

AUXADI
INSIGHTS

The taxation of SOCIMIs (REITs):

according to the Doctrine of the
Directorate-General for Taxation





SOCIMIs are an investment vehicle for the Spanish real estate market, created by Law 11/2009, and their main activity is the investment, direct or indirect, in real estate assets of an urban nature for rent

80%

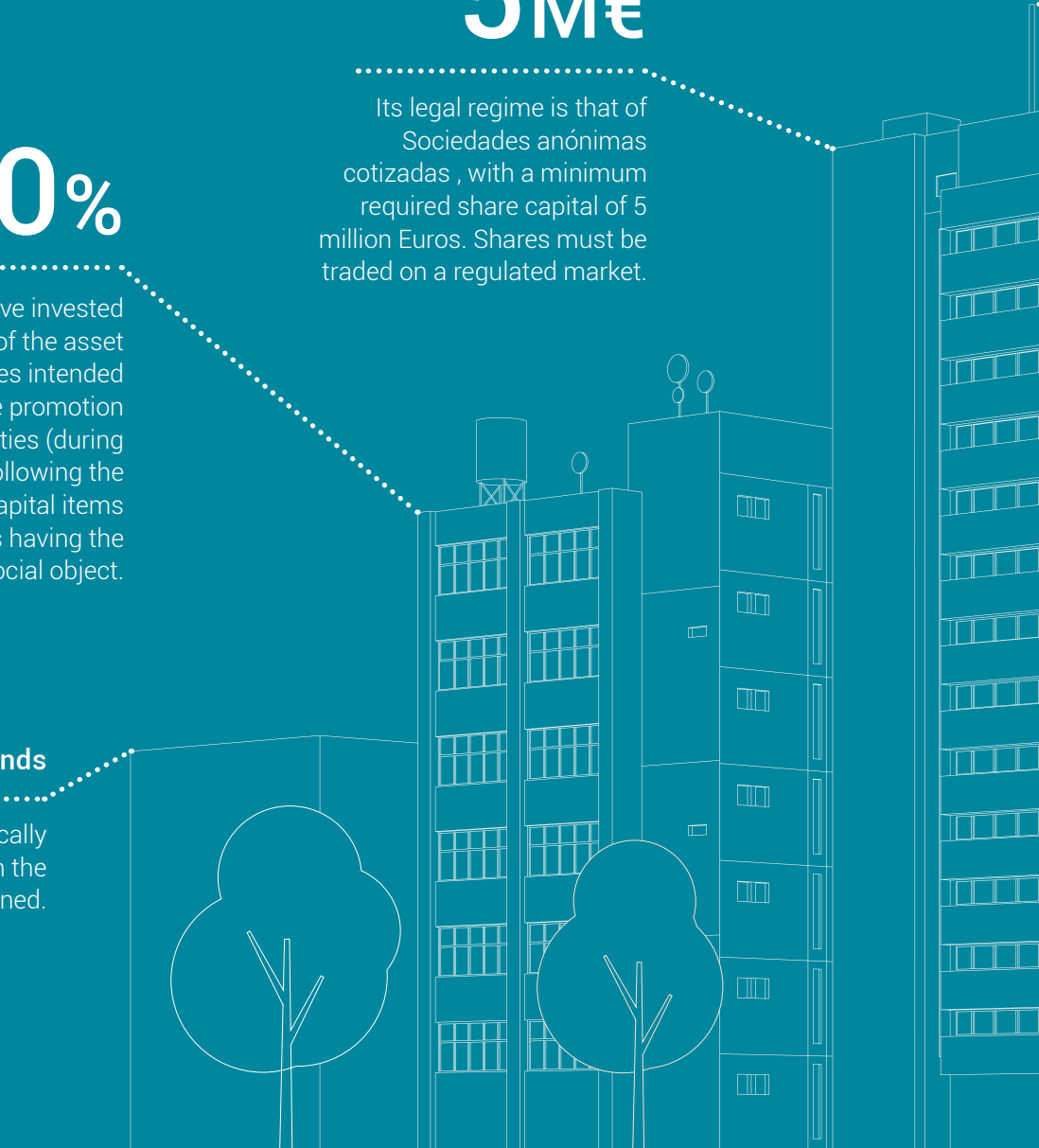
SOCIMIs shall have invested 80% of the value of the asset in urban immovables intended for leasing, for the promotion of such properties (during the three years following the acquisition) or for capital items of other entities having the same social object.

