

French REIT's: Sociétés d'Investissements Immobiliers Cotées (SIIC)

“Successful”, “performing”, “competitive” ! These are adjectives which are often used to qualify the French SIIC regime. This regime was created in 2003 upon the initiative of the French federation of the listed real estate companies (“Fédération des Sociétés Immobilières et Foncières” – FSIF) and has since this date been improved, completed and amended. The main benefit of this tax regime is to exempt from corporation tax rental and capital gain income earned by eligible companies, subject to certain distribution obligations.

Olivier Mesmin and Christine Daric from Baker & McKenzie have, as the exclusive advisors of the French Federation of the Real Estate Listed companies (FSIF, Fédération des Sociétés Immobilières et Foncières) been involved in the design and discussions with the French tax authorities of the whole texts forming the SIIC regime. The purpose of the current memo is to summarize the main provisions of this regime taking into account the latest measures.

The SIIC tax regime was enacted by the Finance bill for 2003 (n°2002-1575 dated December 30, 2002) and published in the Official Journal of December 31, 2002. This text was followed by a Decree n°2003-645 dated July 11, 2003 published in the Official Journal of July 13, 2003. The French tax administration published its administrative guidelines on this new measure on September 25, 2003 (BOI 4 F-5-03). Finance bill for 2004 (n°2003 – 1311 dated 30 December 2003) precised the tax treatment of distributions of sums subject to the exit tax and Finance bill for 2005 (n°2004-1484) dated 30 December 2004 has created a favourable merger regime and a favourable regime to contribution of real estate to SIIC (SIIC 2) and has extended the scope of SIIC regime to rights attached to real estate financial leases. Amendatory Finance bill for 2006 has added new conditions of eligibility and exemption for the SIIC regime, widened the regime (intra group sales) and extended the SIIC 2 regime (SIIC 3). Finance bill for 2008 (n°25007-1822 dated December 24, 2007) has extended SIIC 3 regime to sales of shares in real estate oriented companies and situations of exemptions of dividends and has created new condition for shareholders (SIIC 4). Finance Bill for 2009 (n°2008-1425 dated 27 December 2008) has postponed the entry into force of the 60% shareholding threshold, increased the 16.5% exit tax rate up to 19%, modified rules applicable to exit from the SIIC regime and extended the scope of the SIIC regime (SIIC 5). Amendatory finance bill for 2009 (n°2009-167 dated 30 December 2009) has modified conditions for the

election for the SIIC regime of the foreign companies, facilitated the implementation of partnerships between SIIC and SPPICAV through subsidiaries electing for the tax exemption regime and has extended the possibilities for a SIIC or its subsidiaries to sell assets under tax neutral regime to other companies belonging to the same group.

I. Scope

1.1. SIICs

The regime is applicable, upon election, to companies listed on a French regulated market, or under certain conditions on a foreign market, the share capital of which is superior or equivalent to 15 million euros.

For FY open as from 1st January 2007, a company willing to elect for the SIIC regime must also meet the following two conditions:

- ⇒ As at the date of effect of the election, its share capital and voting rights must be held at least at 15% by persons which individually hold directly or indirectly less than 2% of the share capital and voting rights.
- ⇒ The direct or indirect shareholding of a shareholder or a group of shareholders acting as one (“action de concert”) by the meaning of the Commercial Code shall not be equal or exceed 60% of the share capital and voting rights of the company.

The shareholders can be either French or foreign.

The corporate purpose of the SIIC must be predominantly the acquisition or construction of buildings with a view to their demise and / or the direct or indirect holding of stakes in companies having this identical corporate purpose. This activity may either be performed in France or abroad.

Not only the real estate assets are concerned but also rights attached to a financial lease if it has been concluded or acquired as from 1st January 2005, certain real estate rights (“droits réels immobiliers”) such as usufruct, construction lease, long-term lease (Amendatory Finance bill for 2006) and also the rental income arising from properties which possession is temporarily given

to the SIIC by the State, its public institutions, the local authorities or one of their public establishments (Finance Bill for 2009). The activities of management of car parks are also eligible to the regime if they constitute the accessory to a leasing activity of buildings.

SIICs and/or their subsidiaries can also perform, as an accessory, another activity, for instance an activity of real estate dealer, property management or development. The predominant character of this corporate purpose is appreciated company by company as follows: The value of the assets used for the performance of these activities must not exceed 20% of the gross value of the assets of the considered company. If the SIIC or one of its subsidiaries performs a financial leasing activity, the gross assets of the considered company must not be constituted at more than 50% of net financial leasing outstanding ("*encours net de credit-bail immobilier*").

