


FANTOZZI & ASSOCIATI

STUDIO LEGALE TRIBUTARIO



 **Taxand**
Global Alliance

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ITALIAN LISTED RE INVESTMENT COMPANIES

SOCIETA' DI INVESTIMENTO IMMOBILIARE QUOTATE (SIIQ)

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■ Background and key features

- SIIQ-regime introduced by the Budget Law for FY 2007 for stock companies listed in Italian capital markets mainly performing rental activities of RE properties
- SIIQ-regime is partially following the one of French SIIC
- Income from RE rental activity (residential and commercial) is tax exempt for SIIQ companies
- Income is subject to tax on the head of shareholders (WHT applies)
- SIIQ companies are obliged to distribute a dividend that cannot be lower than 85% of the net profit accrued by the company in each FY

■ Timing

- SIIQ-regime will start from the FY following the one running at June 30, 2007 (on July 1°, 2007 the new tax regime of income from financial investments is expected to enter into force)
- Option for SIIQ-regime is elected by filing a form within the end of the FY preceding the one in which the company will apply such regime
- With a Government Decree, to be issued within April 30, 2007, further regulations will be established governing several technical aspects (assets step-up values, carry-forward of the losses, M&A, offsetting of existing tax credits, etc.)

■ Qualifying Requirements for SIIQ-regime

In order to qualify as a SIIQ, a company has to meet the following conditions:

- a) to be a joint-stock company resident in Italy
- b) to perform mainly rental activities of RE properties
- c) to be listed in the Italian stock exchange market
- d) none of the shareholders owns directly or indirectly more than 51% of voting rights and profit sharing rights
- e) at least 35% of the shares is held by shareholders which do not own, directly or indirectly, more than 1% of voting rights and profit sharing rights each

■ Qualifying Requirements for SIIQ-regime

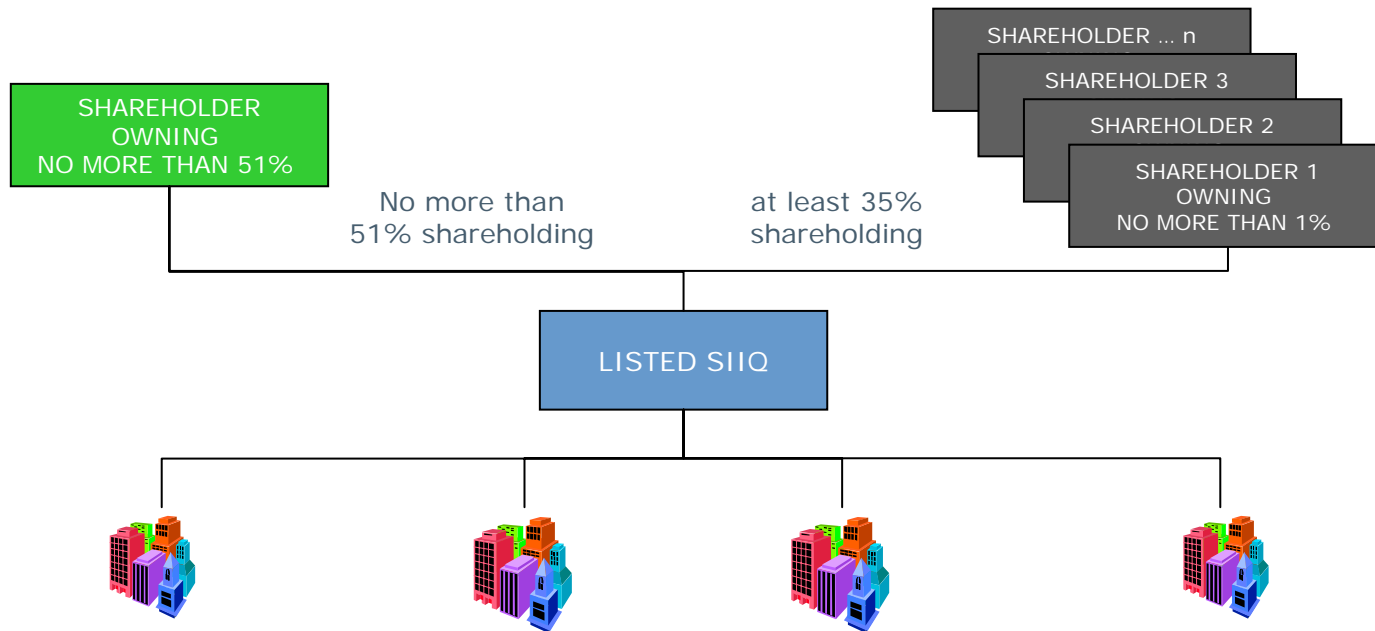
In order to meet the requirement *sub b* (i.e. rental activity has to be the main business purpose):

