LEGISLATION OF SICAV IN SPAIN

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ABSTRACT

This paper seeks to analyze the appeal caused by Open-end Collective Investment institutions (SICAV for their acronym in french: société d’investissement à capital variable), in our country. And the purpose of this consists of demystifying the ideas that has society on the opacity of these institutions.

It will make reference to the social and fiscal pressure which have been subjected, and through a summary in the history of these societies, it will show the way which were favoured, even to non-observance of legal requirements, initially benefiting the large Spanish fortunes until the year 2010 where the Government regulated the tax treatment of these institutions.

Through an analysis of economic and financial statements, it is not observed that in 2011 exists a decrease in the value of the company's assets, the number of SICAVS and the number of shares, so we can conclude that the great attraction that has appealed investors to this kind of companies, was the result of an instrument that provides better financial benefits than other CIS.

KEYWORDS

Open-ended Collective Scheme, Collective Investment Scheme, attractive financial, tax regime, evolution economic and financial.
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ABBREVIATIONS:

**SICAV**: acronym in French for société d'investissement à capital variable (open-ended collective scheme)

**CIS**: Collective Investment Scheme

**CNMV**: National Commission of the Stock Market

**LSC**: Spanish Law of Capital Institutions

**IFI**: Real Estate Investment Funds

**SII**: Real Estate Investment Companies

**FI**: Investment Funds

**HF**: Hedge Funds

**SGIIC**: Corporate Managers of Collective Investment Institutions

**MAB**: Alternative Stock Market

**BME**: Holding Bolsas y Mercados Españoles

**LIS**: Corporations Tax Act

**SIM**: Investment Companies

**SIMCAV**: acronym for the first SICAVs in Spain

**SIBE**: Spanish Stock Market Interconnection System

**IRPF**: Income Tax
1. Introduction

The Spanish financial system is comprised of the set of financial institutions and markets, and in the end, consists of the channeling of savings that is generated to a productive investment. This financial system has become a fairly complex system, which is made up of markets that allow the trading of different financial instruments and institutions that have the functions of management, hedging, transformation of assets, and in addition to other tasks relating to the mediation.

It is in these systems where we can find the CIS, which have the mission of channeling the savings of investors, through investment and management values, goods and other instruments. Whether financial or not, most of these are unattainable by individual investment since they are obtained at a lower cost through economies of scale, and also for the investor that originates a profitability according to the collective results obtained.

Within the collective investment schemes (CIS), is where we find the societies of Variable Capital (SICAV), which will be the basis of our study.

SICAVS in our country have been harshly criticized, and they have raised controversy because they are companies that benefited one group in particular, more specifically the great Spanish fortunes. Initially this form of society was created for this purpose, although the justification of the Government was based on the intention to prevent the flight of capital out of our country. But it should be noted that for a time they were used irregularly.

However, in 2010 the Government approved a new tax regime for these institutions, and was one year later when this situation was regulated, since these institutions came to have equal tax advantages than the other CIS.

In spite of all, these companies have managed to overcome the adversities that occurred in our country, namely financial, controversial social crisis, etc... to have its
greatest splendor, in terms of number of SICAVs established, number of shareholders and capital stock turnover in the year 2015.

Through this work, I will try to demystify the controversy that has taken place towards these institutions, and I will seek to show that its main feature is the attractive financial performance that causes to investors. To do this, I will explain its concept, operation and its fiscal and financial advantages, and finally in order to understand its current moment of expansion, I will analyze its evolution from the period from 2008 to 2015.

The objectives that I intend to achieve in this work are: first, get to know the SICAVs, i.e., to understand its functioning, and the field in which are found as a type of CIS, its concept and the classification. And second, in order to explain where this antipathy towards these institutions is generated, I will examine its history, as well as his previous tax regime, the breach of these institutions to be able to pay taxes as a SICAV, and the end of this situation with the adoption in 2010 of the new tax regulation. In addition I will also analyse the financial evolution of these institutions, using the number of SICAVs formed, the number of shareholders and the investment in the company's assets.

Thus, the methodology used in this work has been:
For the theory, books of financial content, publications that have been issued in specialized press and publications in the CNMV and INVERCO.

On the other hand, for the analysis of economic and financial statements, data that have been published in the CNMV, INVERCO, and Mornigstar reports.

The rest of the paper is structured in the following way:
The first part is based on the theory: introduction of CIS, SICAVS (concept, features, benefits, history and its controversy, its evolution).
And the second part is where I have tried to analyze these societies in our country.
2. THE COLLECTIVE INVESTMENT SCHEMES

2.1 Concept

The Collective Investment Schemes (CIS), according to the regulation of collective investment institutions, are defined as those institutions which "aims to capture funds, property or public rights to manage them and invest them in goods, rights, values or other instrument, either financial or not," establishing the performance of the investor based on collective results.

So, this allows us to identify three components that characterize this CIS:

1. Uptake of funds, rights or public goods.
2. Aim to invest them and manage them in rights, goods, securities or other instruments, whether financial or not.
3. The performance obtained will be assigned to investors based on the collective results obtained.