No specific conditions are provided concerning the level of debt of the company.

Finally, the regime is open to foreign companies which meet the above-mentioned conditions according to modalities which are not currently defined in the administrative guidelines, but have to be negotiated on a case by case basis. Several foreign companies have elected for the SIIC regime.

1.2. SUBSIDIARIES OF SIICs

This regime is also applicable, upon election, to subsidiary companies of SIICs liable for Corporate Income Tax (CIT) as long as (i) they are held directly or indirectly up to 95% at least by the SIIC and (ii) that they have a main corporate purpose identical to that defined above. For FY open as from 1st January 2010, a subsidiary jointly held by one or several SIICs and SPPICAVs can also elect for the tax exemption regime under the same conditions.

For FY open as from 1st January 2007, the exemption regime is also open to subsidiaries liable for Corporate Income Tax jointly held by several SIICs (and not only one) which should facilitate partnerships between SIICs.

The regime is applicable as of right to SIIC subsidiaries which are not liable for CIT (partnerships) up to the level of their share of the result apprehended by the SIIC or its subsidiaries having elected for this regime, as long as the main activity of the said partnership is identical to that mentioned above.

II. Benefiting from the regime

2.1. THE ELECTION

2.1.1. An elective regime

This regime is applicable, upon election, to all companies and their subsidiaries fulfilling the above conditions which are liable for CIT. It is thus possible to arbitrate concerning those subsidiaries falling within the scope of the regime and to choose to only integrate them into a fiscal year subsequent to that during which the SIIC elected for the regime. It is also possible to have a new subsidiary electing for this regime.

Once exercised, the election is definitive and irrevocable. It is also global and therefore concerns all the assets eligible to the regime held by the opting company including foreign assets (see however paragraph 2.2.3)

2.1.2. Modalities for exercising the election

⇒ Timing

The election can be exercised by SIICs and their subsidiaries until the end of the fourth month from the start of the fiscal year during which the company wishes to benefit from the present regime.

⇒ Formalism

The election is notified on paper or electronically to the tax authorities where the annual declaration of tax results is filed by the opting company. Upon election, the SIIC must provide the list of the subsidiaries which opt and mention their denomination, the address of their registered office, the SIRET number and the allocation of their share capital.

⇒ Date of effect

The date of effect of the election is the 1st day of the fiscal year during which it is exercised.

With regard to the conditions, these are appreciated at the date of effect of the election, that is to say the 1st day of the fiscal year during which the election is notified.

The administration specifies that the conditions for benefiting from the regime must be met on a continuous basis during the fiscal years covered by the election.

2.2. CONSEQUENCES OF THE ELECTION

The election entails all the consequences of a ceasing of business with, however, certain adjustments.

Companies which opt for the regime must file their declaration of results including the modalities of computation of the portion subject to the exit tax (hereinafter § 3.2) within 60 days of the election.

2.2.1. Ceasing of business

The election entailing a cease of business has the following consequences:

⇒ The exiting of the companies from the tax group to which they belong with all the relevant consequences and, in particular, the recapture of certain intra-group operations (cancelling of debt less than five years old, assignments of fixed assets).

⇒ Taxation of the operating results of the fiscal year. However, given that the election has a retroactive effect as from the 1st day of the fiscal year during which it was exercised, there will not be any consequences.

⇒ Taxation of profits, the taxation of which was suspended, and in particular, the taxation of add back provisions previously deducted from a tax standpoint.

However, a new regime is provided for latent capital gains which are subject either to « exit tax », or to a suspended taxation mechanism.

2.2.2. Exit tax

The election for the regime entails an immediate taxation at the rate of 19% of latent capital gains (this rate was at 16.5% before 1st January 2009) (i) on buildings held directly or indirectly by an SIIC and its subsidiaries liable for CIT electing for the regime and (ii) on the shares of partnerships (tax transparent companies) held by an SIIC and its subsidiaries liable for CIT electing for this regime.

Exit tax is also payable on latent capital gains on rights attached to a financial lease agreement only if the latter has been acquired or concluded as from 1st January 2005 and on certain real rights.

Exit tax is not due on the latent capital gains for buildings held by partnerships.

The portion subject to the exit tax is a fiscal portion, determined by reference to the tax value of the real estate assets or of the shares of the partnership.