5M€

Its legal regime is that of Sociudades anónimas cotizadas, with a minimum required share capital of 5 million Euros. Shares must be traded on a regulated market.

Dividends

SOCIMIs are to systematically distribute dividends from the profit obtained.





0% Corporate tax rate

SOCIMI are subject to a 0% corporate tax rate. There is a special charge, of 19% of the amount of dividends that SOCIMI distributes to the partners, applicable only in the event that the members have a share rate equal to or greater than 5% and the dividends received by the partners are exempt or tax a tax rate of less than 10%. They also have a specific tax regime for members, both in terms of distribution of dividends and income.

80%

80% of your rents must come from the lease of real estate.

Funding limit

SOCIMIs have no funding limit, but there are minimal periods of asset maintenance.

Obligation

SOCIMIs carry the obligation to provide certain information in memory in a special section.







The taxation of SOCIMIs (REITs): according to the Doctrine of the Directorate-General for Taxation

REIT stands for the *Real Estate Investment Trust*, i.e. a widely used investment vehicle for real estate assets, particularly urban real estate. First introduced in the United States in 1961, REITs are now available in many countries.

REITs have a number of advantages as a vehicle, such as transparency, their connection with ESG principles, greater control, professionalization and institutionalization of investments, and the possibility of control by public administrations. All this gives REITs constant value creation, both for investors and for companies.

Spain, like many countries, has a REIT regime. In Spain, a REIT is known as a SOCIMI (where the Spanish acronym stands for public limited investment companies in the real estate market). In its August 2020 report on REIT vehicles, the Bank of Spain counted 90 operational SOCIMIs, with a market capitalization to EUR 27 billion and **representing 2% of GDP**. With EUR 46 billion in assets, the development of this figure in Spain has been outstanding in recent years (in 2013 there were only 2 registered SOCIMIs), to the point that Spain closed **2019** as the country with the second highest number of SOCIMIs in the world.

On 30 June 2019, Auxadi published the second edition of our e-Book: "*The Taxation of SOCIMI according to the Doctrine of the Directorate-General for Taxes*". Created as a working tool for all those associated with the world of SOCIMIs, it included the administrative interpretations to the articulation of Law 11/2009 of October 26 published to date, which regulates the vehicle.

This document (available only in Spanish at the moment) is subject to continual review, due to the fact that the Directorate-General of Taxes (DGT) periodically publishes its interpretations on the SOCIMI Law, in answer to queries that taxpayers have.

The development and emergence of an increasing number of SOCIMIs demonstrates the growing interest in this vehicle. Which is why we at Auxadi present this new guide, aimed at all international professionals in the sector interested in discovering more about SOCIMIs and their main characteristics.

Here you can find a comprehensive summary of the SOCIMI Law, as well as excerpts from the DGT Consultations on the Law issued from the date of publication of our e-Book (period from 1 July 2019 to 28 February 2021) and published on the website of the Ministry of Finance.



MORE INFORMATION

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For more information (e.g. regarding previously published entries and updates) our e-Book is available or you can contact one of our experts.





Law: public limited companies investment in the real estate market (SOCIMI)

SOCIMIs are an investment vehicle for the real estate market, created by Law 11/2009, equating it in Spain to that of the REIT (Real Estate Investment Trust). The main activity of the SOCIMI is the investment, direct or indirect, in real estate assets of an urban nature for rent (housing, commercial premises, residences, hotels, garages or offices, among others).

SOCIMIs may participate in other SOCIMIs, or entities that meet the same investment and benefit-sharing requirements required, whether residents or not in Spanish territory, within or outside regulated markets.

UNLISTED SOCIMI residing in Spain, wholly owned by foreign SOCIMI or REIT, may benefit from the scheme.

TRADING REGULATIONS

CORPORATE FORM (ART. 1 AND 4)

Listed companies with minimum share capital of EUR 5 million. Shares must be admitted to trading on a regulated market, Continuous Market, or Spanish Alternative Stock Market (MAB), or any Member State of the European Union or country with effective exchange of tax information.

SOCIAL OBJECT (ART. 2)

- Acquisition and promotion of urban properties for leasing, including rehabilitation of buildings.
- Participation in other non-resident SOCIMI or REIT.
- Participate in unlisted SOCIMI or unlisted non-resident companies with the same social object, similar benefit-sharing and investment policy.
- They may carry out other accessory activities provided that they do not represent, as a whole, more than 20% of total income in a tax period.