According to their legal nature, this type of institutions can have two different legal forms:

On the one hand, investment funds. It's a collective fund without legal personality but it needs a legal representative who is in charge of the Administration and a depositary of securities of the fund.

On the other hand are the investment companies, which take the form of joint-stock company. They are regulated by the law of companies Capital (LSC), and by a special regime that includes the law on institutions of collective investment Act No. 35 (2003). This type of societies, are composed of shareholders who acquire an aliquot part of the equity.

The legal form of these institutions will be composed of five rules:

-Directive collective investment institutions.
-Directive of suitable for collective investment institutions asset.
-Regulation of the law of collective investment institutions (R.D. 1082 / 2012).

According to its economic basis, the CIS is a mechanism that is designed to lead an effective channeling of savings through financial markets, improving the liquidity of the same. The CIS make it possible to diversify the portfolio of the investor in an efficient way that in the majority of cases could not be available to an investor if he would invest individually. So the main objective of this type of institutions will be: protect and benefit the less informed investors, increasing their profitability and minimizing their risk.

The CIS will therefore develop its investments considering the following three principles:

- The liquidity.
- The diversification of risk.
- And transparency.

The National Commission of Stock Markets (CNMV) is in charge of supervising the CIS. To establish the company, they have to obtain this authorization, and then register that entity.

2.2 Classification of collective investment schemes

We can classify the CIS depending whether they are financial or non-financial:

(a) Non-financial character CIS: the intended investment is to be done in assets and non-financial instruments. In this way, we find:

-Real estate CIS: They are the most common. Its main purpose is the investment in real estate of urban nature for lease or sale. According to its legal form is divided into funds of real-estate investment (FII) or companies of real estate investment (SII).
-Other non-financial CIS: The regulatory Act enables the creation of different non-financial CIS estate agencies.
(b) Financial CIS's: are those aimed at the investment in assets and financial instruments. Within these CIS are different types:

- Financial investment funds: which we have referred above, are known as (FI) investment funds.
- Investment Company of Variable Capital (SICAV): These types of companies are the object of study of this work, and we'll discuss it in more depth in the next sections.
- Hedge Funds (HF): this type of CIS has wide investment flexibility and is destined for the kind of investor who has a wide experience and financial training, since they require less protection.
- Funds of Hedge Funds: they are CIS which spend at least 60% of its funds in other hedge funds, without the possibility to combine more than 10% in a single hedge fund, and provides access to small investors.
- Principal and subordinated CIS: the subordinated IIC must invest at least 85% of their assets in other CIS, which is the principal CIS. The main CIS will be one that: a) have among their members or shareholders at least one subordinate CIS; b) it is not a CIS subordinated and, c) does not own shares or participations in a CIS subordinated.
- CIS which invest mostly in other CIS.
- CIS which replicate an investment policy that reproduces or take an index as a reference. Its main objective is to play or take a stock or a fixed income index (that is representative of one or several markets or securities traded on them) as a reference.

3. Investment of Variable Capital (SICAV)

3.1. Description.

The investment companies of Variable Capital (SICAVs) are defined in article 32 of law 35/2003 of the CIS, as a type of institution of collective investment of financial nature - "those which relate to investment in assets and financial instruments" – that they take form of anonymous company (S.A.). As investment companies, they have the exclusive corporate purpose of "the capture of funds, assets or rights of the public to manage them and invest them in goods, rights, securities or other instruments, financial or not, provided that the investor performance is established according to the collective result."
The most characteristic elements of these institutions include:

1. Uptake of funds, rights or public goods.
2. Aim to invest them and manage them in rights, goods, securities or other instruments, whether financial or not.
3. Performance obtained will be assigned to investors based on collective results obtained.

SICAVs take the legal form of Corporation, so it gives them legal personality. Therefore the organs of administration and representation of the company shall be determined in their statutes. The shareholders will be those who have power of control of the company, by the General Board of shareholders. So it is not necessary to have a society Manager (SGIIC), although they can entrust the management of their assets, either in whole, or in a designated party to one or several SGIIC, or to one or more entities that are qualified to develop the investment (the best known are credit institutions).

They currently have a special tax regime as well as the other CIS. After the introduction to this type of financial CIS, we can point out that although their purpose is the same as the rest of collective investment instruments, they have a policy of broad, generic and flexible investment with respect to other CIS, such as listed investment funds.

4. Features. Operation and Constitution

4.1. Main features of SICAVs.

These institutions possess its own characteristics, although some are similar to other CIS. These characteristics can be found mostly in the regulation of the law of CIS and CIS article.

In this way, in our legal system, the following particularities are reflected as a concept, social capital, by-laws and actions of the SICAVs.

