

# BARTOLOME & BRIONES

REAL ESTATE: INVESTMENT IN SPAIN

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## LEGAL ASPECTS

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## LEGAL INVESTMENT STRUCTURES

### 01\_ HOW TO BUY REAL ESTATE IN SPAIN



#### Legal matters

- Deed of sale
- Legal certainty (notarial deed / Land Register)



#### Contractual matters

- Establishment of terms and conditions as guarantees.
- Liability regime.
- Deadlines.
- Guarantees.
- Suspensive and/or resolutive conditions.



#### Obligations

- Payment of taxes.
- Maintenance charges.

## LEGAL INVESTMENT STRUCTURES

### 02\_ COMPANIES

#### **Sociedad Anónima (S.A.) / Sociedad Limitada (S.L.)**

The interest of these structures results, among others and mainly, from the impact and the fiscal consequences explained hereafter.

	(SA)	(SL)
Share Capital (KS)	€60,000 25% min. disbursement	€3,000 100% disbursement
Titles	KS represented in stocks: nominative or bearer  May be listed on the Stock Exchange  Easier sale/transfer	KS represented in shares: nominative only  Not listed on the Stock Exchange  More sale/transfer restrictions

## LEGAL INVESTMENT STRUCTURES

### 03\_ SOCIMI



#### What are they?

- Listed Real Estate Investment Company.
- Its main activity is direct/indirect investment in urban real estate assets for rent.
- They are the Spanish version of the Reit's (Real Estate Investment Trust).



#### Who are they destined for?

- For investors (natural or legal persons) who own or wish to develop real estate for rent, the aggregate value of which exceeds a minimum share capital of Euro 5M (the SOCIMI may consist of a single property).
- At least 80% of the real estate must be used for rent and/or come from dividends from its investments in other SOCIMI.
- The assets may be located in Spain or abroad and may be houses, offices, commercial premises, warehouses, parking spaces, etc.

## LEGAL INVESTMENT STRUCTURES

### 03\_ SOCIMI. Characteristics:

- a) The assets must remain in the company for at least 3 years.
- b) They can invest in other SOCIMI.
- c) Participating agents:
  - Legal Advice: for Legal DD
  - Registered Advisor: mandatory intervention.
  - Agent Bank (Liquidity Provider/Depository).
  - Real Estate Expert: Real Estate DD, market review, Business Plan coordination.
  - Auditor: Financial DD, Financial Statements audit, company valuation, issuance of the comfort letter Market Entry Informative Report.
  - Valuation of the Company.
- d) Costs (examples):
  - Euro 300,000.00 (in KS of Euro 5 million), at the time of incorporation.
  - 0.25% of the value of all the stocks at the time of incorporation.

