

7 RREC - legal framework and tax systems

As a group, Intervest uses a number of regimes to structure its activities in Belgium and the Netherlands. In Belgium, the group consists for the greatest part of the public regulated real estate company (RREC) Intervest Offices & Warehouses nv, the institutional regulated real estate company (IRREC) Genk Green Logistics nv and the specialised real estate investment fund (SREIF) Greenhouse Singel nv. In the Netherlands, an association on a cooperative basis and taxed private limited companies are used.

For a detailed description of the group structure of Intervest is referred to Note 24. List of consolidated companies, in the Financial report.

7.1 Belgium: the public regulated real estate company (RREC)

Legal framework

The status of regulated real estate company (RREC) is stipulated in the Act of 12 May 2014 regarding regulated real estate companies, as amended from time to time (the RREC Act) and in the Royal Decree of 13 July 2014 concerning regulated real estate companies, as amended from time to time (the RREC Royal Decree) in order to encourage public investments in real estate. The concept is very similar to that of the Real Estate Investment Trusts (REIT-USA), the Fiscale Beleggingsinstellingen (FBI-Netherlands), the Sociétés d'Investissement Immobilier Côtées (SIIC - France) and the REITs in the United Kingdom and Germany.

As a public real estate company with a separate REIT status, the RREC is subject to strict legislation with a view to the protection of its shareholders and financiers. The status provides both financiers and private investors with the opportunity of gaining access in a balanced, cost-effective and fiscally transparent manner to a diversified property portfolio.

It is the legislator's intention that RRECs guarantee optimum transparency with regard to investment properties and ensure the pay-out of maximum cash flow, while the investor enjoys a wide range of benefits.

The RREC is monitored by the Financial Services and Markets Authority (FSMA) and is subject to specific regulations, the most notable provisions of which are as follows:

- › adopting the form of a limited liability company or a partnership limited by shares with a minimum capital of € 1.200.000
- › company with fixed capital and fixed number of shares
- › mandatory listed with an obligatory distribution of at least 30% of the shares to the public at large
- › the public RREC's sole objective is (a) either directly, or by means of a company in which it possesses a stake pursuant to the provisions of the RREC Act and the decrees and regulations made for the execution of the same, to make real estate available to users; and (b) where appropriate and within the bounds of Article 7, b) of the RREC Act, to possess real estate as mentioned in article 2, 5°, VI to X of the RREC Act; the RREC thus has no statutorily anchored investment policy, but develops a strategy in which its activities may extend across the entire value chain of the real estate sector
- › limited possibility to take out mortgages; the amount of the mortgages or other securities may not exceed 50% of the overall fair value of the real estate and the mortgages or securities granted must not cover more than 75% of the encumbered property
- › a debt ratio limited to 65% of total assets; if the debt ratio exceeds 50%, a financial plan must be drawn up in accordance with the provisions of article 24 of the RREC Royal Decree. In case of a dispensation authorised by the FSMA based on article 30, §3 and §4 of the RREC Act, the consolidated debt ratio of the public RREC pursuant to the provisions of article 30 §4 of the RREC Act may not exceed 33%.
- › the annual financial interest costs arising from the debt burden may in no case exceed the threshold of 80% of the operating result before the result on the portfolio increased with the financial income of the company
- › at least 80% of the sum of the adjusted result and the net gains on the sale of real estate that is not exempt from the mandatory distribution must be distributed; however, the reduction of the debt during the financial year may be deducted from the amount to be distributed
- › strict rules with regard to conflicts of interest
- › an entry of the portfolio at market value without the possibility of depreciation
- › a quarterly estimate of the real estate assets by independent experts, who are subjected to a three-year rotation system
- › a spread of the risks: investing up to 20% of the assets in real estate that forms one single property entity, with certain exceptions
- › an RREC may not engage in "development activities" unless this is only on an occasional basis; this means that an RREC cannot act as a property developer with the intention of erecting buildings in order to sell them afterwards and collect a development profit
- › the opportunity to establish perimeter companies which can take the form of an "institutional RREC", in which the public RREC directly or indirectly holds over 25% of the authorised capital in order to be able to

implement specific projects with a third party, and the financial instruments of which may only be held by the following persons: (i) qualifying investors or (ii) natural persons, on condition that the minimum amount of the subscription or of the price or performance in exchange on the part of the purchaser is determined by the King by means of a decision made at the recommendation by the FSMA, and to the extent that the subscription or the transfer is done in accordance with the above-mentioned rules, who act for their own account in both cases, and the shares of which may only be acquired by such investors

- › at least three independent directors in the sense of article 526ter of the Belgian Companies Code sit on the supervisory board
- › the fixed fees of directors and the effective managers may not depend on the operations and transactions carried out by the public RREC or its subsidiaries: this therefore prohibits them being granted a fee based on the turnover. This rule also applies to the variable fee. If the variable remuneration is determined according to the result, only the consolidated EPRA earnings may be used as a basis for this.

These rules aim to limit the risk for shareholders

RREC - tax system

With the RREC Act the legislator has given RRECs a different tax status.