Thus, the basis of the exit tax includes:

⇒ Capital gains, the taxation of which was suspended subsequent to a merger or a partial contribution of assets operation, or which was previously neutralised within the framework of the tax group regime.

⇒ The possible consequences of the Quemener decision of the Conseil d'Etat¹ leading to an adjustment of the tax value of the shares of a partnership.

In addition, the administration allows the inclusion in the portion subject to exit tax capital gains on constructions in course of add-back further to a restructuring operation (merger/contribution of assets).

The amount subject to exit tax is computed company by company. The capital gains and losses may be set off against each other within the same company. The previous losses of SIICs (ordinary losses, evergreen losses and long-term capital losses up to 19/33.33) may be credited to the part subject to the exit tax. In case of net long-term capital loss, this loss can be offset against taxable result of cease of business (standard rate of 331/3% or reduced rate of 15%).

The additional contributions are not applicable in addition to this exit tax.

One quarter of the exist tax is payable on 15 December of the fiscal year of the election and one quarter at the latest on 15 December of each three subsequent fiscal years.

2.2.3. Real estates located abroad

The election is global and therefore focuses on all real estate including that located abroad. However, this real estate is de facto excluded from the election when the tax treaty concluded between France and the country where it is located provides for an exclusive right of taxation in the said country.

When the right to tax is not exclusively given to the foreign State, the tax administration allows the exclusion of the real estate concerned upon election for the regime or upon their acquisition in order to avoid dual taxation. The decision of exclusion must be notified to the tax administration and is definitive.

2.2.4. Latent capital gains not subject to exit tax

Latent capital gains relating to fixed assets other than those subject to exit tax and, in particular

those relating to accessory activities, to rights attached to a financial lease agreement concluded or acquired prior to 1st January 2005, or to shares of subsidiaries liable for CIT electing for the regime, are not taxed and benefit from a suspension of taxation until the assignment of the asset concerned.

The mechanism is conditional upon the undertaking to determine the capital gains realised subsequently upon the assignment of the assets concerned on the basis of the value they had, from a tax standpoint, at the end of the fiscal year prior to submitting to the regime.

This undertaking must be mentioned in the election for the regime.

2.3. REVALUATION : ACCOUNTING AND TAX RULES

In a notice n°2003-C dated June 11, 2003, the Committee of Urgency of CNC provides that when a SIIC decides to revalue its fixed assets in its corporate accounts, the revaluation reserve corresponding to the assets eligible to the new regime and for which the exit tax is payable, is booked net of the amount of the exit tax as from the opening of the exercise during which the election is made. In the absence of revaluation, the exit tax is booked as an expense.

The absence of taxation of the latent capital gains on assets out of the scope of the exit tax is applicable in case of a revaluation realized upon the election for the SIIC regime. This adjustment is conditional upon the undertaking mentioned in paragraph 2.2.4 and the filing with the annual tax return of a statement showing the accounting value, the tax value to be used for the computation of the taxable profit at the occasion of future assignments and the revaluated value of the assets concerned.

Finally, in a notice n°2003-10 of June 24, 2003, the CNC specified that the revaluation reserve can be transferred to a distributable reserve either upon the assignment of the revaluated asset or gradually as the additional depreciation corresponding to the revaluated portion of the asset is booked under the condition that the company is in a profitable situation.

III. Exemption Régime

3.1. EXEMPTED SECTOR

3.1.1. The profits derived from the demise of the buildings or sublease of real estate properties financed through a financial lease or which possession is temporarily given to the SIIC by the State, its public institutions, the local authorities or one of their public establishments by SIICs and its subsidiaries having elected for the regime are exempted from CIT on condition

that they are distributed up to the minimum amount of 85% before the end of the fiscal year following their realisation.

3.1.2. Capital gains resulting from the assignment to a non related company by the meaning of Article 39-12 of FTC of buildings, of certain real rights, of rights attached to a real estate financial lease, of shares of companies liable for CIT having elected for the regime and of shares of partnerships held by SIICs or one of their subsidiaries having elected are exempted from CIT on condition that they are distributed up to the minimum amount of 50% of their total before the end of the second fiscal year following their realisation.

3.1.3. These exemptions can only be applicable to financial lease agreements acquired or concluded as from 1st January 2005. Agreements concluded prior to this date remain within the taxable sector.