(a) Concept:

-There are collective investment schemes (CIS) of a financial nature.
-They shall have the legal form of limited liability company, which means that they shall possess legal personality.
- They must be formed by a minimum of 100 shareholders. They do not count those who have more than 25%.
- The supervision and control will be carried out by the CNMV.
- There is the possibility of creating SICAVs for compartments, with different investment objectives. If there are compartments, each one will have at least 20 shareholders and a capital of 480,000 euros, provided the previous minimum. Thus, each compartment will get a specific designation and they are subject of form individually as envisaged by the 35/2003 CILL.

b) Bylaws should collect the following:

- The number of initial equity and statutory maximum equity, expressing the number of shares and, in addition to the series into which is divided the equity and the par value.
- The choice of the depositary.
- The choice of the representation and administration bodies. The shareholders are who have the control of the company and these will be in charge of naming the bodies of representation and management who will be responsible for the management of the company.

(c) Equity:

- To the establishment of this society, there is a minimum legal amount of equity of 2,400,000 euros, which must be fully subscribed and paid up.
- The initial and maximum statutory equity value shall not exceed more than ten times the initial capital (i.e. in more than 24,000,000 euros).
- In the event that the institution has been created by compartments, each one of them must have a minimum paid-up equity of 480,000 euros, and in any case, the minimum total equity paid is less than 2,400,000 euros (as recorded in the LSC).
- The increase in minimum equity or decreased, and the statutory maximum must be agreed by the General meeting.

As an exception, provided that they are within the minimum and maximum limits laid down in the statutes, you can increase or decrease, when they acquire or sell its own shares to the net asset value, without having need of agreement by the General meeting.
-The shared equity provided to the company, shall be in money, securities admitted to trading on the official secondary market or other financial assets that are suitable for investment, provided they give effect to the principle of liquidity.

(d) Shares:

-These institutions may issue different series of shares, which may be distinguished, among others, by currency of denomination, the fees, the way of distributing the results, or the marketer.
Same series will have the same nominal value and be awarded exactly the same rights.
In addition, all series have a specific denomination, which will lead to the name of the company.
-The stock portfolio will be in possession of the administrator. The shares must be previously subscribed and paid up in order to execute its rights. And the unsubscribed shares of the maximum statutory equity, or the ones which have been obtained by the SICAV, will be held in the portfolio until they are put into circulation.
-The institution is responsible for the issuance and repurchase of the shares at the request of any interested party as the net asset value belonging to the date of the application, allowing to be marketed by the company, directly or through intermediaries trained to do so or in the stock market.
There will be no restrictions for the repurchases, the maximum statutory equity and initial equity. Although below the minimum equity value if there will be a series of limitations and conditions laid down by the LSC. The purchase and sale shall be made in cash, when:

• Purchase: The purchase price is less than the net asset value.
• Sale: The sale price is higher than the net asset value of the action.

-Special rights. In any case, shareholders will have the preferential right of subscription of new shares. It shall be prohibited to remunerate the founders or overtake them.
-What it refers to the net asset value of the shares, the CIS article says that "the net asset value of each share is the result of dividing the assets of the company corresponding to the series which belong by the number of shares outstanding for that series".
The net asset value shall be calculated by the value of the fund, valuing assets and liabilities at market price.
The regulation of the LIIC exposes that costs of real estate that appear in the assets side of the balance sheet must be supplied on a daily basis (as well direct taxes on the benefit of society and general expenses) to be able to set accurately the net asset value.

The previous article ends with the following assessment:

• Securities admitted to trading: market value
• Not listed securities: cash value.

Finally, the SICAV may choose to negotiate or not to give liquidity to their shares, as set out in the law of CIS.

4.2 Operation

4.2.1. Procedure to provide liquidity to the shares.

Currently, there are three ways to provide liquidity to the shares:

(a) Admission to trade on a stock exchange.

The SICAV may apply for admission to trade on stock exchange of its shares. In this case it will accept the following obligations:

When the price of acquisition or sale of their shares, respectively, is below or above its net asset value, the society will buy or sell their own shares in cash, without postponement of liquidation, using standard means or by means of a public offer of purchase or sale:

-When the difference between the net asset value and the official quotation exceeds 5% for three successive days until the difference is less than the previous rate.
-When for seven consecutive days, the buy and sell positions unmet.

To acquire or sell its own shares, the society shall announce a price that has a noticeable deviation of their net asset value, it is unknown or it is not possible to estimate the true price.

Concerning these operations, the result will only be distributed where the total value is greater than the paid-up share capital.
On the other hand, when the shares are excluded from the trading in the stock markets, the institution will ensure to the shareholders the refund of the net asset value of their shares. In order to execute this, the institution will compute the average change in price during the last month of trading, through a public offer which shall apply to each one of the shareholders. The takeover bid will be made at a price equal to the net asset value of the day that the refund is carried out.

(b) Incorporation into other markets or organized systems of recruitment of values.

The institution may request that their shares are admitted on an organized market of trading assets. The SICAVs, usually choose this channel since its shares are admitted to trading on the alternative stock market (MAB). When the price of acquisition or sale of their shares is, respectively, less than or greater than its net asset value, the SICAV will buy or sell their own shares to meet the standards for admission to trade on a stock exchange.

(c) Acquisition and sale of shares outside stock exchange, organized markets of negotiation.