DISTRIBUTION BENEFITS (ART. 6)

SOCIMI must systematically distribute dividends from the profit obtained, either by:

- 100% of profit from dividends and profit shares distributed by companies that qualify as qualifying investments for SOCIMI regime.
- 50% profits from the transfer of real estate and shares. The remaining 50% must be reinvested in eligible assets within three years of transmission. If not reinvested, it must be distributed to the third year after its sale.
- 80% rest of profits made.

DGT CONSULTATION REFERENCES

DGT V2390/2020 of 13 July 2020 – DGT V2392/2020 of 13 July 2020 – DGT V3601/2020 of 13 July 2020

"Without prejudice to the provisions of the first transitional provision of Law 11/2009 transcribed, given the configuration of the special tax regime for Listed Anonymous Real Estate Investment Companies (SOCIMI) as an investment instrument for the real estate market, and more particularly to the rental market, and taking into account that one of the fundamental characteristics of that special scheme lies, in general terms, in the absence of taxation in the SOCIMI and at least 10% in the shareholder with a significant share (at least 5%), on the occasion of the distribution of dividends to the partner, both the compulsory distribution of dividends, from the company to the partners, and the requirements relating to the main social object and the nominative nature of the company's shares, should be considered as essential elements in that scheme. Those conditions must therefore be fulfilled,



as a sine qua non condition, prior to the exercise of the option by that special scheme."

DGT V2390/2020 of 13 July 2020 – DGT V2392/2020 of 13 July 2020

"As noted, amendments to the by-laws of the companies in order to adapt their social object and dividend distribution policy to that provided for in Law 11/2009, must be carried out prior to the exercise of the option by the application of SOCIMI's special tax regime."

INVESTMENT REQUIREMENTS (Art.3)

ASSET VOLUME

80% of the asset value must be invested in:

- Properties of an urban nature intended for leasing (in Spain or in a country with which Spain has signed an agreement of effective exchange of tax information).
- Land for the promotion of such properties, provided that the promotion begins within three years of its acquisition.
- Equity holdings of other entities with the social object of SOCIMI.

RENT VOLUME

- 80% of income must come from the leasing of properties affected by the fulfillment of the social object, together with dividends and shares in profits of other companies that qualify as an eligible investment.
- The real estate development activity, as well as the leasing activity, must have separate postings for each property.

ASSET MAINTENANCE

- Real estate acquired or promoted must remain leased for three years.
- It counts the time when the properties have been offered for lease, with a maximum of one year.
- Participation in entities that qualify as a fit investment for the scheme: three-year maintenance.

- The three-year period begins when the properties are leased or leased for the first time or, if the company had such properties prior to the application of the special scheme, it starts to be counted from the start of the tax period in which the scheme applies.

DGT CONSULTATIONS

DGT V2668/2020 of 17 August 2020

"In the event that, at the time of total split, the maintenance periods for leased dwellings or offered for lease set out in Article 48.2.b) of the LIS (Corporate Income Tax Law) had not yet been met, in so far as those time limits are subsequently met in the company "SOCIMI", taking into account that SOCIMI's special tax regime contains as one of its requirements that laid down in article 3.3 of Law 11/2009, requiring that immovable property integrating the company's assets remain leased for at least three years, and also provided that the rest of the objective requirements for the special scheme of entities engaged in the leasing of housing (main activity) , most rents derived from the lease, minimum number of homes, etc.) continued to be complied with by the company "SOCIMI" even if a different regime had been chosen for tax purposes, it must be understood that, although the company "SOCIMI" will no longer be able to apply the bonus regulated in Article 49 of the LIS, the bonuses applied by the split entity in the tax periods in which this special scheme would have been applied in relation to such dwellings should no longer be regularized."

DGT V2666/2020 of 17 August 2020

"In that regard, it should be recalled that paragraph 3 of Article 3 of Law 11/2009, with regard to the requirement of maintenance in the case of shares or holdings in the capital of entities referred to in Article 2(1) of that law, provides that they must be kept in the company's assets for at least three years from its acquisition or, where appropriate, from the beginning of the first tax period in which the special tax regime laid down in that law applies.

Since the consulting entity would already be applying SOCIMI's special tax regime when it acquires or constitutes these entities, the period of maintenance in the assets of its holdings shall be calculated from the acquisition or establishment thereof.

...

