition. These sales are subject to French registration duties at the 5.8% rate when VAT applies to the seller's margin and 0.715% rate when VAT applies to the stipulated price; and
- Sales of other lands are exempted from VAT (with the possibility for the seller to opt for the VAT as regards the sale of the land) and subject to 5.8% registration duties.

Furthermore, deeds of transfer of real estate assets in which the purchaser undertakes to resell within five years and to build within four years are subject to registration duties at the reduced rate of 0.715% and a fixed duty of EUR 125, respectively.

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

4 Tax treatment at the shareholder level

4.1 Domestic shareholders

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends and capital gains are taxed at the standard CIT rate (for 2023: 25%, or 25.83% with social contribution)) - Capital repayment is normally tax-free	- Dividends and capital gains are subject to French income tax, as of January 1, 2018, through a flat withholding tax of 30% (12.8% + 17.2% social contributions) - Capital repayment is normally tax-free	A specific 15% withholding tax may apply as regards dividends paid out of the tax-exempt income by the SIIC parent company.

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 CIT at the standard rate (for 2023: 25%, or 25.83% with social contribution)1. They are not eligible for an exemption pursuant to the domestic parent-subsidiary regime.

Dividends paid from the taxable result are also subject to CIT 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, they could be eligible for the domestic parent-subsidiary 95% dividend exemption.

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

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Capital gains earned on the sale of the listed parent company shares are, in principle, subject to CIT at the standard rate (for 2023: 25%, or 25.83% with social contribution).

The rate could be reduced to 19% (or an effective tax rate of 19.63% with social contribution) 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 is presumed in the case of detention exceeding 10% of the share capital).

Individual shareholders

Finance Act for 2018 (of December 30, 2017) introduced a flat tax as regards dividends paid to individual shareholders from January 1, 2018, at a global rate of 30% (i.e., a flat-rate tax of 12.8% increased by social contributions of 17.2%) (Article 200 A of the FTC). In practice, the 12,8% flat rate is treated as a withholding tax.

However, individual shareholders can opt for the former taxation regime (i.e., the progressive personal income tax rates (up to 45%) and the social contributions at a total rate of 17.2%. In such a case, dividends paid out of the tax-exempt income and gains are subject to the income tax on their total amount and dividends paid out of the taxable income and gains are taxed based on 60% of their amount (after application of a 40% base deduction).

French individuals deriving capital gains from the sale of SIIC shares are also subject to the 30% flat tax and can be subject, under election, to the progressive personal income tax rates (up to 45%) and the social contribution at the rate of 17.2%. If such an election is made, the capital gains may benefit from a tax base deduction mechanism for the holding period after a two-year holding period. This tax base deduction amounts to 50% for securities held less than eight years and to 65% for securities held at least eight years.

As for corporate shareholders, a capital repayment distribution is normally tax-free. However, any reduction of share capital or distribution of share premium will be treated as a tax-free capital repayment only to the extent that all reserves or profits of the distributing company have already been distributed. The latter condition is not applicable to share redemption.

Withholding tax

In principle, dividends distributed between French tax residents are not subject to a withholding tax. However, a specific 15% withholding tax applies on dividends paid out of the tax-exempt revenues by the French SIIC parent company or its French subsidiaries that have elected for the SIIC regime, pursuant to their distribution obligations 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
- Foreign collective investment vehicles fulfilling the conditions to benefit from the general exemption of withholding tax on dividends (see 4.2 Foreign shareholders).

Consequently, this withholding tax is applicable in the context of cross-border dividend payments as well as in a domestic French context (article 119 bis, 2 of the FTC).

However, this withholding tax does not apply to dividend distributions paid out of tax-exempt revenues by French subsidiaries of SPPICAVs or joint French subsidiaries of SPPICAVs and SIIC parent companies, having elected the SIIC regime to their French SPPICAV parent company.

Moreover, another 20% withholding tax applies on the dividends paid out of exempt products to French and foreign legal entities that (i) hold directly or indirectly at least 10% of the distributing company and

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(ii) are not subject to CIT (or an equivalent tax) on the dividends received. Nevertheless, such withholding is not due if the beneficial owner of the distribution (i) is a company subject to a distribution obligation for the full amount of the dividends received and (ii) whose shareholders holding, directly or indirectly, at least 10% of its share capital are subject to CIT (or an equivalent tax) on the distributions they receive (BOI-IS-CHAMP-30-20-40, 03/03/2021, n°150).

In this context, the income received is not considered subject to CIT or an equivalent tax when exempted or subject to a tax, which is less than two-thirds of the amount of CIT which would have been due under ordinary law conditions in France.