In the event the SICAV does not choose for the admission to trade their shares on the stock market, the institution must buy and sell shares when requested by stakeholders, where the price is equal to the net asset value corresponding to the date on which it was requested.

4.2.2 Forms of trading shares

When the titles of the SICAV are negotiated, its shares should be trading on an organized market. Today, as discussed above, much of these societies call for shares to be supported in the MAB. The alternative stock market (MAB) is an organized trading system created by the holding Bolsas y Mercados Españoles (BME) and which is authorized by the Government. This market was created after the Elimination of the legal obligation that had these companies quoted on the stock exchange, and in order to establish a new system of clearing, negotiation and settlement that adapts to SICAVs, by having special characteristics.
In this way, the MAB has some modalities different from other organized markets. Currently there are two complementary modalities, but their schedules, principles, rules and agents involved in both are different:

(a) Mode of negotiation by means of fixation of unique prices or "Fixing".

A book of orders is formed in a mode for negotiation and its procurement system is based on auctions: During the auction, introducing, amending, and canceling orders is done in real time, and depending on supply and demand, the equilibrium price is calculated. But negotiation will not run until the end of the auction for the allocation of the titles that will be the final calculated equilibrium price.

In this mode, two auctions are carried out:
- Opening auction: starts at 8:30 h to 12:00 h (random closure of 30 seconds).
- Closing auction: from the end of the assignment of the first auction until 16:00 h (random closure of 30 seconds). In this period there will be no allocation of shares of the SICAV since the net asset value was not communicated.

When there is the equilibrium price, it will be announced the best price of purchase and sale with the associated volumes.

When there is an equilibrium price, and when it completes the allocation of titles, members receive information from the total or partial execution of their orders. When there are orders not executed in the allocation of titles, they will remain in the order book.

When titles are allocated, market informs of the price of the negotiation, the time of each negotiation, the traded volume and the identification of the contracting members.

Orders to trade SICAVs values will have a validity of one day. The orders for a day are valid until the end of the session in progress, and in the case of no trading, they will be automatically removed, after the closure of the market.

(b) "Net asset value" mode

This type is specific of this type of institutions, which permits to introduce positions and transactions to the net asset value.

In this mode there is a book of orders. Investors of the MAB keep introducing orders that are waiting for a price, whose net asset value will be sent to the Manager of the SICAV, matching transactions.

In the operation of this mode, there are three types of SICAVS:
-Standard SICAV. The Fund Manager shall notify the net asset value the following day (D + 1) at 15:00 o'clock.

- SICAV not standard 2. The Manager will inform the net asset value two days (D+2) at 15:00 o'clock.

-SICAV not standard 3. The Manager will inform the net Asset Value three days (D+3) at 15:00 o'clock.

This mode works as follows: MAB investors introduce orders for the net asset value to the whole session in progress, to be called session D (their hours are from 8:00 h to 16:00 h). Orders report only the titles and not the price, therefore, once are introduced in the session of the D day, they will be waiting that the manager reports the net asset value to the companies of the stock exchanges, after moving to the SIBE. Thus, starting from 16:00 h day D+1, D+2 and D+3 (respectively), he will assign the operations whose price is the net asset value reported by the Manager, i.e., on that day, according to the orders introduced in the session of the D day.

4.2.3 Limitations to the investment

The law aims to grant greater protection to shareholders, so as the peculiarities mentioned for this type of companies, and the restrictions that have on its investment. Among them are the following:

-Coefficient of control: the values will be issued by a single entity not exceeding 5%.

-Diversification coefficient: the investment of its assets in securities of a society may not exceed 5%. This margin will expand to 10%, when the total investment of the SICAV, does not exceed 40% of the assets of the same.

-Investment ratio: at least 90% of the assets shall be invested in transferable securities admitted to trading on organised markets.

-Coefficient of liquidity: the minimum of liquidity will be 3%.

4.3 Constitution

As already it has been explained above, the CNMV is the responsible entity for the registration, authorization and control of the SICAV. It is also its responsibility to
constitute a series of legal documents, as well as the compliance with the investment restrictions discussed above, and the obligations of communication and information if they are requested.

The constitution process consists of the following parts:

1. Opening procedure: Application of the name in the register office.
2. The authorization of the CNMV. Creation, submission and certification of statutes.
3. Administrative procedure in the Ministry of economy and finance.
4. Award of public writing and subsequent registration in the commercial register.
And in the case of the admission to trading of their shares on stock exchange or in markets requesting organized values:
5. Process of applying for admission to listing and registration in the register of the CNMV.
6. The admission and approval for trading by the governing societes of the Stock Markets or, where appropriate, of the MAB.

5 ADVANTAGES OF SICAVs

5.1. Tax advantages

Without a doubt, this is one of the characteristics that generate more benefit to SICAVs, and that more controversy has generated in the Spanish society. Currently, SICAVs taxation regime is almost equal to other CIS.