In the light of the above, in the specific case raised of merger by absorption of the entities that have been applying the special tax regime of EDAV (Entities Engaged



in the Leasing of Dwellings) by the consulting entity, which has been implementing the special tax regime of SOCIMI, the maintenance period provided for in article 3.3 of Law 11/2009, shall be calculated from the date of commencement of the first tax period in which the properties become integrated into the assets of the absorbing consulting entity, provided that at that date the good is leased or offered on lease and, otherwise, from the date on which they are leased or offered for lease for the first time by the consulting entity. That is, the maintenance period which, if any, had previously elapsed would not be taken into account."

SOCIMI FINANCING

There is no funding limit.

TAX REGIMEN APPLICABLE TO SOCIMI

SOCIMI TAX REGIME (ART. 8 AND 9)

- Corporate Income tax: Subject to 0% tax rate.
- Special regime: 19% of the amount of dividends that SOCIMI distributes to partners when the share capital stake in SOCIMI at least 5% and dividends are exempt or tax at a rate of less than 10% at the partner's headquarters.

This special levy does not apply:

- If the entity receiving the dividends is an unlisted SOCIMI or SOCIMI resident;
- If the entity receiving the dividends is a non-resident SOCIMI with respect to partners with a share of 5% or more, and they pay for dividends at a rate of tax of at least 10%, reporting this circumstance within ten days of payment of the dividends to avoid excise duty.

PARTNER TAX REGIME (ART. 10)

- Distribution of dividends from profits or reserves to which the SOCIMI regime has been applied:
- Corporate Income Tax (CIT) taxable persons and non-residents with Permanent

Establishment (PE): Internal Double Taxation Deduction will not apply.

- Personal Income Tax (PIT) taxable Persons: Dividend waiver will not apply.
- Non-Residents Without PE: Dividend waiver will not apply.
- Revenues obtained in the transfer or repayment share in capital of SOCIMIs:
 - CIT taxable persons and non-residents with PE: Internal Double Taxation Deduction will not apply.
 - PIT taxable Persons: Capital gains arising from the disposal of SOCIMI shares are subject to general IRPF rules.
 - Non-Residents without PEs: the exemption from these incomes established in the internal regulations will not apply.

EXERCISING THE OPTION FOR IMPLEMENTING THE SPECIAL SOCIMI REGIME

FORMALIZATION OF THE OPTION BY THE REGIME (ART. 8)

- It must be adopted by the general meeting of shareholders.
- The AEAT Delegation of the entity's tax domicile must be notified before the last three months prior to the end of the tax period to which the special tax regime should apply.
- Once it is communicated in a time limit, the special regime will apply in the first financial year ending after such communication and in the following years until the application of the scheme is waived.

TRANSITIONAL PERIOD FOR COMPLIANCE WITH REGIME REQUIREMENTS (DISP. TRANSITIONAL 1ST)

- A period of two years is granted for companies opting for this regime to comply with the requirements of the Law. (E.g. The corporate or investment structure may be adapted over a period of two years, as well as the public listing requirement may be met before the two-year period has elapsed.)



DGT CONSULTATIONS

DGT V2390/2020 of 13 July 2020 – DGT V2392/2020 of 13 July 2020 – DGT V3601/2020 of 13 July 2020

"On the contrary, the remaining investment and income origin requirements; trading on regulated markets; capital and legal form may be fulfilled, as indicated by the first transitional provision of Law 11/2009, previously transcribed, within two years of the date of exercise of the option. That is, two years are excepted for the application of these requirements."

DGT V2937/2020 of 30 September 2020 – DGT V2939/2020 of 30 September 2020

"By application of the common law (Article 7.2 of Law 58/2003 of 17 December, General Tax (hereinafter LGT)), it should be noted that Article 5.1 of the Civil Code provides that the time limits fixed by months or years are calculated from date to date. Therefore, according to settled case-law of the Supreme Court judgments of 9 May 2008, 8 March 2006 of 15 December 2005 of 25 November 2003, inter alia, the two-year period provided for in the first transitional provision of Law 11/2009, previously transcribed, shall be calculated from date to date, taking as the first day the company chooses to apply that special tax regime."

...

"Thus, as laid down in the first transitional provision of Law 11/2009, non-compliance with the requirements shall mean that the entity becomes taxed under the general scheme from the tax period in which the non-compliance is manifested."