- i. RE properties must represent at least 80% of assets of a SIIQ (including shareholding in other SIIQs and in subsidiaries in case of a SIIQ Group Structure), and
- ii. revenues from rental of RE properties must represent at least 80% of the whole company's turnover (including dividends distributed by other SIIQs and by subsidiaries in case of a SIIQ Group Structure)

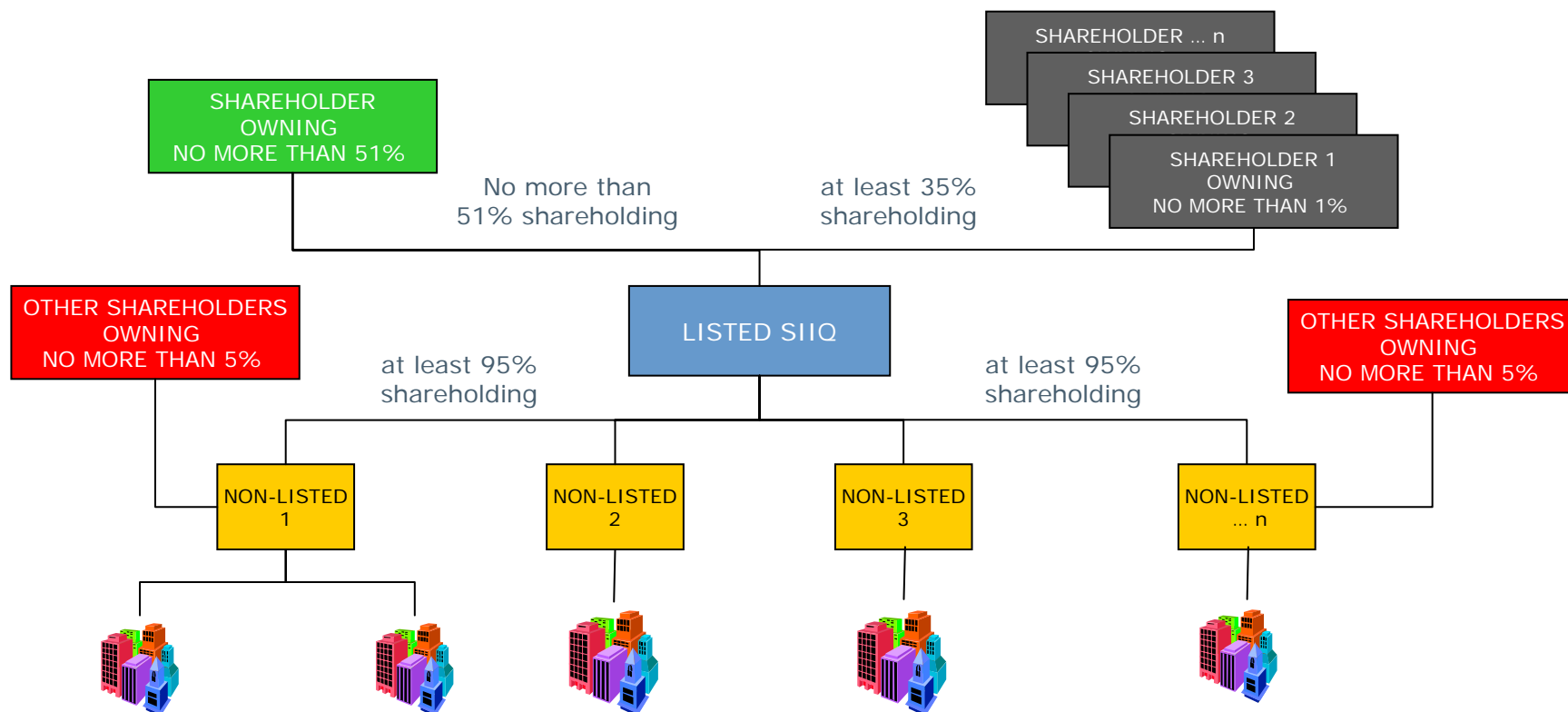
■ SIIQ Group Structures

- Non-listed companies can benefit from the SIIQ regime on condition they are:
 - resident in Italy
 - meeting the 80% assets and revenues thresholds
 - controlled for at least 95% of voting rights (and 95% of profit sharing rights) by SIIQ companies listed in the Italian capital market
- In this case the option for the SIIQ regime must be jointly elected by both the SIIQ-parent and the subsidiary
- The SIIQ-subsiidiary has to draw up the FS according to the IAS/IFRS

SIIQ owning RE properties



SIIQ Group structures



■ Key Effects of the option for the SIIQ regime

- Step-up to the FMV of RE properties
- Capital gains from step-up subject to ordinary tax regime, or to a 20% substitute tax
- Each year, at least 85% of the income from the rental activity must be distributed to shareholders
- Separate books for rental and other activities (if any) must be kept and disclosure in FS of criteria for allocation of overhead expenses has to be given

The Step-up and the Exit tax

- Step-up in the BV of RE properties, up to the fair market value (FMV) as of the closing date of the last FY in which the ordinary tax regime applies
- Capital gains from the step-up, net of possible capital losses, are subject, at taxpayer's option:
 - to the ordinary tax regime, or
 - to a 20% substitute tax
- TLCF from FYs preceding the entry into the SIIQ-regime can be utilised to offset:
 - i. the taxable base of the 20% substitute tax due, and/or
 - ii. the income deriving from the activities other than the exempt rental activity

■ Payment of the 20% Substitute Tax

- 5 equal instalments (max) over 5 years
 - 1° instalment: within the deadline for paying CIT of the last FY of the ordinary regime
 - Further instalments: within the anniversaries of that date (interest applies at official discount rate + 1 point)
- Substitute tax due can be offset by tax credits for CIT, VAT, others (if any)
- Also RE properties owned for trading purposes can be subject to the 20% substitute tax (tax value after 3 years*)