Today, from the point of view of the society, this type of special tax regime is essentially characterized by the applicable tax rate. SICAVs, although they are limited liability companies and are subjected to corporate tax, are taxed at 1%, and not to the 25% that are taxed as a general rule the rest of the companies.
The corporate tax law (LIS) reflects this provided that the institution complies with the legal status of 100 shareholders.

On the other hand, this law (LIS) in article 52, in reference to the CIS, says that this type of companies that already benefits from a special tax, "will be entitled to exemptions or deductions to avoid international double taxation".
To determine the taxable base, it shall be computed from the profit-loss statement. In any case the exemption in the article 21 of LIS can be implemented for the perception of dividends from foreign investments or the benefits received by the trading of foreign shares...

Article 53 of LIS, points out that the distributed profits may be deducted by double international taxation, so the tax rate of 1% will be transformed into a definitive cost which will be deducted by shareholders.

Finally, when withholding, instalments or payments on account exceed the amount of the total tax, the excess will be returned.

When seen from the point of view of the shareholder, the tax regime is quite beneficial. It should be noted that the shareholders of such companies may be personal or legal entities. And as it is collected in the article 53 LIS, shareholders will be taxed by:

- The benefits distributed by the CIS. In the event that the benefits are double taxation will not have the right to deduction
- The income, positive or negative, from the shares or the reimbursement of these transmissions.

It should be noted, that if they are legal entities, income will be subject to tax, and according to the type of society the regime's assessment that apply to them.

But they will be subject to the tax on income of physical person (personal income tax) when they are incomes of individuals. Thus the dividends shall be considered as income from the capital, integrating itself into the taxable savings.

In what refers to the transfer of shares and the reimbursement of shares, losses and capital gains, will be integrated and offset the taxable savings as well provided for the income tax act. But on the other hand, the LIIC in article 94, in this general scheme shows us one caveat:

If the amount that is obtained after transmission or redemption of shares may be designated fully to the acquisition or subscription in other shares of CIS, taxation, may be extended for the following two requirements:

1. When the number of partners of the CIS whose actions are transmitted is greater than 500.
2. When the taxpayer in the twelve months prior to the date of transmission has not participated in a percentage higher than the 5% of the capital of the CIS.
5.2 Financial advantages

This type of companies does not only have tax appeal but that they also have important financial appeal. In fact, the boom that currently is present in this type of institutions is not primarily to its tax regime, as it took place earlier, since this has become as attractive as they can be other CIS. It is rather due to the financial peculiarities that have these societies and that supposed advantages quite considerable to investors.

The main financial advantages of SICAVs are the following:

-Management control: these companies having legal personality will have a Board of Directors, and they can choose their own management bodies, and can take place self-management or on the other hand this responsibility it may entrust an external management society (SGIIC).

In both cases, investment is controlled by the shareholder, through the Board of Directors, which is considered one participant more of the society, not as in the case of other CIS, that the investor has no control over the capital and has no influence whatsoever on the investment.

If on the other hand, the management is entrusted to a SGIIC, they will make decisions to invest, but the shareholder will control. So the investor will benefit, on the one hand controlling on your investment, and its investment by a SGIIC management.

-Mobility: In the case that the shareholders are not satisfied with the SGIIC, you can change it through the vote in the General meeting of shareholders, but does not occur the same in the rest of CIS, since they do not have such power.

-Flexibility of the investment: the investment policy of SICAVs is broad and very flexible. They can have as an element of investment mode of asset or any financial instrument. So, both the SGIIC and the Board of Directors will enjoy a greater freedom to move depending on the circumstances of the market. This will cause that the shareholder benefits.

-Diversification: SICAVs offer investors diversification and better control of their risks. In this way, it can invest in a broad enough portfolio that the majority of the cases would not be available to do so individually. And also the investor will also have the means to
invest in foreign securities in an easier and economical way and in more complex products, in a way that would be difficult to do so individually.

-Bespoke investment strategy: combining the three previous features, the shareholder may ask his SGIIG for a customized investment strategy, according to its particularities as investor (aggressive, moderate or conservative), all this will be possible because they have access to control management and to the ability of these companies to have a diversified and flexible policy. For the rest of the CIS, these preferences should be adapted to the strategies of the institution.

-Liquidity: The SICAV are a fairly liquid investment instrument, since it has various alternatives to provide liquidity to its shares. These alternatives include the quote in the MAB, which is what they normally use the SICAVs, and thus get that their shares have a daily net asset value. Thus, if the shareholder wants to sell his participation, he will sell the number of shares he wants and in a time limit of two working days he shall receive their money.

Also, in the case an investor wants to sell its shares, it is not necessary that there is another investor that wants to buy them, because it will be the same SICAV who can buy these shares. Thus, an investor does not have to sell their shares when another investor wants to buy them.

Finally, in the same way that occurs with diversification, a minimum ratio of liquidity should legally be kept.

-Treasury: SICAVs can manage the surpluses and the Treasury needs, since they are permitted to increase or decrease up to 10 times the initial capital, as well as laid down in the rules of the law of CIS.

-Funding: in the event that shareholders need funding, they will be provided with the mean to do it, as they are entitled to sell their shares.

