

## New aspects of the Spanish SOCIMI regime

On Friday 11 May, the Council of Ministers announced the main content of the Draft Bill on Measures on Flexibility and Promotion in the Housing Rental Market, by virtue of which significant changes could be introduced into the current regime of Listed Real Estate Investment Companies (*Sociedades Cotizadas de Inversión en el Mercado Inmobiliario*) (SOCIMI).

As is already known, the SOCIMI regime was created in 2009 (Act 11/2009, of 26 October) with scant success to date. One of the main reasons hindering the progress of SOCIMI entities has been the strict, complex regulation, requiring compliance with numerous requisites in various areas.

Therefore, given the relevance that the said measures could have to the development of these types of entities, we shall analyse below the content of the same.<sup>1</sup>

### A. Changes to the general SOCIMI regime:

#### 1 Flexibility of the minimum requisites required for admission to listing.

Since the enactment of the SOCIMI Act (Act 11/2009, of 26 October), the rigidity related to the listing of these entities has been one of the main barriers to its implementation. Specifically, the obligation to be listed on an official secondary market has discouraged the sector, which has encountered a significant obstacle in the compliance with the numerous strict requisites associated with the same. In order to solve this problem, the Government has announced greater flexibility in some of such requisites, namely:

- A reduction in the minimum outstanding capital, falling from 25% to 15%.
- A reduction in the number of shareholders, falling from 100 to 50.

Although the adoption of such measures is positive, the possibility of allowing listing on alternative markets would have been desirable.

Therefore, attention should be paid to the legislative development of this measure in order to verify whether the option of SOCIMI entities being listed on alternative markets is finally implemented.

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<sup>1</sup> It should be mentioned that the changes announced regarding SOCIMI regime are mere proposals not yet in force, and therefore we must await the legislative development of the said Draft Bill in order to determine the scope of such changes.

## **2 Reduction in the period required for the properties developed by the entity to be kept under lease.**

Another of the aspects criticised of Act 11/2009 is the existence of excessively lengthy minimum periods for holding properties: 3 years or 7 years, depending on whether the property has been developed by the SOCIMI itself or not.

Among the measures announced is a proposal to unify these minimum holding periods, establishing a general minimum period of 3 years for all properties belonging to the SOCIMI, the fact of whether the property in question was developed by the entity therefore being indifferent.

## **3 Elimination of the requisites of diversification of assets.**

At present, SOCIMI entities must meet certain minimum requisites regarding the diversification of their assets: they must have at least three properties without any of them representing more than 40% of the total assets of the entity.

Under the proposed changes, this requisite would be removed, thus enabling the implementing of a SOCIMI for each property asset. This measure could be beneficial within the framework of large-scale property projects (shopping centres, property developments, buildings for administrative use), where having a company per project is fundamental for the effects of liability, obtaining licences, financial risk management, etc.

## **4 Elimination of the requisite of minimum external financing.**

Another of the most disputed questions of the SOCIMI regime, which has raised most doubts as to its practical application, is the obligation for external financing to be lower than 70% of the assets of the entity, at book or market value.

According to the proposal announced by the Government, this requisite is to be removed. As a result, SOCIMI entities will have no limit on indebtedness.

We believe that, should it be approved, this new aspect would be warmly received by the sector, although without forgetting the general limits on the deductibility of financial costs introduced by Royal Decree 12/2012, of 30 March, introducing various tax and administrative measures aimed at the reduction of public deficit (see our last Client Briefing).

## **5 Reduction in the amount of the minimum required share capital.**

The minimum share capital of SOCIMI entities is currently set at 15 million euros. This figure easily exceeds the minimum capital required in capital companies (EUR 3,000 for limited liability companies (*Sociedades de Responsabilidad Limitada*) and EUR 6,000 for public limited companies (*Sociedades Anónimas*)).

With the proposed reduction, the minimum capital of a SOCIMI entity would be 5 million euros, amount which, although still fairly high, is more reasonable than at present. It should also be mentioned that the subscribing of the share capital may take place through non-monetary contributions (i.e. contribution of properties to the equity of the SOCIMI entity), no cash payments therefore needing to be made.

Furthermore, this measure together with the removal of the requisites of the diversification of assets (point 3) would enable the incorporation of SOCIMI entities on a smaller scale, which could be attractive within the sector.

## **6 Reduction in profit distribution obligations.**

The object of another of the measures announced is greater flexibility of the distribution requisites of profit not coming from dividends received by the actual SOCIMI entity. In this sense, it seems the intention of the Government is to

match the minimum distribution percentage of such profit (i.e. coming from leases), generalising the obligation to distribute at least 50% of the same (percentage already applicable to profit coming from the transfer of properties and shares).

## **B. Improvement and simplification of the tax regime of the entity:**

The Government has announced specific changes in order to simplify and improve the tax regime for SOCIMI entities. Such measures are the following:

### **1 Taxation depending on the result and not on profit distribution.**

By virtue of this measure, SOCIMI entities, like any other company, would be taxed depending on the result of the financial year. The percentage of profit distributed to investors would therefore have no impact on the calculation of such taxation, as is the case at present.

This new aspect would simplify the tax system of the entity, thus providing management of the same with greater flexibility by eliminating the complexities the current regime contains in respect of the determining of the taxable base.

### **2 Increase in the exemption of income from the lease of housing.**

Currently, 20% of the income obtained by SOCIMI entities from the lease of housing is exempt for Corporate Income Tax purposes.

The Government proposals intend to increase such percentage to 25% in those cases where more than 50% of the assets of the SOCIMI entity are housing.

We believe the amendment of the SOCIMI regulation regarding this point is essential in order to favour the housing rental market. Nevertheless, we feel the measure announced is insufficient and that, therefore, there would be room for addressing this matter in greater depth.

### **3 Unified tax rate (19%).**

Finally, a single tax rate of 19% is proposed for all income obtained by a SOCIMI entity, regardless of the source. This would therefore simplify management of the calculation of the tax quota, as it would not be necessary to distinguish between the various categories of income in order to apply the reduced rate or general rate (currently, certain income exists, such as that coming from subsidiary activities, to which the general tax rate is applied).

In this respect, it should be pointed out that this tax rate of 19% is at present one of the lowest within the Spanish tax system applicable to real estate investment companies.

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