■ Ordinary taxation vs. Exit Tax

- At taxpayer's choice the ordinary taxation can be elected
- Capital gains from the step-up, net of possible capital losses, are subject to CIT (at 33%) plus Regional Tax (at 4.25%)
 - in the last FY of the ordinary regime, or
 - in equal instalments in that FY and followings, not exceeding the fourth (in this case, such income is considered from non-exempt activities)

Stepped-up values as Tax values

- The stepped-up values become Tax values (relevant also for the 80% assets threshold) starting from the 4° FY following the one preceding the entry into the SIIQ regime, e.g.:
 - Entry into the SIIQ regime 1.1.2008
 - Stepped-up value corresponding to the Tax value from FY running 1.1.2011
- If a RE property is sold before the 3 years “waiting period” is expired, taxes (CIT and IRAP) are due as follows:
 - Tax Cost is the one preceding the entry into the SIIQ regime, net of depreciations calculated on this cost, and
 - The 20% substitute tax proportionally related to the RE property sold becomes a tax credit

■ Tax exemption for SIIQ

- Income from rental activity is exempt from CIT (at 33%) and Regional Tax (IRAP at 4.25%)
- Exemption for dividends paid to a SIIQ by their subsidiaries subject to the SIIQ-regime, and relating to profit from rental activity
- Income is subject to tax on the head of shareholders
- a 20% (or 15%) WHT is withheld by the SIIQ
- Ordinary tax regime for income and dividends from activities other than rental activity

Taxation of dividends to shareholders

SHAREHOLDER	TAXATION of DIVIDENDS
shareholders doing business (companies, other business entities, partnerships, individual entrepreneurs and PEs in Italy of foreign business entities)	<ul style="list-style-type: none"> • SIIQ is fiscally transparent for these shareholders • The WHT is an advance WHT • Dividend fully subject to CIT (95% exemption for dividends does not apply)
any other case (individuals, non business entities)	WHT is final and no further taxation applies
persons/companies/entities non-tax resident in Italy	<ul style="list-style-type: none"> • WHT is final and no further taxation applies in Italy • 20% (or 15%) WHT instead of 27%, i.e. standard WHT on dividends with a 4/9 refund = 15% (???) • Reduced WHT according to Tax Treaties (???) • Parent/Subs Directive; NO WHT in Italy; NO exemption for the Parent in its EU country (???)