-Security (information): The CNMV is responsible for controlling this type of institutions, so that shareholders will have the guarantee of transparency and control security. Therefore, their net asset values are published daily, and will have the same duty to continuously publish their reports.

The shareholder will have access to know in detail the composition of the portfolio, as well as how it evolves the profitability of the company.
Outreach: any investor can buy shares in virtually any SICAV, however the rest of CIS, is more complex, because that will be the marketer that will offer you this possibility, and this will depend on the purchasing power of the investor.

Profitability: These societies not only look attractive when it comes to investing, they have led to get high historical returns. But it must also be said, that these yields mostly take place because it is assumed a high level of risk.

As a conclusion, we can say that SICAVs, possess a tax regime quite attractive which is characterized in line with other CIS. As explained above also have a higher financial attraction than the rest of similar institutions.

6. Spain and of VARIABLE CAPITAL companies

6.1. The history and controversy of SICAVs

Variable Capital (SICAVs) investment companies, were initially created in Spain to benefit the large fortunes. In the 1980s, this type of societies were designed in order to attract and retain huge capitals.

It was later in 1995 when the finance inspectorate and the CNMV began to discover a series of irregularities committed by this kind of companies, since many of these societies did not meet the requirements to pay tax to 1%. But before taking place this fact, these institutions were not properly inspected to regulate this tax situation, as it had taken place in another business sector.

The attempt to inspect these societies has been failing because of the support they have benefited. They have benefited from the protection of different Governments and in addition to the same Parliament, carrying out legislative initiatives such as the granting of the tax in the retroactively amnesty to SICAVs.

During all this time, the Revenue Service has not been able to regularize the tax situation of these taxpayers that have not complied with the law.

In the period from 1995 until 1996, the Public Treasury investigated these societies, called by then investment interest institutions (SIM), subsequently (SIMCAV), and currently SICAV, obtaining the necessary evidence that showed that were not
complying with the law. Among them can be noted, that to achieve the minimum of partners who were supposed to be 100, the own companies used head-figures. All the facts that were put in knowledge of the CNMV, quantified the fraud in one trillion pesetas, i.e., today would be six billion euros. It was in 1997 when the CNMV relaxed some requirements to SICAVs, since according to the rules of the CIS they had to meet a few minimum requirements of permanence and volume to trade in the stock exchange operation such as having a minimum of 100 shareholders and a capital 200 million pesetas.

In 1997, as reflected in the annual report of the CNMV, governing societies for the stock markets and the same CNMV, considered that the new SIMCAV did not have to have a required minimum diffusion requirement to apply for admission of its shares to trading on stock exchange.

Between the years 1996 and 1997, due to the suspension of inspections and the flexibility in the compliance with the requirements, resulted in the increase of these societies. In the year 2003, it was approved a new standard of CIS, which did not require listing on stock exchange. Until 2003, not complying with any legal requirement of SICAVs, was ranked as a minor, serious or very serious violation. Only the suspension or cancellation of the society was decreed in very exceptional cases. According to this standard, the fact of breaking the minimum requirement of 100 shareholders, was not reason enough to be suspended or canceled the as a SICAV. Given this, the conclusions of the SICAVs between 1996 and 2003 are as follows:

The rules governing the CIS always required a minimum of 100 shareholders. All involved agencies, were aware of non-compliance with the legal requirements of these societies. SICAVs were expelled by the CNMV, provided that they pose serious damage to investors, but not in the case of breaking with the minimum requirement of 100 members.

It should also be noted that even they could pay the 1% required as the values representing the social capital of SICAVs, they were admitted to trading on the stock exchange, which was required, a minimum of 100 shareholders, as well as a frequency, permanency and volume of contracting in the stock exchange.

In 2004, the Government withdrew the competition to finance inspectors, and it was transferred to the CNMV. This took place when the inspectors reported that they was a
breach of minimum legal requirements, as they have been using head-figures, or also known as "mariachis", to reach the minimum number of partners, and that they should pay taxes like the rest of societies for this breach.

In this way, only the CNMV, could determine to whether they did meet or not with the legal requirements. But the only thing that the CNMV did was to declare that they were complying with the legal minimum of shareholders, without going to assess whether these were head-figures or "mariachis".

As we have seen, this type of partnerships are a good instrument for large fortunes, since on the one hand, the own shareholders are those who have control of the society. And the tax advantages enjoyed by the shareholders; they are taxed at 1% and can pay the taxes deferred. This means that shareholders do not pay tax by the obtained incomes until they do not withdraw the money of the society.

But a few years ago, SICAVs still had greater interest, since the equity that the shareholder provided, was considered as a withdrawal of cash, and therefore this was rated as a disinvestment, and therefore they did not have to pay tax on this amount of money. But in reality these withdrawals of equity were capital gains or benefits of the society that should be taxed.

This type of institutions were very criticized in our country by the Spanish society, as a type of tax evasion for the rich.