DGT V3601/2020 of 13 July 2020

"As noted above, the non-essential requirements do not have to be met prior to the exercise of the option by the special tax regime and may be fulfilled, as indicated by the first transitional provision of Law 11/2009, within two years of the date of the exercise of the option."

- The provisional application of the scheme implies that, if it does not meet the requirements within two years, the company must enter the difference between the quota paid under the SPECIAL SOCIMI scheme and the one that would have resulted from the application of the general corporate tax regime, together with the corresponding interest, surcharges and penalties resulting.

DGT V2937/2020 of 30 September 2020 – DGT V2939/2020 of 30 September 2020

"In addition, it shall enter, together with the quota of that tax period, the difference between the fee resulting from the application of that tax and the fee paid which resulted from the application of the special tax regime in the previous tax periods, without prejudice to the interest of late payment, surcharges and penalties that, where appropriate, are appropriate."

....

"1. With regard to the first question, as regards the regularization raised by the consultant, it shall be carried out in the self-liquidation of corporation tax for the tax period 2015-16, since, following the wording of the first transitional provision of Law 11/2009, it is the tax period in which non-compliance with the scheme is manifested.

2. With regard to the possible application of surcharges, interest and penalties referred to in the second subparagraph of the first transitional provision of Law 11/2009, if the taxable person regularizes in the terms laid down in the first transitional provision of Law 11/2009, Article 125 of the LIS (CIT) and Article 122.2 of the LGT (General Tax Law) shall not apply the surcharges in Article 27 of the LGT, since those surcharges are not provided for adjustments under the special rule, that is to say, Article 125.3 of the LIS.

Notwithstanding the foregoing, if it fails to comply with the period for the submission of the self-liability of corporation tax for the tax period in which the adjustment is to be carried out, period 2015-16 in this case and the other circumstances provided for in Article 27 of the LGT exist, the surcharges covered by this provision may apply."

SOCIMI INFORMATION OBLIGATIONS (ART. 11)

- Obligation to provide certain information in memory in a special section called "Information requirements arising from the status of SOCIMI, Law 11/2009" for both SOCIMI and companies that are not SOCIMI apply the special tax regime (e.g. unlisted SOCIMI):
 - Reservations from pre-implementation exercises of the special scheme.
 - Reservations from fiscal years in which the special scheme has been implemented, with those coming from rents at 0%, 19%, or at the general rate 25%.



- Dividends distributed from the benefits of each financial year and distinguishing whether they come from income subject to 0%, 19%, or at the general rate of 25%.
- Dividends distributed from reserves distinguishing the exercise from which they come, the reserve applied and the type of levy to which the reservation has been subject.
- Date agreement distribution dividends.
- Date of acquisition of eligible properties and shares.
- Identification of the asset it computes for the requirement of 80% of the volume of assets.
- Reserves arranged for purposes other than dividend distribution and loss compensation.

LOSS OF SPECIAL FISCAL REGIME (ART. 13)

- They shall be taxed under the general scheme in the same financial year in which one of the following circumstances occurs:
 - Exclusion of trading in regulated markets.
 - Substantial non-compliance with the reporting obligations required by the SOCMI Act.
 - Lack of agreement on the distribution and payments, even if partial, of dividends under the terms set out in the standard.
 - Waiver of the application of the special regime.
 - Failure to comply with any other requirements required by the standard unless the cause of non-compliance is replenished within the following immediate financial year.
- Once the regime has been lost, it cannot be applied again three years after the end of the last tax period to which the special regime was applicable.