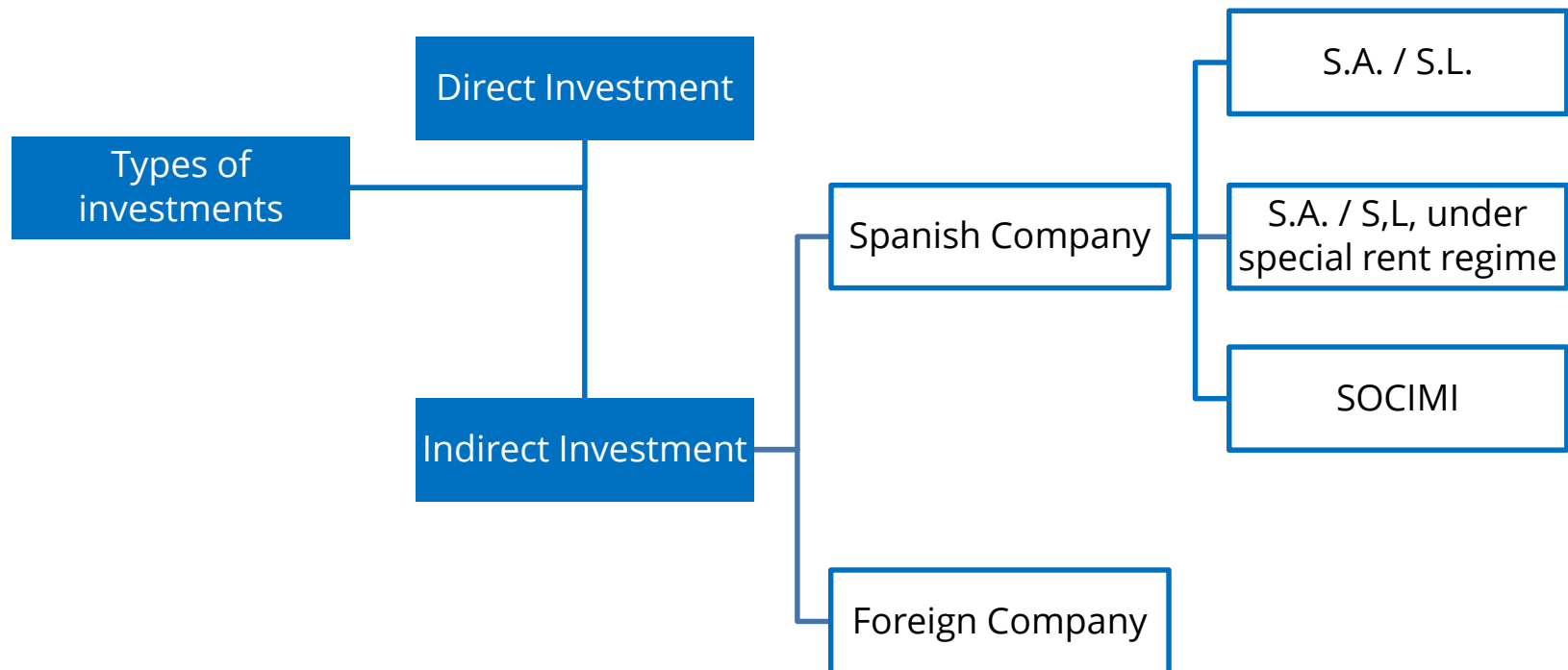
## FISCAL ASPECTS

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## REAL ESTATE INVESTMENT ALTERNATIVES IN SPAIN

### 01\_ INVESTMENT SCHEMES



## REAL ESTATE INVESTMENT ALTERNATIVES IN SPAIN

02\_ S.A. / S.L.

- They may carry out any real estate activity (development, construction, rehabilitation and renting).
- They are taxed at a rate of 25% on the net profit for the financial year.
- Expenses are deductible if they are activity related.
- The financial burden is deductible up to 30% of EBITDA (in any case, Euro 1 million may be deducted). The excess is deductible in future financial years.
- Possibility of offsetting negative tax bases in the future, without a time limit but with a quantitative limit (in any case, Euro 1 million may be offset).
- Legal forms to which all double taxation treaties and European Union tax directives apply.

## REAL ESTATE INVESTMENT ALTERNATIVES IN SPAIN

### 03\_ S.A. / S.L. UNDER A RENT REGIME

#### a) Main characteristics

- From the legal point of view they are S.A. / S.L.
- Its main economic activity must be the rental of housing in Spain (it is not required to have developed or built them).
- It is a non-exclusive activity and is therefore compatible with other complementary activities.

#### b) Tax benefits

- 85% discount on the Company Tax.
- 3.75% effective Company Tax rate (versus 25% general rate).

#### c) What do I have to do to apply for this regime?

- Have at least 8 rented or offered for rent housing units at all times.
- Rent or offer for rent the housing units for at least three years.

Warning: It does not apply to tourist flats that do not qualify as housing units for the purposes of the special regime.