But it was not until the year 2010, when a change of the situation took place. Approved a reform of the law of personal income tax, retroactively, it forced all shareholders to pay all the money received or removed from these companies. In this way the tax regime was going to be similar to the other CIS.

Currently SICAVs still are perceived by our society as mechanisms of tax evasion to large Spanish fortunes, but in reality by buying shares in the stock exchange or the alternative stock market (MAB), any person may be shareholder of these companies.

In summary, as we have seen this perception that people has regarding these societies has its fundaments, but should be noted that at the current time, these societies are as correct as other CIS.
6.2 Development of SICAVs

SICAVs are currently living a good moment. In the database published by the CNMV, by the year 2015 were incorporated in Spain 108 new SICAVs, increasing the number of these companies in this country to a total record of 3,368, while the previous record was obtained in 2008 with 3,347.

But at that time, the circumstances were different, since most of them were in the hands of large fortunes. Currently, the map has changed and these societies have been transformed and they are available for any investor. Its success is due to its high financial appeal.

Between 2014 and 2015, the increase in the collective investment using such products, has reached a percentage increase of 10% in its value, to a total of EUR 35,638 million in 2015.

Last year, the total number of registered shareholders were of 465,490, increased from the previous year in 15,040 new shareholders.

As stated in the reports of Bolsas and Mercados Españoles (BME), these societies continue increasing its number of companies for the third consecutive year, in more than 100 every year. According to BME, SICAVs continue attracting interest, due to the announcement by the Government that will continue to be taxed at 1%.

According to data from Morningstar Direct, three SICAVs in Spain with at least 500 shareholders, which have achieved a higher profitability in the first quarter of this year are Menara Capital with a 9.70%, Balaguer 98 with 9.68% and Inver-99 with 9.34%.
Table 1: Profitability 1st quarter 2016 SICAVs

<table>
<thead>
<tr>
<th>Name of the Fund</th>
<th>1T 2016 profitability (%)</th>
<th>Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Menara Capital SICAV</td>
<td>9.70</td>
<td>Bankia funds SGIIC</td>
</tr>
<tr>
<td>Balaguer 98 investments SICAV</td>
<td>9.68</td>
<td>Gesiuris Asset Management SGIIC</td>
</tr>
<tr>
<td>Inver-99 SICAV</td>
<td>9.34</td>
<td>Gesiuris Asset Management SGIIC</td>
</tr>
<tr>
<td>Lempira SICAV</td>
<td>8.65</td>
<td>Credit Suisse Gestión SGIIC</td>
</tr>
<tr>
<td>Salmon Capital Mundi SICAV</td>
<td>6.72</td>
<td>Andbank Wealth Management SGIIC</td>
</tr>
<tr>
<td>Investment Remellan SICAV</td>
<td>6.33</td>
<td>Auriga Asset Management SGIIC</td>
</tr>
<tr>
<td>Smart Social SICAV</td>
<td>5.73</td>
<td>Inversis Gestión SGIIC</td>
</tr>
<tr>
<td>Capital Eyquem SICAV</td>
<td>5.41</td>
<td>Credit Suisse Gestión SGIIC</td>
</tr>
<tr>
<td>FCS at Compass SICAV</td>
<td>5.36</td>
<td>FCS Asset Management Ltd</td>
</tr>
<tr>
<td>Investments targeted SICAV</td>
<td>4.94</td>
<td>Bankia funds SGIIC</td>
</tr>
<tr>
<td>Marzal investments SICAV</td>
<td>4.91</td>
<td>Santander Private Banking management SGIIC</td>
</tr>
<tr>
<td>Bora Capital SICAV</td>
<td>4.43</td>
<td>Nmás1 SYZ Gestión SGIIC</td>
</tr>
<tr>
<td>Aenigma XI SICAV</td>
<td>3.41</td>
<td>Mirabaud Asset Management SGIIC (Spain)</td>
</tr>
<tr>
<td>Capital PITA SICAV</td>
<td>3.35</td>
<td>Bankinter SGIIC asset management</td>
</tr>
<tr>
<td>SICAV Capital Quilicura</td>
<td>3.19</td>
<td>Urquijo Gestión SGIIC</td>
</tr>
<tr>
<td>Cuinver 2000 SICAV</td>
<td>3.14</td>
<td>Credit Suisse Gestión SGIIC</td>
</tr>
<tr>
<td>Scipio Capital SICAV</td>
<td>3.03</td>
<td>Renta 4 SGIIC management</td>
</tr>
<tr>
<td>Truvi of investments SICAV</td>
<td>2.99</td>
<td>Gesiuris Asset Management SGIIC</td>
</tr>
<tr>
<td>Relko investments SICAV</td>
<td>2.67</td>
<td>Renta 4 SGIIC management</td>
</tr>
<tr>
<td>Koala Capital SICAV</td>
<td>2.66</td>
<td>Gesiuris Asset Management SGIIC</td>
</tr>
</tbody>
</table>

Source: Funds People, 2016.

7. Evolution in Spain. Economic and financial analysis

In point 5.2 I explained, from a theoretical point of view, the financial advantages that make this type of companies so attractive.

