

Renouncing BE-REIT or FIIS status: the Ruling Commission clarifies the tax consequences



Mr. Wouter Claes
Partner



Mrs. Kelly Moens
Lawyer

wouter.claes@eubelius.com kelly.moens@eubelius.com

In a [press release dated 12 May 2021](#), Leasinvest Real Estate announced its intention to give up its public regulated real estate investment company (“BE-REIT”) status. This is exceptional news, as it would be the first time that a public BE-REIT gives up its status.

Since there is no legal framework for renouncing BE-REIT status, the question arises as to what the exact consequences would be. A BE-REIT is, after all, subject to a specific regulatory, accounting and tax regime, so exiting from BE-REIT status inevitably implies a number of important changes.

From an accounting perspective, the company will no longer have to prepare its statutory financial statements in accordance with IFRS standards, but will have to comply with Belgian GAAP. From a tax perspective, renunciation of BE-REIT status will mean that the company can no longer benefit from the “tax transparency” regime, under which rental income and capital gains on real estate are not taxable. After the renunciation, the company will again be subject to the standard corporate income tax regime.

Eubelius obtained an advance tax ruling dated 1 June 2021, which is expected to be published soon, in which the Ruling Commission expressed its opinion in principle on this technically complex matter. In summary, the Ruling Commission confirms:

- that renunciation of the status during a financial year has the consequence that the company can still benefit from the tax transparency regime until the actual renunciation, and that only thereafter is it again subject to ordinary profit tax (while the statutory financial statements for the entire financial year are prepared in accordance with Belgian GAAP);
- what the tax classification of the various components of the company’s equity will be after the renunciation of BE-REIT status, what the tax base for future depreciation will be, and what the tax value of the company’s assets will be for calculating future capital gains or

losses;

- that, in principle, the corporate shareholders of the former BE-REIT can benefit from the dividend received deduction (“DRD”) and that, in principle, their capital gains on shares are exempt.

Although some of these principles were already confirmed in 2016 in an advance tax ruling regarding an institutional BE-REIT that was going to lose its status, this is the first time that the Ruling Commission has elaborated on the tax consequences of renunciation of BE-REIT status in such a comprehensive manner. This tax ruling will therefore be of considerable practical value, not only for BE-REITs but also for specialised real estate investment funds (“FIIS/GVBF”), which are subject to exactly the same accounting and tax regime.