3.1.4. Dividends received from subsidiaries having elected for the regime are exempted from CIT on condition that they are fully distributed during the fiscal year following their receipt. Dividends distributed by a SIIC, a foreign company subject to an equivalent SIIC status, or by a French collective real estate investment company (Société de Placement à Prépondérance Immobilière à Capital Variable – SPPICAV) to another SIIC holding at least 5% of the share capital and voting rights of its subsidiary for at least two years would be tax exempt subject to distribution obligations.

3.1.5. The share of the profits realised by partnerships apprehended by SIICs or their subsidiaries having elected for the regime is exempted under the same conditions – in particular regarding distribution – as set out above.

3.1.6. The total amount of the compulsory distribution is limited to the taxable profit of the exempted sector. It is also capped to the accounting profit, the amount exceeding the compulsory distribution being carried forward to future profits.

3.1.7. The administration provides for an allocation key of the expenses in proportion of the kind of income of the exempted sector, taking into account the correlative compulsory distributions. The principle is the exclusive and total allocation (for instance: depreciations are allocated to the lease sector). If not, this allocation will be made on the basis of the following ratio: numerator, the amount of the incomes of the considered operation, and denominator, the total amount of the incomes of the exempted sector.

3.2. TAXABLE SECTOR

3.2.1. The profits stemming from the performance of other activities are determined and taxed according to standard rules. The losses prior to the election for the regime which were not offset against the profit at the cession of business or the exit tax basis are lost definitely.

3.2.2. The charges and products (in particular financial) common to both the taxable sector and to the exempted sector shall be allocated as follows: the principle is the total and exclusive allocation, when possible, to one or the other sector. If not possible, the common expenses are allocated to the exempted sector according to the following ratio: numerator, the amount of the incomes (rents, capital gains, dividends) of the exempted sector and denominator, the total amount of the incomes of the company. In addition, the administration provides for a particular method of allocation for the financial expenses and incomes. The net financial incomes are considered as allocated to the taxable sector. By default of exclusive allocation, the net financial expenses of the exempted sector are computed on the basis of the following ratio: numerator, the gross accounting value of the assets used for the realisation of the exempted result and denominator, the gross accounting value of the whole assets.

3.2.3. Particular case of assets becoming eligible to the exemption regime.

Article 208C Ter allows the levying of exit tax at the rate of 19% (16,5% before 1st January 2009) if subsequently to opting for the SIIC regime, real estate properties, rights attached to a real estate financial lease or shareholding in a partnership become eligible to the exemption. The latent capital gain is then added back in equal share over a four-year period, which allows to spread the taxation.

This provision will mainly concern real estate properties financed through a financial lease agreement concluded or acquired prior to 1st January 2005, which become eligible to the exemption due to the exercise of the option to buy². It will also concern cases where corporations would be transformed into partnerships or where a company having elected to Article 208C regime would absorb a company not subject to that regime (See hereinafter § V.).

3.3. SIIC 4 / SIIC 5: MAIN SHAREHOLDING AND SPECIFIC 20% CORPORATION TAX

3.3.1. The direct or indirect holding into a SIIC by a single shareholder or by a group of shareholders

acting as one (« action de concert ») is limited to 60% of the share capital and voting rights of a SIIC. Should this percentage be exceeded, the SIIC would then become liable to corporation tax under standard conditions in respect of the fiscal year during which this percentage has been exceeded. This condition needs to be met on a continuous basis and is not applicable if the shareholder is itself a SIIC. It is however allowed to temporarily exceed this 60% ceiling under certain circumstances (e.g tender offering, restructuring and bonds conversion operations). In such a case, the regularisation shall occur before the dead line to file the income tax return for the FY during which the threshold is not respected. In the other cases, the dead line is the year-end closure of the FY during which the threshold is no longer respected.

The tax exemption regime is suspended during the period of regularisation and the SIIC becomes taxable to CIT under standard conditions on its rental income, capital gains and dividends. In the case of a sale of a building during the suspension period, the taxable capital gain would be decreased by the amount of the depreciation which has been booked during the tax exemption period.

The return to the tax exemption regime triggers the consequences of cease of business with however attenuation: on capital gain incurred during the suspension period on the assets eligible to the tax exemption regime are taxed at 19%.

The suspension of the regime can only be applied once during the first ten years as from the election for the tax exemption regime and the ten year following except in case of stock exchange operation (tender offer), restructuring or reimbursement or conversion of bonds into shares. If the situation is not regularised within the binding delay or if the threshold is not respected several times, the SIIC definitely exits from the tax exemption regime with all the consequences described in § 4 below.

