

French SCPIs Investing in Irish Property

French société civile de placement immobilier ("SCPIs") represent an active and growing sector of the Irish real estate market.

SCPIs have been acquiring Irish assets in the residential, logistics and office sectors for a number of years, however activity has increased in recent months.

As existing owners adapt to life in the Irish property market and new entrants plan acquisitions, it is useful to summarise some aspects of Irish tax law which should be considered.

Irish Tax on Rental Income

Typically, the SCPI will acquire the Irish real estate directly or by using an intermediate holding company. In each case, it is likely that Irish tax law will have informed the choice.

Prior to 2022, there was an Irish tax advantage to using a non-resident company. An Irish resident company was subject to tax at 25% on its rental profits. By contrast, a non-resident company was subject to tax at 20%. The non-resident company was also outside the scope of certain Irish rules which limited deductions for debt.

However, in 2022, this difference in treatment was removed. Non-Irish landlords are now required to register for Irish corporation tax and to file Irish corporation tax returns. They are also subject to Irish corporate tax rules, such as the interest limitation rule, which can restrict the tax deductibility of interest in certain cases. It is important that these changes are modelled and considered over the coming months in order to ensure the potential additional Irish tax obligations are complied with.

Irish Collection Agents

Prior to 2022, tenants were obliged under Irish law to deduct 20% from their rental payments to non-Irish resident landlords. Typically, an Irish rent collection agent (such as the local property

agent) would be appointed. This removed the withholding tax.

In 2023, under new tax laws, this process will change. The changes include a requirement on the part of the collection agent to transmit additional information to the Irish Revenue. A new tax withholding platform will be implemented on the Revenue's website. Irish Revenue has begun writing to collection agents and non-Irish landlords concerning these changes, which are expected to come into effect from 1 July 2023.

Non-Irish landlords should review the terms of their engagement with their Irish collection agent when the detail of the new legislation is published in order to ensure there is no disruption to the receipt of rent or information.

EU Law Impacts

There have recently been a series of cases from the Court of Justice of the European Union ("CJEU") which concern real estate investment funds.

A number of EU Member States provide favourable tax treatment to domestic real estate funds. Such advantages are not provided to funds formed under other EU jurisdictions. The CJEU has, in a number of instances, declared that such rules violate the freedom of movement of capital principles of EU law.

In one Finnish case (C-342/20), Finnish tax rules which required investment funds to be based in contract was held to violate the EU rules. A more recent case (C537/20) concerned German rules which imposed tax on a Luxembourg fund investing in Germany. German funds were not exposed to such treatment, but instead were required to levy a withholding tax on distributions to investors.

In each case, the Court asserted that legislation which may deter foreign funds from investing, and which favours domestic funds, was unlawful.

The rulings are significant in an Irish context because Irish tax law treats Irish regulated funds and non-Irish funds differently. An Irish real estate fund is entirely exempt from Irish tax, subject to meeting certain conditions. Irish tax is levied on distributions from the Irish fund to certain investors. By contrast, a non-Irish fund is taxable on Irish rental profits.

SCPIs, as non-Irish entities, may wish to consider whether their Irish tax treatment compares less favourably to a comparable Irish fund. The issue may well be the subject of Irish tax litigation in the future.

Maples Group Experience

Maples Group's Property and Tax teams act for a range of institutional owners of Irish real estate. They are active in all sectors, advising on large-scale real estate acquisitions, management and sales. The Group has a deep institutional knowledge of the issues involved in the Irish property market, having advised on some of the most complex and high value transactions in recent years.

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