Structuring of a French SPV in relation to a property deal: tax exempt or tax transparent property company?

When considering a French asset deal, it makes sense to analyse what is the efficient way from a tax perspective whether to create a French tax exempt company or a French tax transparent company as the purchase company.

The French tax exempt structure consists in an OPPCI – Organisme Professionnel de Placement Collectif Immobilier – which is a regulated property investment vehicle. A SCI – Société Civile Immobilière – is a French tax transparent company which is not regarded as such as a regulated property investment vehicle.
The asset manager which manages property investment vehicles falls in the scope of the AIFM directive – Alternative Investment Fund Managers directive – as soon as the aggregate AUM for third party exceeds €500m or €100m (with leverage).

The OPPCI is committed to distribute a minimum of 85% of its result & a minimum of 50% of the property capital gain to benefit from the tax exempt regime.

The figures below are in €k.

1. Assumptions

Purchase price including acquisition expenses	
Land	300,0
Construction	700,0
	1 000,0

Funding		
Equity	500,0	
Bank debt	500,0	repayment at maturity
	1 000,0	

Sale price	1 250,0

	OPPCI	SCI
Net rental income	5,0%	5,0%
Depreciation rate	0,0%	3,0%
Notional depreciation rate	1,5%	0,0%
Structure costs rate	1,0%	0,5%
Bank interest rate	3,0%	3,0%
Distribution rate of the result	100,0%	100,0%
Distribution rate of the capital gain	100,0%	n.a.

Distribution rates are aligned to make the comparative analysis homogenous.

2. OPPCI

The yearly income statement is as follows.

Net rental income	50,0
Depreciation	0,0
Notional depreciation	-15,0
Structure expenses	-10,0
Bank interest expenses	-15,0
Distributable result	10,0
Distributed result	10,0

At year 5, the balance sheet is as follows.

Land	277,5	Share capital	500,0
Construction	647,5	Share premium	
	925,0	Retained earnings	0,0
		Result	0,0
			500,0
Cash	75,00	Bank debt	500,0
ASSETS	**1 000,0**	**LIABILITIES**	**1 000,0**

The preferred exit scenario is an asset deal to avoid i) the capital gain tax resulting from the sale of shares in an OPPCI and ii) the discount in the property latent capital gain tax usually computed for the value of the shares.

3. SCI

The yearly income statement is as follows.

Net rental income	50,0
Depreciation	-21,0
Notional depreciation	0,0
Structure expenses	-5,0
Bank interest expenses	-15,0
Distributable result	9,0
Distributed result	9,0

At year 5, the balance sheet is as follows.

Land	300,0	Share capital	500,0
Construction	595,0	Share premium	
	895,0	Retained earnings	0,0
		Result	0,0
			500,0
Cash	105,0	Bank debt	500,0
ASSETS	**1 000,0**	**LIABILITIES**	**1 000,0**

The preferred exit scenario is a share deal i) to reduce the transfer tax – lower basis & rate for a share deal in comparison with an asset deal – and ii) with the tax neutral incidence of the Quéméner jurisprudence – revaluation of the property at the market value & merger of the property company with the purchase company.

4. Internal rate of return & net present value

At the level of investors, the outcome is as follows.

OPPCI

	Year					
	1	2	3	4	5	TOTAL
Equity	-500,00				500,00	0,00
Distributed result	10,00	10,00	10,00	10,00	10,00	50,00
Income tax on distributed result	-3,33	-3,33	-3,33	-3,33	-3,33	-16,67
Distributed capital gain					325,00	325,00
Income tax on distributed capital gain					-108,33	-108,33
Distributed outstanding result					0,00	0,00
Income tax on distributed outstanding result					0,00	0,00
TOTAL	-493,33	6,67	6,67	6,67	723,33	250,00
IRR	**11,0%**					
NPM	**163,30**					

SCI

	Year					
	1	2	3	4	5	TOTAL
Equity	-500,00					-500,00
Distributed result	9,00	9,00	9,00	9,00	9,00	45,00
Income tax on tax result	-3,00	-3,00	-3,00	-3,00	-3,00	-15,00
Net sale proceeds					855,00	855,00
Capital gain tax					-118,33	-118,33
TOTAL	-494,00	6,00	6,00	6,00	742,67	266,67
IRR	**11,6%**					
NPM	**177,50**					

CONCLUSION

The structuring of a French asset deal by an OPPCI or a SCI does not make a huge difference from a tax perspective. It actually depends on the difference between the structure costs & the contribution of the expected property latent capital gain.
The key decisive factors are in fact related to i) the impact of the AIFM directive on the operational organisation and ii) the constraint of the liability of the SCI's shareholders on their own portfolio.

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