THE SOCIMIS IN THE NEW WAVE:

A PRACTICAL APPROACH TO FOREIGN INVESTORS

Emilio Gómez Delgado analyses the key star of the real estate sector: SOCIMIS, the Spanish REITS.

Emilio Gómez Delgado, partner Real Estate Hogan Lovells, Madrid

When is the SOCIMI tax regime applicable? The election to apply the sosimi special tax regime must be approved by the shareholders of the Company and notified to the Spanish tax authorities. If the election and communication are made on or before 30th September, the company could apply the SOCIMI tax regime during the whole 2016 tax period (i.e. as of 1st January).

Should all SOCIMI requirements be met before electing to apply the SOCIMI regime?

Not necessarily. The Spanish tax authorities have confirmed in several binding tax rulings that the following two requirements are "essential" and should be met before electing to apply the SOCIMI tax regime (the other requirements can be met within a 2-year period, as explained below):

1. The bylaws of the relevant company should include: (a) the main corporate purpose of the SOCIMIS (i.e. purchase and development –including building refurbishment- of urban property for rental, directly or through 100% qualifying subsidiaries), and (ii) the mandatory distribution of dividends to its shareholders.
2. The shares should be registered shares.

When shall all SOCIMI requirements be met by the SOCIMI?

The other requirements should be met within 2 years after the SOCIMI election as from the date when the SOCIMI regime is elected (counted from date to date): (a) investment requirements: "80% asset" and "80% income" rules; (b) legal form of a corporation (Sociedad Anónima or S.A.); (c) minimum share capital of €5 million; and (d) Trading requirement.

How is the "80% asset" rule calculated?

At least 80% of the SOCIMI assets must be invested in (i) urban property to be leased (to be owned at least 3 years), (ii) plots of land for development of properties to be leased (development starting within 3 years from acquisition date) and (iii) shareholdings in qualifying subsidiaries. This is the so called "80% asset" rule.

The value of the assets should be the average resulting from the quarterly balance sheets of the fiscal year. However, the SOCIMI can elect to replace the book values with the market value of the assets. If this market value was elected, it should be applied to all the balance sheets of the relevant year. In the event the SOCIMI has controlled subsidiaries (ie non-listed SOCIMIS), the 80% asset rule shall be calculated over the consolidated balance sheet of the SOCIMI (applying Spanish GAAP consolidation rules, not IFRS).

In addition, the SOCIMI should comply with the "80% income rule" (i.e. at least 80% of the income in a given year must arise from: (i) rental income, and (ii) dividends from qualifying shareholdings).

What happens if the "80% asset" or "80% income" rules are not met in a given year?

The immediate consequence is that the SOCIMI would lose the special tax regime effective in the relevant tax period, unless the SOCIMI solves that situation in the following tax period. Notwithstanding this, as mentioned above, the SOCIMI has a so-called "transitional period" of 2 years since the date of election of the SOCIMI regime in order to meet the 80% rules.

Investment requirements: The 3-year minimum lease period

The real property assets owned by the SOCIMI must remain under lease for at least 3 years. This term shall start from the date the asset is leased or offered for lease (in the case of not leased but offered for lease, the term shall count with a maximum of one year).

If the assets were acquired by the SOCIMI before the date the SOCIMI regime is applicable, the 3-year period shall start from 1st January of the first fiscal year when the SOCIMI tax regime entered into force.

What happens if the 3-year lease period is not met for a given asset?

All income generated by the SOCIMI asset during the validity of the SOCIMI tax regime would be subject to the general tax regime (i.e. 25% CIT rate), with payment of interest.

Can shareholders sell SOCIMI shares?

Yes. Capital gains obtained by a non-resident investor from the sale of SOCIMI shares are, as a general rule, taxable in Spain at a 19% withholding tax, unless a tax treaty relief is applicable. ◆

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