

## SPANISH - REITs

Is a quoted property company that derives its income primarily from long-term investment in immovable property (real estate) distributes its income annually and, in general, does not pay income tax related to immovable property that is so distributed.

Current status according to provisional contents included in Draft Bill dated on June 26, 2009

Issue	Spain SOCIMI
<b>Qualifying legal form under domestic Corporate Law</b>	Sociedades Anónimas (SA - Corporation)
<b>Resident company</b>	Yes
<b>Minimum share capital</b>	Eur 15 Mio
<b>Mandatory listing on stock exchange</b>	Yes in Spain but also listing on any other EU stock exchange
<b>Shareholder requirements (max/min of shareholders)</b>	No restrictions. IPO must include a 30% public offering (free float)
<b>Activity test</b>	
Main qualifying activities (eligible activities)	<p>The main activity and object must be (passive) investments in real estate</p> <ul style="list-style-type: none"> <li>- The acquisition and promotion of urban based real estate with the aim of leasing such (*)</li> <li>(*) the following will not be considered real estate for these purposes: (a) real estate with special characteristics (e.g. airports, motorways, real estate designated for the production of electrical energy, etc), and (b) real estate, where the use of such is assigned to third parties by way of a finance lease agreement.</li> </ul> <p>Other passive investments qualifying as eligible activities</p> <ul style="list-style-type: none"> <li>- Direct ownership in other Spanish SOCIMI and/or other foreign entities that have same corporate purpose, subject to a similar regime and that are resident in countries or territories with which an effective exchange of tax information exists.</li> <li>- The holding of stock in the capital of non financial Spanish Collective Investment Institutions</li> </ul>
Non-qualifying ancillary activities	Ancillary activities are allowed but may not exceed 20% of the company's income
<b>Conditions of investment</b>	
Assets level test	At least 80% of the value of its assets in qualifying passive investments. The company must held at least three real estate assets.
Maintenance period	Real estate forming part of the qualifying assets of the company must remain on lease or must be offered under lease for a period of at least three years, except when the real estate has been developed by the company in which case the term will be for 7 years. Holding of stock in entities forming part of the qualifying pasive investments must held by the company at least during a period of three years.
Qualify income test	At least 80% of the income for the tax period must come from qualifying activities.
<b>Leverage</b>	Limited to 70% of book value of real property For this purposes, the SOCIMI can opt for substitute book value for fair market value
<b>Profit distribution obligations</b>	Once the corresponding mercantile obligations have been complied with, Spanish REITs are obliged to distribute the profit obtained in the previous year among theirs shareholders by way of dividend, in the following manner: At least 90% of the profit corresponding to income derived from qualifying activities At least 50% of the profit corresponding to income derived from the transfer of qualifying assets.

**Issue**

**Tax treatment at the level of the REIT**

**Corporate tax**

SOCIMI that have elected for the special tax regime

Income

Qualifying income

Income derived from eligible activities are taxed at the 18% flat tax rate.

Non-qualify income

Income derived from non-eligible activities are taxed at rate of 30%  
Income derived from the letting of real estate when the tenant was a related party according to article 16 of the Spanish Corporate Income Tax Act will be considered as non qualify income.

Capital gains

Qualifying capital gains

Capital gains derived from qualifying passive investments are taxed at the 18% flat tax rate

Non qualifying capital gains

Capital gains derived from non qualifying passive investments are taxed at the rate of 30%  
Capital gains derived from qualifying real estate assets which do not fulfils with the maintenance period will be considered as non qualifying capital gains or in case the purchaser was a related party under article 16 of the Spanish Corporate Income tax act

Withholding tax on distributions

Dividends distributed by the Spanish REITs not will be subject to withholding tax.

**Capital duty**

Tax exempt in setting up and capital increasing operations.

**Tax treatment at the level of the shareholders**

Dividends distributed

Dividends distributed against profits derived from qualify income obtained during the period in which the company has been eligible for the special tax regime:

- a) When the beneficiary is a Spanish Corporate Income tax payer or a Non-Resident Income Tax payer with a permanent establishment (PE) in Spain: Subject to limited taxation
- b) When the beneficiary is a Spanish Personal Income Tax Payer: tax exempt
- c) When the beneficiary is a Non-Resident Income Tax payer without PE in Spain: tax exempt except in case the beneficiary was resident in a country without effective exchange of tax information.

Capital gains derived from the transfer of stock held in Spanish REITs eligible for the special tax regime

- a) When the seller is a Spanish Corporate Income Tax payer or a Non-Resident Income Tax payer with a PE in Spain: Subject to limited taxation.
- b) When the seller is a Spanish Personal Income Tax payer: tax exempt but subject to limits
- c) When the seller is a Non-Resident Income Tax payer without PE in Spain: tax exempt but subject to limits. DTT provisions must be checked