The withholding tax on dividends

20% WHT	15% WHT	NO WHT
<p>Dividends paid to persons other than other SIIQ, out of profits arising:</p> <ul style="list-style-type: none"> ➤ from the rental activity of RE property, and ➤ from shareholding in other SIIQ and in subsidiaries subject to the SIIQ regime 	<p>Portion of dividend related to the special residential rental regime provided for by art. 2, para. 3, Law 9/12/1998, n. 431</p>	<ul style="list-style-type: none"> ➤ dividends paid to other SIIQ ➤ dividends paid to Italian Pension Funds ➤ dividends paid to Italian UCITS (including REITs) ➤ dividends paid to persons having elected for the "risparmio gestito" (handled savings) regime






Taxation of capital gains (Italian tax-residents)

SHAREHOLDER	TAXATION of CAPITAL GAINS
shareholders doing business (companies, other business entities, partnerships, individual entrepreneurs and PEs in Italy of foreign business entities)	<ul style="list-style-type: none"> • Capital gain fully subject to CIT (84% participation exemption does not apply)
Individuals and non business entities which are qualified shareholders (more than 2% of voting rights or 5% of paid-in share capital)	<ul style="list-style-type: none"> • Capital gain fully subject to CIT or PIT (60% participation exemption does not apply)
individuals, non business entities which are non-qualified shareholders (up to 2% of voting rights or 5% of paid-in share capital)	<ul style="list-style-type: none"> • Ordinary tax regime: 12,5% substitute tax (will be increased up to 20% by the reform of taxation of financial income, by July 1, 2007)





Taxation of capital gains (non-residents in Italy)

SHAREHOLDER	TAXATION of CAPITAL GAINS
<p>persons/companies/entities non-tax resident in Italy which are qualified shareholders</p>	<ul style="list-style-type: none"> • Capital gain fully subject to CIT or PIT • 60% participation exemption does not apply • Tax Treaties protection • UK shareholders are subject to tax only in the UK (art. 13, ITA/UK Tax Treaty)
<p>persons/companies/entities non-tax resident in Italy which are non-qualified shareholders</p>	<ul style="list-style-type: none"> • No taxation in Italy for capital gains from shares listed at the Italian Stock market • No taxation in Italy for capital gains from non-listed shares (e.g. shares in SIIQ subsidiaries) in case of residents in white-listed countries • Tax Treaties protection





Tax Treaties

COUNTRY		DIVIDENDS	CAPITAL GAINS
AUS		15% WHT	Taxation in Italy when assets of ITA-Co mainly consist of RE property
AUT		15% WHT	NO TAX in ITALY
BEL		15% WHT	NO TAX in ITALY
CAN		15% WHT	Taxation in Italy when assets of ITA-Co mainly consist of RE property
FRA		<ul style="list-style-type: none"> • 5% companies owning > 10% for 1y • 15% other cases 	<ul style="list-style-type: none"> • Taxation in Italy when assets of ITA-Co mainly consist of RE property • Taxation in Italy if shareholding > 25% of share capital




Tax Treaties

COUNTRY		DIVIDENDS	CAPITAL GAINS
GER		<ul style="list-style-type: none"> • 10% companies owning > 25% • 15% other cases 	<ul style="list-style-type: none"> • NO TAX in ITALY • special rule for change of residence and shareholding > 25%
IRL		15% WHT	NO TAX in ITALY
JAP		<ul style="list-style-type: none"> • 10% companies owning > 25% for 6 months • 15% other cases 	NO TAX in ITALY
LUX		15% WHT	NO TAX in ITALY

