

## THE NEW BELGIAN REIF - READY FOR 'TAKE-OFF'

*The Royal Decree containing the regulatory framework for the new Belgian Real Estate Investment Fund ("REIF") has finally been published in the Belgian Official Gazette. Belgian and international real estate investors can start implementing their Belgian REIF(s) from December 2016.*

The most striking features of the new Belgian REIF, also referred to as FIIS in French ("*fonds d'investissement immobilier spécialisé*") or GVBF in Dutch ("*gespecialiseerd vastgoedbeleggingsfonds*") are highlighted below:

1. The FIIS/GVBF is intended to limit the regulatory burden impeding existing Belgian REIT's today (SIR, "*Société immobilière réglementée*", in French or GVV, "*Gereguleerde vastgoedvennootschap*" in Dutch);
2. The FIIS/GVBF is only available for institutional and professional investors (and so excludes private individuals);
3. The attractive regulatory framework is supplemented by a beneficial tax regime at the level of the fund;
4. The (re)structuring of real estate investment through a FIIS/GVBF provides opportunities for a wide range of companies.

## MINIMAL RESTRICTIONS - MAXIMUM FLEXIBILITY

The FIIS/GVBF will be a closed-end real estate fund (meaning an investment fund with fixed capital) subject to a very limited number of regulatory constraints. First, the fund must comply with AIFMD regulations unless it qualifies for an exemption (e.g. the de minimis exemption if its assets remain below € 100 million or € 500 million in the absence of leverage). Second, the value of the fund's assets must amount to € 10 million (after a transition period of approximately two years) and the fund must annually distribute at least 80% of its profits. Thirdly, the fund will be created for a period of 10 years. Nevertheless, the fund can in principle exist indefinitely since the initial period can be prolonged (albeit by a unanimous decision of the shareholders) for consecutive maximum periods of 5 years.

Even though the fund will be subject to certain restrictions, they are dwarfed by the flexibility resulting from the absence of other restrictions, such as:

- ✓ A FIIS/GVBF can be created by a single shareholder;
- ✓ The fund can exist with a single real estate asset;



- ✓ There is no maximum debt percentage;
- ✓ There is an exemption from the interest deduction limitations under the Anti-Tax Avoidance Directive.
- ✓ The FIIS/GVBF is not subject to oversight or approval by the Belgian Financial Services and Markets Authority (“FSMA”);
- ✓ There is no ‘cash-trap’ (due to the application of IFRS accounting standards);
- ✓ There is a ‘light’ registration procedure with the Belgian Ministry of Finance.

## INSTITUTIONAL AND PROFESSIONAL INVESTORS ONLY

The GVBF/FIIS is only available for professional and institutional investors, such as:

- ✓ Automatically-qualifying investors, such as credit institutions, pension funds and insurance companies;
- ✓ Large undertakings meeting two of the following size requirements: (i) a balance sheet total of at least € 20 million, (ii) net turnover of at least € 40 million and (iii) net equity of at least € 2 million;
- ✓ Companies that the Belgian FSMA has accredited as professional investors. The accreditation procedure is open to any undertaking and is (relatively) easy to acquire.

Moreover, the FIIS/GVBF must possess the legal form of a SA/NV, SCA/Comm.VA or SCS/Comm.V. (and so excludes the SPRL/BVBA legal form).

## BENEFICIAL TAX REGIME

The FIIS/GVBF will be subject to a favourable tax regime. The fund will be virtually tax transparent since it is only taxed on a very limited notional corporate tax base. Latent capital gains are subject to an “exit tax” of 16.995% at the moment of the creation of a new fund and the contribution of assets into an existing fund. The new FIIS/GVBF’s tax regime is aligned on the existing SIR/GVV regime.

All taxation is shifted from the fund level to the fund’s shareholders. Belgian shareholders will, in principle, be taxed at a rate of 33.99% (unless the shareholder possesses tax assets to shelter the dividend income) since a FIIS/GVBF’s dividend distribution does not qualify for the Belgian participation exemption. Foreign shareholders may be subject to a more advantageous tax treatment dependent on the participation exemption regime in their resident jurisdiction. Shareholders in the Netherlands, Luxemburg, Germany, the UK and Switzerland could benefit from their domestic participation exemption provided that certain conditions are fulfilled. Moreover, Belgium does not levy withholding tax on dividends distributed by the FIIS/GVBF to

foreign shareholders (provided that the dividend does not originate from Belgian dividends or Belgian real estate income).

The FIIS/GVBF also benefits from a VAT exemption on (certain) management services invoiced to the fund.

## WHO SHOULD CONSIDER A FIIS/GVBF?

The combination of the attractive regulatory framework and the beneficial tax treatment provides opportunities for various types of real estate investors. First, international investors might decide to 'pool' their European real estate investment in a FIIS/GVBF. The Belgian fund will then serve as a 'hub' for pan-European investments. The rental income from the European real estate will not be taxed at the level of the fund and the subsequent income repatriation remains tax-free in most cases. Moreover, investors opting for a FIIS/GVBF will not be burdened by BEPS concerns regarding the fund's rental income.

Second, the fund also provides alluring opportunities for Belgian real estate investors as well as any Belgian corporation with a (significant) real estate portfolio. This will, for example, be the case for Belgian pension funds and undertakings with substantial unrecognised tax assets. Moreover, the FIIS/GVBF might serve as the ideal tool to re-leverage existing structures and avoid a 'cash-trap'. Additionally, the FIIS/GVBF could also function as a trigger to reform the existing real estate group-policy and operate as a cornerstone within the new corporate structure.

## TAILOR-MADE ADVICE AVAILABLE

The SIIF/GVBF offers a wide array of advantages for international and Belgian corporations alike. The new regime could already be beneficial for companies with a single real estate asset. Obviously our real estate experts remain available to offer you a tailor-made solution for your real estate (projects).