This withholding tax is not in lieu of corporate or personal income tax and may neither be offset nor refunded.

4.2 Foreign corporate shareholders

Withholding tax on dividends	Withholding tax on Capital gains
- Standard CIT rate (25%) or reduced treaty WHT rate - EU Parent-Subsidiary Directive is not applicable to dividends paid out of tax-exempt revenues	- CIT at the standard rate (25%) or reduced rate (19%) for large investors

Dividends

Under domestic law, 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 corresponding to the standard CIT rate (25% as of 2022). If the shareholders are residents 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 CIT 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 30 October, 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 the immovable property by an investment vehicle:

- That distributes most of its income annually;
- Whose income and gains from such immovable property are exempted from tax; and
- Where the beneficial owner of these dividends holds, directly or indirectly, 10% or more of the capital of the vehicle paying dividends.

In such a case, the dividends may be taxed at the 25% rate provided for in domestic law. The 15% tax treaty withholding tax rate is therefore applicable only for companies qualifying as small investors (i.e. when the beneficial owner holds less than 10% of the share capital of the REIT.

For example, France has included this provision in the tax treaties recently concluded (among others) with the United Kingdom (tax treaty dated 19 June, 2008), Panama (tax treaty dated 30 June, 2011), Andorra (tax treaty dated 2 April, 2013), China (tax treaty dated 26 November, 2013), Singapore (tax treaty dated 15 January, 2015), Germany (tax treaty dated 31 March, 2015) and Colombia (tax treaty dated 25 June, 2015).

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The 25% withholding tax does not apply to dividend payments made by a French parent company 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 to fight against tax fraud and evasion, and that fulfil both the two following conditions:

- Raises capital from a number of investors to invest in accordance with a defined investment policy in the interests of these investors; and
- Presents 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), etc.

However, according to the French administrative guidelines, a specific 15% withholding tax is levied when these dividend distributions are paid out of tax-exempt revenues under the same conditions as exposed previously in section 4.1.

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.

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

Anti-abuse measures

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

The specific levy regime applicable to domestic distribution paid to exempted beneficiaries also applies under certain circumstances to the dividends paid by the French-listed parent company to foreign shareholders (see 4.2).

Capital gains

Capital gains realised on the sale of SIIC parent company shares by foreign corporate shareholders subject to CIT may be taxable in France through a specific withholding tax as follows:

- Provided that the seller holds directly or indirectly at least 10% of the SIIC parent company shares, capital gains realised on such sale are taxable at the standard CIT rate when the listed parent company's asset is mainly composed of immovable properties and related rights located in France. Such tax treatment is subject to provisions of the applicable double tax treaty. Also, capital gains realised on the sale of qualifying subsidiaries' shares that have been elected for the SIIC regime are taxable under the same conditions;
- The corporate shareholders of EU resident, or residents of a State member of the EEA which has concluded with France an administrative assistance agreement to prevent tax evasion and avoidance, can benefit from the same taxation rules as French companies. Therefore, capital gains realised by them on the sale of the French-listed parent company shares may be taxable at a flat rate of 19%, provided that they hold directly or indirectly at least 10% of these shares for at least two years;

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- When the seller holds directly or indirectly less than 10% of the SIIC parent company shares, there are uncertainties as to whether the capital gains derived from the sale of these shares would be taxable in France.

Special rules apply for refund procedure in the event that such withholding tax exceeds the CIT amount due in France for the year of realisation of the capital gain.

5 Tax treatment of the foreign REIT

Foreign REIT
Election for the SIIC regime is possible.

Foreign REIT

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

Accordingly, a foreign company's rental income and capital gains are taxed in France as long as the relevant properties are located in France. In this respect, the foreign company can benefit from the SIIC 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 before 2.2, 2.3 and 2.4).

AUTHORS CONTACT | FRANCE

Elena Aubrée

Tel: +33 1 49 97 35 13
Elena.aubree@avocats-mazars.com

Alexandre Soulet

Tel: +33 6 98 14 18 52
alexandre.soulet@avocats-mazars.com

European Public Real Estate Association
Square de Meeus, 23
1000 Brussels, Belgium
T +32 (0) 2739 1010
F +32 (0) 2739 1020
W www.epra.com
E info@epra.com

Editor & Production Manager

EPRA

Tobias Steinmann

t.steinmann@epra.com

Jonathan Vydt

j.vydt@epra.com

Kim Viebig

k.viebig@epra.com

Design & Layout

ZN Consulting | znconsulting.com

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