This condition applies for FY open as from 1st January 2007 for those companies willing to elect for the SIIC regime as from this date, and for FY open as from 1st January 2010 for those companies having already elected for the regime as at 1st January 2007.

3.3.2. The SIIC becomes liable to a specific corporation tax at a 20% rate assessed on its distributions taken out of tax exempted results and distributed to those of its shareholders, other than individuals, which directly or indirectly own 10% or more of its share capital and are not liable to corporation tax in respect of the dividend received.

² The add back provided for by Article 239 series of FTC remains taxable at CIT at standard rate.

This provision does in principle not apply if the shareholder concerned is a French SIIC or a foreign company with a similar status (in fact a tax credit mechanism is provided to avoid paying the 20% tax twice). This provision however applies whether or not the distributing SIIC is a French company. Dividend income that would be fully tax exempted or subject to a tax substantially below the French corporation tax which would have applied on such dividend income, would be deemed not to be subject to corporation tax for the application of this new provision.

This specific 20% corporation tax is recovered and controlled according to standard corporation tax rules and would be neither creditable nor refundable. It is payable within the month following the actual dividend distribution. It applies to distributions paid as from 1st January 2007.

3.4. TAX REGIME OF DISTRIBUTED DIVIDENDS BY VIRTUE OF THE DISTRIBUTION OBLIGATION

- 3.4.1. The distributions carried out by subsidiaries having elected for the regime to other subsidiaries having elected for the regime or to the SIIC are exempted from CIT on condition that they are fully redistributed.
- 3.4.2. The dividends distributed by virtue of the distribution obligation do not give rise to the application of the parent company regime of the FTC for the recipient company. However, these distributions give rise for the individuals to the discount of 40%
- 3.4.3. The law allows for the taxation at the rate of 10% on distributions of dividends of SIICs received by non-profit making entities, such as public establishments and pension funds.
- 3.4.4. With regard to individuals, they can be exempted from tax on dividends and capital gains by transferring the shares of the relevant SIIC to their PEA.
- 3.4.5. Finally, with regard to foreign shareholders, the dividends distributed to them will be subject in France to a withholding tax the rate of which can be reduced by virtue of the relevant international tax treaty.

The withholding tax exemption provided by the EU parent/subsidiary Directive should not be applicable.

3.5. DISTRIBUTION OF THE SUMS SUBJECT TO THE EXIT TAX

The distribution of sums having been subject to exit tax does not trigger additional tax at the level of the distributing SIIC.

At the level of the individual shareholders, the discount of 40% is applicable.

Concerning shareholders which are legal entities, the exemption regime should be applicable under standard conditions.

3.6. FORMALISM

The SIIC and the subsidiaries having elected for the regime must enclose with their declaration of results a statement, conforming to the model given by the administration, which shows the split of their taxable profits and that of the partnerships depending on the realised operations (lease incomes, capital gains, dividends), the corresponding compulsory distributions and the compliance with the previous compulsory distributions.

In addition, the SIIC must enclose with its declaration of profits the up-dated list of its subsidiaries having elected for the regime.

IV. Sanctions

In case of non-compliance with the compulsory distribution, the company concerned is taxed under the standard conditions on its whole exempted sector for the fiscal years concerned.

Finance bill for 2009 has toughened the sanctions in case of exit from the SIIC regime.

In the event of the SIIC exiting the regime within ten years following the election, the capital gains having been subject to exit tax at the level of the SIIC will be the subject of an additional taxation at the standard rate of CIT, from which will be deducted the exit tax paid on entering this regime. Such a sanction is not provided in the case of one of the subsidiaries exiting the regime or if a SIIC becomes the 95% subsidiary of another SIIC and remains within the scope of the exemption regime.

As from 2 January 2009, the benefits of the tax exempt sector which have not been distributed yet (finance bill for 2009) becomes taxable to CIT at standard rate. An additional tax of 25% is also payable to a portion of the capital gains incurred during the tax exemption period of the properties. In addition, if the SIIC definitely exit the tax exemption regime after a period of suspension, the SIIC shall also pay on top of the above-mentioned sanctions a corporate tax at

19% on latent capital gains incurred during the period of suspension.

V. Restructuring

5.1. MERGERS AND PARTIAL MERGERS (« APPORTS PARTIELS D'ACTIFS »)

Finance bill for 2005 states that the favourable provisions of merger regime provided for by Articles 210A and following of FTC will be applicable to SIIC and their subsidiaries having elected for regime of Article 208C. The sole condition is that the absorbing company commits, in the merger deed, to substitute the absorbed company concerning binding obligations to distribute which have not been satisfied yet at the date of the merger.