A RREC is subject to the normal **corporate tax** rate, however this only applies to a limited taxable basis, consisting of the sum of (1) the abnormal or benevolent benefits it has received (2) expenses and costs that are not deductible as professional expenses, other than depreciations and losses on shares. The results (rental income and gain from sale minus the operating expenses and financial charges) are thus exempt from corporate tax on condition that at least 80% of the operating distributable profit is paid out in accordance with article 13 §1 of the RREC Royal Decree and Chapter III of Annex C of the RREC Royal Decree. It can also be subjected to the special secret commissions tax on commissions and remunerations paid that are not properly documented in individual pay sheets and a summary statement.

The **withholding tax** on the dividends that are paid out by a public RREC equals 30%, to be withheld when paying the dividend (subject to certain exemptions).

This is a discharging withholding tax for private individuals who are residents of Belgium.

If a company converts to the status of RREC, or if a (normal) company merges with an RREC or splits part of its immovable assets with a transfer to an RREC, or contributes to an RREC, it must pay a one-time tax (the so-called **exit tax**), which is currently 15%. After that, the RREC is only subject to taxes on very specific elements, such as rejected expenses and abnormal benefits.

This exit tax is the fiscal price that such companies must pay in order to leave the normal tax system. In terms of the tax system, this transfer is treated as a (partial) division of the company's assets by the company to the RREC. When dividing the company's assets, a company must treat the difference between the payments in cash, in securities or in any other form and the revalorised value of the paid-up capital (in other words the gain that is present in the company) as a dividend.

The Income Tax Code states that the sum paid out equals the actual value of the company's assets on the date when this transaction has taken place (art. 210, §2 Income Tax Code 1992). The difference between the actual value of the company's assets and the revalorised value of the paid-up capital is equated with a dividend paid out. The reserves that have already been taxed may be subtracted from this difference. As a rule, the remainder forms the taxable basis that is subject to the 15% rate.

The exit tax is calculated with due observance of the Circular Letter Ci.RH.423/567.729 of the Belgian tax administration of 23 December 2004, of which the interpretation of the practical application could always change. The "actual tax value", as the circular letter refers to it, is calculated by deducting registration fees or VAT (which would apply in case of sale of the assets) and can differ from the fair value of the property as listed on the public RREC balance sheet in accordance with IAS 40.

7.2 Belgium: the institutional regulated real estate company (IRREC)

The institutional RREC is regulated by the Act of 12 May 2014 regarding regulated real estate companies, as amended from time to time (the RREC Act) and in the Royal Decree of 13 July 2014 concerning regulated real estate companies, as amended from time to time (the RREC Royal Decree). It is a lighter form of the public RREC. It offers the public RREC the opportunity to extend the specific tax aspects of its system to its perimeter companies and to realise partnerships and specific projects with third parties. The status of institutional RREC is acquired after approval by the FSMA.

The main characteristics of the institutional RREC are:

- › unlisted company and more than 25% controlled by a public RREC
- › joint or exclusive control by a public RREC
- › registered shares held by eligible investors or by private individuals with a participation of at least € 100.000
- › no requirements regarding diversification or debt ratio (consolidation at public RREC level)
- › obligation to distribute a dividend
- › activity consists of making real estate available to users

- › no obligation to appoint a property expert, since the property portfolio is valued by the expert of the public RREC
- › statutory accounts prepared in accordance with IFRS standards (same accounting scheme as the public RREC)
- › strict rules on operation and conflicts of interest
- › control by the FSMA.

The institutional RREC has the same tax system as the public RREC.

7.3 Belgium: the specialised real estate investment fund (SREIF)

The Specialised Real Estate Investment Fund (“SREIF”) is governed by the Royal Decree of 9 November 2016 on specialised property investment funds. This system permits investments in real estate in a flexible and efficient fund.

The main characteristics of the SREIF are:

- › a light regulatory regime without the approval and direct supervision of the FSMA, if certain criteria are met. Only the listing on a list of the Belgian Ministry of Finance is required
- › financial instruments issued by a SREIF can only be acquired by eligible investors
- › an SREIF can be exempted from the AIFM Act (Act of 19 April 2014 on alternative collective investment undertakings and their managers) if certain criteria are met
- › an SREIF is subject to an investment volume of at least € 10 million at the end of the second financial year following its inclusion on the SREIF list
- › an SREIF is a closed fund with fixed capital and cannot be traded publicly
- › a SREIF invests in real estate, broadly defined, but without mandatory diversification requirements or leverage limits (or the use of leverage limits)
- › statutory accounts prepared in accordance with IFRS standards (same accounting scheme as the public RREC)
- › an SREIF is subjected to an annual mandatory distribution of 80% of its profits
- › the duration of a SREIF is limited to ten years with the possibility of extending this period with successive periods each of up to five years.

A specialised real estate investment fund has the same tax system as the RREC.

7.4 The Netherlands: taxed entities

Intervest incorporated a Dutch cooperatively based association named Intervest Nederland Coöperatief U.A. as at 28 April 2017 to realise real estate investments in the Netherlands. Intervest has structured its Dutch investment properties in Dutch “BVs” (private limited companies).

The above-mentioned cooperatively based Dutch association named Intervest Nederland Coöperatief U.A., as well as the Dutch private limited companies, are subject to corporate tax as domestic taxpayers. Profit payments by the Dutch private limited companies to the Dutch cooperatively based association are not taxed because they fall under contribution exemption.