Corporate and tax aspects of SOCIMIs

Act 11 /2009, of 26 October, introduced the legal form of Listed Real Estate Investment Stock Companies (SOCIMIs, its acronym in Spanish) and along with it the legal regime of a REIT (Real Estate Investment Trust), a long-standing investment vehicle in the English-speaking world. The main business activity of this type of company is the direct or indirect investment in urban real estate assets – including, *inter alia*, residential property, commercial premises, student/retirement residences, hotels, garages and offices – for the purpose of letting.

The limited success of this novel investment formula brought about, through the agency of Act 16/ 2012, a thorough reshaping of its legal and, above all, tax regime that was aimed at raising the vehicle's market appeal.

Among the changes that this statute made to the special regime of SOCIMIs, of note are those related to the possibility of trading on a multilateral trading facility, such as the Spanish Alternative Securities Market (MAB), or the removal of restrictions on third-party funding, though without relinquishing the structural elements of these companies, similar to those in neighbouring countries.

To this we should add that notwithstanding the importance of some of the substantive changes, the truth is that the main development introduced by Act 16/2012 resides in the tax rate - 0% on profit from carrying out the corporate objects - applied to these companies.

1. Definition and delimitation of the objects of the company

Those listed stock companies that, meeting the requirements stated further below, have as their main object the pursuance of any of the following activities, shall be treated as SOCIMIs:

a) The acquisition and development of urban real estate for the purpose of letting, including the restoration of buildings within the terms of the law.

b) The holding of shares in the capital of other SOCIMIs or in other non- resident companies with the same objects and which are subject to a regime similar to that of SOCIMIs regarding the mandatory (under the law or the articles of association) profit distribution policy.

c) The holding of shares in the capital of other companies, resident or not in Spanish territory, whose main object is the acquisition of urban real estate for the purpose of letting and which (i) are subject to the same regime as SOCIMIs regarding the mandatory (under the law or the articles of association) profit distribution policy and (ii) meet the investment requirements applied to SOCIMIs.

   In this case, shares may not be held in the capital of other companies, while the shares representing the capital of these companies must be registered and all of their capital must belong to other SOCIMIs or the non-resident companies referred to in b) above. In the case of companies resident in Spain, these may choose the special tax regime within the terms of the rule.

d) The holding of shares or units in Real Estate Collective Investment Schemes regulated by the Spanish Collective Investment Schemes Act 35/2003, of 4 November.

   The non-resident companies to which the rule refers must be resident in countries or territories with which there is an effective exchange of tax information.

In addition, overseas real estate of non-resident companies must be of a nature similar to that found in Spanish territory.

2. Investment requirements

SOCIMIs must have invested a minimum of 80 percent of the value of urban real estate assets for the purpose of letting (i) in land for the development of real property to be used for this purpose, provided that development starts within three years following acquisition, as well as (ii) in capital or assets of the other companies referred to in section 1 above.

It is important to note that the following do not count for such 80% inasmuch as excluded from the regime of SOCIMIs: (i) certain real estate with special characteristics for cadastral purposes, mainly large infrastructure and buildings that would normally be channelled through administrative concessions (real estate for the production of electricity and gas and oil refinery; nuclear power plants; dams, waterfalls and reservoirs; toll motorways, roads and tunnels; and commercial airports and ports), or (ii) real estate whose use is transferred to third parties through contracts that meet the requirements to be considered leasing.

Finally, together with the economic activity deriving from the main object of the company, SOCIMIs may carry out other ancillary activities, regarding as such those whose profit, as a whole, represents less than 20 percent of the company's profit in each tax period.

3. Listing

SOCIMIs' shares must be admitted to trading on a regulated market or a multilateral trading facility, be it Spanish or of a Member state of the European Union or the European Economic Area, or on a regulated market of any country or territory with which there is an effective and continuous exchange of tax information throughout the entire taxable period.

4. Share capital

The authorised minimum share capital is 5 million euros.

5. Dividend policy

The SOCIMIs and its investee companies resident in Spain that have opted for the Act's special tax regime are required to distribute as dividends to its shareholders, upon satisfaction of the appropriate company obligations, the profit obtained in the year, it being necessary to agree on its distribution within six months after the end of the same. To this effect, the company must distribute:

1. 100% of the profit from dividends or shares in profits distributed by the companies referred to in section 1 hereof;

2. At least 50% of the profit from the transfer of real property and shares. The remaining profit must be reinvested in other real properties or shares tied to the attainment of said purpose, within three years following the date of transfer. Otherwise, such profit must be distributed in its entirety along with the profit, if any, for the year in which the reinvestment time limit expires.

3. At least 80 % of the remaining profit obtained.

The dividend must be paid within one month of the date of the distribution resolution.

6. Special tax regime

The special tax regime of SOCIMIs and companies qualifying for this regime sets the tax rate of Corporation Tax at 0%. The company shall be subject to a special tax rate of 19% on the full amount of dividends or shares in profits distributed to shareholders whose stake in the share capital of the company is equal to or greater than 5%, when said dividends are exempt or taxed at a rate lower than 10%. Said rate shall be treated as Corporation Tax liability, and shall not apply if the shareholder receiving the dividend is a company subject to the discipline of Act 11/2009.

To this effect, the shareholders whose stake in the share capital of the company is equal to or greater than 5%, and who receive dividends or shares in profits subject to a tax rate of at least 10%, are required to notify such fact to the company within ten days from the day following that on which the same are paid. If there is no such notification, the special rate shall apply.

Additionally, shareholders who have the status of non-resident company with a regime equivalent to that of SOCIMIs, must provide evidence within ten days, in view of the composition of its shareholders and applicable legislation at the time of the dividends distribution resolution, that such dividends will be taxed, either through the company or through the shareholders, at a rate of at least 10%. In this case, non-application of the special tax rate is conditional on meeting this minimum tax requirement.

The option to apply this special tax regime must be adopted by resolution of the General Meeting of Shareholders and communicated to the State Tax Administration Offices for the company's registered address before the last three months prior to the end of the first taxable period to which the regime would apply.

7. Special tax regime of shareholders

The Act provides for the special tax regime applicable to shareholders of the companies benefiting from the special tax regime of SOCIMIs, whereby dividends paid against profits or reserves to which the Act's special tax regime has applied and capital gains or losses on the sale or redemption of shares in the capital of companies that have opted for this regime, shall be afforded the following treatment:

Taxpayers:	Dividends	Capital Gains
Personal Income Tax on Residents	Taxed without application of the annual 1,500 euro exemption	Taxed according to general calculation rules
Corporation Tax: Resident legal persons / Permanent Establishments	Taxed without application of domestic double taxation relief	
Personal Income Tax on Non-Residents (without Permanent Establishment)	Taxed without application of the annual 1,500 euro exemption	Taxed without application of the exemption on holdings in investment funds

For any queries on the above please contact any of the following members of Gómez-Acebo & Pombo:

Alfonso Fernández-Puebla Muñiz
Partner, Madrid
Tel.: (34) 91 582 91 00
afernandezp@gomezacebo-pombo.com

Javier Vinuesa Magnet
Partner, Madrid
Tel.: (34) 91 582 91 00
jvinuesa@gomezacebo-pombo.com