The favourable merger regime is adapted as follows:

- Exemption of merger bonus on condition of its distribution up to the minimum of 50% before the end of the second fiscal year after its realization; because of the accounting obligation to choose Net Book Value for a merger between two companies placed under a common control, bonus should only reflect profits and reserves of the absorbed company which have not been distributed yet,
- Add back in equal share over a fifteen year period of the capital gain realized on depreciable assets (for instance constructions) in the exempted result subject to a 85% obligation to distribute; In principle, in case of sale of the property, according to our information, the French tax administration should admit that the amount of this capital gain which has not been added back yet be exempted on condition to be distributed up to a minimum of 50% before the end of the second fiscal year following the sale.

In addition, the merger between two SIIC will not trigger the challenge of the favourable regime on condition that outstanding binding obligations of absorbed SIIC be satisfied by absorbing SIIC, such a commitment being mentioned in the merger deed.

In case of absorption by a SIIC or one of its subsidiaries subject to the Article 208C regime of a company not subject to the regime, exit tax will be levied on latent capital gains on properties, rights attached to real estate financial lease, certain real rights or shareholdings in real estate partnership which become eligible to the regime.

It is worth noting that the favourable regime is applicable under standard conditions to the taxable sector.

An Administrative guideline should precise this regime

5.2. SALES OF BUILDINGS

The capital gain realised by a SIIC or one of its subsidiaries upon the sale of a property, real rights or rights relating to a financial lease agreement on a real estate is exempted under the conditions that (i) the purchaser benefits from the same tax exemption regime (SIIC, subsidiaries of SIIC, SPPICAV, subsidiary of SPPICAV) and (ii) the seller and the purchaser are related companies by the meaning of Article 39-12° of the French Tax Code. The purchaser shall however take the commitment to respect certain conditions and in particular in case of sale of the concerned property to add back in equal share over a fifteen year period of the capital gain realised on depreciable part of the asset (constructions) in the exempt result subject to 85% obligation to distribute.

VI. Outsourcing of real estate portfolios until 31 December 2011 (SIIC 3)

The article 210E of the French Tax Code allows for the levying of CIT at the rate of 19% (16.5% before 1st January 2007) - plus additional taxes - on net capital gains resulting from the contribution or the sale of buildings, of rights attached to a financial lease agreement or of certain real rights or shares in a real estate oriented company which is carried out by a legal entity liable to CIT according to common rules generally applicable, in favour of a company raising funds from the public or being agreed by the Stock Exchange Authorities ("Autorité des Marchés Financiers") and having a real estate activity³. Amendatory Finance bill for 2006 has specified the definition of "raising funds from the public" by meaning of SIIC 3 provisions. It must be characterized by the emission of securities giving bindingly an access to the share capital, excluding other types of emissions (such as listed bonds other than them reimbursable into stocks). For FY open as from 1st January 2007, this attractive tax regime is also applicable if the assignee is a subsidiary of a SIIC or a SPPICAV having elected for the tax exemption provided by Article 208C as long as they remain within the scope of this regime during at least 5 years as from the acquisition. Finance Bill for 2009 has confirmed the possibility to apply SIIC 3 regime to buildings which are aimed at being

³ i.e. its corporate purpose is (i) to purchase or build real estate properties with a view to rent them or (ii) to hold shareholdings in companies having the same purpose as in (i)

demolished with a view to be rebuilt provided that the construction works are completed before the expiry of the 5 year following the acquisition.

The company acquiring or benefiting from such contribution must covenant to keep the assigned property for five years. The formalism of this commitment shall be specified in a Decree. Non-compliance with this covenant shall entail a penalty corresponding to 25% of the contribution/sale value of assigned property.

The same 25 % penalty is also applicable if the assignee is a subsidiary of SIIC or SPPICAV and does not remain within the exemption regime during at least 5 years. This provision shall apply to assignments carried out until 31 December 2011. This SIIC3 regime has been commented by the French tax authorities in their guidelines dated 30 March 2009 (4H-I-09) and should in practice mainly concern assignments in the benefit of SIIC, SCPI and OPCI under the form of a company (SPPICAV). Its purpose is to favour the transfer of the real estate assets of industrial or commercial companies to real estate companies.

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