In the next section, we will proceed to analyze the evolution of SICAVs from a practical point of view. We can see the evolution in time of the number of incorporated companies, the number of shareholders, and the amount of invested assets.
7.1. Evolution of the number of SICAVs

In the following chart it can be observed the evolution of SICAVs in Spain from 2008 until 2015.

In 2008, following the financial crisis affecting our country, these societies begin to decrease until the year 2012 hitting a low of 361 institutions.

In the year 2013 they begin to rebound to reach in the year 2015 3,368 SICAVs which is the biggest number since the previous record which was reached in the year 2008 when 3,347 societies were created in Spain.

Figure 1: Evolution number of SICAVs

Source: Inverco and CNMV. Own elaboration
7.2. Evolution of the number of shareholders.

The evolution of the number of shareholders is related to the increase in the number of societies. In this way, the number of shareholders in 2008 was 435,382 and similar to what happened with constituted SICAVs, it is in this year when they begin to descend, until the year 2012 for a total of 28,197 shareholders.

In the year 2013 they begin to grow until the year 2015, hitting this year a total of 465,940 shareholders, the highest number in the period analyzed.

In 2011, there is a difference with respect to the number of SICAVs, the number of shareholders did not diminish and it takes place a slight increase of shareholders, for the following year to continue lowering.

The increase that takes place in the year 2011 is due to the new regulation on tax matters that the Government authorized the previous year. This regulation supposed the elimination of the tax breaks, which had benefited them in the previous years. So this represents a change in the rules that I think have a crucial role in the evolution in the activity of SICAVs.

**Figure 2: Evolution number shareholders SICAVs**

![Image of the graph showing the evolution of the number of shareholders from 2008 to 2015.](image)

Source: Inverco and CNMV. Own elaboration
7.3 Evolution of the social equity

As it can be examined in the following graphic, as well as with the evolution of the number of companies and the number of shareholders, in the year 2008 begins to decrease the social equity of SICAVs, as investors begin to reduce capital, possibly because of the insecurity that resulted in the onset of the financial crisis investors, and by the introduction of the Government in 2011 of the new tax regulation, which ends with the tax privilege benefited from this type of societies, giving rise to flight of large fortunes abroad.

It is in the year 2013 when the value of these companies start to increase, compared to the previous year at 3,495 billion euros. They achieve by 2015 a total assets value of 35,638 million euros, its largest increase in the period analysed.

![Figure 3: Evolution social equity SICAVs](image)

Source: Inverco and CNMV. Own elaboration
8. Conclusions

In this work, we have tried to demonstrate the financial attractiveness of SICAVs, and try to find out the reasons why these companies have been able to cope with the economic crisis in our country, as well as the harsh social pressures, and get up to the present day.

We can confirm that until 2011, these institutions were a claim of large fortunes, since his aim was to pay less tax, until it came up new tax regulation, and these societies would have virtually the same tax advantages as the rest of CIS. It has been analysed the flight of funds observed the following year after the change in regulation.

In this way, through the analysis of economic and financial statements of these institutions, due to the financial crisis that crossed our country, these companies were affected, both in the number of companies created, the number of shareholders as well as the invested value of assets.

We have also seen that SICAVs have another type of advantages, as well as the ability of self-management, mobility across the SGIIC, large flexibility to invest and the ability to implement a strategy customised to the investor.

Despite entering the new tax regulation in 2011, these societies are still very attractive to the investor. On hand it provides access to individual investors on to stock markets. On the other hand they can benefit from the deferring in the payment of taxes. And finally they can apply a tax rate of 1%.

After the study of this work, it can be considered that it has several limitations. Among them is that after the economic and financial analysis of its evolution, the sample period could have been expanded further in time to better understand these institutions.

By what may be recommended for further studies, expanding the years analyzed in order to understand better the evolution of these companies and in this way to improve the empirical study quality.
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10. Appendix

Appendix 1: Number of SICAVS, shareholders and social equity

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of SICAVS</th>
<th>Number of Shareholders</th>
<th>Social equity (millions of euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>3,347</td>
<td>435,382</td>
<td>24,656</td>
</tr>
<tr>
<td>2009</td>
<td>3,232</td>
<td>419,606</td>
<td>25,925</td>
</tr>
<tr>
<td>2010</td>
<td>3,133</td>
<td>417,635</td>
<td>26,155</td>
</tr>
<tr>
<td>2011</td>
<td>3,056</td>
<td>420,114</td>
<td>24,145</td>
</tr>
<tr>
<td>2012</td>
<td>2,986</td>
<td>407,185</td>
<td>23,836</td>
</tr>
<tr>
<td>2013</td>
<td>3,035</td>
<td>407,341</td>
<td>27,331</td>
</tr>
<tr>
<td>2014</td>
<td>3,260</td>
<td>450,900</td>
<td>32,339</td>
</tr>
<tr>
<td>2015</td>
<td>3,368</td>
<td>465,940</td>
<td>35,638</td>
</tr>
</tbody>
</table>

Source: Inverco and CNMV