DGT CONSULTATIONS

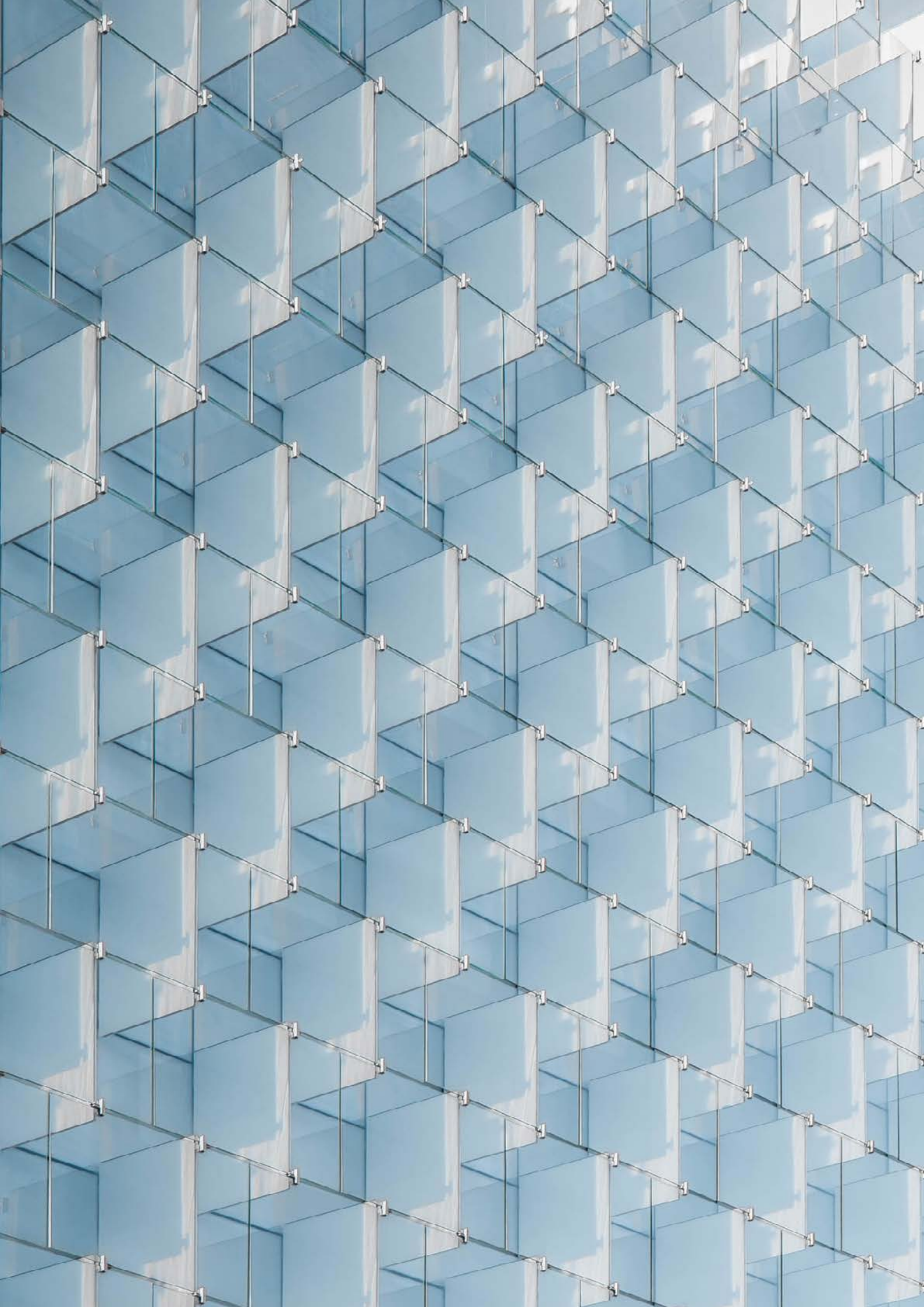
DGT V2390/2020 of 13 July 2020 – DGT V3601/2020 of 13 July 2020

"It is appropriate to consider, in this case, whether the limitation on the application of the SOCIMI scheme is applicable within 3 years of the end of the tax period in which it was applicable. However, in view of the view that, in this particular case, the entities would not have applied the SOCIMI regime in any tax period having regularized their tax situation in accordance with the provisions of the first transitional provision and having taxed under the general corporate tax regime, there would have been no tax period in which they would have taxed under the SOCIMI regime, and that limitation will therefore not apply.

It follows that, if they subsequently opted again for the application of SOCIMI's special tax regime, in accordance with Article 8 of Law 11/2009, the special tax regime shall apply in the period of taxation ending after the communication of the new option, and the non-essential requirements may be met, as indicated by the first transitional provision of Law 11/2009, within two years of the date of exercise of that option."

TAX ON PATRIMONIAL TRANSMISSIONS AND DOCUMENTED LEGAL ACTS (FINAL PROVISION 2A)

- Bonus of 95% of the share of the ITP-AJD accrued in the occasion of the acquisition of homes intended for lease or land for the promotion of homes intended for lease, provided that, in both cases, the minimum period of three years of holding of those assets is met.





Local Knowledge - International Coverage

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With subsidiaries in 22 countries, a wide affiliate network, and clients in +50 jurisdictions, we use our Local Knowledge and International Coverage to make your life easier.



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