Tax Treaties

COUNTRY		DIVIDENDS	CAPITAL GAINS
NL		<ul style="list-style-type: none"> • 5% companies owning > 25% for 1Y • 10% companies owning > 10% for 1Y • 15% other cases 	NO TAX in ITALY unless change of residence 5Y before the sale
POR		15% WHT	NO TAX in ITALY
RUS		<ul style="list-style-type: none"> • 5% companies owning > 10% for 100K US\$ • 10% other cases 	NO TAX in ITALY
SP		15% WHT	NO TAX in ITALY

Tax Treaties

COUNTRY		DIVIDENDS	CAPITAL GAINS
SVI		15% WHT	NO TAX in ITALY
UK		<ul style="list-style-type: none"> • 5% companies owning > 10% • 15% other cases 	NO TAX in ITALY unless change of residence 5Y before the sale
USA		<ul style="list-style-type: none"> • 5% companies owning > 50% for 1Y • 10% companies owning > 10% for 1Y • 15% other cases 	Taxation in Italy when assets of ITA-Co mainly consist of RE property

White-listed Countries

Algeria	Giappone	Regno Unito
Argentina	Grecia	Repubblica Ceca
Australia	India	Repubblica Slovacca
Austria	Indonesia	Romania
Belgio	Irlanda	Singapore
Bielorussia	Israele	Slovenia
Brasile	Jugoslavia	Spagna
Bulgaria	Kazakistan	Sri Lanka
Canada	Kuwait	Stati Uniti
Cina	Lituania	Sud Africa
Corea del Sud	Lussemburgo	Svezia
Costa d'Avorio	Macedonia	Tanzania
Croazia	Malta	Thailandia
Danimarca	Marocco	Trinidad e Tobago
Ecuador	Mauritius	Tunisia
Egitto	Messico	Turchia
Emirati Arabi Uniti	Norvegia	Ucraina
Federazione Russa	Nuova Zelanda	Ungheria
Filippine	Paesi Bassi	Venezuela
Finlandia	Pakistan	Vietnam
Francia	Polonia	Zambia
Germania	Portogallo	

■ Contribution of assets to SIIQ companies – direct taxation

- Capital gains from contribution of RE properties in exchange for SIIQ shares (or into a company which is going to elect the option for the SIIQ regime within the FY in which the contribution takes place) are subject, at taxpayer's choice:
 - to the ordinary tax regime, or
 - to a 20% substitute tax (in this case, however, the receiving company must hold the RE property contributed for at least 3 years)
- Also applicable to contributions to Italian REIFs

- Contributions in exchange for SIIQ shares of a plurality of mainly rented out RE properties are:
 - out of scope of VAT
 - subject to flat amounts of Euro 168 each for Registration, Mortgage and Cadastral taxes
- Contributions of assets other than the above are subject to standard Registration tax rules
- For Mortgage and Cadastral purposes a reduced 2% tax rate applies

Losing the SIIQ regime

REASONS	CONSEQUENCES
Failure to meet for 2 FYs in succession one of the 80% thresholds	Ordinary tax regime does apply from the 2° FY e.g.: <ul style="list-style-type: none">• failure of one of 80% thresholds in 2008: SIIQ regime applies• failure of one of 80% thresholds in 2009: ordinary regime applies to FY 2009
Failure to distribute 85% of profit	Ordinary tax regime does apply retrospectively from the same FY where the profit has been accrued; e.g.: <ul style="list-style-type: none">• failure to distribute, in May 2009, 85% of the 2008 profit• ordinary tax regime does apply to FY 2008

Comparison SIIQs vs. Italian REIFs

	SIIQs	ITALIAN REIFs
INCOME and LOCAL TAX for SIIQ/FUND	<ul style="list-style-type: none"> Rental Income exempt Other income subject to tax, including capital gains 	<ul style="list-style-type: none"> Total income exempt, including capital gains
TAXATION of share/unit-holders: business entities	<ul style="list-style-type: none"> CIT at 33% (dividends and capital gains) 20% (or 15%) advance WHT on dividends 	<ul style="list-style-type: none"> SAME AS SIIQs (12,5% advance WHT will be increased to 20%)
TAXATION of share/unit-holders: individuals and non-business entities	<ul style="list-style-type: none"> 20% (or 15%) final WHT on dividends paid out from exempt rental income 20% capital gains (???) 	<ul style="list-style-type: none"> 12,5% final WHT on: <ul style="list-style-type: none"> profits distributed and on the difference: redemption value/subscription or purchase cost (will be increased to 20%)