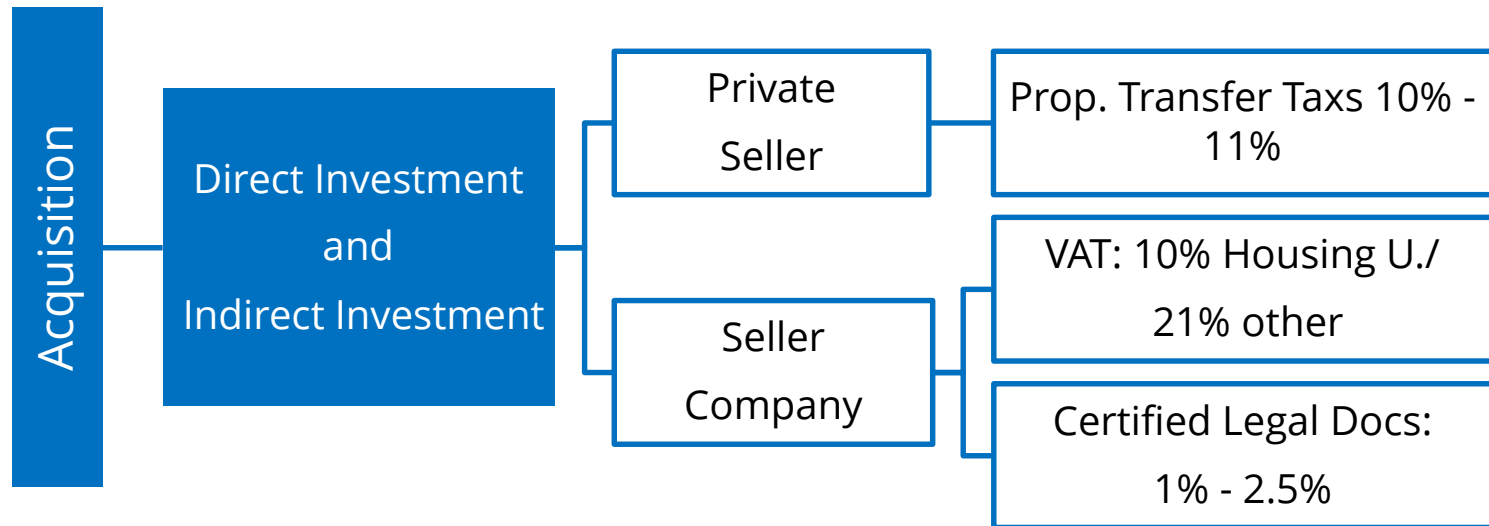
## REAL ESTATE INVESTMENT ALTERNATIVES IN SPAIN

### 04\_ LISTED REAL ESTATE INVESTMENT COMPANIES (SOCIMI)

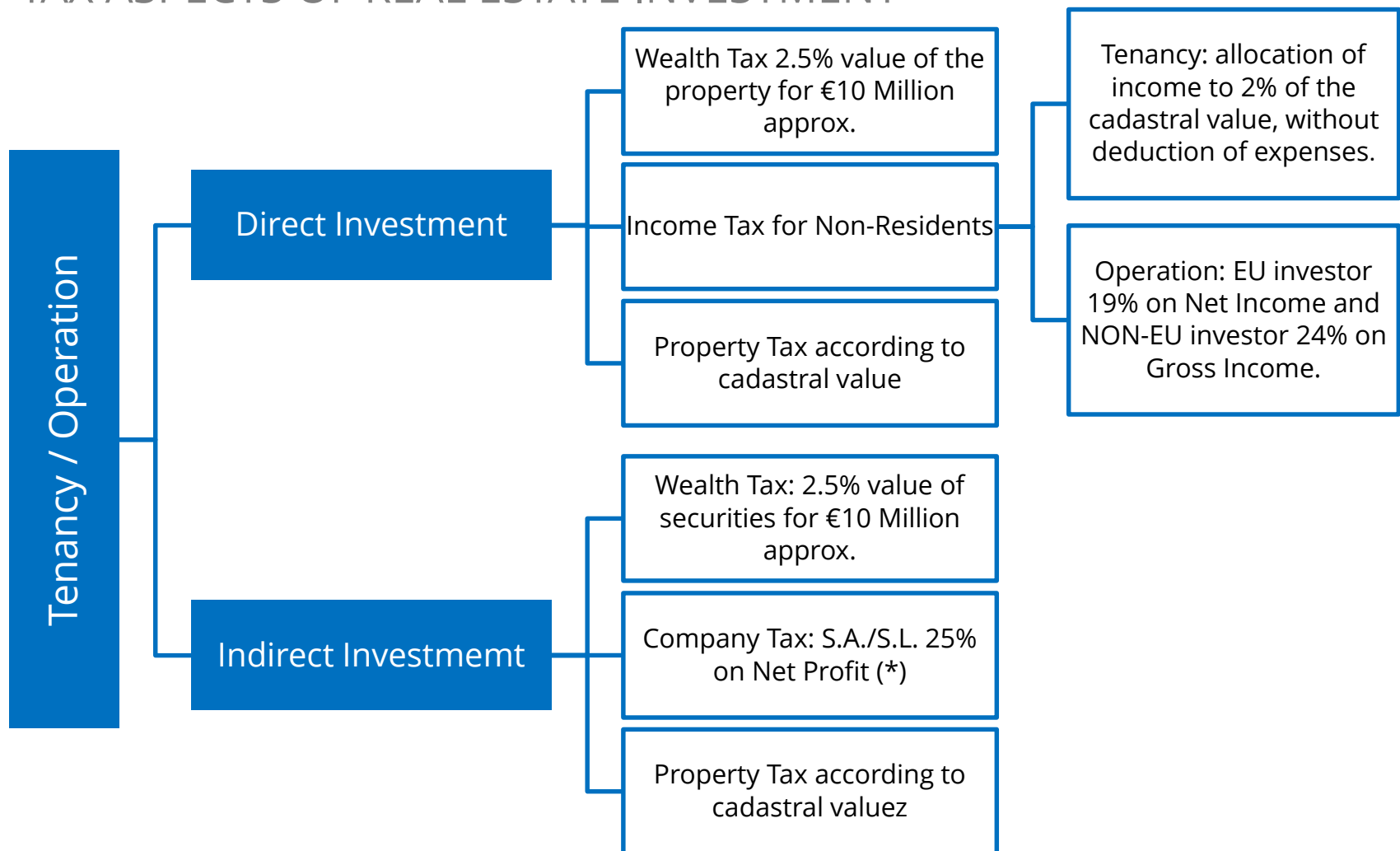
#### a) Main characteristics

- Optional tax regime subject to compliance with legal requirements in terms of company's object, investment, obligation to negotiate and so on.
- SOCIMI do not pay Company Tax; their tax rate is 0%.
- Shareholders' tax regime: Dividends and capital gains from the sale of SOCIMI shares are taxed at the lower of the following two rates:
  - I. 19% or
  - II. The one established by the Convention to avoid double taxation corresponding to the tax residence of the investor.
- Failure to comply with any of the legal requirements leads to the loss of the special tax regime for SOCIMI and entails taxation as an S.A. / S.L.

## TAX ASPECTS OF REAL ESTATE INVESTMENT

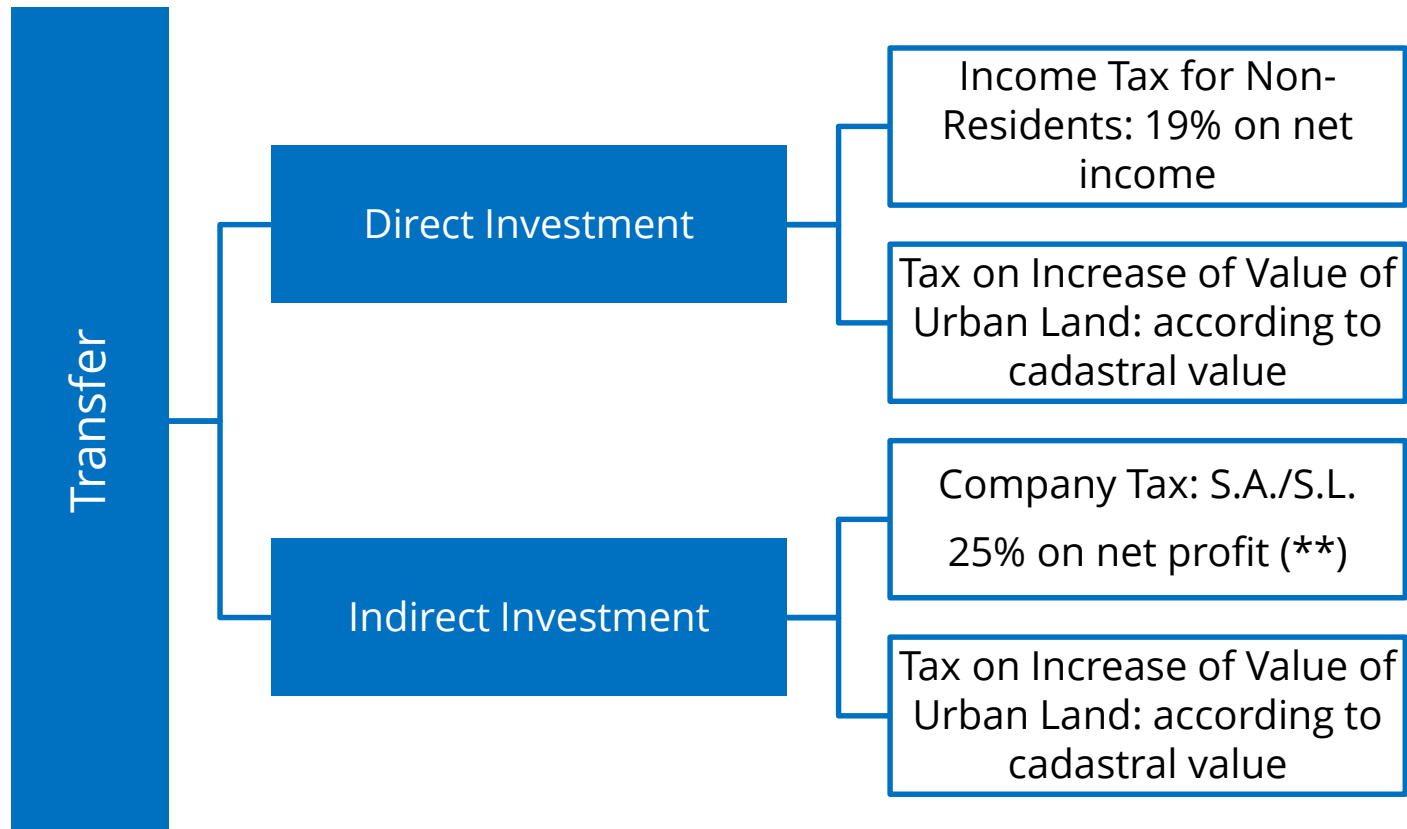


## TAX ASPECTS OF REAL ESTATE INVESTMENT



(\*) 0% for SOCIMI and 3.75% for S.A./S.L. under a housing rental regime

## TAX ASPECTS OF REAL ESTATE INVESTMENT



(\*\*) 0% for SOCIMI and 25% for S.A./S.L. under a housing rental regime

# ANALYSIS OF THE DIFFERENT ALTERNATIVES FOR INDIRECT INVESTMENT IN SPAIN

## 01\_ PRACTICAL EXAMPLE

	SA/SL	SA/SL lessor	SOCIMI
<b>Gross profit in Spain</b>	1,000.00	1,000.00	1,000.00
<b>Spanish Company Tax</b>	25%	3.75%	0%
<b>Net profit in Spain</b>	750.00	962.50	1,000.00
<b>Withholding on repatriation of dividends to:</b>			
Germany	0%	0%	15%
Chile	5% / 10%	5% / 10%	5% / 10%
Colombia	0% / 5%	0% / 5%	0% / 5%
France	0%	0%	0% / 15%
Italy	0%	0%	15%
Mexico	0% /10%	0% /10%	0% /10%
Uruguay	0% / 5%	0% / 5%	0% / 5%
Switzerland	0% / 15%	0% / 15%	0% /15%
<b>Net profit in:</b>			
Germany	750	962.50	850
Chile	712.50 / 675	914.38 / 866.25	950 / 900
Colombia	750 / 712.50	962.50 / 914.38	1000 /950
France	750.00	962.50	850 /722.50
Italy	750	962.50	850
Mexico	750 / 675	962.50 / 866.25	1000 / 900
Uruguay	750 / 712.50	962.50 / 914.38	1000 / 950
Switzerland	750 / 637.50	962.50 / 818.12	1000 / 850



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