Comparison SIIQs vs. Italian REIFs

	SIIQs	ITALIAN REIFs
TAXATION of share/unit-holders non-tax residents: dividends/profits	<ul style="list-style-type: none"> • 20% (or 15%) final WHT on dividends paid out from exempt rental income • Tax Treaties • Parent/Subs 	<ul style="list-style-type: none"> • No taxation in Italy for residents in white-listed countries • 12,5% final WHT for residents in countries other than white-listed
TAXATION of qualified share/unit-holders non-tax residents: capital gains	<ul style="list-style-type: none"> • CIT at 33% or PIT (marginal tax rate 43%) • Tax Treaty protection 	<ul style="list-style-type: none"> • No taxation in Italy for residents in white-listed countries • 12,5% final WHT for residents in countries other than white-listed
TAXATION of non-qualified share/unit-holders non-tax residents: capital gains	<ul style="list-style-type: none"> • No taxation in Italy (listed SIIQ) • No taxation for non-listed SIIQ (white-listed countries) • Tax Treaty protection 	<ul style="list-style-type: none"> • No taxation in Italy for residents in white-listed countries • 12,5% final WHT for residents in countries other than white-listed

Comparison SIIQs vs. Italian REIFs

	SIIQs	ITALIAN REIFs
CONTRIBUTIONS OF RE PROPERTIES IN EXCHANGE FOR SHARES (INCOME AND LOCAL TAX)	<ul style="list-style-type: none"> • Ordinary tax regime or • 20% substitute tax 	SAME AS SIIQs
CONTRIBUTIONS OF PLURALITY OF RENTED OUT RE PROPERTIES IN EXCHANGE FOR SHARES (VAT)	<ul style="list-style-type: none"> • NO VAT 	SAME AS SIIQs
OTHER CONTRIBUTIONS (VAT)	<ul style="list-style-type: none"> • VAT AT 20% (commercial properties) • VAT EXEMPT - 0% rate (residential properties) 	SAME AS SIIQs

Comparison SIIQs vs. Italian REIFs

	SIIQs	ITALIAN REIFs
CONTRIBUTIONS OF PLURALITY OF RENTED OUT RE PROPERTIES IN EXCHANGE FOR SHARES (REGISTRATION, MORTGAGE, CADASTRAL)	<ul style="list-style-type: none"> • € 168 REGISTRATION • € 168 MORTGAGE • € 168 CADASTRAL 	SAME AS SIIQs
OTHER CONTRIBUTIONS OF COMMERCIAL RE PROPERTIES (REGISTRATION, MORTGAGE, CADASTRAL)	<ul style="list-style-type: none"> • € 168 REGISTRATION • 1,5% MORTGAGE • 0,5% CADASTRAL 	SAME AS SIIQs
OTHER CONTRIBUTIONS OF RESIDENTIAL RE PROPERTIES (REGISTRATION, MORTGAGE, CADASTRAL)	<ul style="list-style-type: none"> • 7% REGISTRATION (reduced to 3% for historical & fine arts buildings) • 2% MORTGAGE • 1% CADASTRAL 	<ul style="list-style-type: none"> • € 168 REGISTRATION • 2% MORTGAGE • 1% CADASTRAL

Further Regulations to be issued by Decree

FURTHER REGULATIONS

- | | |
|--|---|
| <ul style="list-style-type: none">a) Specific Stock Exchange Market rules for SIIQsb) Criteria for determining FMV of RE propertiesc) Instruction for use of TLCFd) Criteria for determining the tax value of shareholding in SIIQs and their subsidiariese) Rules on Tax consolidation for SIIQs and their subsidiariesf) Criteria for determining the tax value of assets and liabilities in case of losing the SIIQ regime | <ul style="list-style-type: none">g) Tax consequence of M&A transactions involving SIIQs and their subsidiariesh) Instruction for use of Tax creditsi) Further consequences of losing the SIIQ regimel) Accounting requirements to apply the 15% reduced WHT |
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This guide is correct at the best of our knowledge and belief at March 2007.
It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken.