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EPRA Global REIT Survey 2023

A comparison of the major REIT regimes around the world.

2023

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Since the start of the year, 2023 has proven to be exceptionally challenging for the listed and unlisted sector alike. The industry has faced significant pressures due to soaring inflation, escalating interest rates, and a volatile geopolitical landscape. Despite these adversities, the REIT sector has showcased its resilience and strong operational performance, successfully navigating through turbulent times in the capital markets.

REITs continue to grow in popularity and prominence, attracting the attention of investors, stakeholders, and industry professionals alike. As global markets adapt to changing economic conditions and regulatory frameworks, the resilience and adaptability of REITs have shone through, making them an increasingly attractive option for both seasoned investors and newcomers seeking opportunities in the real estate sector.

This survey represents the collective effort of dedicated researchers and industry experts who have meticulously analysed and compiled the latest data and trends related to REITs.

As we explore the key findings of this survey, it is essential to recognise the crucial role that REITs play in diversifying investment portfolios, democratising real estate ownership, and providing a vehicle for investors to access income-generating properties across different sectors. I am therefore pleased to present the regulatory landscape of the 44 countries that have already adopted a REIT regime. This year we have also incorporated a new summary table for European REIT regimes which you will find as an annexe to the Global REIT Survey.

I express my hope that this REIT Survey serves as a valuable resource, sparking meaningful discussions and igniting curiosity about the endless possibilities that lie within the realm of real estate investment trusts. May it inspire you to embrace the opportunities, navigate the challenges, and make a positive impact in the ever-evolving landscape of real estate investment.

Finally, I extend my gratitude to all the authors, whose invaluable support contributes to making this survey our Association's flagship publication. Their dedication and expertise have been instrumental in shaping the quality and reliability of the information presented herein.

Dominique Moerenhout

EPRA CEO

EUROPE

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1 General introduction

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	Mkt Cap (EUR m)	Citation	REIT type
SICAFI (pro memorie)	1995	- Royal Decree of December 07, 2010 - Law of April 19, 2014 - Other tax laws	Corporate type
BE-REIT	2014	- Law of May 12, 2014, as modified by, among others, the Law of October 22, 2017, and for the last time by the Law of April 28, 2020 (together, the 'BE-REIT Law') - Royal Decree of July 13, 2014, as modified by Royal Decree of April 23, 2018 (together, the 'BE-REIT Decree') - Other tax laws	Corporate type

Under the current Belgian REIT regime, an undertaking investing in real estate can either take the form of (i) a SICAFI/Vastgoedbevak (société d'investissement en immobilier à capital fixe/ vastgoedbeleggingsvennootschap met vast kapitaal), (ii) a SIR/GVV (société immobilière réglementée/ gereglementeerde vastgoedvennootschap) commonly named BE-REIT, (iii) an FIIS/GVBF (fonds d'investissement immobilier spécialisé/gespecialiseerde vastgoedbeleggingsfonds) or (iv) stay unregulated (meaning that only the laws applicable to companies in general, as set forth in the Belgian Company Code will apply). Due to their status of collective investment undertaking, SICAFI/ Vastgoedbevak and FIIS/GVBF are subject to additional obligations deriving from the AIFM Law[1].

SICAFI/Vastgoedbevak and BE-REIT are public (i.e., stock-listed) real estate companies.

As an alternative to maintaining the attractiveness and competitiveness of Belgium, the possibility of taking the form of a BE-REIT has been introduced by the BE-REIT Law (as further implemented by the BE-REIT Decree) to allow undertakings investing in real estate that wish to opt for a regulated status (and thus benefit from a preferential tax regime) to avoid the burden of compliance with the Belgian AIFM Law.

An important difference between the SICAFI/Vastgoedbevak and the BE-REIT is that the latter is not an AIF, i.e., an entity that 'raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors'. Such a difference is clearly reflected in Article 4 of the BE-REIT Law. Pursuant to such article, the activities of a BE-REIT may only consist of (a) placing, directly or through a company in which it participates in accordance with the law and its implementing regulations, immovable property at the disposal of users, (b) if applicable, possessing 'immovable property'[2] as mentioned in Article 2, 5° vi) to xi) of the BE-REIT Law within the

1 i.e., the Law of April 19, 2014, on alternative collective investment undertakings and their managers.

2 The BE-REIT Law defines what constitutes 'immovable property'. Immovable property is:
(i) real estate and rights in rem on real estate, with the exclusion of real estate of the following nature: forestry, agriculture or mining industry;
(ii) shares with voting rights in real estate companies subject to participation threshold;
(iii) option rights on real estate;
(iv) shares in BE-REITs and in institutional BE-REIT subject to participation threshold;
(v) rights arising out of contracts pursuant to which the BE-REIT leases one or more goods or is granted analogous rights of use;
(vi) shares in public SICAFIs;
(vii) units of foreign collective investment undertakings investing in real estate and registered on the Belgian FSMA list of foreign AIFs;
(vii) units of collective investment undertakings investing in real estate, established in the EEA and subject to an equivalent control;
(ix) shares issued by companies (i) with legal personality; (ii) governed by the law of another EEA member state; (iii) the shares of which are admitted to trading on a regulated market and/or are subject to a regime of prudential supervision; (iv) the main activity of which consists of the acquisition or establishment of immovable property in anticipation of placing such immovable property to the disposal of users, or the direct or indirect possession of participations in companies with a similar activity; and (v) that are exempted from taxes on the revenues arising out of the profit that results from the activty mentioned under (iv) above, provided certain legal obligations are complied with, and that are at least obliged to distribute part of their revenues among their shareholders (i.e., 'Real Estate Investment Trusts' or REITs);
(x) real estate certificates; and
(xi) shares of FIIS / GVBF.

limits of Article 7, b) of that same law[3] and (c) participate in infrastructure projects as further defined by the legislation. The BE-REIT must thus mainly engage in an operational activity with a long-term strategy instead of an investment activity. Therefore, the BE-REIT does, not follow a defined investment policy but has a business strategy based on creating long-term value (instead of engaging in buying to sell within the framework of a defined investment policy). To that extent, Article 4 of the BE-REIT Law requires the BE-REIT to (a) exercise its activities itself, (b) maintain direct relationships with its clients and suppliers and (c) have, for the purpose of exercising its activities as described above, operational teams at its disposal that make up an important part of its workforce. The fact that the BE-REIT engages in an operational/commercial activity also entails that, contrary to what is the case for the SICAFI/ Vastgoedbevak, the BE-REIT is not exclusively managed in the interest of the shareholders but must take into account the overall interest of the company.

The BE-REIT Law also provides for the possibility of an institutional BE-REIT (société immobilière réglementée institutionnelle/institutionele gereglementeerde vastgoedvennootschap), the shareholders of which qualify as 'eligible investors'. The institutional BE-REIT is not stock listed. In this respect, the conditions to convert into an institutional BE-REIT have been eased, and the list of 'eligible investors' provided by the BE-REIT Decree includes retail investors subject to a minimum investment value of EUR 100,000.

Last, the BE-REIT Law foresees the form of social BE-REIT, an unlisted vehicle dedicated to investment in real estate used for social purposes (e.g., education, care).

All former SICAFI/Vastgoedbevak have converted into BE-REIT; therefore, only the BE-REIT regime is commented on below.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Belgium	17	10	19.363,48	1,07%

Top five REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Warehouses De Pauw	5.123,99	-13,10%	4%	0,32%
Shurgard Self Storage	3.728,36	-3,23%	3%	0,09%
Aedifica	2.764,85	-30,41%	5%	0,22%
Cofinimmo	2.260,21	-28,36%	9%	0,18%
Montea C.V.A.	1.272,58	-19,21%	5%	0,08%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

3 The fair value of those investments cannot exceed 20% of the consolidated asset of the BE-REIT.

2 Requirements

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2.1 Formalities/procedure

Key requirements
- Licence from the Financial Service and Markets Authority ('FSMA') - BE-REIT list

The BE-REIT must obtain a licence as a collective investment undertaking from the FSMA. Then it can be registered on the list of Belgian- regulated real estate companies ('BE-REIT list'). The granting of the licence by the FSMA is based on a licence request comprising the following information, out of which the FSMA can assess the compliance with the BE-REIT Law and the BE-REIT Decree:

- The articles of association, which must, e.g., provide that the company has been constituted for an indefinite term;
- The demonstration of an appropriate administrative, accounting, financial and technical organisation that ensures independent management;
- The board of directors is composed only of individuals unless the BE-REIT has been incorporated under the form of a public limited liability company (société anonyme, SA/naamloze vennootschap, NV) managed by a sole director, in which case the sole director must be a public limited company managed by a collegiate board;
- The directors and the persons in charge of daily management have the appropriate professional reliability and experience to ensure independent management;
- Individuals supervise the effective daily management;
- A minimum investment budget has been determined for a period of three years as of the registration on the BE-REIT list;
- The BE-REIT has called upon one or more independent real estate experts who are responsible for the valuation of the investment in real estate. Such experts have to be chosen from a list annexed to the application and may not have direct links to the so-called 'promoter' of the BE-REIT;
- The real estate expert has the required professional reliability and experience;
- The BE-REIT complies with the rules on risk diversification;
- An entity in charge of the financial services is appointed;
- The identity of the 'promoter' and the confirmation of its obligations; and
- The BE-REIT commits to comply with the listing requirements.

2.2 Legal form/minimum share capital and securities

Legal form	Minimum share capital
- Belgian public limited liability company - Belgian limited partnership with shares	EUR 1.20 million

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Legal form

A BE-REIT must be a public limited liability company (société anonyme, SA/naamloze vennootschap, NV), incorporated for an unlimited period of time. The BE-REIT's statutory seat and general management must be located in Belgium. Note that as a result of the entry-into-force of the new Code of Companies and Association, the corporate form of a limited partnership with shares (SCA/Comm VA) is not available anymore, meaning that existing BE-REITs having this corporate form shall have to convert into a public limited liability company (SA/NV) and if such conversion has not taken place before 1 January 2024, they will automatically be converted into public limited liability companies (SA/NV) with a single director on that day[4]. The alternative offered by the Belgian Company Code to the former SCA/Comm VA is, therefore, the SA/NV with a single director, as the liability and the powers of such a single director can now be organised to reproduce the legal characteristics of the former SCA/Comm VA. In this respect, the single director can, e.g., be held jointly and severally liable with the BE-REIT if its Articles of Association provide so, could be granted a veto right for distributions, and can be revoked by a motivated decision of the general meeting of the shareholders at a three-quarters majority, even if appointed in the Articles of Association of the BE-REIT.

The status of BE-REIT is open to corporations only; a foreign entity that is similar to a BE-REIT cannot benefit from a passporting regime nor request the application of the BE-REIT (tax) regime to a branch it would have in Belgium and/or the real estate assets it directly owns in Belgium. This restriction might be contrary to European law further to the ECJ Ruling in case L-Fund (C-537/20 dd. 27 April 2023).

Minimum share capital and securities

The required minimum share capital amounts to EUR 1.20 million. In principle, each shareholder has an equal right to participate in the profits of the BE-REIT. However, different categories of shares may be issued if allowed by the articles of association. The BE-REIT can issue securities other than shares (e.g., bonds, convertible bonds) to exclude of profit shares (parts bénéficiaires/winstbewijzen).

A BE-REIT is also allowed to raise capital in cash through the so-called Accelerated BookBuild ('ABB') process without having to grant a preferential subscription right or irreducible allocation right to existing shareholders. The ABB refers to a capital increase in which the creation of the order book is spread over a short period of time of a few hours or a few days, with little or no means of publicity, to allow the company concerned to find financing quickly and/or to take advantage of special conditions of the market. Given the timing, this type of operation is carried out through the authorised capital technique. Please note that the cumulative capital increases via the ABB process cannot exceed 10% of the share capital upon the capital increase decision over a period of 12 months.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
No requirements	Yes

Shareholder requirements

There are no specific shareholder conditions to fulfil to achieve BE-REIT eligibility.

Listing requirements

All shares of a Belgian BE-REIT must be listed on a stock exchange, with a minimum of 30% free float. Listing can only occur after registration on the BE-REIT list and after publishing a prospectus. There are specific prospectus requirements for BE-REITs in Belgium.

4 Until the limited partnership with shares (SCA/Comm VA) has been converted into a public limited liability company (SA/NV), the former Belgian Company Code remains applicable on it. As of January 1, 2020, the mandatory provisions in respect of public limited liability companies under the new Code of Companies and Association will apply together with the former ones, even if they have not yet been converted into a public limited company.

2.4 Asset level/activity test

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Restrictions on activities/investments
- The principal activity must be the active management of real estate assets - A maximum of 20% of the total assets can be invested in one real estate project (ensemble immobilier/ vastgoedgeheel) ('risk diversification'); this risk diversification requirement does not apply when the tenant, user or beneficiary is an EEA Member State - Developments are allowed but cannot be sold before, during or within five years of completion (no promotion) - The BE-REIT is allowed to hold shares in subsidiaries investing in real estate, including institutional BE-REITs but specific requirements, incl. minimum participation thresholds, apply in case of public-private partnerships or joint venture - The BE-REIT is allowed to invest in transferable securities on an exceptional and ancillary basis - The BE-REIT may hold hedging instruments (covering its financial risk), but excluding speculative transactions

Immovable property

The BE-REIT may only invest in 'immovable property', whether located in Belgium or not. This includes the following:

- Real estate and rights in rem on real estate;
- Shares with voting rights in real estate companies (including intermediary holding), whose share capital is held (directly or indirectly) for more than 25% by the BE-REIT;
- Option rights on real estate;
- Shares in BE-REITs and in institutional BE-REITs, whose share capital is held (directly or indirectly) for more than 25% by the BE-REIT;
- The units of a foreign collective investment undertaking to invest in real estate and registered on the Belgian FSMA list of foreign collective investment undertakings;
- The units of a collective investment undertaking to invest in real estate, established in the EEA and subject to an equivalent control;
- Real estate certificates;
- Shares of EEA REITs[5];
- Shares of SICAFI/Vastgoedbevak;
- Shares of FIIS/GVBF; and
- Subject to limitations, rights resulting from financial leases as defined by IFRS and analogous rights of use.

A BE-REIT may develop real estate, provided that the BE-REIT maintains the completed developments for at least five years (i.e., promotion is prohibited).

On an exceptional basis, the BE-REIT can invest in transferable securities to the extent that the articles of association authorise such investments. In such cases, investments in transferable securities must be considered ancillary or temporary. Belgian law does not provide for any specific minimum or maximum requirements. The FSMA will exercise discretion when examining the BE-REIT's articles of association.

The BE-REIT may hold hedging instruments covering its financial risk to the extent that the articles of association authorise such transactions. Speculative transactions are not allowed. The hedging strategy must be disclosed in BE-REITs' financial reports.

5 As further defined by the Law of May 12, 2014.

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Public-private partnerships and infrastructure projects

The list of authorised activities of a BE-REIT includes the execution, as the case may be indirectly and/or in a joint venture, of DBF agreements, DB(F)M agreements, DBF(M)O agreements, or agreements for the concession of public works (i.e., the participation to public-private partnerships). Important to note: the BE-REIT can conclude this type of contract directly or in a joint venture with a project company (with such a project company having the possibility to opt for the status of institutional BE-REIT).

These agreements must relate to buildings or infrastructures for which:

- The BE-REIT is liable for their putting at disposal and maintaining or operating, for a public entity or the citizen as a final user; and
- The BE-REIT can assume, in whole or in part, the financing risk, the availability risk, the demand risk or the operation risk, and the construction risk.

The BE-REIT should also be allowed to take care, in the long term, of the development, establishment, management and operation, as the case may be in a joint venture and through sub-contracting of:

- Installations and warehouses for the production, transport, distribution or stocking of energy in the broad sense;
- Installations for the transport, distribution, stocking and purification of water; and
- Incinerators and waste installations.

The infrastructure activity can also be operated by a project company where the BE-REIT shall participate. In such a case, and as a derogation to the minimum participation threshold, the BE-REIT is allowed to take a participation of less than 25% in the share capital of the project company concerned initially, provided that this percentage is increased within two years (or a longer period of time if required by the public partner) after the construction phase, to comply with the minimum participation requirement for investing in a joint venture. The project company can also opt for the status of institutional BE-REIT and benefit from its tax regime.

Risk diversification

The BE-REIT may not invest more than 20% of its total assets into one single 'real estate project'. A 'real estate project' is defined as 'one or more properties in which investment risk is to be considered as a single risk for the BE-REIT'. According to the FSMA, the concept of a real estate project is based on the idea that separate properties can nevertheless represent a single real estate project from the point of view of the investment risk associated with them[6].

This risk diversification requirement and limit of 20% of the BE-REIT's assets do not apply when an EEA Member State is the tenant, user or beneficiary.

Under certain specific conditions, obtaining a derogation of this rule from the FSMA is possible, provided that its leverage limit of the BE-REIT does not exceed 33% of its consolidated assets.

It is also specified that the restriction for the BE-REIT to grant loans or vest securities for third parties does not apply in the framework of the infrastructure activities described for public-private partnerships in view of a bid bond or similar mechanism. Subject to a series of conditions, the limit according to which a mortgage or other guarantee cannot exceed 75% of the relevant asset's value is also not applicable, and the indebtedness related to those infrastructure projects is also not subject to the leverage limit and not taken into account to determine the leverage limit of a BE-REIT.

6 In this respect, the investment risk includes, among other things, the counterparty risk, i.e., the risk that a given counterparty will not perform its obligations. It means that a real estate complex with several units being rented to different tenants that are actually related entities of the same group should be considered as a single "real estate project" based on the counterparty risk, while a single building being rented to different unrelated entities (e.g., a shopping center) would not have the same counterparty risk exposure.

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Joint ventures

Considering the interests of the BE-REIT's investors, the regulation also contains specific provisions applicable to joint ventures.

The minimum participation required is 25% (plus one share) in the capital of the subsidiary, which can also opt for the status of institutional BE-REIT. For the BE-REIT, those participations (without exclusive or joint control) cannot exceed 50% of its consolidated assets.

It is prohibited for a BE-REIT to enter into a shareholder's agreement that derogates its vote cast according to its participation (being at least 25% plus one share) in a joint venture.

2.5 Leverage

Leverage
- LTV ratio is limited to 65% of the (consolidated) assets (under specific conditions limited to 33%) - (consolidated) Interest expenses limited to 80% of the total income - Mortgage (or other collateral) is limited to 50% of the global fair value of the 'immovable property' and to 75% of the value of each 'immovable property' mortgaged, subject to exceptions when it concerns the participation in public-private partnerships

Belgian legislation requires that the aggregate loans do not exceed 65% of the total fair value of the BE-REIT assets (when entering into the loan). Furthermore, the annual interest costs may not exceed 80% of the total annual operational and financial income. If the BE-REIT holds shares in affiliated companies investing in real estate, the leverage restrictions will be applicable on a consolidated basis.

To guarantee proactive management, the BE-REIT must present a financial plan to the FSMA as soon as its consolidated debt-to-asset ratio exceeds 50%.

If the BE-REIT has obtained a derogation to the risk diversification rule, the debt-to-asset ratio may not exceed 33%.

A BE-REIT may only vest a mortgage (or other collateral) on real estate in relation to the financing of its 'immovable property' activities or of the 'immovable property' activities of the group. The total amount covered by a mortgage (or other collateral) may not exceed 50% of the total fair value of the 'immovable property' held by the BE-REIT and its subsidiaries. Moreover, it is not allowed to vest a mortgage (or other collateral) on one immovable property for more than 75% of its fair value, except in the case of infrastructure activities in relation to public-private partnerships.

2.6 Profit distribution obligation

Operative income	Capital gains Operative income	Timing
80% of net profit as determined by Royal Decree	Not included in the distribution obligation, if reinvested within a four-year time period	Annually

Operative income

Subject to the provisions of Belgian corporate law on capital protection, Belgian legislation requires the BE-REIT to distribute on an annual basis the positive difference between (i) 80% of its net operational

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result (as determined by Royal Decree) and (ii) the net decrease of its indebtedness[7]. No distribution is allowed if the (statutory or consolidated) indebtedness ratio exceeds 65% or will exceed this limit due to the distribution.

The same profit distribution obligations also apply to institutional BE-REITs.

Capital gains

Capital gains are not included in the distribution obligation, provided the capital gains are reinvested within four years.

2.7 Sanctions

Penalties/loss of status rules
Various penalties (not necessarily resulting in the loss of BE-REIT status)

If the FSMA concludes that the BE-REIT does not observe the laws, regulations and/or its articles of association, this does not necessarily lead to a loss of BE-REIT status. Instead, the FSMA may, for example, make the necessary recommendations to the BE-REIT to remedy the situation, subject to a grace period, which can be linked to a penalty of a maximum of EUR 50,000 per day of delay with a total of EUR 2,500,000. Or, the FSMA might impose temporary sanctions (for example, a public notice). The FSMA could also ask the market authorities to suspend the listing of the shares of the transgressing BE-REIT. The ultimate penalty would be to omit the BE-REIT from the BE-REIT list. The BE-REIT would then lose its status and become a regular (stock listed) real estate company. The official loss of status would start as of the date of notification. Additionally, if there is an intentional infringement of certain laws and regulations, a prison sentence and/or a fine could be imposed on the directors of the BE-REIT, as well as on the 'promoter' of the BE-REIT.

The loss of BE-REIT status, which entails switching from (i) accounts in IFRS to accounts in Belgian GAAP and (ii) tax-exempt status to taxable status, shall also have tax consequences. A recent ruling has clarified these consequences:

- Concerning the results of the year concerned, they will be subject to the BE-REIT tax regime until the loss of the regime and to the ordinary corporate income tax from this date;
- The share capital of the BE-REIT, in the sense of the corporate law legislation, shall be considered fiscal capital for corporate income tax and withholding tax;
- The retained earnings, not yet distributed, of the BE-REIT, built up under the BE-REIT status, shall be considered taxed reserves for the purposes of corporate income tax and withholding tax; these retained earnings have indeed been subject to their own tax regime; and
- The revaluation surplus corresponding to the latent gain that has been subject to the exit tax shall be considered a taxed reserve for corporate income tax and withholding taxes purposes; this revaluation surplus has indeed been subject to its own tax regime. If these revaluation surpluses have not been subject to the exit tax, they will be considered tax-exempt reserves.

7 The FSMA has published guidelines in order to harmonise the use of specific reserves (e.g., changes in fair value) when computing the distribution obligation, the allocation of the result and the limitation to distribution as contained in the BE-REIT Decree.

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2.8 Institutional BE-REIT

The institutional BE-REIT status is available to companies investing in 'immovable property' as defined above or participating in public-private partnerships, provided that their share capital is, directly or indirectly, owned for 25% + one share by a BE-REIT. The capital of institutional BE-REIT is open to institutional or professional investors but also retail investors, subject to a minimum investment value of EUR 100,000.

The fact that the status of institutional BE-REIT is available only to subsidiaries of BE-REITs (and not to subsidiaries of other EU REITs) might be considered to be contrary to EU law[8].

Even though the institutional BE-REIT's regulatory regime is less stringent, it is still subject to FSMA supervision. The key regulatory features are as follows:

- Given its capacity as a subsidiary of a BE-REIT, certain requirements applicable to BE-REITs should also impact the institutional BE-REIT. The risk diversification requirement of the BE-REIT is assessed on a consolidated basis. As the real estate expert is appointed to appraise the BE-REIT's assets and those of its subsidiaries, it was unnecessary to subject institutional BE-REITs to the same obligation. Financial reporting obligations apply only to BE-REITs, but they concern consolidated information;
- Like BE-REITs, institutional BE-REITs can issue shares and bonds but with the exclusion of profit-sharing certificates. In the case of capital increase by contribution in kind, an institutional BE-REIT fully controlled by a BE-REIT or its subsidiaries is not subject to a minimum subscription price requirement. Specific requirements also apply to institutional BE-REITs jointly controlled by BE-REIT in the case of capital increase by contribution in cash with a discount of more than 10%. Other capital transactions are subject to the common corporate law regime; and
- The institutional BE-REIT is subject to the same distribution requirements.

2.9 Social BE-REIT

A new type of non-stock listed BE-REIT is created to finance and promote investments in 'care', subject to their accreditation by the competent authority, and defined as infrastructures dedicated to

- the housing or care of disabled persons;
- the housing or care of elderly persons;
- the care or help of youth persons;
- the collective welcoming and care of children under the age of three;
- the teaching and accommodation of students;
- the operation of a psychiatric institution; or
- the operation of a revalidation centre.

Social BE-REITs are incorporated as cooperative companies with a social purpose, having a minimum fixed capital of EUR 1,200,000. Retail investors can subscribe the variable capital in a proportion to be determined by Royal Decree. Due to their corporate form, they guarantee a dividend of a maximum of 6% (after deduction of the withholding tax) per year, but the exit is only structured as a buy-back of shares at nominal value. The social BE-REIT must build up a liquidity reserve to execute these buy-back orders, which can themselves be limited.

Important to note that the corporate form of a cooperative company with a social purpose no longer exists under the new Code of Companies and Associations, and the BE-REIT Law has not yet been updated to

8 It being understood that EU REITs still have the possibility to convert their Belgian subsidiairies in FIIS/GVBF.

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reflect these changes.[9]

The social BE-REIT can only invest in 'real estate assets' as defined by the Civil Code and in leasing. Its indebtedness level cannot exceed 33% of its asset value.

2.10 Qualification as an AIF

The BE-REIT does not qualify as an AIF.

3 Tax treatment at the level of BE-REIT

Unless indicated otherwise, the tax treatment applies to a BE-REIT, an institutional BE-REIT, and a social BE-REIT.

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
The current income is excluded from the taxable basis	Excluded from the taxable basis	N/A

Current income

The BE-REIT is formerly subject to the Belgian corporate income tax at the rate of 25%. However, the taxable basis is reduced (i.e., de facto zero or nearly zero taxable basis). A BE-REIT is taxed on an accrual basis only on the sum of the non-arm's length benefits received and the expenses and charges due that are not deductible as expenses for tax purposes (other than reductions in value and capital losses on shares), and the undisclosed salaries and commissions. The taxable basis does thus not include rental income or other types of business income, nor exceeding borrowing costs under ATAD (Anti-Tax Avoidance Directive).

Since the BE-REIT enjoys its favourable tax regime that allows for a very low tax basis, it is not entitled to take advantage of the Belgian participation exemption nor the Belgian notional interest deduction regimes. Additionally, Belgian law explicitly excludes a BE-REIT from the foreign tax credit on foreign source income.

Capital gains

Capital gains are excluded from the taxable basis, provided they are received at arm's length terms.

Withholding tax

In principle, non-Belgian source dividends and Belgian and non-Belgian source interest distributed to a BE-REIT are exempt from Belgian withholding tax.

Since the (institutional) BE-REIT is subject to corporate income taxes, the BE-REIT will qualify as

9 Even under the assumption that a Social BE-REIT will be considered as an 'actual' cooperative company as recognised corporate form under the new Code of Companies and Association, various changes will still need to be implemented in the articles of association and governance of the Social BE-REIT as the new Code of Companies and Associations has e.g., abolished the concept of (fixed and variable) capital and replaced it by the concept of 'equity contributions', which also impacts the distribution mechanism.

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a Belgian resident. It should thus qualify for double taxation treaties and benefit from the reduced withholding tax rates or withholding tax exemptions.

Other taxes

The special tax regime of the BE-REIT does not affect applicable local income tax, including the annual property tax, which is usually recharged to tenants of office buildings and retail spaces. Such a recharge of the property tax is prohibited for residential tenants.

Furthermore, the BE-REIT is also subject to the subscription tax of 0.0925% on the net amount invested in Belgium at the end of the financial year. The institutional BE-REIT is subject to an annual tax of 0.01%.

VAT

Management services invoiced to BE-REITs benefit from a VAT exemption.

Accounting rules

The IFRS rules apply to the BE-REIT and institutional BE-REIT. Social BE-REITs have a choice between IFRS and BE-GAAP.

3.2 Transition regulations

Conversion into BE-REIT status
- Real estate assets are to be assessed at market value, excluding RETT - 15% tax on capital gains ('exit tax')

Upon conversion of a regular real estate company into a BE-REIT or upon the merger of such a company into a BE-REIT, the latent gain on the Belgian real estate and the tax-free reserves are subject to the exit tax at a rate of 15%. The latent gain is computed based on the appraised value of the real estate asset, excluding rights and taxes, and the tax losses of the Belgian company should be available for off-setting, subject to the minimum taxable base provided for by the tax legislation.

When a Belgian real estate asset is contributed to the BE-REIT (as a single asset or as part of a contribution of a line of business or universality), the capital gain realised by the transferor is also subject to the exit tax in its hands, but the transferor cannot claim the roll-over regime.

The tax law specifies that, in the case of conversion, there is no withholding tax on the deemed dividend (to avoid any discussion in this respect).

Note that merger, de-merger or assimilated restructuring in the case that all participants in the operation are BE-REITs occur in tax neutrality and can, therefore, be performed without adverse tax consequences for the shareholders.

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3.3 Registration duties (RETT)

Registration duties (RETT)
- No capital duty - Real estate transfer tax of 12% or 12.5% for full ownership rights or usufruct right - Real estate transfer tax of 2% for long-term lease right or right to build

No capital duty is due upon incorporation and capital increase.

Depending on the location of the real estate, the sale and purchase of real estate assets are subject to the 12% or 12.5% transfer tax. If the purchase or sale is subject to VAT, then no real estate transfer tax is levied. The granting of a long-term lease right (droit d'emphytéose/erfpachtrecht) or a right to build (droit de superficie/opstalrecht) is subject to a 2% transfer tax.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Dividends and capital gains are fully taxable, but if a dividend participation regime applies (in the case of qualifying investment in foreign real estate), dividends and capital gains are, in principle 100% tax-free	- Withholding tax on dividends at 30% is the final tax burden (15% for BE-REITs investing in healthcare) - In principle, capital gains are tax-exempt	- In principle, a 30% withholding tax (15% for BE-REITs investing in healthcare) - Withholding tax exemption in the case of participation of at least 10% in the share capital of the BE-REIT during a minimum uninterrupted holding period of one year

Corporate shareholder

Dividends received and capital gains realised that derive from Belgian real estate are fully taxable (25%). However, if the Belgian dividend participation exemption regime applies, dividends and capital gains benefit from a 100% tax deduction. Note that the Belgian dividend participation exemption regime is only available in the case of redistribution (look-trough approach) by the BE-REIT of:

- real estate income deriving from foreign real estate assets located in EEA or in a treaty country (with an exchange of information clause) subject to this income being subject to tax without enjoying a derogatory tax regime; and
- dividends and capital gain deriving from the company(ies) holding such foreign real estate assets, in the case this company meets the subject-to-tax requirement.

A reimbursement of capital is, in principle, not taxable if it occurs based on a regular decision in accordance with the Belgian Company Code or similar non-Belgian company law. Capital decreases are, however, re-characterised into dividend distributions pro rata certain taxed and untaxed reserves of the company. This measure does not consider the untaxed and unavailable reserves not incorporated into the share capital (e.g., revaluation surplus), the legal reserve and the negative taxed reserve recorded further to corporate restructuring. The same rule applies to the reimbursement of the share premium.

For tax purposes, the capital decrease is deemed to be allocated pro-rata between the share paid-up capital and the reserves, and within the reserves, exclusively and in the following order:

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- On the taxed reserves incorporated in the share capital; in such a case, the dividend is subject to withholding tax (incl. the reductions and exemptions provided by law or tax treaty) and may benefit from the participation exemption in the hands of the recipient;
- On the taxed reserves not incorporated in the share capital; in such a case, the tax treatment is the same as above; and
- On the untaxed reserves incorporated in the share capital; in such a case, the amount qualified as a dividend shall first be subject to corporate income tax in the hands of the company (which means excluded from the taxable basis in case of a BE-REIT) and then subject to the tax treatment applicable to taxed reserves.

The company's paid-up capital shall be deemed to decrease only to the extent of the amount of the capital decrease imputed on this paid-up capital.

Individual shareholder

The 30% dividend withholding tax is the final levy.

Capital gains realised on BE-REIT shares are not taxable unless the Belgian tax authorities are able to demonstrate that the capital gain was not realised within the scope of the normal management of private wealth or that the capital gain was speculative.

A reimbursement of capital is, in principle, not taxable if it occurs based on a regular decision in accordance with the Belgian Company Code or similar non-Belgian company law. Capital decreases are, however, re-characterised into dividend distributions pro rata certain taxed and untaxed reserves of the company. Untaxed and unavailable reserves not incorporated into the share capital (e.g., revaluation surplus), the legal reserve and the negative taxed reserve recorded further to corporate restructuring are not considered by this measure. The same rule applies to the reimbursement of the share premium.

Moreover, a return of capital upon liquidation or redemption of the BE-REIT's shares would be taxable if, upon the public offering of the shares in Belgium, the BE-REIT guarantees a certain repayment or rate of return for a period of eight years or less to its investors. In that case, the return constitutes an interest subject to a 30% withholding tax.

Withholding tax

In principle, 30% withholding tax is due on dividends distributed by a BE-REIT.

Dividends distributed by the BE-REIT to its shareholders are subject to a 15% withholding tax if the BE-REIT invests at least 80% of its assets in real estate used for healthcare in the EEA. Due to the Brexit, a transition regime shall apply to real estate assets used for healthcare in the United Kingdom and already owned by the BE-REIT, directly or indirectly, on 31 December 2020. In this respect, these real estate assets can still be included in the computation of the 80% threshold as regarding dividends paid or allocated by the BE-REIT until 31 December 2025.

Suppose the quantitative conditions of the European Parent-Subsidiary Directive as implemented in Belgian tax law are met (e.g., a minimum participation of 10% or investment value of at least EUR 2.5 million and held during an uninterrupted period of at least one year). In that case, no withholding tax will be due on dividend distributions to a corporate domestic shareholder.

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4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Capital gains tax-exempt in Belgium	Capital gains tax-exempt in Belgium	- Distribution of Belgian-source income subject to 30% withholding tax, subject to reduction or exemption based on tax treaty - Distribution of foreign-source income benefits from a withholding tax exemption without the subject-to-tax requirement - Distribution to foreign pension funds benefits from a withholding tax exemption

Investment in Belgian real estate

Dividends distributed to a foreign pension fund that (i) is not conducting a business or a lucrative activity, (ii) is totally tax-exempt in its country of residence, and (iii) is not contractually obliged to redistribute these dividends to a beneficial owner that cannot qualify for this exemption, benefit from a withholding tax exemption.

Dividends distributed to foreign investors shall be subject to a 30% withholding tax subject to exemption or reduction by virtue of the applicable tax treaty.

Apart from this withholding tax, no non-resident taxation applies.

Investment in foreign real estate

Dividends distributed to foreign investors shall benefit from a withholding tax exemption without an underlying condition of taxation in the source state.

Capital gains

Capital gains realised by a foreign shareholder upon disposal of the shares in the BE-REIT should not be subject to Belgian non-resident taxation since, in the tax treaties entered into by Belgium and containing a real estate rich clause, the stock listed companies are excluded from the application of this clause. Consequently, the power to tax such capital gain is granted to the state of establishment of the foreign shareholder.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
No specific tax privilege	No specific tax privilege	No specific tax privilege

Foreign REIT

A foreign REIT investing directly in Belgian real estate is not eligible for the REIT regime and is, therefore, subject to the ordinary Belgian non-resident income tax. The Belgian source net income of the foreign REIT will be taxable at 25%. The fact that a foreign REIT may not apply for the BE-REIT regime for its Belgian real estate might be held contrary to European law further to the ECJ Ruling in case L-Fund (C-537/20 dd. 27 April 2023).

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Corporate shareholder

The tax treatment of a domestic corporate shareholder of a foreign REIT depends on the specific characteristics of the fund.

If the foreign REIT has no legal personality, then the corporate investor is deemed to have invested directly in real estate. Based on the applicable tax treaty, the non-Belgian real estate income would most likely be taxed in the country where the real estate is located (thus tax-exempt in Belgium). Likewise, capital gains realised on participating in a foreign REIT without legal personality would be considered capital gains on real estate. Based on the applicable tax treaty, the capital gain realised on non-Belgian real estate would most likely be taxed in the country where the real estate is located and, therefore, tax-exempt in Belgium.

Concerning a foreign REIT with legal personality, the corporate investor will not be deemed to have invested in real estate but in the fund itself. The same rules apply to the dividends, received and capital gains realised on the shares in a BE-REIT. The foreign withholding tax levied on dividends received from a non-Belgian real estate fund is tax-deductible.

Individual shareholder

The tax treatment of an individual domestic shareholder of a foreign REIT depends on the specific characteristics of this fund.

If it concerns a foreign REIT without legal personality, the individual investor will be deemed to have invested directly in real estate. The analysis is the same as for corporate investors, it is understood that foreign exempt income is taken into account to determine the global level of taxation (i.e., applicable tranche in terms of income tax rate).

Concerning a foreign REIT with legal personality, the individual investor will not be deemed to have invested in real estate but in the fund itself. The income received from the fund will be taxed according to the rules of dividend taxation. Consequently, the dividends would be taxable at 30% (plus communal surcharges if the fund is located outside the EEA). The foreign withholding tax levied on the dividend income would be deductible from the Belgian taxable basis. Capital gains realised on foreign real estate fund shares are treated like capital gains realised on BE-REIT shares.

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SPIC

A comparison of the major REIT regimes around the world.

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1 General introduction

	Enacted year	Citation	REIT type
SPIC	2021	Special Purpose Investment Companies and Securitisation Companies Act (SPICSCA)	Corporate type

The SPIC regime was introduced with the Special Purpose Investment Companies Act, which came into force on January 1, 2004, and was repealed and replaced in March 2021 by the Special Purpose Investment Companies and Securitisation Companies Act.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Bulgaria	34	0	€ 718,00	0.00%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
- Licence from the Financial Supervision Commission - Listing on Bulgarian Stock Exchange authorisation - Depository bank mandatory

To qualify as a SPIC, a company is required to obtain a licence from the Bulgarian Financial Supervision Commission (FSC). A SPIC shall be established at a constituent meeting at which its shares are subscribed. The founders may number up to 50. Within seven days after the SPIC is registered in the Commercial Register, the FSC shall be notified. The SPIC shall file with the FSC an application for a licence within six months of its registration with the Commercial Register.

In addition, upon the incorporation of a SPIC, the constituent meeting is obliged to pass a resolution for an initial capital increase up to at least 130% of the initial share capital (i.e. the capital increase should be in the amount of at least 30 % of the initial share capital). This first capital increase can be performed only based on a prospectus authorised by the FSC. Once the formal authorisation (licence) is granted, the SPIC may effectively increase its capital. This increase is to be performed through the issuance of rights entitling their holders to participate in the subscription of shares from the capital increase. Said rights must be listed on a regulated market (the Bulgarian Stock Exchange JSC), and no pre-emptions rights apply.

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2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Joint-stock company	BGN 500,000 (~ EUR 255,646)

Legal form

A SPIC can only be established and operate as a public joint-stock company (AD). The company name of the special purpose investment company needs to include the denomination 'joint-stock special purpose investment company' or the abbreviation 'JSSPIC'.

The registered seat and address of the management of a SPIC must be located in Bulgaria.

Minimum share capital

The minimum share capital requirement for a SPIC (at the time of incorporation) is BGN 500,000 (~EUR 255,646). The share capital must be fully paid in as of the date of applying for registration in the Commercial Register. No contributions in kind are permitted. The SPIC can issue only book-entry (dematerialised) shares.

The initial contemplated increase of registered capital via an IPO should amount to at least 30% of the initial registered capital.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
No more than 50 founders	Yes

Shareholder requirements

It is not allowed for more than 50 persons or entities to be founders of a SPIC. It has not yet clearly been stated whether a SPIC may be owned by just one shareholder.

Listing requirements

Within six months after its registration in the Commercial Register, the SPIC must apply for the approval of its prospectus for IPO by the FSC. The prospectus is submitted to the FSC as a part of the documents accompanying the application for issuance of a licence for carrying on activities as a SPIC.

There is no clear rule regarding which stock exchange the SPIC must be listed. However, based on the analysis of the current regulations and other practical considerations, it seems that the SPIC can only be initially listed on the Bulgarian Stock Exchange JSC. Before it may do so, the SPIC's IPO prospectus must be approved by the FSC. However, SPICs may be listed on other EU-regulated markets as well.

2.4 Asset levels/activity tests

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Restrictions on activities/investments
- The SPIC may invest its free cash in securities issued or guaranteed by an EU Member State and in bank deposits in banks that are authorised to perform activities in such member state. The SPIC may invest in such assets within six months after the registration of any capital increase within the relevant registries - No more than 10% of the SPIC's assets may be invested in covered bonds admitted to trading on a trading venue in an EU Member State - No more than 10% of the SPIC's assets may be invested in companies that provide services to the SPIC - No more than 30% of the assets of a SPIC (investing in real estate) may be invested in SPVs for investments in real estate - No more than 10% of the SPIC's assets (investing in real estate) may be invested in other SPICs investing in real estate - The total amount of investments (save for these mentioned in the first point above, within the period specified therein) in assets specified above cannot exceed 30% of the SPIC's assets - No investments allowed in real estate subject to a legal dispute - Real estate investments must be in Bulgaria or another EU Member State (the possibility of making real estate investments located in another EU Member State must be explicitly reflected in the SPIC's Articles of Association and its prospectus). The SPVs in which SPICs (investing in real estate) can make investments may, in turn, invest in real estate located in Bulgaria or another EU Member State

The business activity of a SPIC investing in real estate is limited to:

- Purchasing real estate (which must be located in Bulgaria or another EU Member State) and limited property rights to real estate, carrying out real-estate construction and improvements (for property management, renting, leasing, sales); and
- Raising funds by issuing securities. The IPO is mandatory for SPICs. However, additional financing is not prohibited. Therefore, SPICs may engage in equity and debt financing.

At least 70% of the SPIC's assets (investing in real estate) as of the end of each quarter must result from the activities under the first point above. When capital is raised through the issuance of securities, the SPIC must ensure that this requirement is complied with within six months after the registration of the capital increase.

At least 70% of the gross proceeds of the SPIC (investing in real estate) for the respective financial year must be generated by the activities under the first point above.

The SPIC (investing in real estate) must ensure that the above requirements are complied with within two years of obtaining a license.

The SPIC (investing in real estate) shall report to the Financial Supervision Commission information about the commercial real estate properties owned by the SPIC and the SPVs, in which it invested, within 120 days of the end of the respective financial year, respectively within 60 days as of the end of each quarter.

SPICs can invest up to 10% of their assets in covered bonds admitted to trading on a trading venue in an EU Member State. SPICs are entitled to invest up to 10% of their assets in companies that provide services to the respective SPIC. SPICs investing in real estate may invest up to 30% of their assets in SPVs for investments in real estate. In addition, SPICs investing in real estate may invest up to 10% of their assets in other SPICs investing in real estate. No other investments in shares are allowed.

A SPIC may not directly perform the maintenance services of the acquired real estate. The SPIC must delegate these services to one or more third companies with the necessary resources and experience to perform these activities. These companies can engage in the following activities: servicing and maintaining acquired real estate, constructing and improving real estate, servicing the receivables, keeping and safeguarding the accounting records and other reporting correspondence, and many other necessary activities.

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2.5 Leverage

Leverage
Short-term loans cannot exceed 20% of income-generating asset

The only introduced debt financing limitation concerns loans granted to settle interest due by the SPIC. In that case, the company may only borrow (from a bank) an amount not greater than 20% of its balance sheet asset value for a period not exceeding one year.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of the net income of the year	Included in net income	Distribution until the end of the following financial year required

Operative income

The SPIC must distribute at least 90% of the profit as dividends. It must do so within 12 months following the financial year the profit was incurred. The SPIC may distribute interim 6-month dividends under certain conditions and if an evaluation of the assets as of the end of the first six months of the financial year is available.

Capital gains

Special rules determining the formation of the profit of a SPIC are set out under the SPICSCA, and the capital gains/losses are explicitly provided as such items.

2.7 Sanctions

Penalties/loss of status rules
Monetary penalties and a possible loss of SPIC status

The Finance Supervision Commission may cancel the SPIC's licence if:

- the SPIC does not begin activities within 12 months after receiving the licence or did not perform licensed activities for more than six months;
- the SPIC has provided wrongful information (based on which the licence was granted);
- the SPIC explicitly asked for the withdrawal of its license;
- the SPIC has not implemented an enforced coercive measure under SPICSCA, the Public Offering of Securities Act, the Activities of Collective Investment Schemes and Other Undertakings for Collective Investment Act or the acts for their implementation;
- the SPIC no longer meets the conditions under which the licence has been granted; or
- the SPIC systematically or materially breaches SPIC statutory rules.

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Furthermore, SPICs are not allowed to change their legal form as well as to change their scope of activity, except in the cases where the license of the respective SPIC has been withdrawn by the Financial Supervision Commission based on a request by the SPIC (in this case, the respective SPIC may continue to exist as a public traded joint-stock company). Doing so would result in a loss of status.

SPICs that breach the profit distribution obligation may be penalised between BGN 4,000 (~EUR 2,045) and BGN 10,000 (~EUR 5,113) for individuals and between BGN 10,000 (~EUR 5,113) and BGN 20,000 (EUR 10,226) for legal entities and sole proprietors.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt	Tax-exempt	N/A

Current income

The income of a SPIC is not subject to corporate taxation. In this respect, the SPIC is not entitled to a tax credit for foreign income tax paid.

Capital gains

Capital gains realised by a SPIC are not subject to taxation since they are included in the financial result of the SPIC, which is exempt from corporate tax.

Other taxes and fees

Other taxes may apply to SPICs, such as VAT at a standard rate of 20%, garbage collection fees and annual real estate tax in the range of 0.01%-0.45% (the exact rate is determined by the municipality where the property is located). Specific higher real estate tax rates were introduced in the legislation as of January 1, 2019 (e.g., 0.5%-0.7% for certain properties located in tourist resorts); however, these were later announced as counter-Constitutional by the Constitutional Court.

Accounting rules

Unless provided by the SPIC regime, the rules provided by the IFRS apply. The SPIC may outsource its bookkeeping to a third party as per the requirements of the legislation.

3.2 Transition regulations

Conversion into SPIC status
The tax legislation does not envisage any special rules for conversion into a SPIC

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3.3 Registration duties

Registration duties
- Transfer tax of 0.1% to 3% - Land Registrar Entrance Fee of 0.1%

A real estate transfer tax, the rate of which varies between 0.1% and 3% (the exact rate applicable in the respective year is approved by the Municipal Council as per the location of the real estate property) and a land registrar entrance fee of 0.1% is levied on the purchase price of the real estate or on the tax value determined by the municipality (in compliance with the Local Taxes and Fees Act).

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends are subject to corporate income tax - Capital gains could be tax-exempt	- 5% withholding tax on dividend distributions is the final levy - Capital gains could be tax-exempt	No withholding tax credit applies

Corporate shareholder

Dividends

Dividends distributed by a SPIC to domestic corporate shareholders are not subject to withholding tax except for shareholders who are not considered merchants according toBulgarian legislation. However, dividends are taxed with corporate income tax at the recipient level under the general corporate tax rules.

Capital gains

Capital gains realised from the sale of SPIC shares could be tax-exempt if traded on a recognised EU/EEA stock exchange or (as of January 1, 2021) on a third-country stock exchange considered as an equivalent stock exchange within the meaning of the law.

A return of capital distribution

Under the Bulgarian tax legislation, capital decrease does not have tax implications (with certain exceptions).

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Individual shareholder

If dividends are distributed to resident individuals, a 5% domestic final withholding tax is applied. Capital gains realised on the sale of the SPIC shares could be tax-exempt if they are traded on a recognised EU/EEA stock exchange.

Withholding tax

A 5% withholding tax applies on dividend distributions for individual and corporate shareholders who are not merchants. The tax is final; it is not possible to credit it. Dividend distributions to (other) domestic corporate shareholders are not subject to withholding tax.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends are subject to a 5% withholding tax - Possibility of dividend tax reduction. - Dividends distributed to EU/EEA entities are exempt from Bulgarian withholding tax - Capital gains could be tax-exempt	- Dividends subject to a 5% withholding tax - Possibility of dividend tax reduction - Capital gains could be tax-exempt	- Treaty relief might apply

Corporate shareholder

A 5% domestic withholding tax rate, or the lower respective DTT withholding tax rate, applies to dividends distributed by the REIT in favour of foreign shareholders.

If applicable income accrued to the foreign shareholder (including dividend income) exceeds BGN 500,000 (~EUR 255,646) for the calendar year, DTT protection can be obtained following the successful completion of an advance clearance procedure with the Bulgarian National Revenue Agency.

If the annual accrued income is less than BGN 500,000, a DTT relief can be applied under a simplified approach (without undergoing a special procedure) by the REIT. For the simplified application of the DTT relief, the foreign shareholder must provide to the REIT certain documents (the main of which are a tax residency certificate and a declaration of beneficial ownership of the income).

Dividends distributed to EU/EEA, tax resident entities, are exempt from Bulgarian withholding tax (the beneficial ownership concept exists under the domestic legislation in Bulgaria).

Individual shareholder

Dividends distributed to individual foreign shareholders are subject to a 5% Bulgarian withholding tax unless a more favourable rate is provided under an applicable DTT, which applies again on the same conditions as corporate shareholders. Capital gains could be exempt from taxation as long as the SPIC shares are listed on an EU/EEA stock exchange and the individual shareholder is an EU/EEA tax resident.

Withholding tax

A 5% withholding tax will be levied on outbound dividends if the recipient is not an EU/EEA entity. Treaty relief may be available.

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5 Tax treatment of the foreign REIT and its domestic shareholder

Income realised by a foreign REIT from Bulgarian source

Foreign REIT
Local rental income is subject to a Bulgarian withholding tax of 10%

Income realised by Bulgarian tax residents from a foreign REIT

Corporate shareholder	Individual shareholder
Dividends distributed by EU/EEA corporations are tax-exempt	No tax privileges

Foreign REIT

The Bulgarian rental income of a foreign REIT is subject to a withholding tax of 10%.

Corporate shareholder

Bulgarian corporate shareholders are taxed on their dividend income, except for dividends from domestic, EU and EEA tax residents. (Dividends remain taxable if distributed by a REIT licensed under the Bulgaria SPICSCA). Certain anti-abuse restrictions may apply in specific cases.

Individual shareholder

Individual shareholders are taxed on the income from dividends distributed by a foreign corporation under the general rules, and such are subject to a 5% one-off tax.

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A comparison of the
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1 General introduction

	Enacted year	Citation	REIT type	REIT market
FINNISH REIT	2010	Act on Tax Incentives for certain Limited Companies Carrying on Residential Renting Activities (24.4.2009/299)	- Private limited company (closed-ended) - Public limited company (closed-ended)	No REITs currently in the market

The Finnish REIT was introduced with effect on 1 January 2010, by the Finnish Act on Tax Incentives for certain Limited Companies Carrying on Residential Renting Activities (24.4.2009/299) ('the Finnish REIT Act.). This was, however, subject to a state aid notification to the Commission. On 12 May 2010, the Commission announced that REIT is not illegal state aid. However, the Commission considered that a provision allowing REITs to use up to 30% of their annual profits to create tax-exempt re-investment reserves would constitute incompatible aid. Following the Commission's concerns, the Finnish authorities committed not to put into force this provision. Under the REIT regime, a Finnish REIT is fully exempt from paying corporate income tax. However, penalty tax charges may apply to a REIT in certain circumstances.

2 Requirements

2.1 Formalities/procedure

Key requirements
- Application for REIT status must be filed - Certain conditions for REIT status apply

An application for REIT status must be filed with the Finnish tax authorities. REIT status must be granted to a Finnish limited liability company under the following conditions:

- The company does not carry on any other activities than renting of property and certain ancillary activities, such as property administration and maintenance and cash management. Property development on its own account is permitted;
- At least 80% of the total assets of the company must comprise shares in mutual real estate companies or residential real property (as defined in the relevant legislation) (measured using financial statements);
- The company does not hold any assets other than property, equipment required by its ancillary activities and liquid funds (as defined in the relevant legislation). The company may not, except for shares in mutual real estate companies, hold any shares in subsidiary companies;
- The company's total liabilities may not exceed 80% of the total assets (measured using consolidated financial statements);
- Each shareholder must hold less than 10% of the share capital of the company; and
- The Finnish Act on Real Estate Funds (19.12.1997/1173) must apply to the company, and hence it must be subject to supervision by the FIN-FSA.

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The following additional conditions for REIT status apply as of the beginning of the first tax year as a REIT:

- The company must distribute as dividends at least 90% of its net income for each financial period (excluding unrealised changes in value);
- The company's shares must be listed on a regulated market or must be, upon application, admitted to trading on a multilateral trading facility in the European Economic Area. Upon application to the Finnish tax authorities, this requirement may be suspended during the first two tax years as a REIT (the application must be submitted to the Finnish tax authorities no later than at the end of the first tax year);
- The company does not distribute profits in any other form than as dividends; and
- The company or its mutual real estate company subsidiaries have not been involved in any transactions, the purpose of which are deemed to be tax avoidance.

In addition, at least 80% of the REIT's net income (excluding capital gains) must be derived from renting residential property (measured using financial statements). Failure to fulfil this requirement results in a penalty tax charge on the REIT.

A REIT must file a tax return and a statement on fulfilling the conditions for REIT status with the Finnish tax authorities. The (consolidated) financial statement must be enclosed with the tax return.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
In practice, a public limited company	EUR 5 million

Legal form

A Finnish REIT must be a private or public limited company incorporated in Finland. Under the Companies Act 21.7.2006/624, only a public limited company may be listed on a regulated market.

A Finnish REIT may own shares in so-called mutual real estate companies resident in Finland or, in principle, outside Finland. In general terms, a mutual real estate company is a company whose shares entitle the shareholder to use (or rent to third parties) the premises owned by the mutual real estate company. A REIT may not hold shares in any other subsidiary companies except for shares in mutual real estate companies.

Minimum share capital

Under the Finnish Act on Real Estate Funds (19.12.1997/1173), a Real Estate Fund must have a minimum share capital of EUR 5 million.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
A shareholder should not own 10% or more of the share capital	- Yes - A requirement to be listed on a regulated market or admitted upon application to trading on a multilateral trading facility in the European Economic Area

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Shareholder requirements

No shareholder should hold 10% or more of the share capital; otherwise, a penalty tax charge will arise in relation to the dividend paid to such shareholder.

Listing requirements

Under the Finnish Act on Real Estate Funds (19.12.1997/1173), a Real Estate Fund must apply for listing on a regulated market within three years of the commencement of its activities unless the FIN-FSA grants an exemption from this requirement.

Under the Finnish REIT Act, a REIT's shares must be listed on a regulated market or admitted upon application to trading on a multilateral trading facility in the European Economic Area. Upon application to the Finnish tax authorities, this requirement may be suspended as a REIT during the first two tax years.

2.4 Activity/asset level restrictions

Restrictions on activities/investments
- No other activities than renting of property and certain ancillary activities, such as property administration and maintenance and cash management, are allowed; development on own account is permitted - At least 80% of the net income must be derived from the renting of residential property (measured using financial statements) - At least 80% of the assets must consist of shares in mutual real estate companies or residential real property (measured using financial statements) - May invest outside Finland

A REIT may not carry on activities other than renting property and certain ancillary activities, such as property administration, maintenance and cash management. Development by the REIT for its own account is permitted.

Disposals of property are permitted but may result in a penalty tax charge unless the following requirements are met:

- The REIT disposes of less than 10% of its properties during a tax year (measured using balance sheet values);
- Shares in mutual real estate companies have been held for five years; and
- More than five years have elapsed since a comprehensive modernisation fulfilling certain criteria (as defined in the legislation).

The financial restrictions are:

- At least 80% of the net income must be derived from the renting of residential property; and
- At least 80% of the total assets must consist of shares in mutual real estate companies or residential real property (as defined in the legislation).

2.5 Leverage

Leverage
Total liabilities may not exceed 80% of the total assets (measured using financial statements)

The REIT's total liabilities may not exceed 80% of the total assets under (consolidated) financial statements.

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2.6 Profit distribution obligations

Profits	Capital gains	Timing
90% of the net income must be distributed (excluding unrealised changes in value)	Realised capital gains are included in the distribution obligation	Not defined

Dividends

A REIT must distribute as dividends at least 90% of its net income for each financial period (excluding unrealised changes in value).

Capital gains

Gains arising from the disposal of property fall under the distribution obligation.

2.7 Sanctions

Penalties/loss of status rules
Failure to meet the conditions for REIT status may result in the loss of the REIT status. However, the following may lead to penalty tax charges instead: - Less than 80% of the net income derives from renting residential property - A shareholder holds more than a 10% share in the REIT - Disposal of property, if certain requirements are not met

As a general rule, failure to meet any of the conditions for REIT status could result in the loss of the REIT status. However, failure to meet the requirement of 80% of the net income being derived from the renting of residential property or the requirement that each shareholder holds less than a 10% share in the REIT will only result in a penalty tax charge.

Where less than 80% of the net income (excluding capital gains) is derived from renting residential property, a tax charge of 20% will arise on the REIT on the shortfall in the income from the renting of residential property.

The REIT will incur a tax charge, at a rate corresponding to the valid CIT rate (currently 20%), on the amount equivalent to the dividend paid to a shareholder that holds at least 10% of the shares in the REIT.

Disposals of property are permitted but may result in a penalty tax charge unless the following requirements are met

- The REIT disposes of less than 10% of its properties during a tax year;
- Shares in mutual real estate companies have been held for five years; and
- More than five years have elapsed since a comprehensive modernisation fulfilling certain criteria (as defined in the legislation).

The tax authorities have general powers to make a REIT leave the REIT regime if they consider that the REIT has entered into arrangements with the sole or main purpose of tax avoidance. It is possible to appeal against such action.

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3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
All income of a Finnish REIT is fully exempt from corporate income tax	Disposals of property are permitted but may result in penalty tax charges unless certain conditions are met	- Distributions to Finnish resident individuals are subject to tax prepayment withheld at the source - Under Finnish domestic law, dividends distributed by a Finnish REIT to a non-resident recipient will be subject to 15/20/30% withholding tax at source, subject to applicable tax treaties

Corporate income tax

A Finnish REIT is fully exempt from paying corporate income tax. However, penalty tax charges may apply to a REIT in certain circumstances.

Capital gains

Disposals of property are permitted but may result in a penalty tax charge unless the following requirements are met:

- The REIT disposes of less than 10% of its properties during a tax year;
- Shares in mutual real estate companies have been held for five years; and
- More than five years have elapsed since a comprehensive modernisation fulfilling certain criteria (as defined in the legislation).

Withholding tax

Distributions to Finnish resident individuals are subject to tax prepayment withheld at the source.

Under domestic law, dividends distributed by a REIT to a non-resident recipient will be subject to a withholding tax at source, subject to applicable tax treaties. The applicable domestic withholding tax rate is currently 30% for private individuals and 15/20/30/35% for other recipients depending on the type of recipient.

The Finnish withholding tax legislation was changed with effect from January 1, 2021, with respect to nominee-registered shares. The dividend withholding tax may be withheld directly at the applicable tax treaty rate in case of dividends paid to nominee-registered shares if the payer of the dividend or the custodian is registered with the Finnish Tax Administration's custodian register and either of them has information on the identity of the final recipient of the dividend. If the information on the final recipient is not provided, the tax at source for the dividend is 35%.

If an overseas jurisdiction levies a withholding tax on payment to a Finnish REIT, the REIT cannot obtain credit for such tax as the income is exempt in Finland.

Other taxes

Asset transfer tax, property tax and value-added tax apply in the same way that they apply to ordinary property companies.

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Accounting rules

As a general rule, accounting rules apply in the same way that they apply to ordinary property companies.

3.2 Transition regulations

Conversion into REIT status
Conversion charge of 20% of the unrealised gains on all assets held by the property company converting to REIT status

For Finnish tax purposes, all assets held by a property company converting to REIT status are revalued to market value. A 20% conversion charge is levied on the unrealised gains on all assets held on the day of conversion. The conversion charge can, upon application, be spread over three years from the year of conversion to REIT status.

3.3 Asset transfer tax

Asset transfer tax
Asset transfer tax of 2% (shares in mutual real estate companies and other real estate companies), 1.6% (shares in other companies) or 4% (real property) (no different within the REIT regime)

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Tax at source
Dividends distributed by a Finnish REIT are fully taxable at 20%	Dividends distributed by a Finnish REIT are capital income fully taxable at 30/34%	he REIT must withhold tax at source on dividends paid to Finnish individuals and pay it forward to the tax administration

Under the Finnish REIT Act, dividends distributed by a Finnish REIT are fully taxable income for Finnish residents.

Corporate shareholder

Dividends distributed by a Finnish REIT are fully taxable at 20%.
Capital gains on the disposal of shares in REITs are taxable under normal capital gains tax rules.

Individual shareholder

Dividends distributed by a Finnish REIT (a listed company) are fully taxable capital income.
The capital income tax rate is currently 30% up to a taxable capital income of EUR 30,000 and 34% on the excess.
Capital gains on the disposal of shares in REITs are taxable under normal capital gains tax rules.

Taxation at source

The REIT must withhold tax at source on dividends paid to Finnish individuals and pay it forward to the tax administration.

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4.2 Foreign shareholder

Corporate shareholder	Individual shareholder/ other shareholders	Withholding tax
- 15/20% final withholding tax on dividends (subject to tax treaties) - Disposal of shares in a Finnish REIT should typically be outside the scope of Finnish capital gains tax	- 30% final withholding tax on dividends (subject to tax treaties) - Disposal of shares in a Finnish REIT should typically be outside the scope of Finnish capital gains tax	- Tax treaty relief may be available and should be treated as a dividend distribution under most tax treaties - Parent-Subsidiary Directive is not applicable

Corporate shareholder

Under domestic law, dividends distributed by a REIT to a non-resident recipient will be subject to 15/20% withholding tax at source, subject to the applicable tax treaties. The dividend withholding tax may be withheld directly at the applicable tax treaty rate in case of dividends paid to the nominee-registered shares if certain requirements are met. The payer of the dividend or the custodian must be registered with the Finnish Tax Administration's custodian register, and either of them must have information on the identity of the final recipient of the dividend in order to receive the benefit. This development is related to the OECD TRACE (Treaty Relief and Compliance Enhancement) project. The withholding tax rate is 35% if the information on the final recipient of the dividends has not been provided.

Gains on disposals of shares in a Finnish REIT could be subject to tax at 20% if at least 50% of the REIT's assets are directly held property located in Finland (as opposed to shares in mutual real estate companies), subject to the applicable tax treaties. In practice, disposals of shares in a Finnish REIT should typically be outside the Finnish capital gains tax.

The legislation on the taxation of profits derived from real estate investments was changed with effect from 1 March 2023. The amendment enables the taxation of profits derived from the disposal of indirect real estate investments. However, the amendment does not concern listed companies. Thus, due to the listing requirement of REITs, the amendment does not affect Finnish REITs.

Individual shareholders/other shareholders

Under domestic law, dividends by a REIT to a non-resident recipient will be subject to a 30% withholding tax at source, subject to the applicable tax treaties. The dividend withholding tax may be withheld directly at the applicable tax treaty rate in case of dividends paid to the nominee-registered shares if certain requirements are met. The payer of the dividend or the custodian must be registered with the Finnish Tax Administration's custodian register, and either of them must have information on the identity of the final recipient of the dividend in order to receive the benefit. This development is related to the OECD TRACE project. The withholding tax rate is 35% if the information on the final recipient of the dividends has not been provided.

Gains on disposals of shares in a Finnish REIT could be subject to tax at 30/34% (or 20% in the case of shareholders other than individuals) if at least 50% of the REIT's assets are directly held property located in Finland (as opposed to shares in mutual real estate companies), subject to the applicable tax treaties. In practice, disposals of shares in a Finnish REIT should typically be outside the Finnish capital gains tax.

The legislation on the taxation of profits derived from real estate investments was changed with effect from 1 March 2023. The amendment enables the taxation of profits derived from the disposal of indirect real estate investments. However, the amendment does not concern listed companies. Thus, due to the listing requirement of REITs, the amendment does not affect Finnish REITs.

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Withholding tax

A non-resident shareholder is subject to a withholding tax of 30/35% (individuals) or 15/20/30/35% (other recipients), subject to applicable tax treaty provisions. Treaty relief can be claimed ex-ante or retrospectively. The dividend should be treated as a dividend distribution under most treaties. The EU Parent-Subsidiary Directive is not applicable in practice due to the ownership restrictions of a single shareholder of a REIT.

Future developments

Currently, there are no upcoming changes in Finnish legislation which would have an effect on the taxation of REITs or their shareholders.

5 Tax treatment of the foreign REIT and its domestic shareholders

	Corporate shareholder	Individual shareholder
Taxed under normal Finnish tax rules	A foreign REIT's distribution to a Finnish shareholder is likely to be treated as a normal dividend from the non-resident company (will depend on the structure of the foreign REIT)	A foreign REIT's distribution to a Finnish shareholder is likely to be treated as a normal dividend from the non-resident company (will depend on the structure of the foreign REIT)

Foreign REIT

A foreign REIT will be taxable under normal Finnish rules.

Corporate shareholder

A foreign REIT's distribution to a Finnish corporate shareholder is likely to be treated as a normal dividend (which is generally considered as the shareholder's taxable income but may be fully or partially tax-exempt under certain conditions) from the non-resident company (will depend on the structure of the foreign REIT).

Individual shareholder

A foreign REIT's distribution to a Finnish individual shareholder will likely be treated as a normal dividend from the non-resident company (will depend on the structure of the foreign REIT). As a general rule, 85% of a dividend from a listed company is taxed at 30/34%, whereas a dividend from a non-listed company is divided into capital income (taxed at 30/34%) and earned income (taxed at progressive rates) under a certain formula.

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SIIC

A comparison of the
major REIT regimes
around the world.

2023

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1 General introduction

	Enacted year	Citation
SIIC	2003	Article 11 of the Finance Act for 2003 Official comments from the French tax authorities

Article 11 of the Finance Act for 2003 (Law n° 2002-1575 of 30 December 2002) introduced a specific corporate income tax (CIT) exemption regime applicable to listed real estate investment companies (sociétés d'investissements immobiliers cotées, SIICs) available upon election and subject to conditions. This regime is governed by Articles 208 C, 208 C bis, 208 C ter and 219 IV of the French tax code (FTC). The SIIC regime has been amended by the Amending Finance Act for 2004, the Finance Act for 2005, the Amending Finance Act for 2006, the Amending Finance Act for 2007, the Finance Act for 2008, the Finance Act for 2009, the Amending Finance Act for 2009, the Finance Act for 2012, the Amending Finance Act for 2013 and the Amending Finance Act for 2014, the Finance Act for 2019 and the Finance Act for 2021.

In addition, the French tax authorities (FTA) published administrative tax guidelines on 25 September 2003, 1 February, 2010, 27 December, 2011, 8 March, 2012, and 15 June, 2012. These are now all included in the FTA's official comments published in the Bulletin Officiel des Finances Publiques BOI-IS-CHAMP-30-20-04/03/2014 dated 4 March, 2014, (and updated on 3 March, 2021, BOI-IS-CHAMP-30-20-40). However, since the computation of the taxable result of the SIIC is subject to the standard CIT rules unless specified otherwise, many disposals regarding the SIIC are included in the French administrative guidelines relating to entities subject to CIT under ordinary rules.

1.1 Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR_m)	% of Global REIT Index
France	28	8	43.122,24	1,64%

1.2 Top five REITs*

Company name	Mkt Cap (EUR_m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Gecina	7.199,44	15,77%	5%	0,41%
Unibail Rodamco Westfield	6.681,28	-1,03%	0%	0,40%
Klepierre	€6.486,58	29,21%	11%	0,38%
Covivio	4.051,36	-12,35%	9%	0,17%
Icade	2.889,56	-10,01%	9%	0,10%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

The SIIC regime has attracted a number of foreign companies such as Corio and Wereldhave (Netherlands), Hammerson (UK), Cofinimmo, Montea and Warehouse de Pauw (Belgium).

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2 Requirements

2.1 Formalities/procedure

Key requirements
- The election letter must be filed with the relevant tax office of the parent company with a list of the subsidiaries which also opted - Subsidiaries list must be updated once a year

To benefit from the SIIC regime, an eligible real estate investment company (i.e., the listed parent company) must file an election letter with the French tax authorities by the end of the fourth month of the tax year for which this company wishes to benefit from this regime.

This election may also be made by subsidiaries subject to CIT provided (i) at least 95% of their share capital is directly or indirectly held by one or several listed parent companies that have themselves elected for the SIIC regime or jointly held by one or several SIIC parent companies and one or several SPPICAV (Société de Placement à Prépondérance Immobilière à Capital Variable), and (ii) their main object is identical to that of the listed parent company. The election letter must be filed with the relevant tax office of the parent company with a list of the subsidiaries elected for the SIIC regime. The list and the company's annual corporate tax return must be updated every year.

A subsidiary that wishes to elect for the SIIC regime must also identify the parent company and file the election letter with the relevant tax office.

Due to the changes in the company's tax regime, the process of election results in a partial cessation of business (Articles 221 and 201 of the FTC – see 3.2 Transition regulations for the tax consequences of such cessation of business). Therefore, the listed parent company and its elected subsidiaries must file a specific cessation tax return.

The election is irrevocable and takes effect from the first day of the tax year during which it was realised. Once it is made, the eligible companies may not waive it. The election is also considered global because it applies to all the properties and shares in the qualifying partnerships (sociétés de personnes) subject to Article 8 of the FTC (see 3.2. Transition regulations for the consequences of the option).

If income and gains deriving from directly held properties located abroad would not be exclusively taxable in the foreign jurisdiction where the property is located (under provisions of the applicable tax treaty), the SIIC election would apply to such properties. However, these properties, upon specific election, may be excluded from the SIIC regime, either (i) on the date of the election for the SIIC regime or (ii) on the date of their acquisition, if later. In this case, the profits deriving from these excluded properties will then be treated as part of the SIIC taxable sector.

The revenues deriving from properties located abroad and exclusively taxable in the foreign jurisdiction where they are located (under provisions of the applicable tax treaty) do not benefit from the SIIC regime in France since such revenues are not liable to CIT in France.

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2.2 Legal form/minimum share capital

Legal form	Minimum share capital
- Joint-stock company and simplified stock company - Partnership limited by shares	EUR 15 million (except for subsidiaries of a listed parent company opting for the SIIC regime)

Legal form

The parent company opting for the SIIC regime must be a corporation (Société Anonyme) or any other company whose capital is divided into stocks (actions) that can be listed (e.g., Société en Commandite par Actions). The SIIC regime does not require the parent company to be incorporated under French law or be tax-resident in France. Indeed, the parent company can be a foreign company whose running and functioning rules are similar to the French SIIC regime.

Foreign companies that are listed on an EU-regulated stock exchange (or in any stock exchange functioning under the same rules as EU-regulated stock exchanges) and that comply with other SIIC conditions may elect for the SIIC regime as a parent company with respect to their French direct or indirect qualifying operations. To be eligible for the SIIC regime, the French tax authorities require that the foreign company has a permanent establishment (PE) in France and is subject to French CIT. The foreign company's French assets and shares of qualifying French subsidiaries are booked as assets of the PE for French tax purposes.

In order to qualify for the SIIC regime, the subsidiary company must (i) be subject to French CIT, either due to its legal form or pursuant to a tax election; (ii) be at least 95% directly or indirectly held by one or several listed SIIC parent companies having validly elected for the SIIC regime during the entire tax year in which the SIIC regime was applied for or together by one or several SIIC and one or several SPPICAV (or foreign companies subject to a similar tax regime); and (iii) have a SIIC activity (see 2.4 Asset level/activity test).

Minimum share capital

The share capital of the listed parent company must amount to at least EUR 15 million. This condition does not apply to the subsidiaries of a listed parent company or of one or several SPPICAV (or foreign companies subject to a similar tax regime) that opt for the SIIC regime under the abovementioned conditions.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
- Shareholders must not hold more than 60% of share capital or voting rights except for subsidiaries of a SIIC parent company - At the time of the election, 15% of the share capital and voting rights must be held by shareholders, who individually own fewer than 2%	Yes

Shareholder requirements

A single shareholder (other than a SIIC parent company or a SPPICAV for SIIC being eligible as SPPICAV subsidiaries) or a group of shareholders acting jointly (agissant de concert) pursuant to Article L. 233-10 of the French Commercial Code (i.e., persons who have entered into an agreement to buy or sell voting rights, or to exercise voting rights aiming to implement a policy in relation to a company) must not hold, either directly or indirectly, more than 60% of the share capital or voting rights of the SIIC parent

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company. This '60% shareholders test' must be met on a continuous basis (temporary breaches resulting from takeovers, exchange offers, mergers or conversions or redemptions of bonds into shares are allowed subject to conditions).

Failure of this test leads to the suspension of the SIIC regime. If the 60% condition is fulfilled again before the end of the tax year, the SIIC regime can apply again from the opening of the next tax year, and the suspension of the regime consists of cessation of business (see 3.2 Transition regulations). In addition, a permanent failure to this test (including after the closing of the tax year) leads to the exit of the SIIC regime (see 2.7 Sanctions in the case of breach of the SIIC regime conditions).

However, the '60 % shareholders test' does not apply to the portion of the SIIC's share capital owned by (i) another French SIIC or (ii) a foreign company whose functioning and tax regime are similar to French SIICs' ones, provided that such companies are not acting jointly.

At least 15% of the listed parent company's share capital and voting rights must be held by shareholders who individually own, directly or indirectly, less than 2% of such share capital and voting rights. This condition aims to ensure a minimum level of free float before the company can elect for the SIIC regime. It only has to be met on the first day of the first year of application of the SIIC regime (and no longer after that date).

Listing requirements

The parent company must be listed on an EU or EEA-regulated stock exchange. It can also be listed on any stock exchange under the condition the functioning rules of this stock exchange are the same as the EU and EEA's ones (European Directive 2004/39/CE).

2.4 Asset level/activity test

Restrictions on activities/investments
- Principal activity restricted to property acquisition and/or construction with the aim of renting out the property as well as direct or indirect portfolio investments in partnerships (sociétés de personnes) or other companies liable to CIT, having business activities and corporate purposes similar to the SIIC's ones - No required asset level - Ancillary activities must not exceed 20% of the SIIC's assets' gross book value

To be eligible for the SIIC regime, the principal activity of the company must be restricted to property acquisition and/or construction with the aim of renting out the property as well as direct or indirect portfolio investments in partnerships (sociétés de personnes) or other companies liable to CIT, having business activities and purposes similar to the SIIC's ones. The eligible rental activities are those realised for residential, commercial or industrial purposes. Such activities can be either carried out in France or abroad and will only benefit from the SIIC regime under the condition they are, in principle, taxable in France (see 2.1 Formalities/procedure).

The listed parent company and its subsidiaries may also engage in activities other than passive investments. However, these activities must remain ancillary to the principal qualifying activity. Income derived from these activities is fully taxable under ordinary CIT rules. Qualifying ancillary activities are most notably comprised of the following:

- The financial leasing of properties (crédit-bail immobilier) provided that the net book value of the outstanding portfolio of the properties does not exceed 50% of the total gross asset value of the company. This applies to entities that are lessors; and

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- Other activities, such as real estate development or real estate brokerage, provided that the gross book value of the relevant assets does not exceed 20% of the total gross asset value of the company. For this 20% test, the value of properties subject to financial leasing is disregarded. If these qualifying ancillary activities are performed through subsidiaries, then only the book value of the participation and current-account receivables would be considered for the purpose of the 20% test.

Each of these two ratios must be met for each tax year covered by the option for the SIIC regime at the end of the sixth month following the opening and at the closing date of the tax year. Thus, in a situation where the tax year corresponds to the civil year, these ratios must be respected on both the 30 June and 31 December dates.

Please note that before the modification of the French administrative guidelines in July 2020, the 20% ancillary activity test was to be met throughout the year, which implied that particular attention to the ratio was to be given notably in the case of a sale of an asset. The modification exposed allows more flexibility to the SIIC in the management of their assets.

Supposethe SIIC parent company or subsidiary entered into a financial lease for a building as a lessee that is sub-let to tenants. In this case, this activity is considered an eligible activity no matter if the SIIC entered into the financial lease before or after 1 January, 2005. Nevertheless, only revenues deriving from financial leasing agreements entered into after 1 January, 2005, benefit from the CIT exemption (i.e., are eligible for the SIIC regime).

The exploitation of a parking lot qualifies as an eligible activity only when the parking lot is ancillary to an eligible real estate rental activity.

The SIIC regime is also applicable with respect to assets over which the listed parent company and elected subsidiaries enjoy a usufruct right or that they leased under certain long-term leases (baux emphytéotiques) or building leases (baux à construction).

The qualifying activity may be conducted directly or through subsidiaries outside of France.

The listed parent company’s subsidiaries electing for the SIIC regime must have the same corporate purposes as SIICs.

The SIIC regime may also apply to the listed parent company’s shares in a partnership if such partnership has a corporate purpose identical to the SIICs. There is no percentage participation requirement with respect to partnerships that engage in qualifying activities.

It is possible to create joint ventures between two SIIC groups. Indeed, as mentioned above, a subsidiary subject to CIT may elect for the SIIC regime when at least 95% is held by one or several listed companies that have themselves elected for the SIIC regime.

2.5 Leverage

Leverage
Several French tax rules limit the deduction of financial expenses (e.g., maximum deductible tax rate, anti-hybrid mechanism amended as of 2020, new thin capitalisation and general interest deduction limitation since the 2019 Finance Act)

The French SIIC regime does not provide for specific leverage restrictions. However, French several interest deduction limitation rules apply to companies elected for the SIIC regime, affecting their tax-exempt income, which is subject to profit distribution obligations (see paragraph 2.6 below).

First of all, the deduction of interest paid to a shareholder is limited to a rate not exceeding the annual average rate of interest charged by financial institutions on variable interest rate loans to enterprises with a duration exceeding two years (Article 39, 1-3° and 212 (I) of the FTC). The Central Bank of France determines the maximum tax rate and it is published every trimester in the Official Journal (for

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companies with a tax year corresponding to the civil year, the rate was 2.27% for 2022). This limitation applies to all shareholders. Related entities (under the definition of Article 39, 12° of the FTC) may deduct a higher interest paid provided that (i) it corresponds to the rate that the company could obtain from an independent financial institution under similar circumstances and (ii) it is duly documented.

In this framework, the proof of the arm's length character of the practised rate, if higher than the maximum rate of the year, can be provided by any means. Even if the FTA consider the only documentation to be accepted to be an offer from an independent financial institute for a similar loan (notably in terms of the amount of capital, duration and interest) and of the same date the intragroup loan was settled, the French Administrative Supreme Court (Conseil d'Etat) has confirmed the proof of the arm's length character can be provided by any means, notably by reference to the bond market (CE, opinion, July 10, 2019, n° 429426, SAS Wheelabrator Group). In this respect, it is possible to use public rating software to analyse the credit rating of a borrower company (CE, December 11, 2020, n°433723, Sté BSA; CE, December 22, 2022, n°446669, Sté SAS Willink).

After specifying that the market rate is assessed in the light of the company's own characteristics and not those of the group to which it belongs (CE, 18 March, 2019, n° 411189, Sté Siblu), the French Administrative Supreme Court has considered that the assessment of the risk profile of the borrowing company can be carried out considering the consolidated economic and financial situation of this borrowing company and of its subsidiaries. The economic and financial situation of the subsidiaries influences the risk profile of their parent company, as their solidity may contribute to improving it and their fragility to deteriorating it (CE, 29 December, 2021, n°441357, Sté Apex Tool Group). However, it should be noted that this reasoning only applies in this context. It does not apply in the opposite case, e.g., when the subsidiary, and not the parent company, is the borrower. Indeed, in a recent decision, the French Administrative Supreme Court has specified that the borrower's parent's own data is not relevant to the assessment of this risk profile in this situation (CE, 20 September, 2022, n°455651, Sté HCL Maître Pierre).

For the computation of the taxable result of tax years closed in 2019, a specific anti-hybrid financing provision applies to loans granted by related entities of the borrowing company (former Article 212 (I)(b) of the FTC). Under this provision, a French borrower is not allowed to deduct the interest when the lender is not liable for the interest income to a CIT equal to at least 25% of the ordinary French CIT.

For tax years opened from 1 January, 2020, the aforementioned disposal has been suppressed and replaced by a new anti-hybrid mechanism in order to comply with ATAD I and ATAD II Directives. This new disposal is, in particular, applicable where:

- Payment under a financial instrument giving rise to a deductible expense in the residence country of the payor without inclusion in the taxable income in the residence country of the beneficiary, where the mismatch outcome is attributable to the differences in the tax characterisation of the instrument or the underlying payment. This situation is qualified when the mismatch is due to a different characterisation of the instrument, a difference in allocation of the payment between the two countries, the difference of qualification of a permanent establishment (or in the attribution or qualification of a payment to a permanent establishment);
- There is a double deduction resulting from a payment given due to the double attribution of an expense, permanent establishment mismatch or double residency qualification; or
- The transfer of a hybrid instrument mismatch generates a tax credit in two (or more) countries with the application of only one withholding tax.

In this context, it results from the French administrative guidelines that the absence of taxation in the beneficiary's State because of his tax status does not justify the scheme's application (BOI-IS-BASE-80-20-10-15/12/2021, n°40). Therefore, income received by a SIIC should not de facto lead to the rejection of the corresponding expense deduction in the State of residence of the debtor on the sole ground that the SIIC is exempted from CIT on all or part of its income.

In the application of the Finance Act for 2018 modified by the Finance Act for 2020, the ordinary French CIT is reduced to 25% as of 2022. The French CIT rate is mentioned below for the last three years:

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<table>
<tr><th>Tax years opened as from:</th><th>Turnover of the company (EUR)</th><th>Proportion of the taxable result (EUR)</th><th>CIT rate applicable</th></tr>
<tr><td>January 1, 2021</td><td>Up to 250m</td><td>Total taxable result</td><td>26.5% (27.37% with social contribution)</td></tr>
<tr><td rowspan="2">January 1, 2021</td><td>Up to 250m</td><td>Total taxable result</td><td>26.5% (27.37% with social contribution)</td></tr>
<tr><td>Beyond 250m</td><td>Total taxable result</td><td>27,5% (28,41%with social contribution)</td></tr>
<tr><td>January 1, 2022</td><td rowspan="2">No matter the turnover</td><td rowspan="2">Total taxable result</td><td rowspan="2">25% (25.83% with social contribution)</td></tr>
<tr><td>January 1, 2023</td></tr>
</table>

In addition, a reform of the rules on the deductibility of financial expenses has been settled by the Finance Act for 2019. From a general standpoint, the former thin capitalisation rules and the general interest deduction limitation on the net financial expense have been merged into one scheme provided for in Article 212 bis of the FTC.

According to this new scheme, the companies subject to CIT shall limit the deduction of their net financial expenses at the highest amount of EUR 3 million and 30% of their EBITDA retreated (Tax EBITDA) (standard threshold) or at the highest amount of EUR 1 million and 10% of the Tax EBITDA if they are thin-capitalised (limited thresholds). The financial expenses added back to their taxable result can be carried over to the following tax years.

In this framework, the financial expenses (after the application of the mechanism of the limitation of financial expenses rate, Article 212 (I) of the FTC) and financial products mean interest on all forms of debt to interest on any form of debt (i.e., financial interest related to sums of money left or put at the disposal of the company or by the company). This includes notably payments under profit-participating loans, alternative financing arrangements, notional interest amounts under derivative instruments or hedging arrangements, financial leases, etc.

A company should be considered in a thin capitalisation position when its total debt towards related entities exceeds one and a half of its equity (fonds propres) (so-called 'debt ratio'). Nevertheless, a safe harbour clause shall apply in such a case. Indeed, a company for which the amount of debts exceeds 1.5 times the amount of equity (fonds propres) is not in a situation of thin capitalisation if it can prove that its debt ratio at its stand-alone level is lower than the same ratio determined at the level of the consolidated group to which it belongs. In this respect, the company's debt ratio will be considered equal to that of the consolidated group if its ratio is higher than that of the group by a maximum of 2%.

For the application of this safe harbour clause, the perimeter of the consolidated group and the ratio should be determined from the data published in accordance with the French standards relating to the preparation of annual and consolidated accounts (French GAAP) or other international accounting standards adopted in the European Union (IFRS). Therefore, it results that only companies which published consolidated accounts can benefit from the safe harbour clause and that only fully consolidated companies (global integration) must be included in the consolidated group.

For the application of this scheme, the French administrative guidelines have made important reference to the accounting rules for the definition of equity (fonds propres) or the perimeter of the consolidated group (in particular by reference to the global integration under accounting definition).

Provided the company is not in a thin-capitalisation position when the net financial expenses are lower than EUR 3 million or 30% of its tax EBITDA, no limitation of deduction will be applied according to the

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new mechanism.

In this situation, the text allows for the possibility to carry forward and, over a period of five tax years, the deduction capacity unused of the tax year in the application of the standard thresholds. This capacity corresponds to the spread between (i) the maximum between EUR 3 million and 30% of the tax EBITDA and (ii) the net financial expenses of the tax year.

Companies member of a consolidated accounting group and not in a thin capitalisation position can benefit from an additional deduction of 75% of the net financial expenses exceeding the standard thresholds, provided that the 'equity-to-asset ratio' of the company (i.e., the ratio between its equity and total assets, based on either the closing or opening balance sheet data for the tax year) is at least equal to, or is not lower by more than 2% of the same ratio determined at the level of the consolidated group.

For SIICs, neither the 'equity-to-asset ratio' of the company itself nor that of the consolidated group to which it belongs should be adjusted for amounts relating to activities that are tax-exempt. Consequently, the financial autonomy ratios the company and of the consolidated group must be determined respectively from data for the company and the whole group's activity (BOI-IS-BASE-35-40-10-20-13/05/2020, n°280).

A thin-capitalised company must determine two bases of net financial expenses, each subject to its own rules of deduction:

- The first base corresponds to the portion of interest on (i) debts towards unrelated parties and (ii) towards related entities which do not exceed 1.5 times the equity (fonds propres).
- The second base corresponds to the portion of interest for the debts towards related entities exceeding 1.5 times the equity (fonds propres).

Regarding the first base of financial expenses, the portion of financial expenses will be deductible on a prorated basis of EUR 3 million or 30% of the tax EBITDA (standard thresholds). As regards the second base, the portion of financial expenses will be deductible on a prorated basis of EUR 1 million or 10% of the tax EBITDA (limited thresholds).

In addition, a deferral mechanism of added-back financial expenses and a carry forward of unused deduction capacity are included in the new mechanism. .

Regarding the SIIC in particular, the French administrative guidelines provide that the net financial expense deductibility limitation is only applicable to the taxable sector result of a SIIC subject to CIT. This means that, contrary to the former thin-capitalisation rules, the new scheme is not applicable to the tax-exempt result of a SIIC subject to distribution obligations. Therefore, no add-back shall be realised in the tax-exempt result subject to distribution obligations (the ratio used for the split of the financial expenses between the tax-exempt result subject to distribution obligations and the one of the taxable sector is not applicable to the portion of interest added back under this scheme) (BOI-IS-BASE-35-40-10-10-15/12/2021, n°10).

2.6 Profit distribution obligations

Operative income	Capital gains	Dividends	Timing
95% of tax-exempt profits	70% of capital gains	100% of dividends	See below

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Operative income

At least 95% of the tax-exempt profits realised during tax years closed as of 31 December, 2013, derived from qualifying leasing activities (including profits realised by directly owned partnerships or pass-through entities), must be distributed before the end of the tax year following the year in which they are generated.

Capital gains

At least 70% of the capital gains realised during tax years closed as of December 31, 2018, resulting from the sale of (i) rights relating to leasing contracts regarding real estate assets, (ii) properties (including the sale of properties by directly held partnerships or pass-through entities), (iii) shares of qualifying partnerships or (iv) shares of corporate subsidiaries that have elected for the SIIC regime (including the sale of shares by a directly held partnership or a pass-through entity) must be distributed before the end of the second tax year following the year in which they have been realised.

Dividends

100% of the dividends received from the SIIC's subsidiaries that have elected for the SIIC regime must be distributed before the end of the tax year in the SIIC parent company levies them.

Incomes arising from partnerships

Incomes arising from partnerships are deemed directly realised by the parent SIIC company and benefit from the tax exemption under the same distribution obligations. Thus, these incomes are spread between (i) qualifying rental activities, (ii) the sale of properties previously used for qualifying activities and (iii) dividends received from subsidiaries that have elected for the SIIC regime. Distribution obligations are then determined for each type of activity by applying the corresponding rate.

Limitation and capping of the distribution obligations

A SIIC's total distribution obligations for a tax year (i.e., the sum of the distribution obligations of the three tax-exempt sectors) are limited to the company's total tax result for this tax year, which is eligible for the tax exemption. The surplus distribution obligations do not have to be distributed. Even if the domestic tax law and administrative guidelines are not clear on whether the distribution obligations exceeding this first limitation must be carried forward or not for the computation of the future distribution obligations of the SIIC, it results from the examples given in the administrative guidelines that the surplus on the taxable result is not subject to carry forward (BOI-IS-CHAMP-30-20-40-03/03/2021, n°50, example 2).

Moreover, the SIIC's distribution obligations for a tax year are capped at the tax year's accounting result (i) decreased by previous accounting losses and the sums allocated to the legal reserve and (ii) increased by the retained earnings. When the total distribution obligations exceed this retreated accounting result, the surplus is deferred on the first following profitable year and the following ones. In any case, please note that the deferred distribution obligations must only be distributed if possible under the application of the aforementioned limitation and capping the distribution obligations of the following years (including the deferred amounts).

Capital gain for cancellation of stocks in the framework of a merger between SIICs

The special merger regime (art. 210 A of the FTC, i.e., tax regime entailing notably the tax deferral of the merger capital gains) applies to the restructuring operations between entities benefitting from the SIIC regime (either between the parent company and its subsidiaries having opted for the SIIC regime or between such subsidiaries).

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The benefit of this regime is notably subject to the condition that the receiving company commits, in the deed of contribution, to realise the distribution obligations determined at the level of the transferring entity and not met at the date of the operation.

In addition, the capital gain arising from the cancellation of shares held in the absorbed company is exempted from CIT, provided the capital gain is distributed for 70% of its amount before the end of the second tax year following its realisation. Before 2021, this distribution obligation corresponded to 60% of the capital gain. The capital gains realised during previous tax years remain subject to the 60% distribution obligation.

2.7 Sanctions in case of breach of the SIIC regime conditions

Penalties/loss of status rules
- Tax exemption of profits and gains is denied for the tax year in which the distribution shortfall appears or when the exit of the SIIC regime occurs - In the case that the SIIC leaves the status within ten years following the SIIC election, unrealised capital gains subject to the exit tax upon the election for the SIIC status are subject to CIT at the standard rate (after deduction of the 16.5% or 19% exit tax paid at the time of the election for the SIIC regime) and unrealised capital gains accrued during the period of the SIIC election must be taxed at a 25% tax rate

Sanctions in the case of distribution obligations shortfall

If a SIIC company does not meet its distribution obligations, profits and gains exemptions are denied for the tax year in which the distribution shortfall appears.

Moreover, if the FTA were to conduct a tax audit and reassess the tax-exempt profits or gains, the reassessment would be fully taxable because it would not have been distributed in due time. However, the reassessment amount should not be considered taxable for the portion already covered by previous distributions in excess of the minimum distribution obligations. In any case, such reassessment would not question the benefit of the tax exemption regime for the corresponding year.

Sanctions in the case of a breach of the eligibility conditions

The exit from the SIIC regime occurs if the following conditions are no longer met:

- (i) minimum capital share, (ii) market listing, (iii) corporate purpose condition during the ten years following the option conditions; and
- 60% cap of majority ownership condition.

Such exit also triggers the exit of the SIIC Parent Company's subsidiaries.

If the listed parent company no longer fulfils the conditions for the SIIC regime within ten years following the SIIC election, then:

- The distributable income previously exempted from corporate income and existing at the date of the exit is subject to CIT under the general conditions and the standard rate;
- Unrealised capital gains on its real estate assets that had been subject to CIT at the reduced 'exit tax' rate (19% since 2009, 16.5% before – see 3.2) at the time of entry into the SIIC regime become subject to CIT at the standard rate applicable during the year of the exit (see above 2.5 for detailed standard CIT rates), after deduction of the 19% (or 16.5%) exit tax paid at the time of entry into the SIIC regime; and
- Unrealised capital gains accrued during the period of the SIIC election on the real estate assets are taxed at a special rate of 25% (subject to a rebate of 10% per civil year passed since the election for the SIIC regime).

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Suppose the listed parent company no longer fulfils the conditions for the SIIC regime more than ten years after the SIIC election. In that case, the exit of the SIIC regime should take effect from the opening of the tax year during which the exiting event occurred and does not impact the benefit from the SIIC regime for the previous years (e.g., the exit does not entail additional CIT charge on the SIIC revenues exempted from CIT during the application of the SIIC regime).

Should one of the qualifying subsidiaries that elected for the SIIC regime no longer fulfil the conditions, it would lose the benefit of the leasing profits and gains exemption as of the beginning of the tax year in which the loss of status takes place, regardless of whether such exit happens during the ten years following the date of election or later. This could occur if, for example, more than 5% of its capital shares are sold to an unrelated entity that is not a SIIC parent company.

A specific mechanism applies when a SIIC does not meet the 60% shareholder test for a limited period of time (when that period is exceeded, then the SIIC definitively exits the regime).

In the case of a merger of one SIIC with another, the special merger regime remains valid as the distribution conditions are executed by the absorbing company (see above 2.6 Profit distribution obligations). In the case of acquisition, the target SIIC parent, which becomes a subsidiary as a result of that acquisition, must remain subject to the SIIC regime (as a subsidiary) for the remainder of the ten-year period from its own election as SIIC parent.

3 Tax treatment at the level of the REIT

3.1 Corporate income tax (CIT)

Election	Current income	Capital gains	Withholding tax
Cessation of business (see: 3.2)	Eligible income is tax-exempt	Eligible capital gains are tax-exempt	- In principle, domestic sourced income is not subject to withholding tax - The taxes withheld on foreign-sourced income could be credited if a double tax treaty allows

Current income

The listed parent company and its qualifying corporate subsidiaries elected for the SIIC regime are, in principle, subject to French CIT.

However, the following income is fully exempt from CIT, provided that the distribution requirements are met:

- Income is realised directly or through qualifying partnerships from qualifying leasing activities. The exemption regime is applicable to financial lease contracts (i) entered into force after January 1, 2005, when the SIIC company is the lessee, (ii) to sublease agreements regardless of the date of conclusion of the initial financial lease and (iii) to certain long-term leases (baux emphytéotiques) or building leases (baux à construction);
- Dividends received from qualifying subsidiaries that have elected for the SIIC regime and paid out of the tax-exempt income of such subsidiary; and
- The listed parent company may also benefit from the dividend exemption in respect of Dividends received from (i) another SIIC, (ii) a SPPICAV or (iii) a foreign REIT, provided the listed parent company holds at least 5% of the distributing entity's capital shares and voting rights for at least two years.

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Capital gains

Capital gains arising from the sale or disposal of properties used for qualifying leasing activities, from the disposal of a participation in qualifying partnerships or other pass-through entities, or from the disposal of a participation in qualifying corporate subsidiaries that have elected for the SIIC regime are fully tax-exempt.

However, the French administrative supreme court has ruled that, in the situation where a sale of an asset eligible for the tax exemption (subject to an obligation of the distribution) is realised at a reduced price, the potential tax add back corresponding to the price reduction as a result of a tax audit is considered as a donation taxable at the standard CIT rate and not subject to any distribution obligation (CE, October 15, 2020, n° 425150, Sté Kerry; Paris Administrative Court, July 13, 2022, n° 20PA03017, Sté Kerry).

Capital gains are only considered tax-exempt if the acquirer is not related to the seller (under the definition of a related entity given by Article 39, 12 of the FTC). Two companies are considered to be related to each other if one of the two directly or indirectly holds the majority of the capital shares of the other (or has de facto control) or if both of the companies are directly or indirectly under the control of the same company.

The straight sales of properties among members of the same SIIC group or between members of a SIIC group and a SPPICAV may, however, benefit from an exemption under certain conditions (with a rollover of the tax basis). In this respect, the tax treatment of the capital gain allocated to buildings will differ from the one allocated to land:

- Non-depreciable assets (e.g., land): for tax purposes, the acquirer takes over the sellers' basis. Capital gain upon a subsequent sale would, therefore, for tax purposes, be computed from this rolled-over tax basis, which will increase the 70% distribution obligation; and
- Depreciable assets (e.g., construction): for tax purposes, the acquirer has a stepped-up tax basis. However, the gain recognised in the transaction must be recaptured in the tax-exempt rental income (over 15 years generally or over the residual useful life if construction represents more than 90% of the value of the depreciable assets). This recapture increases the exempt income and, therefore, the amount of the compulsory 95% distribution, which in practice offsets the increased depreciation allowances (which themselves reduce the exempt income and the distribution obligations).

Incomes arising from partnerships

Income arising from partnerships is deemed to be directly realised by the parent SIIC company and benefits from the tax exemption under the same distribution obligations. Thus, these results should be spread between the different revenue categories of the SIIC parent company for the computation of the distribution obligations.

Withholding tax

If a French-listed company or a subsidiary receives foreign source income subject to French CIT, the tax withheld could be credited if the applicable double tax treaty allows for it. There is no actual cash refund for foreign tax withheld. In principle, outbound dividends paid by a SIIC to French tax residents are not subject to a withholding tax.

Accounting rules

The French Accounting Regulatory Committee (Comité de la Réglementation Comptable) adopted a Resolution on 12 December, 2002 (Regulation CRC, 12 December, 2002, n°2002-10) that devoted a large section of IFRS relating to depreciation and impairment of assets under French GAAP. French companies are required to prepare financial statements in accordance with these rules from 1 January, 2005.

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Accordingly, French SIICs are also subject to the French GAAP rules regarding depreciation and property impairment.

3.2 Transition regulations for CIT purposes

Conversion into REIT status
- Exit tax payment - Tax losses carried forward are deductible from the exit tax basis within certain limits - Remaining losses are cancelled

As a result of the SIIC election, the listed parent company and its electing subsidiaries are subject to a cessation of activity and a change of tax regime. Under ordinary tax rules, this would, in principle, trigger immediate taxation of deferred profits and unrealised capital gains. Upon the transition, the following tax rules apply:

- The election for the SIIC regime triggers liability for an exit tax at a rate of 19% (16.5% before 2009) on unrealised capital gains on real estate assets and on interest in qualifying real estate partnerships owned by the listed parent company and its corporate subsidiaries electing for the SIIC regime. This exit tax is payable in four instalments (every December 15 for the first four years after the election). Conversely, there is no taxation of the unrealised capital gains on participation held in qualifying corporate subsidiaries. However, there is a rollover of tax basis on these gains;
- The unrealised capital gains on other assets are tax-exempt when attributed to an ancillary activity but subject to a rollover tax basis; and
- Prior tax losses, if any, may be offset against such cease of activity result, but the surplus cannot be used in the future (i.e., cannot be offset against the taxable or non-taxable result of the SIIC and will not be available in the situation of an exit of the SIIC regime).

The SIIC regime election does not trigger any taxation at the shareholder level.

3.3 Other tax costs

Other tax costs
- VAT and/or registration duties - Notary and land security fees

NB: The rules described below are not SIIC-specific.

The French tax costs arising from property acquisition are:

- Depending on the nature of the property, either (i) a 20% VAT plus a 0.715% reduced registration duty for real estate completed or renovated less than five years before the transfer date or (ii) VAT exemption (unless VAT option) and registration duties at the standard 5.8% rate (5.09% in a few locations) for real estate completed or renovated more than five years before the transfer date, plus an additional tax on registration duties of 0.60% in the case of a transfer of office premises, commercial premises or warehouses located in the Ile-de-France region;
- Land security fee amounting to 0.1% of the purchase price of the property; and
- Notary fees equal to 0.799% of the property purchase price.

Property acquisition is either subject to VAT or registration duties in France:

- Pursuant to Article 257 of the FTC, the standard French VAT of 20% applies on the stipulated price

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(or current value if greater) to transfers of real estate that have been completed or renovated less than five years before the considered sale. In such a case, the 0.715% reduced registration duty rate applies;

- Sales of other real estates (built or renovated more than five years before the sale date) are exempt from French VAT (unless VAT option) and subject to French registration duties at a rate of 5.8% (5.09% in a few locations), plus an additional tax of 0.60% in the case of a transfer of office premises, commercial premises or warehouses located in the Ile-de-France region;
- Sales of building lands are subject to 20% VAT on (i) the stipulated price or (ii) the seller's margin, depending on whether the seller deducted the VAT burden on his acquisition. These sales are subject to French registration duties at the 5.8% rate when VAT applies to the seller's margin and 0.715% rate when VAT applies to the stipulated price; and
- Sales of other lands are exempted from VAT (with the possibility for the seller to opt for the VAT as regards the sale of the land) and subject to 5.8% registration duties.

Furthermore, deeds of transfer of real estate assets in which the purchaser undertakes to resell within five years and to build within four years are subject to registration duties at the reduced rate of 0.715% and a fixed duty of EUR 125, respectively.

The acquisition of shares or interest in French real estate subsidiaries or partnerships (sociétés à prépondérance immobilière) is subject to registration duties at the rate of 5% calculated on the sale price of the transferred shares or interest.

4 Tax treatment at the shareholder level

4.1 Domestic shareholders

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends and capital gains are taxed at the standard CIT rate (for 2023: 25%, or 25.83% with social contribution)) - Capital repayment is normally tax-free	- Dividends and capital gains are subject to French income tax, as of January 1, 2018, through a flat withholding tax of 30% (12.8% + 17.2% social contributions) - Capital repayment is normally tax-free	A specific 15% withholding tax may apply as regards dividends paid out of the tax-exempt income by the SIIC parent company.

Corporate shareholders

The tax treatment of French corporate shareholders receiving dividends from a SIIC differs depending on whether the dividends are paid out of taxable or tax-exempt income and gains.

Dividends paid out of the tax-exempt income and gains are fully subject to French CIT at the standard rate (for 2023: 25%, or 25.83% with social contribution)1. They are not eligible for an exemption pursuant to the domestic parent-subsidiary regime.

Dividends paid from the taxable result are also subject to CIT at the standard rate. However, if the qualifying parent companies hold at least 5% of the shares of the SIIC for at least two years, they could be eligible for the domestic parent-subsidiary 95% dividend exemption.

Capital repayment is normally tax-free. Any reduction of share capital or distribution of share premium will be treated as a tax-free repayment only to the extent that all reserves or retained earnings of the distributing company have already been distributed. The latter condition does not apply in the case of a share redemption.

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Capital gains earned on the sale of the listed parent company shares are, in principle, subject to CIT at the standard rate (for 2023: 25%, or 25.83% with social contribution).

The rate could be reduced to 19% (or an effective tax rate of 19.63% with social contribution) pursuant to the long-term capital gain tax regime if the shares have been held for at least two years and can be considered qualified participation (e.g., treated as participating shares for accounting purposes, which is presumed in the case of detention exceeding 10% of the share capital).

Individual shareholders

Finance Act for 2018 (of December 30, 2017) introduced a flat tax as regards dividends paid to individual shareholders from January 1, 2018, at a global rate of 30% (i.e., a flat-rate tax of 12.8% increased by social contributions of 17.2%) (Article 200 A of the FTC). In practice, the 12,8% flat rate is treated as a withholding tax.

However, individual shareholders can opt for the former taxation regime (i.e., the progressive personal income tax rates (up to 45%) and the social contributions at a total rate of 17.2%. In such a case, dividends paid out of the tax-exempt income and gains are subject to the income tax on their total amount and dividends paid out of the taxable income and gains are taxed based on 60% of their amount (after application of a 40% base deduction).

French individuals deriving capital gains from the sale of SIIC shares are also subject to the 30% flat tax and can be subject, under election, to the progressive personal income tax rates (up to 45%) and the social contribution at the rate of 17.2%. If such an election is made, the capital gains may benefit from a tax base deduction mechanism for the holding period after a two-year holding period. This tax base deduction amounts to 50% for securities held less than eight years and to 65% for securities held at least eight years.

As for corporate shareholders, a capital repayment distribution is normally tax-free. However, any reduction of share capital or distribution of share premium will be treated as a tax-free capital repayment only to the extent that all reserves or profits of the distributing company have already been distributed. The latter condition is not applicable to share redemption.

Withholding tax

In principle, dividends distributed between French tax residents are not subject to a withholding tax. However, a specific 15% withholding tax applies on dividends paid out of the tax-exempt revenues by the French SIIC parent company or its French subsidiaries that have elected for the SIIC regime, pursuant to their distribution obligations to the following French collective investment vehicles (organismes de placement collectif):

- UCITS (OPCVM), real estate collective investment schemes (organismes de placement collectif immobilier) and closed-end investment companies (sociétés d'investissement à capital fixe); or
- Foreign collective investment vehicles fulfilling the conditions to benefit from the general exemption of withholding tax on dividends (see 4.2 Foreign shareholders).

Consequently, this withholding tax is applicable in the context of cross-border dividend payments as well as in a domestic French context (article 119 bis, 2 of the FTC).

However, this withholding tax does not apply to dividend distributions paid out of tax-exempt revenues by French subsidiaries of SPPICAVs or joint French subsidiaries of SPPICAVs and SIIC parent companies, having elected the SIIC regime to their French SPPICAV parent company.

Moreover, another 20% withholding tax applies on the dividends paid out of exempt products to French and foreign legal entities that (i) hold directly or indirectly at least 10% of the distributing company and

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(ii) are not subject to CIT (or an equivalent tax) on the dividends received. Nevertheless, such withholding is not due if the beneficial owner of the distribution (i) is a company subject to a distribution obligation for the full amount of the dividends received and (ii) whose shareholders holding, directly or indirectly, at least 10% of its share capital are subject to CIT (or an equivalent tax) on the distributions they receive (BOI-IS-CHAMP-30-20-40, 03/03/2021, n°150).

In this context, the income received is not considered subject to CIT or an equivalent tax when exempted or subject to a tax, which is less than two-thirds of the amount of CIT which would have been due under ordinary law conditions in France.

This withholding tax is not in lieu of corporate or personal income tax and may neither be offset nor refunded.

4.2 Foreign corporate shareholders

Withholding tax on dividends	Withholding tax on Capital gains
- Standard CIT rate (25%) or reduced treaty WHT rate - EU Parent-Subsidiary Directive is not applicable to dividends paid out of tax-exempt revenues	- CIT at the standard rate (25%) or reduced rate (19%) for large investors

Dividends

Under domestic law, dividends distributed by a French parent company or a qualifying subsidiary having elected for the SIIC regime to non-resident shareholders are subject to a withholding tax corresponding to the standard CIT rate (25% as of 2022). If the shareholders are residents of a treaty country, they may, however, benefit from an exemption or a reduced withholding tax rate which is generally equal to 15%, and such withholding tax is often creditable against the CIT liability in their home jurisdiction.

However, the latest tax treaties concluded by France provide for specific provisions relating to distributions by REITs, as advised by the OECD in the report Tax treaties issues related to REITs dated 30 October, 2007, included in the 2008 update of the model tax convention.

According to these provisions, the tax treaty reduced rates of withholding tax do not apply to dividends paid out of income or gains derived from the immovable property by an investment vehicle:

- That distributes most of its income annually;
- Whose income and gains from such immovable property are exempted from tax; and
- Where the beneficial owner of these dividends holds, directly or indirectly, 10% or more of the capital of the vehicle paying dividends.

In such a case, the dividends may be taxed at the 25% rate provided for in domestic law. The 15% tax treaty withholding tax rate is therefore applicable only for companies qualifying as small investors (i.e. when the beneficial owner holds less than 10% of the share capital of the REIT.

For example, France has included this provision in the tax treaties recently concluded (among others) with the United Kingdom (tax treaty dated 19 June, 2008), Panama (tax treaty dated 30 June, 2011), Andorra (tax treaty dated 2 April, 2013), China (tax treaty dated 26 November, 2013), Singapore (tax treaty dated 15 January, 2015), Germany (tax treaty dated 31 March, 2015) and Colombia (tax treaty dated 25 June, 2015).

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The 25% withholding tax does not apply to dividend payments made by a French parent company to collective investment vehicles established on the basis of foreign law located in a Member State of the EU or in another state or territory that has concluded with France a convention on administrative assistance to fight against tax fraud and evasion, and that fulfil both the two following conditions:

- Raises capital from a number of investors to invest in accordance with a defined investment policy in the interests of these investors; and
- Presents characteristics similar to those of the following French collective investment vehicles (organismes de placement collectif):
    - UCITS (OPCVM);
    - Real estate collective investment schemes (organismes de placement collectif immobilier); and
    - Closed-end investment companies (sociétés d'investissement à capital fixe), etc.

However, according to the French administrative guidelines, a specific 15% withholding tax is levied when these dividend distributions are paid out of tax-exempt revenues under the same conditions as exposed previously in section 4.1.

EU corporate shareholders are not eligible for the withholding tax exemption pursuant to the EU Parent-Subsidiary Directive to the extent that the dividends are paid out of the tax-exempt revenues.

Capital repayment is normally tax-free. However, any capital share reduction or share premium distribution will be treated as a tax-free capital repayment only if all reserves or profits have already been distributed. This latter condition does not apply in the case of a share redemption.

Anti-abuse measures

Specific levy of 20%
Applicable to the dividends paid by the parent company to domestic or foreign shareholders under certain circumstances

The specific levy regime applicable to domestic distribution paid to exempted beneficiaries also applies under certain circumstances to the dividends paid by the French-listed parent company to foreign shareholders (see 4.2).

Capital gains

Capital gains realised on the sale of SIIC parent company shares by foreign corporate shareholders subject to CIT may be taxable in France through a specific withholding tax as follows:

- Provided that the seller holds directly or indirectly at least 10% of the SIIC parent company shares, capital gains realised on such sale are taxable at the standard CIT rate when the listed parent company's asset is mainly composed of immovable properties and related rights located in France. Such tax treatment is subject to provisions of the applicable double tax treaty. Also, capital gains realised on the sale of qualifying subsidiaries' shares that have been elected for the SIIC regime are taxable under the same conditions;
- The corporate shareholders of EU resident, or residents of a State member of the EEA which has concluded with France an administrative assistance agreement to prevent tax evasion and avoidance, can benefit from the same taxation rules as French companies. Therefore, capital gains realised by them on the sale of the French-listed parent company shares may be taxable at a flat rate of 19%, provided that they hold directly or indirectly at least 10% of these shares for at least two years;

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- When the seller holds directly or indirectly less than 10% of the SIIC parent company shares, there are uncertainties as to whether the capital gains derived from the sale of these shares would be taxable in France.

Special rules apply for refund procedure in the event that such withholding tax exceeds the CIT amount due in France for the year of realisation of the capital gain.

5 Tax treatment of the foreign REIT

Foreign REIT
Election for the SIIC regime is possible.

Foreign REIT

In principle, the double tax treaties provide that the income and gains deriving from property located in a foreign State are taxable in that foreign State.

Accordingly, a foreign company's rental income and capital gains are taxed in France as long as the relevant properties are located in France. In this respect, the foreign company can benefit from the SIIC regime if it meets the applicable conditions and if it has validly elected for the SIIC regime (notably, the parent company and its corporate subsidiaries meet the SIIC requirements, see before 2.2, 2.3 and 2.4).

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GLOBAL REIT SURVEY

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Germany

G-REIT

A comparison of the major REIT regimes around the world.

2023

1 General introduction

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	Enacted year	Citation	REIT type
G-REIT	2007	Law on German real estate joint-stock companies with publicly quoted shares (Real Estate Investment Trust law – REIT law)	Corporate type

After intensive three-year political discussions, Germany implemented the German Real Estate Investment Trust (G-REIT) in 2007 to meet the market demands inspired by the introduction of the REIT in other European countries. The G-REIT is a joint-stock company with specific rules laid out by the REIT law.

The REIT law came into force on 1 June, 2007, with retroactive effect as of 1 January, 2007. Changes in various tax laws, such as the German Income Tax Act and the Investment Tax Act support the REIT law. The REIT law has been amended inter alia by the Tax Amendment Act 2009 (Jahressteuergesetz 2009) and the UCIT IV Transformation Act in 2011 (OGAW IV Umsetzungsgesetz). One of the major changes was that shareholders might benefit from the privileged taxation generally applicable for dividend income if pre-taxed profits of the G-REIT source such dividends and certain further requirements are fulfilled. However, for corporate shareholders of a G-REIT, this privileged taxation has de facto been abolished (see section 4.1).

The tax authorities published on 10 July, 2007, administrative guidance according to which upon registration as a REIT with the Commercial Register, tax exemption is to be assumed to start with the beginning of the year of registration, and therefore upon application, no tax prepayments are to be assessed. Another administrative guidance published on April 29, 2021, deals with questions regarding the qualification of investments of German Funds in G-REITs and foreign REITs (esp. US-REITs) for Investment Tax purposes.

According to Sec. 1 (3) no. 5 Investment Tax Act 2018, the G-REIT does not qualify as an Investment Fund in the meaning of the law. The ITA 2018 is applicable as of January 1, 2018; for further details, see Sec. 56 ITA 2018.

Up to now, the following five REITs are listed: alstria Office REIT-AG, Hamborner REIT AG, Fair Value REIT, Deutsche Konsum REIT-AG and Deutsche Industrie REIT-AG. No company is registered as pre-REIT at the Federal Central Tax Office (Bundeszentralamt für Steuern – BZSt).

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Germany	6	1	1.872,07	0,04%

Top REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Hamborner REIT AG	519,784	-20,26%	7%	0,04%

** All market caps and returns are rebased in EUR and are correct as of 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, July 2023.*

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2 Requirements

2.1 Formalities/procedure

Key requirements
- G-REIT: Registration with the Commercial Register - Pre-REIT: Registration with the Federal Central Tax Office

G-REIT

The G-REIT must be registered with the Commercial Register, which examines whether the G-REIT qualification requirements are met. The G-REIT comes into existence with its registration.

The main requirements for the registration of a G-REIT are as follows:

- Joint-stock company with a minimum share capital of EUR 15 million;
- Corporate seat and place of management in Germany;
- By-laws must provide for certain provisions (e.g. purpose of the company, compensation of shareholders with a shareholding of less than 3% in case of termination of the tax-exempt G-REIT status, etc.);
- Listing at the stock exchange;
- At least 25% widely held shares at IPO (after listing reduced to 15%);
- Direct shareholding of a shareholder must be less than 10%; and
- Asset, equity and activity requirements (see under no. 2.4. and 2.5).

Pre-REIT

Before registration with the Commercial Register, a pre-REIT status can be obtained. A pre-REIT can be characterised as a joint-stock company that does not yet have to fulfil all the requirements for a G-REIT. The Pre-REIT status requires registration with the Federal Central Tax Office. Similarly to the G-REIT, the Pre-REIT status allowed capital gains from the transfer of the real estate to the pre-REIT to be subject to exit tax rules, which have since been abolished (see no. 2.3 'Listing requirements' and 3.2 'Transition regulations/Exit-Tax'). At the end of each business year following the year of registration, the pre-REIT must prove to the Federal Central Tax Office that its activities comply with certain G-REIT requirements.

For registration as a pre-REIT, the company must fulfil the following requirements:

- joint-stock company; and
- corporate seat in Germany.

The pre-REIT must fulfil at the end of the business year following the year of registration and each consecutive year the following requirements:

- objectives of the pre-REIT must be limited to the objectives of a G-REIT;
- 75% of its total assets must consist of immovable property;
- 75% of its gross earnings must be derived from renting, leasing, letting and disposal of real estate;

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- a pre-REIT service company's assets may not exceed 20% of the pre-REIT's total assets; and
- a pre-REIT service company's gross earnings may not exceed 20% of the pre-REIT's gross earnings.

The assets and gross earnings requirements mentioned above must be verified by an auditor upon the request of the Federal Central Tax Office.

With the exception of the exit tax rules, which are no longer applicable for purchases realised after December 31, 2009, the taxation of the pre-REIT follows the general tax rules applicable for corporations. As a consequence, there is no longer a need to obtain pre-REIT status.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Joint-stock company	EUR 15 million

Legal form

The only legal form which is permitted for a G-REIT is the joint-stock company (Aktiengesellschaft – AG). The company's name must include the words 'REIT-Aktiengesellschaft' or any other reference containing the words 'Real Estate Investment Trust' or the abbreviation 'REIT'. Because of its qualification as a joint-stock company, the G-REIT is subject to the standard regulations of the Joint Stock Company Act and the Commercial Code. This is the case unless the REIT Act specifically indicates otherwise.

Minimum share capital

A G-REIT must have a share capital of at least EUR 15 million. All shares must be voting shares. Different categories of shares are not allowed. Shares can only be issued against the full payment of the issuance price.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
- 15% of the shares must be widely held (25% at the time of IPO) - A shareholder is not allowed to own directly 10% or more of the shares or the voting rights of the company	Yes

Shareholder requirements

At least 15% of the G-REIT shares must be widely held, which means that such shares must be owned by shareholders who may each hold less than 3% of the voting rights of the G-REIT. Consequently, at least six shareholders are needed to satisfy this 15% requirement. At the time of the stock exchange listing, the precondition of widely held shares must be fulfilled for at least 25% of the shares of the G-REIT.

In addition, a single shareholder is not allowed to directly hold 10% or more of the shares or the voting rights of a G-REIT (including shares held on his/her behalf by a third party). However, this limitation is not applicable to indirect shareholding. Consequently, holding structures allow the legal circumventing of this threshold.

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At the end of each calendar year, the G-REIT is obliged to inform the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstaufsicht) of the shares that are widely held. The Federal Financial Supervisory Authority will inform the Federal Central Tax Office if the 15% widely held shareholding requirement is not met. The REIT law provides for further reporting requirements that apply to a shareholding of 3%, 80% and 85% of the G-REIT's voting rights.

Listing requirements

A G-REIT's shares must be admitted to trading in an organised market in the meaning of the Securities Trading Law in a Member State of the European Union or in another signatory state to the Treaty on the European Economic Area (Iceland, Liechtenstein, Norway).

A pre-REIT must apply to be admitted to trading in an organised market mentioned above within three years of the application being made to register the joint-stock company as a pre-REIT. The time allowed may be extended twice, for one year each time on application by the Federal Financial Supervisory Authority if there are exceptional circumstances justifying such an extension. Should no application be made within the time allowed, or if an application is made within that time and refused, the company will lose its status as pre-REIT.

2.4 Asset levels/activity test

Restrictions on activities/investments
- 75% immovable property requirement - 75% immovable property income requirement

At least 75% of the total assets of the G-REIT must be comprised of immovable property, and at least 75% of its gross earnings must derive from the rental, leasing, letting and disposal of immovable property.

A G-REIT may only provide secondary activities (activities serving third-party investment portfolios) via a 100% owned REIT service company. The assets related to such services are not allowed to exceed 20% of the total assets of the G-REIT. In addition, the gross earnings from such services are not allowed to exceed 20% of the gross earnings of the G-REIT.

A G-REIT must not engage in trading in real estate. Trading is assumed when the G-REIT receives revenues from the disposal of real estate within a period of five years which exceeds 50% of the average value of its real estate portfolio within that same period. The valuation of the real estate portfolio will be based on fair value as defined in IAS 40.

Investments in immovable property, which is used primarily (i.e., more than 50%) for residential purposes, are prohibited if the property is located in Germany and was built prior to January 1, 2007. The G-REIT may invest in all kinds of real estate abroad insofar as the real estate can be owned by a REIT corporation, REIT partnership or a REIT trust or a corporation, partnership or trust comparable to a REIT under the laws of the respective foreign country.

The G-REIT is allowed to hold German real estate via a German partnership but not via a German corporation. A German corporation may only be held for such purposes if the company acts as an unlimited liable partner in a real property partnership without any participation in the property of the partnership (i.e., the corporation is a general partner and holds no interest in the real estate partnership.) This refers to the structure of a GmbH & Co. KG, which is a partnership with an unlimited liable partner corporation. The partnership must have the same business objectives as the G-REIT itself.

Foreign real estate may be held through a German or foreign property partnership as well as through a 100% owned German or foreign property corporation of the G-REIT.

2.5 Leverage

Leverage
The equity must equal at least 45% of the total asset value of the immovable property (valuated at IAS 40)

The equity of the G-REIT, as generally shown in its consolidated accounts (if no obligation to consolidated accounts exists, the single accounts are decisive) at the end of the fiscal year, must equal at least 45% of the total asset value of immovable property in the accounts (valued at IAS 40). As at least 75% of all assets at the end of each business year must be immovable assets, the equity must not fall below 33.75% of total assets. This means the leverage of a G-REIT cannot exceed 66.25%.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of the net income of the year	Deferral of 50% of the capital gains from real estate assets is allowed	Distribution is required until the end of the following business year

Operative income

The G-REIT has to distribute at least 90% of its net income, calculated under German GAAP, to its shareholders until the end of the following business year.

Capital gains

Up to half of the proceeds from disposals can be transferred to a reserve; distributable profits will be reduced accordingly.

Any unused reserves must be dissolved at the latest by the end of the second financial year after creation. The reserves can either be deducted from the acquisition or construction cost of real estate assets acquired or created in the respective two years or must be added to the distributable profits in the year in which they are dissolved.

2.7 Sanctions

Penalties/loss of status rules
- Several penalties - Loss of REIT status

Penalties will be levied by the competent tax office as follows:

- If less than 90% of the gross earnings are distributed, the penalty amounts from 20% to 30% of the difference;
- If less than 75% of the assets consist of immovable property, the penalty amounts from 1% to 3% of the difference;
- If less than 75% of the gross earnings is derived from qualifying income, the penalty amounts from 10% to 20% of the difference; or

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- If more than 20% of the gross revenue consists of real estate advisory or other related services to third parties, the penalty amounts from 20% to 30% of the earnings exceeding this threshold.

If the G-REIT continuously violates one and the same qualifying requirement as defined by the REIT law for three consecutive years, it will lose its status as a tax-exempt corporation after the end of the third year. If the G-REIT continuously violates different qualifying requirements over five consecutive years, it will lose its status as a tax-exempt corporation after the end of the fifth year.

If the G-REIT performs forbidden real estate trading activities, it will lose its status as a tax-exempt corporation with effect from the financial year in which the limit is exceeded.

If the G-REIT is de-listed, it will lose its status as a tax-exempt corporation at the end of the financial year prior to the year of de-listing.

If 10% or more of the shares or the voting rights of a G-REIT can be attributed directly to one shareholder, this will not cause the G-REIT to lose its tax-exempt status. Nor will the shareholder forfeit his dividend or voting rights. However, he would only be able to exercise the rights of a double tax treaty applicable for a shareholding of less than 10% of the G-REIT's shares.

If less than 15% of a G-REIT's shares are in free float for three consecutive years, the G-REIT will cease to be tax-exempt from the end of the third year. The same applies if the aforementioned 10% threshold is violated for three consecutive years. These rules do not apply as long as the G-REIT cannot infer the breach from the notifications required under the Securities Trading Law.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
All income is tax-exempt	Capital gains are tax-exempt	Reduced withholding tax on distributions to the G-REIT

Current income

The income of a G-REIT is not subject to corporate or trade income taxes, irrespective of whether the income is generated from real estate assets or not. The tax exemption applies for the first time at the beginning of the business year in which the G-REIT is registered as a REIT with the Commercial Register. The tax exemption only applies to the G-REIT's income.

Consequently, the income of a subsidiary or a partnership of the G-REIT (the latter is, according to German tax principles, only tax transparent for corporate income tax but not for trade income tax) remains subject to taxation at their level. In this context, it should be noted that German trade tax law provides certain requirements for a trade tax exemption for income from real estate.

Capital gains

Capital gains are exempt from corporate and trade income taxes as in the case of the G-REIT's other income.

Withholding tax

Dividend distributions from German subsidiaries of the G-REIT to the G-REIT are, in the first place, subject to the standard withholding tax of currently 25%, but the G-REIT can reclaim two-fifth of this tax upon application.

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Other Taxes

Taxes other than income taxes will be levied. Specifically, real estate transfer taxes will be levied on acquiring and selling real estate.

Accounting rules

The income is to be determined based on German GAAP. Real estate assets can only be depreciated using the straight-line method.

The thresholds which must be met by the G-REIT (see nos. 2.4 and 2.5) are determined based on IFRS rules.

The financial statements of the G-REIT must be audited. The auditor must confirm inter alia that the threshold requirements were met.

3.2 Transition regulations/exit tax

Conversion to REIT status
The G-REIT law does not provide for a tax-free conversion.

The G-REIT obtains tax-exempt status at the beginning of the taxable year in which the joint-stock corporation has been registered as a G-REIT in the Commercial Register. This event is treated as a taxable liquidation of the (prior) taxable joint-stock corporation. The conversion of a property company into a G-REIT is thus (always) a taxable event, and the REIT law does not provide for a tax-free conversion. The exit tax privilege initially granted no longer exists.

3.3 Registration duties

Registration duties
Real estate transfer tax

The transfer of the real estate to and from a G-REIT is not exempt from real estate transfer taxes of 3.5% to 6.5% of the sales price. For real estate transfer tax, the conversion of a corporation into a pre-REIT or G-REIT is not regarded as a taxable event according to German tax principles. The same applies to the conversion of a limited liability company (GmbH) into a stock corporation (AG).

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
In general, fully taxable	In general, a final withholding tax of 25% plus a 5.5% solidarity surcharge on the withholding tax, totalling 26.375%	- A final withholding tax for privately held shares - Otherwise, a creditable/ refundable withholding tax

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Corporate shareholder

Before 1 March, 2013, the taxation of dividends at the level of the corporate shareholder was dependent on the taxation of the underlying income (pre-taxed profits) distributed by the G-REIT. Pre-taxed profits of a G-REIT could be caused by the taxation of profits of the real estate of the G-REIT in a foreign jurisdiction or the taxation of a subsidiary or a partnership (with foreign real estate) of the G-REIT. If the underlying income had been taxed at least at the 15% German corporate income tax rate or a comparable foreign income tax rate and certain further requirements were met, dividends sourced by such pre-taxed profits were 95% exempt from corporate income tax at the shareholder level.

As of 1 March, 2013, dividends are fully taxable at the level of the corporate shareholder of a corporation as long as the shareholder owns less than 10% of the shares at the beginning of the year in which the dividends have been received. Because of the shareholder restrictions outlined under section 2.3 above, this means that dividend income remains subject to corporate income tax at the level of the corporate shareholder at ordinary tax rates irrespective of pre-taxed profits source the dividends or not. The dividend income is also subject to trade income tax.

Capital gains on the disposals of G-REIT shares are always subject to corporate and trade income tax at ordinary tax rates.

Individual shareholder

From 1 January, 2009, onwards, dividends and all (i.e. short- or long-term) capital gains on the disposition of shares in a G-REIT realised by individuals as non-business income are subject (in principle) to a final withholding tax of 25% (plus solidarity surcharge of 5.5% thereon).

Long-term capital gains on privately held G-REIT shares acquired prior to 1 January, 2009, remain tax-exempt provided that the shares were held for more than one year and the shareholder did not own an interest of 1% or more in the G-REIT at any time during the five years preceding the sale of the shares.

Capital gains on privately held shares acquired on 1 January, 2009, and onwards are fully subject to personal income tax (i.e., the final withholding tax does not apply), where during the five years preceding the sale, the shareholder-owned an interest of 1% or more in the G-REIT.

Dividends received by individuals as business income are fully subject to personal and trade income tax (trade income tax will be credited for personal income tax under certain requirements) unless the underlying income has been taxed with corporate income tax as outlined above (see under corporate shareholder). When the underlying income has been taxed, the dividends are only 60%, subject to personal income tax, but remain fully subject to trade income tax.

Capital gains on the disposal of G-REIT shares held in a business are fully subject to personal and trade income tax.

Withholding tax

Dividends from a G-REIT, and other benefits granted in addition to or instead of dividends, are subject to a withholding tax at a rate of 25% plus a 5.5% solidarity surcharge on the withholding tax, in total 26.375%. In the case an individual shareholder privately holds the G-REIT shares, the withholding tax is final. Otherwise, the withholding tax is creditable/refundable at the shareholder’s level.

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4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- A final withholding tax for dividends - Generally, tax exemption for capital gains	- A final withholding tax for dividends - Generally, tax exemption for capital gains	- 25% plus a 5.5% solidarity surcharge, resulting in a rate of 26.375% (or a reduced treaty tax rate or a reduced withholding tax rate for foreign corporate shareholders) - EU Parent-Subsidiary Directive is not applicable

Corporate shareholder

The withholding tax on dividends to foreign (non-resident) shareholders is a final tax, provided that the G-REIT shares are not assets of a permanent German establishment of such shareholders.

Capital gains from the disposal of G-REIT shares are taxable if the shares are assets of a permanent establishment or if the foreign shareholder has held at least a 1% shareholding at any time within a five-year period prior to the sale of the shares. Usually, double tax treaties provide for a tax exemption of capital gains on the disposal of shares in Germany. However, most of the German tax treaties do not protect investors from the German capital gains tax, as they give Germany the right to tax capital gains from the disposition of shares in a real estate company.

Individual shareholder

The same principles apply to foreign corporate shareholders.

Withholding tax

German domestic tax law provides that the foreign corporate shareholder is principally entitled to a refund of two-fifths of the withholding tax resulting in a final tax of 15% (which is equal to the corporate income tax rate) plus a 5.5% solidarity surcharge, resulting in a rate of 15.825%.

A double tax treaty may reduce the dividend withholding tax rate, amounting under German tax law to a total of 26.375% (25% withholding tax plus a 5.5% surcharge on the tax). Most German tax treaties provide that foreign shareholders are entitled to a reduced withholding tax rate of 15% if they are domiciled in the other treaty state. Entitlement to a refund also requires that the investor qualifies for the treaty benefit under the German anti-conduit rules.

A corporate shareholder could not exercise his rights to a further withholding tax reduction, which would accrue to him if his shareholding was 10% or more.

Because of the tax-exempt status of the G-REIT, the EU Parent-Subsidiary Directive is not applicable.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Fully-taxable	Like dividends from a G-REIT, if the foreign REIT is a qualifying REIT	Like dividends from a G-REIT, if the foreign REIT is a qualifying REIT

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Foreign REIT

According to Sec. 1 (3) no. 5 Investment Tax Act 2018, a foreign REIT in the meaning of Sec. 19 (5) of the German REIT law does not qualify as an investment fund.

A foreign REIT's German source income is taxable in Germany at the standard rules and rates applicable to a non-resident corporate taxpayer.

Corporate shareholder

Dividends distributed from a qualified foreign REIT as defined by the REIT law are fully taxable at the corporate shareholder level. If the dividend was sourced from pre-taxed profits and the corporate shareholder owns at least 10% of the shares in the foreign REIT, 95% of the dividends would be exempt from corporate income tax. Capital gains from the disposal of the shares in a qualified foreign REIT would be fully taxable at the level of the corporate shareholder. A foreign REIT is qualified under the following cumulative requirements:

- The REIT is not domiciled in Germany;
- The gross assets of the REIT consist of more than two-thirds of immovable property;
- More than two-thirds of the gross earnings are derived from rental, leasing, letting and disposal of immovable property; the distribution deriving from immovable property of the REIT does not carry underlying foreign taxes like the German corporate income tax;
- The REIT is not under the supervision of a financial supervision commission; and
- The shares of the REIT are listed in an organised market.

Foreign withholding taxes levied on distributions will generally be credited in Germany.

Dividends received from a non-qualifying foreign REIT and capital gains from the disposal of shares in a non-qualifying foreign REIT, are taxed according to general German tax principles depending on the qualification of the foreign REIT as a corporation or transparent entity.

Individual shareholder

For the tax treatment of dividends distributed from a qualifying foreign REIT and capital gains from the disposal of shares in a qualifying foreign REIT, see section 4.1.

Dividends received from a non-qualifying foreign REIT as well as capital gains from the disposal of shares in a non-qualifying foreign REIT, are taxed according to German tax principles depending on the qualification of the foreign REIT as a corporation or transparent entity.

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	Enacted year	Citation	REIT type
REIC	1999	Law 2778/1999 (REIC Law)	Corporate

Greek law recognises the legal forms of Real Estate Mutual Funds (REMF) and Real Estate Investment Companies (REIC), which are regulated by Law 2778/1999 (hereafter REIC law). Although the exact term REIT does not exist in Greek legislation, the REIC could be qualified as such. The REIC law was introduced in December 1999 and has been amended thereafter by different laws, including recently enacted laws 4141/2013, 4209/2013, 4223/2013, 4261/2014, 4281/2014, 4370/2016, 4389/2016, 4410/2016, 4416/2016, 4514/2018 and 4646/2019.

There are currently six listed REICs in Greece. Additionally, there are three established REICs that have not gone public yet, but will be launching their initial public offerings in the near term.

The investor base of listed REICs is predominantly made up of Greece-resident companies and individuals, although a few foreign investors have entered the market over the last years.

The tax and regulatory legislation applicable to Greek REICs is often imprecise, and several grey areas continue to exist in spite of the latest tax reforms.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Greece	6	0	2.477,17	0.00%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
- Prior operating licence issued by the Hellenic Capital Market Commission required - Functions are supervised and regulated accordingly

A Greek REIC has the legal form of a Société Anonyme (SA) and is subject to all the formalities and procedures set out by Greek Corporate Law (L. 4548/2018 currently in force). Moreover, its incorporation requires a prior operating license issued by the Hellenic Capital Market Commission. Its activities are also supervised and regulated accordingly.

Its operating activity must solely consist of managing a portfolio of real estate, certain capital means (defined as certain highly liquid and short-term investments in bonds and certain marketable securities) and interests in other SAs whose sole purpose is to invest in real property and whose assets comprise solely of investments in real property. A thorough description of investment policy and real estate use

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must be submitted to the Hellenic Capital Market Commission for the issuance of the REIC's operating license.

A REIC must file an application for its listing on the Athens Stock Exchange within two years of its incorporation. The Capital Market Commission may decide to extend the annual deadline for listing in the stock market for up to a total of 36 months, subject to an application for an extension being filed by the REIC and a demonstration that a force majeure or unfavourable market conditions prevented listing. If a REIC is not accepted to the Athens Stock Exchange, the Capital Market Commission will revoke its operating license, and the company shall be liquidated.

For a REIC to be considered Greek and hence be regulated by REIC law, its statutory seat must be in Greece. The Greek tax authorities use the effective place of management criterion (and is now included in the wording of the new Income Tax Code) when an overseas entity has its effective place of management in Greece. Nevertheless, this scenario should be avoided in order to prevent the authorities from questioning the nationality of the company.

Currently, under Greek law, it should be noted that no foreign managing company (even an EU company) may be the manager of a Greek REIC. For the REIC law to apply, the management company must be a Greek resident. REICs' investments in securities (not in real estate) must be supervised by a custodian bank operating in Greece.

The law provides no possibility of a pre-REIC structure.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Listed Société Anonyme	EUR 25 million

Legal form

A REIC must have the legal form of a Société Anonyme listed on the Athens Stock Exchange operating in Greece.

Minimum share capital

The required minimum share capital amounts to EUR 25 million.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
None. Transfer of REIC's real property to shareholders, founders, board members and CEOs and their relatives is forbidden.	Yes

Shareholder requirements

Transferring a REIC's immovable property to founders, shareholders with more than a 5% holding, Board of Director Members and CEOs and by their relatives up to the third degree is forbidden.

No difference between resident and non-resident shareholders in regard to ownership (status, shareholding percentage, etc.) is provided by the law.

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Listing requirements

A REIC's stocks must be listed on the Athens Stock Exchange. Parallel listing is also allowed.

2.4 Asset level/activity test

Restrictions on activities/investments
- At least 80% of the total assets must be invested in real estate in Greece, the EU or the EEA - Investment in buildings under development is only allowed if the cost of development does not exceed 40% of the REIC's investment assets - Greek REICs may invest in at least 80% of the shares of Sociétés Anonymes (AE) having as special purpose the investment in real estate and whose capital is solely invested in real property - Moveable and immovable assets owned by a REIC for its own operational purposes may not exceed 10% of the REIC's investment assets - Real Estate investments in non-EEA countries must not exceed 20% of the total Real Estate Investments - May not invest in a single property exceeding 25% of the REIC's total assets

At least 80% of the total assets must consist of real estate.

For REIC law purposes, real estate means real estate situated in Greece, in an EU member state, or in the EEA or, subject to certain conditions in a non-EEA third country (see below), that the company owns as full or bare owner or as a beneficial owner and that may be used for business facilities or for other commercial, touristic, residential or industrial purposes. Within the meaning of real estate, as defined by L. 2778/1999, a building plot and a building under construction are also included.

Real estate situated in countries (outside the EEA) may also be included, provided that they do not exceed 20% of the total real estate investments of the company.

Greek REICs may invest in at least 80% of the shares of Sociétés Anonymes (AE), having real estate investments as their special purpose, and of which the total capital is invested in real estate or in holding companies investing solely in companies whose capital is invested in real estate as above.

A REIC may invest in development/redevelopment property as long as the construction/redevelopment costs do not exceed 40% of the total value of the investment of REIC in real estate, as the latter results after the completion of the works.

A Greek REIC may not invest in a single property exceeding 25% of its total assets.

A REIC may also invest in other non-real estate assets serving its operational needs and which, together with the real estate used for its operations, do not exceed 10% of the value of the investment real estate at the time of purchase.

As stated above, 80% of the total assets of the REIC must be invested in real estate. A further 10% (maximum) can be invested in self-used assets. The remainder (10-20% of total assets) can be invested in securities. There are no legal restrictions if the securities consist of a subsidiary's shares. Regarding a partnership structure, the partnership interest would no longer be considered securities. Hence, such investment is not allowed.

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2.5 Leverage

Leverage
- Overall leverage must not exceed 75% of the REIC's total assets - Leverage linked to development property must not exceed 40% of the value of the real estate under development - Specific 10% of the total net equity rule for the purchase of real estate

Financing through either loans or credits must not exceed 75% of the REIC's total assets. Loans received by the REIC for the purchase of a real estate for its operational needs (i.e. non-investment property) must not exceed 10% of the total net equity of the REIC minus the total investments in real estate. The value of such loans is not included in the 75% threshold mentioned above.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
50% of its annual net profits	No obligation	Annually

Operative income

The REIC should generally distribute at least 50% of its annual net profits to its shareholders. The distribution of a smaller percentage or no distribution at all is only allowed pursuant to a Resolution taken at the Shareholders' Meeting (provided a clause exists in the REIC's Articles of Association) either for the creation of a tax-free reserve or the distribution of free shares accompanied by a share capital increase.

Capital gains

Capital gains do not need to be distributed.

2.7 Sanctions

Penalties/loss of status rules
- Violations may trigger the imposition of penalties - Non-listing of REIC's shares on the Athens Stock Exchange leads to the loss of REIC status

If a REIC is not accepted to the Athens Stock Exchange, the Capital Market Commission shall revoke its operating license, and the company should be liquidated. As a consequence of liquidation, all tax benefits granted by the law will be retroactively rescinded.

Tax penalties may be applied at different levels on a case-by-case basis, depending on the nature of the infringement.

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3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Investment and liquid assets are taxed at 10% of the European Central Bank (ECB) interest rates plus 1%	Exempt due to the special tax treatment of the REIC	No WHT except for dividend distributions received from Greek subsidiaries at a rate of 5%

Current income

REICs are subject to a special taxation rate, of 10% of the European Central Bank (ECB) interest rate in force (Reference Interest Rate) plus 1%. The tax rate is applied to the average of the REICs' investments plus any available funds (cash and securities) at their current value, as shown in their six-month investment tables, which are a legal requirement to produce. For example, assuming the ECB interest rate is 0.05%, the tax rate would be calculated as follows: 10% x (0.05% + 1%) = 0.105%.

The tax is payable by the REIC. Its direct shareholders have no further tax liability upon receipt of dividends. Should a change of the Reference Interest Rate occur, a new taxation basis would be valid starting the first day of the month following the stated amendment.

Capital gains

Since REICs are subject to the special taxation rules described above, which exhaust any further tax liability of the company, there is no taxation on the capital gains on the sale of securities by the REIC. If a REIC sells listed shares, a 0.2% transfer duty will apply to the value of the shares transferred.

Other taxes

As of January 1, 2014, REICs are subject to the Annual Real Property Ownership Tax (also known as the ENFIA tax). The ENFIA tax consists of the main ENFIA tax and the supplementary ENFIA tax. The main ENFIA tax is imposed based on a statutory formula that takes into account a variety of features specific to the property (size, location, zone price, surface, age, use, and other characteristics of the property), and the supplementary ENFIA tax is calculated as 0.55% of the total tax value of the property owned. REICs are fully subject to both the main and the supplementary taxes.

REICs are fully exempt from the Real Property Transfer Tax and the local municipality surcharge levied at 3.09% on the value of the property (payable by the purchaser) on the acquisition of real property. When a REIC sells real property, the purchaser is not exempt from the aforementioned transfer taxes.

Withholding tax

Income generated from foreign or Greek securities is not subject to any Greek withholding tax upon repatriation, with the exception of dividends received from a Greek subsidiary. Regarding interest from bond loans, the said tax exemption is valid, provided that the bonds were acquired at least 30 days before the interest payment date. Dividends received by a Greek REIC from Greek entities are subject to withholding tax at 5%, which can be offset against the wealth tax imposed on its average net investments described above under current income. Any unused amount may be carried forward to be set off against a tax on average investments in future tax returns. Income tax treaties may not apply to reduce the rate of withholding.

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Accounting rules

The REIC must follow IFRS.

3.2 Transition regulations

Conversion into REIC status
Tax benefits upon mergers, spin-offs, etc, of real estate companies

Greek REICs enjoy the tax benefits provided by Law 2166/1993 for certain cases of mergers, spin-offs etc. Benefits available may include exemptions from transfer taxes and capital gains.

3.3 Registration duties

Registration duties
Exemption from any Greek tax and stamp duties on REIC's share issue

The issuance of REIC's shares and the transfer of the real estate to a REIC are exempt from any Greek tax duties, stamp duties or any kind of tax liability. Capital Concentration Tax (CCT) at 0.5% is payable in the case of a share capital increase. However, no CCT is imposed on the initial share capital injected upon the formation of the REIC.

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Tax-exempt on dividends received from REIC - Exempt from capital gains tax on the sale of shares in a non-listed Greek REIC - If the REIC is listed, the gain is taxed at 22%.	- Tax-exempt on dividends received from REIC - Exempt from capital gains tax on the sale of shares in Greek REIC	N/A

Corporate shareholder

The taxation of dividends distributed by the REIC should be exempt from any Greek withholding tax as well as corporate income tax at the level of the corporate shareholder, according to the wording of the law. Capital gains arising from the sale of shares in a non-listed Greek REIC are exempt from income tax. If the REIC is listed, the gain is taxed at 22% from FY 2021 onwards.

Individual shareholder

Whilst dividend income from REICs received by an individual shareholder is exempt from income tax, it was subject to special solidarity tax at rates up to 10% until 31 December 2022. In particular, the special

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solidarity tax was imposed on the individual's total income, whether exempt or not. Note that income from capital (e.g., dividends, interest, capital gains etc.) received by an individual shareholder was exempt from special solidarity tax for FY 2020, 2021 and 2022. However, the special solidarity tax has been abolished for all income categories from 1 January 2023. Capital gains arising from the sale of shares in a non-listed Greek REIC are exempt from income tax. If the REIC is listed, the gain will be taxable only in the case where the seller owns more than 0.5% of the share capital of the listed REIC and the shares transferred have been acquired after 1 January 2009. Accordingly, most retail investors would be exempt. As noted above, the gains are no longer subject to special solidarity tax.

Withholding tax

N/A

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- No Greek withholding tax on dividends paid by REIC - Exempt from capital gains tax on the sale of shares in Greek REICs in most cases	- No Greek withholding tax on dividends paid by REIC - Exempt from capital gains tax on the sale of shares in Greek REICs in most cases	N/A

Corporate shareholder

Dividends distributed by the REIC to a non-resident corporate shareholder should not be subject to withholding tax in Greece. Capital gains arising from the sale of shares in a non-listed Greek REIC are exempt from income tax. Capital gains from the sale of shares in listed REICs are also exempt on the additional condition that the foreign shareholder does not maintain a permanent establishment in Greece where the gain can be attributed.

It is unclear whether Greek REICs can benefit from double tax treaties entered into by Greece.

Individual shareholder

Dividends distributed by the REIC to a non-resident individual shareholder should not be subject to withholding tax in Greece. Capital gains arising from the sale of shares in a non-listed Greek REIC are exempt from income tax. Capital gains from the sale of shares in listed REICs are exempt if the shareholder is resident in a double tax treaty country and can access the treaty (regardless of whether the Greek REIC can access the treaty, see below). Regardless of residence, no income tax is levied on the gain if the seller owns less than 0.5% of the share capital of a listed company or if the listed shares were acquired prior to January 1, 2009.

It is unclear whether the Greek REICs would be awarded a similar benefit from the same arrangement.

Withholding tax

N/A

5 Treatment of the foreign REIT and its domestic shareholder

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Foreign REIC	Corporate shareholder	Individual shareholder
No specific tax privilege	No specific provision	No specific provision

Foreign REIC

The Greek REIC law only applies to Greek REICs and does not cover the cases of foreign REICs. The Greek tax authorities have not dealt with foreign REICs, and therefore it is unclear as to the treatment of foreign REICs under Greek law.

As such, the exact treatment should be determined on a case-by-case basis.

Domestic corporate shareholder

No specific tax provision deal with the taxation of income received by a company resident in Greece from a non-resident REIC. In the absence of specific rules, it is expected that such foreign-sourced income should be taxed in the hands of the Greek corporate shareholder according to the general rules applicable to income from a foreign source.

Dividends from EU-qualifying subsidiaries will be exempt from tax, provided that the EU Parent/Subsidiary Directive conditions are met. If the dividend income does not qualify for exemption under the EU Parent/Subsidiary Directive, then it is taxed as normal business income at 22% (lowered from 24% as of FY 2021) with a credit for any tax withheld at source. If the participation that is distributing the dividends is in the EU, then an unlimited foreign tax credit is provided for both the dividends withholding tax and the underlying corporate income tax.

Domestic individual shareholders

No specific tax provision deals with the taxation of income received by an individual resident in Greece.

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REIT

A comparison of the
major REIT regimes
around the world.

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1 General introduction

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	Enacted year	Citation	REIT type
REIT	2011	Act on Real Estate Investment Companies	Corporate type

Traditionally, limited liability companies have been Hungary's preferred vehicle for holding real estate investments. The REIT regime was introduced into Hungarian legislation in 2011. The key tax benefits arising for the investor from a Hungarian REIT structure are that the income generated by the REIT is, as a main rule, not taxable from Hungarian corporate income tax and local business tax perspective and distributions from the REIT paid to corporate shareholders are not subject to withholding tax in Hungary.

The REIT is governed by the Act on Real Estate Investment Companies (the 'Act'). Public limited companies with a minimum starting capital of HUF 5 billion and which are registered as a REIT (upon the request of the company) with the Hungarian Tax Authority (the 'tax authority') may qualify as REITs if the conditions are met. The Act aimed to introduce the EU-wide known 'REIT structure' into the Hungarian market.

The law acknowledges the following entities as REITs[1] :

- A real estate investment pre-company;
- A real estate investment company; or
- A real estate project company (Special Purpose Vehicle, hereinafter 'SPV').

The activities of a REIT or its 100% subsidiary SPV should be limited to the following in the territory of Hungary:

- The sale of their own real estate;
- The rental and operation of their own real estate (including particularly real estate investment for operation purposes, rental and operation of real estate owned by the Hungarian government or state, operating own warehouse and stock room, and rental of a vacant warehouse and stock room);
- Property management and facility management;
- Asset management; and
- Real estate project development.

Advantages of a Hungarian REIT structure:

- Unlike Hungarian real estate funds, a REIT can hold shares in a project company that can also benefit from the REIT regime;
- Corporate income-tax-free status is available at REIT and SPV levels (including gains on asset deals);
- Local business tax-free status is available at REIT and SPV levels (including gains on asset deals);
- REITs do not have to pay the Fund tax based on their net assets; and
- REITs are subject to only a 2% real estate transfer tax (RETT) levied on the transfer of Hungarian real estate or any rights related to such property and on the acquisition of shares in companies owning domestic real estate (real estate holding company). .

1 Reference to 'REIT' in this document, includes real estate investment pre-companies, real estate investment companies, or real estate project companies under the preferential regime. Reference to only one of those entities, should be understood as a reference to that type of entity only.

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Limitations and obligations:

- REITs' management have an obligation to have dividend proposed to be paid out at 90% of the REITs' profits or distributable monetary assets each year, while SPVs in the regime have an obligation to have dividend pay-out proposed by management at 100% of their profits or distributable monetary assets each year as dividends;
- A starting capital of HUF 5 billion is required for a REIT;
- The tax authority administers strict registration obligations;
- Limitations exist regarding top management; and
- A compulsory quarterly market valuation of the property portfolio is required for REITs.

1.1 Sector Summary

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
Hungary	2	0	€ 298,20	0,00%

2 Main requirements

2.1 Formalities/procedure

Key requirements
REITs (including pre-companies) have to be registered with the tax authority. Strict formal and practical requirements should be met

REITs (including pre-companies) have to be registered with the tax authority. Registration is only possible if REITs have no outstanding tax liabilities with the tax authority or customs authority or at local municipalities.

During the registration procedure, information – amongst others, the deed of foundation, availability of registered capital, related parties, name of the auditor and detailed information about the senior management – should be filed.

REITs (including SPV) should notify the tax authority within 30 days if there have been any significant changes to their status (including any changes to SPVs held).

REITs should not undergo voluntary closure, bankruptcy or liquidation procedures before or during their registration.

REITs should have experienced managers with a college or university degree, at least three years of managerial experience and a clean criminal record. Further independence requirements should also be met.

REITs (including SPVs) should revalue their properties and accounts every quarter.

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2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Publicly Limited Company	HUF 5 billion

Legal form

A REIT should be a public limited company and, broadly, at least 25% of the shares should be tradable on controlled financial markets (i.e., certain defined stock exchanges).

Minimum share capital

The minimum share capital (registered capital, capital reserve and profit reserve) is HUF 5 billion

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
Limitation for banks and insurance companies and other REITs	Yes, as a general rule, 25% of the shares should be traded on controlled financial markets

Shareholder requirements

At least 25% of the shares should be tradable on controlled financial markets (i.e., certain defined stock exchanges). At least 25% of the shares should be owned by minority shareholders (below 5% each). Direct voting rights in a REIT by banks and insurance companies altogether are limited to 10%.

REITs are allowed to own only a maximum of 10% of shares or voting rights in other REITs.

2.4 Asset level

Restrictions on activities/investments
Investment policy limitations and liabilities are similar to those of real estate investment funds in Hungary.

A REIT cannot have shares in another company other than an SPV, other REITs or companies whose main activity consists of real estate building project management. REITs cannot have more than 10% shares or 10% of the voting rights in any other REIT.

Besides real estate, the assets of REITs may include assets that are necessary for performing their regulated activities and cash and cash equivalents (including bonds issued by governments or financial institutions), shares of entities issued in regulated markets, appropriate interest in other REITs, REIT SPVs or SPVs who engage in real estate building projects, or hedge agreements on FX risks associated to their real estate activities or debt and interest repayments.

However, 70% of the total assets should be in the form of real estate. A single real estate asset or shares in other REITs should not make up more than 30% of the total assets. When performing this calculation, the revaluation of the real estate (recognised in line with the Hungarian Act on Accounting) should be considered as well. However, in the case of REITs performing bookkeeping under IFRS, real estate value already includes the revaluation, regardless of the valuation model applied.

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The supervisory board's permission is required when purchasing an asset with an asset value exceeding 10% of the REIT's total assets. Suppose the REIT uses a one-tier system, where the board of directors are responsible for both the directory and supervisory duties. In that case, the supervisory board's permission can be considered as granted if the majority of the independent parties member vote for the acquisition of the asset exceeding the 10% of the REIT's total assets.

2.5 Leverage

Leverage
Debt is limited to 65% of the value of the real estate assets

The REIT's liabilities (other than equity) should not exceed 65% (SPV 70%) of the value of its real estate assets and investments.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
- Any expected dividends should be distributed - SPVs should distribute their total profits of distributable monetary assets	To the extent that it is included in the REITs' income, any capital gain realised on the disposal of real estate or shares in other entities should be distributed	Annually

The REITs board of directors have an obligation to make an offer regarding the acceptance of dividends stipulated as expected dividends in their deed of foundation. In case of acceptance, the distribution of the profit should take place within 30 trading days after the shareholders have accepted the annual report. If the available cash amount does not reach the value of expected dividends, then at least 90% of the distributable monetary assets have to be distributed.

SPVs have the same obligation, but they need to pay dividends at 100% of their distributable monetary assets each year. Distribution of the profit should take place within 30 trading days after the shareholders have accepted the annual report.

REITs and SPVs should not enter into any agreement which limits their dividend payment obligation (except for loan agreements with financial institutions).

2.7 Sanctions

Penalties/loss of status rules
REITs that do not meet the requirements are deleted from the records and lose tax privilege

The tax authority will delete REITs from its records if the requirements are not met or not corrected within 90 days.

REITs should start their activities within six months of registration, and they cannot suspend their

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activities for more than six months; otherwise, the tax authority will delete them from its records.

REITs that do not meet the requirements determined by law cannot apply for the benefits (from the day when the resolution on the deletion from the registry issued by the tax authority becomes effective). From that point onwards, the REIT will be taxed similarly to an ordinary company.

As a general rule, if the real-estate pre-company is not registered as a REIT, then it is liable to pay twice the corporate income tax and local business tax that were due without applying for the REIT regime's tax benefits. A similar rule should be applied to the SPVs of pre-companies

3 Tax treatment at the level of the REIT

3.1 Corporate tax/local business tax/withholding tax

Operative income	Capital gains	Withholding tax
- Corporate income tax and local business tax-free status are available for REITs and SPVs - Certain related-party transactions could be subject to corporate income tax if arm's length prices are not met	Received capital gains are tax-free for corporate income tax and local business tax purposes	Received capital gains are tax-free for corporate income tax and local business tax purposes

Operative income

REITs should calculate their corporate income tax base according to the general CIT rules – with some exceptions; however, their corporate income tax base is not subject to tax.

Transactions with related parties that are not REITs are subject to transfer pricing rules. The difference between the arm's length prices and the applied prices in such transactions could be subject to corporate income tax at the REIT level. Income realised on transactions with related parties, which are not subject to the Hungarian REIT legislation, will be subject to Hungarian corporate tax.

Tax losses cannot be carried forward.

REITs local business tax base is tax-free.

Capital gains

By default, received capital gains are part of the profit before taxation. As part of the total income of REITs, the received capital gains are free from corporate income tax and local business tax.

If a REIT owns more than 10% of the shares of a real estate project development company, then the capital gain realised on the sale of the shares or the gain realised on in-kind contribution will be subject to corporate income tax.

Foreign taxes

Considering that any REIT's income is tax-free, it is not possible to credit or exempt foreign taxes on foreign-sourced income.

Accounting rules

An interim audit is required after the registration and deregistration.

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REITs should revalue their real estate units at least quarterly. For the revaluation, the general accounting rules are applicable. Suppose the market value of a real estate unit is higher than its accounting book value. In that case, the difference might be accounted for as extraordinary depreciation and/or as capital depending on the revaluation result (positive/negative) on the real estate units. In the case of REITs performing under IFRS (including SPV), the value of the real estate has to be determined based on a revaluation model or fair valuation model.

Apart from the above revaluation, no special accounting rules apply exclusively to REITs.

REITs (i.e., entities whose shares are traded on the regulated market) have to use IFRS instead of Hungarian GAAP for local reporting purposes once their shares are introduced to the regulated market.

3.2 Transition regulation

Conversion into REIT status
Possible

If a pre-company fulfils the requirement of REIT law, then it has to initiate the REIT registration.

3.3 Registration duties

Registration duties
No duty on capital contribution

The registration fee at the Court of Registration is currently HUF 100,000 (around EUR 265) for public limited liability companies.

There is no duty on capital contribution, except RETT, if the subject of the contribution is a real estate unit.

4. Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends received are tax-deductible for CIT purposes - Capital gains are subject to corporate income tax; however, participation exemption rules could apply	- Individual shareholders are subject to a 15% personal income tax on their dividend income - Dividends are subject to a 13% social contribution; however, if the individual shareholder’s annual income exceeds 24 times the monthly mandatory minimum wage, the exemption could be applied	There is no dividend withholding tax in Hungary on dividends paid to non-private individual entities.

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Corporate shareholders

According to the general rules, dividends received by corporate shareholders are tax-deductible for CIT purposes in Hungary.

Capital gains are subject to corporate income tax; however, the general participation exemption rules could apply. Domestic or foreign participation can be considered an 'announced participation', which should be reported to the tax authority within 75 days of the acquisition. The capital gains on such participations held for at least one year are exempt from corporate taxation. Any loss on write-offs, foreign exchange or losses incurred when cancelling from the books (except during transformations) should be added back to the corporate income tax base.

Individual shareholder

Individual shareholders are subject to a personal income tax of 15% on their dividend income. There is a 13% social contribution tax on dividends unless the individual's annual taxable income exceeds 24 times the mandatory monthly minimum wage (in FY23, HUF 5,568,000, around EUR 14,736). The personal income tax and the social contribution tax charge (if applicable) should be deducted and paid to the tax authority by the REIT.

Capital gains on the sale of shares in REITs are subject to personal income tax at 15%. Direct expenses related to the acquisition of the shares are deductible. A 13% social contribution charge (exemption, as described above) exists on capital gains not derived from securities on an EEA exchange market.

Withholding tax

Hungary has no dividend withholding tax on dividends paid to non-private individual entities.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Distributed dividends are not subject to Hungarian corporate income tax	- Foreign individual shareholders are subject to personal income tax at 15% on their dividend income - Treaty rates may apply - Individuals not resident for social security purposes are not subject to social contribution tax on dividends and capital gains	There is no dividend withholding tax in Hungary

Corporate shareholders

Distributed dividends are exempt from Hungarian corporate income tax even if the receiver is not a Hungarian entity.

Hungarian REITs listed on an accepted stock exchange should not be qualified as real estate holding companies for Hungarian corporate tax purposes; therefore, the capital gains realised on the sale of shares in such Hungarian REITs should not be subject to corporate income tax in Hungary.

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Individual shareholder

Foreign individuals are only liable for personal income tax at 15% on gains realised on the sale of shares; however, the tax can be reduced or eliminated by an applicable double taxation treaty. Individuals not resident for social security purposes are not subject to social contribution tax on dividends and capital gains.

Withholding tax

Hungary has no dividend withholding tax on dividends paid to non-private individual entities.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
- Capital gain on the sale of shares of real estate companies could be subject to Hungarian corporate income tax - Treaty exemptions may be applicable	- Received dividends are generally exempted - Capital gains are subject to corporate income tax; however, participation exemption rules could apply	- Individual shareholders are subject to personal income tax at 15% on their dividend income - Dividends are subject to 13% social contribution; however, if the individual shareholder's annual income exceeds 24 times the monthly mandatory minimum wage, the exemption could be applied

Foreign REIT

Foreign REITs could be taxed on Hungarian source income and capital gains on taxable Hungarian properties.

The sale of a share in a so-called Hungarian real estate holding company is subject to corporate tax. For Hungarian CIT purposes, real estate holding companies are business entities whose shares are not traded on a recognised exchange market. In addition, real estate holding companies are those that also own real estate in Hungary, constituting more than 75% of the balance sheet value of their assets or the consolidated balance sheet with their related parties. Their shareholders should be residents in jurisdictions that do not have tax treaties with Hungary or where the treaty allows Hungary to levy tax. The tax is based on the selling price of the shares, reduced by the purchase price paid and other justifiable costs. The tax can be reduced or eliminated by an applicable double taxation treaty.

In the case of Hungarian real estate transactions, treaty rules are applicable.

Corporate shareholders

Dividends received from foreign sources (including foreign REITs) are free from Hungarian corporate income tax unless the foreign payer qualifies as a controlled foreign company.

Capital gains are subject to corporate income tax; however, participation exemption rules could apply.

A domestic tax credit system is available for companies to avoid double taxation on foreign-source income. Hungarian tax treaties apply either the exemption or the credit method to prevent double taxation.

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Individual shareholder

Under its double taxation treaties, Hungary mainly gives tax relief through exemption. The wording of each double-taxation treaty should be considered on its own merits. If the income is derived from a jurisdiction that does not have a tax treaty with Hungary, then the individual shareholders are subject to personal income tax at 15% tax on their dividend income from that source. However, foreign withholding tax can be credited against the Hungarian tax liability with certain limitations.

By default, the 13% social contribution charge on dividends not derived from securities on an EEA exchange market is applicable; however, a possible exemption could be investigated for each case.[2]

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2 This document has been prepared based on the rules applicable in Hungary at the date of May 19, 2023..

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A comparison of the major REIT regimes around the world.

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1 General introduction

Citation	REIT type
Introduced by the Finance Act 2013	Corporate entity

Irish REITs, as a property investment vehicle, provide an opportunity for a diversified investment in real estate to both Irish and overseas investors. In addition, REITs allow smaller-scale investors the opportunity to generate property investment returns in a regulated environment. Since the introduction of the Irish REIT legislation in the Finance Act 2013, four REITs (Green REIT plc, Hibernia REIT plc, IRES REIT and Yew Grove REIT plc) have been established in Ireland. Between them, they have managed to raise more than EUR 2 billion. In 2019, Green REIT was sold and ceased to be a REIT. In 2022, Yew Grove Reit PLC and Hibernia REIT plc ceased to be REITs. The only remaining Irish REIT is IRES REIT.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Ireland	1	1	504,53	0.03%

Top REITs*

Company name	Mkt Cap (EUR m)	1yr return (EUR) %	Div Yield	% of Global REIT Index
Irish Residential Properties REIT	504,16	-21,50%	5%	0,03%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
- Notice must be filed to become a REIT/Group REIT - Certain conditions for REIT/Group REIT status

A notice must be filed with the Irish Revenue Commissioners to become a REIT. The notice shall contain a statement to the effect that the REIT or a principal company of a ‘Group REIT’ is:

i. incorporated under the Irish Companies Acts 1990;

i. resident in Ireland for Irish tax purposes and not resident in another country;

i. listed on the main market of a recognised stock exchange in an EU Member State; and

i. not a closely controlled company for corporation tax purposes (unless owned by certain ‘qualifying

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investors' such as pension funds, life businesses, Qualifying Investor Alternative Investment Funds (QIAIF)(an Irish regulated non-UCITs fund structure), charities and the National Asset Management Agency (NAMA).

In respect of conditions (iii) and (iv), the REIT or the principal company of a Group REIT has a grace period of three years from when it becomes a REIT to meet these conditions. This will enable companies to acquire REIT status and then have three years to diversify their shareholders and raise additional finance to facilitate a listing.

In addition, each of the following conditions should be met by the REIT or the Group REIT for each accounting period:

i. At least 75% of the aggregate income of the REIT or Group REIT must derive from carrying on a property rental business;

i. The property rental business conducted by the REIT or Group REIT must consist of at least three properties. The market value of any one of these properties should not exceed 40% of the total market value of the property rental portfolio held by the REIT/Group REIT;

i. The REIT or Group REIT must maintain a ratio of at least 1.25:1 in respect of property income and property finance costs to property finance costs;

i. At least 75% of the aggregate value of the assets of the REIT or Group REIT relate to assets of the property rental business;

i. The debt of the REIT or the Group REIT shall not exceed 50% of the market value of the assets of the REIT or Group REIT; and

i. Subject to having sufficient distributable reserves, at least 85% of the REIT's or Group REIT's property income must be distributed to shareholders within nine months of the year-end.

In respect of condition (ii) above, the REIT or Group REIT has a grace period of three years from when it becomes a REIT to meet this condition.

Every REIT or principal company in respect of a Group REIT shall, by February 28 each year, make a statement to the Revenue Commissioners confirming that the above conditions have been met.

Since 1 January 2015, where subsequent to the initial notice referred to above, a new company is incorporated or acquired by the Group REIT as a wholly-owned subsidiary, an amended notice must be filed with the Revenue Commissioners (Form REIT 2A). The amended notice must be made within 30 days of the new company becoming a member of the Group REIT. This amended notice must specify the following:

- The date from which the new company will become a member of the Group REIT;
- A statement that the conditions referred to above in relation to the Group REIT are reasonably expected to be met at the end of the accounting period in which the amended notice is made; and
- A list of all the members of the group to which the Group REIT designation will apply.

Where the above-amended notice is not made within 30 days from the date the new company becomes a member of a Group REIT, the principal company shall be deemed to have made a notice to the Revenue Commissioners that it has ceased to be a Group REIT from a date that is 30 days after the date the new company became a member of the group.

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2.2 Legal form/minimum share capital

Legal form	Minimum share capital
The REIT must be an Irish-incorporated company listed on a main market of a recognised stock exchange in an EU Member State.	A Public Limited Company (PLC) must have an allotted share capital of not less than EUR 25,000

Legal form

The REIT or a principal company of a Group REIT must be listed on the main market of a recognised stock exchange in an EU Member State.

The REIT or the principal company of a Group REIT must be an Irish tax resident, and an Irish incorporated company.

Other members of a Group REIT need not be Irish incorporated and can be tax-residents outside of Ireland.

Minimum share capital

Public Limited Companies must have a nominal value of share capital of not less than EUR 25,000. An Irish REIT may only have one class of ordinary shares, but it can also offer non-voting preference shares that carry no rights to dividends other than dividends at a fixed rate.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
- Must not be a 'close' company - A single corporate shareholder may not own 10% or more of the shares/voting rights	The principal company of a REIT needs to be listed on a main market of a recognised Stock Exchange in an EU Member State.

Shareholder Requirements

The REIT must not be a 'close company'. A company is 'close' where five or fewer shareholders control it. However, where a listed company is under the control of five or fewer participators, it shall not be treated as close if shares in the company carrying not less than 35% of the voting power are 'held by the public'. Broadly, shares are considered 'held by the public' if the shares do not comprise part of a principal shareholder's holding. A principal shareholder is a shareholder that possesses more than 5% of the voting power of the company, and where there are more than five such shareholders if such a person is one of the five persons who possess the greatest percentages. Shares held by pension funds or non-close companies will be considered 'held by the public'.

The close company rule will not apply where the shares in the REIT or the principal company of a Group REIT are controlled by 'qualifying investors', i.e., pension funds, life businesses, QIAIFs, charities and NAMA.

Where a shareholder holds 10% or more of the share capital with voting rights in the REIT or the principal company of a Group REIT or is entitled to 10% or more of a distribution, and the REIT or Group REIT has not taken 'reasonable steps' to prevent distribution to such a shareholder, then the REIT or Group REIT shall be deemed as receiving an amount of income equal to the amount of the distribution to the

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shareholder. This income shall be taxable at the 25% rate, and no loss allowance or expense may be set against it for the purposes of calculating the amount chargeable to tax. The 10% shareholding rule does not apply to a 'qualifying investor', i.e., pension funds, life businesses, QIAIF, charities and NAMA.

It is unclear what will be considered 'taking reasonable steps', and there is no guidance to date on this point.

The above penalty for excessive shareholdings will not apply in the first three years of the REIT. This provision should give the REIT time to attract new investors and thus diversify its shareholders.

Listing requirements

As stated above, to qualify as a REIT, the company must be listed on a main market of a recognised stock exchange in an EU Member State. The requirement for the listing to be on a main market, compared to listing on a smaller alternative market, will result in additional costs/regulation and may deter smaller vehicles from taking up REIT status.

2.4 Asset level/activity test

Restrictions on activities/investments
- At least 75% of the REIT or Group REIT's aggregate income must be derived from the property rental business - At least 75% of the market value of the REIT must relate to assets of the property rental business. - Within three years of commencement, the REIT must hold at least three separate assets, none of which has a market value in excess of 40% of the market value of the property rental assets - The REIT can hold Irish and non-Irish assets - The property rental assets may be either commercial, industrial or residential

A REIT can carry on a non-property rental business (the residual business). However, 75% of a REIT or Group REIT's aggregate income must derive from its property rental business, which generates rental income from properties. Capital gains on the sale of assets are not considered income for the purposes of the 75% income test.

Where the REIT or Group REIT raises cash either by selling a rental property or raising cash from the issue of ordinary share capital and invests the cash in non–property rental assets, then the profits from such investments will be treated as profits of the property rental business during the first 24 months following the sale or share issue ('reinvestment provision'). Following the 24month period, the profits will be treated as profits of the residual business. This should give REITs time to consider various reinvestment opportunities. It should be noted that the reinvestment provisions will not apply to funds raised by way of a preference share issue.

In addition to the income test, there is an asset test that requires that 75% of the market value of the REIT or Group REIT relates to assets of the property rental business. On a strict technical reading of the legislation, the reinvestment provisions will only apply to the 75% income test and not to the 75% asset test. However, we understand the revenue is prepared to apply the reinvestment provisions to the 75% asset test. Therefore, proceeds from share issues and property sales should be treated as property rental assets for a period of two years. The 75% asset and income test should limit the amount of investment in non-property rental-generating assets.

In the case of a Group REIT, the 75% asset and income test will be determined using the group's consolidated accounts.

A REIT or Group REIT must hold at least three separate property rental assets directly, and no one of these assets can exceed 40% of the market value of the total portfolio.

Qualifying properties may be residential, industrial or commercial and in any location worldwide.

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Offices used in carrying on the business of the REIT itself are unlikely to be considered property rental assets for the purposes of the asset tests mentioned above. It should also be noted that if these offices cease to be used for the residual business and begin to be used for the property rental business, the asset shall be deemed to have been sold and reacquired by the REIT at market value. The deemed gain will be subject to Capital Gains Tax at 33%.

2.5 Leverage

Leverage
Profit/financing ratio

The REIT or Group REIT must maintain a profit/financing ratio of at least 1.25:1. The ratio is calculated as follows:

Property income plus property finance costs: property finance costs

Property income plus property finance costs: property finance costs.

Property financing costs will include interest, net swap or hedging costs, and fees such as arrangement and commitment fees associated with raising debt finance.

Increases in interest rates or drops in rental yields may negatively impact this ratio and result in a penalty, as described above. In addition, it may result in the company or group's REIT status being cancelled.

While the profit/financing ratio appears generous, it will need to be considered in conjunction with the requirement that debt shall not exceed 50% of the market value of the assets of the REIT/Group REIT, i.e., all of the assets of the REIT/Group REIT and not just property rental assets. In general, while the financing costs should be monitored, Irish REITs should be in a position to meet the 1.25:1 financing ratio.

2.6 Profit distribution obligations

Property income	Capital gains	Timing
85% of property income must be distributed to shareholders	Must be reinvested or distributed within 24 months, after which it forms part of property income	On or before the tax return filing date for the relevant accounting period

Property Rental Income

At least 85% of property rental income earned by the REIT/Group REIT in an accounting period must be distributed to shareholders on or before the REIT's tax return filing date, i.e., within nine months of the period/year-end.

Where a REIT fails to make the required distribution, the REIT or the principal company of the REIT will be chargeable to tax at 25% on:

i. Where no distribution is made, the amount chargeable will be equal to 85% of the property income for the period; or

ii. Where a distribution is made, but it is less than 85% of the property income, the amount chargeable will be the difference between the distribution made and the amount equal to 85%.

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No deductions may be made in arriving at the amount chargeable to tax.

It should be noted that where the REIT is restricted under company law from distributing all or part of the property income (e.g., the company does not have sufficient distributable reserves), then regard will be had to this restriction when calculating the amount chargeable to tax. This will prevent a situation whereby, for example, a company is penalised for not distributing property rental income even though, under company law, it was not in a position to make a distribution due to insufficient distributable reserves.

Capital gains

While previously, the 85% distribution requirement did not apply to gains arising from the disposal of real estate, with effect from midnight on October 8, 2019, where the REIT or Group REIT disposes of a property of the property rental business, the 'net proceeds' broadly must, within 24 months of the date of the property disposal (or by the date the REIT ceases to be a REIT, if earlier), be:

a. invested in the acquisition of a new property; or

b. Distributed to the shareholders of the REIT or the shareholders of the principal company of the Group REIT, as the case may be.

Amounts not so reinvested or distributed will, at the end of the 24-month period, then be treated as part of the REIT's property income, 85% of which must be distributed annually. Any shortfall will be subject to tax at 25%.

Other profits

There is no requirement to distribute non-property rental profits. However, as mentioned, these will be considered 'bad' assets for the purposes of the 75% asset test, and any income deriving from them will be considered 'bad' income for the purposes of the 75% income test.

2.7 Sanctions

Penalties/loss of status rules
Tax penalties and potential loss of REIT status

Penalties or the withdrawal of REIT status may arise where any of the conditions (see 2.1) are breached.

Every REIT or the principal company of a Group REIT shall, by February 28 of each year, deliver a statement to the Revenue Commissioners confirming that all of the conditions have been met throughout the most recently ended accounting period. Where a condition has been breached, and it is not possible to make such a statement, the REIT or the principal company of a Group REIT shall provide details of the revenue of the breach and how it intends to rectify such breach. Where within a reasonable period of time, as determined by the Revenue Commissioners, the REIT or the principal company of a Group REIT fails to rectify the breach, then the Revenue Commissioners may issue a notice withdrawing REIT status, and this withdrawal will take effect from the end of the previous accounting period.

The fact that a REIT will be given time to rectify a breach should ensure that a company does not automatically lose its REIT status due to an unavoidable breach, e.g., an increase in interest rates, drop in rental yields or property values etc.

In addition, penalties may arise in the following circumstances:

1. Where a shareholder holds 10% or more of the share capital with voting rights in the REIT or Group REIT or is entitled to 10% or more of distribution, and the REIT or Group REIT has not taken

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reasonable steps to prevent distribution to such a shareholder, then the REIT or Group REIT shall be deemed as receiving an amount of income equal to the amount of the distribution to the shareholder. This income shall be taxable at the 25% rate. (See 2.3 above);

2. The REIT or Group REIT must maintain a profit financing ratio of at least 1.25:1. Where this requirement is breached, the REIT shall be chargeable to tax at the rate of 25% on the amount by which the property financing costs would have to be reduced for the property financing cost ratio to equal 1.25:1. (See 2.5 above); or

3. Where a REIT fails to make the required 85% distribution, the REIT or the principal company of the REIT will be chargeable to tax at 25% on the amount that was not distributed. (See 2.6 above)

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
- Income from a property rental business is exempt from corporation tax - Residual business income is taxable at mainstream CT rates (i.e., 12.5% on trading profits, 25% on passive income or income from an 'excepted trade') - Deposits of a REIT or a Group REIT are exempt from deposit interest retention tax (DIRT)	- Gains realised on disposals of assets used in the property rental business are not subject to tax - Gains on the disposal of other investment assets are subject to Capital Gains Tax (currently 33%) - Profits from trading in land are taxed at 25%	Property income dividends paid by the REIT are subject to Dividend Withholding Tax at 25%

Property Rental Income

Income from the property rental business is not subject to corporation tax. Non-rental business income (residual income) will be taxable at the rate of 25% unless such activities constitute a trade (other than an 'excepted trade', as defined by Irish tax law), in which case such profits will be taxable at the 12.5% rate.

Capital Gains

Capital gains or losses arising on the disposal of property used in a REIT's or Group REIT's property rental business are not taxable.

The REIT or Group REIT may develop a property for use in its property rental business. Profits on the disposal of such developed properties may be taxable at the rate of 25% if the cost of such development exceeds 30% of the market value of the property at the date on which the development commenced, and the property is sold within three years of the completion of development.

Thus if the development costs do not exceed 30% of the market value of the property at the date on which the development commenced or if the development costs exceed the 30% threshold but are held for at least three years after the completion of development, then any gains on disposal will be exempt.

Where properties are acquired that do not form part of the REIT's property rental assets and are not an investment, then profits on the disposal of such assets will be subject to corporation tax at 25%. For example, if a company acquired a portfolio of properties with the intention of disposing of non-core assets, then any profits on such disposals would be subject to corporate tax at 25%.

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Withholding tax

Dividend Withholding Tax (Dividend Withholding Tax) at 25% on distributions will be levied on distributions made to all investors unless the investor is an exempt qualifying investor such as a pension fund and certain investment funds. For non-resident investors, this should be their final liability to tax. Certain non-residents may be entitled to recover some of this Dividend Withholding Tax under their tax treaties.

Other taxes

Irish stamp duty of 1% will apply to the purchase of shares in a REIT. The REIT itself will pay stamp duty on the purchase of Irish property. The rate of stamp duty on non-residential property was increased by the Finance Act 2017 from 2% to 7.5%%. Land acquired for residential development is generally treated as commercial land for stamp duty purposes. However, the Finance Act 2019 provides for a stamp duty refund of the difference between 7.5% and 2% in respect of land acquired for residential property development where certain conditions are met. The rate of stamp duty for residential property will be 1% on the first EUR 1 million and 2% on any amount in excess of EUR 1 million. In certain cases, a rate of 10% will apply (see below).

Foreign tax-resident companies

As mentioned above, a foreign tax resident company may be considered part of a Group REIT. Broadly, companies that are tax-resident outside of Ireland should not be under the charge of Irish corporation tax. However, such entities would be subject to the tax regimes in the countries where they do business and, therefore, may suffer foreign tax. On repatriation to Ireland, such dividends to the extent paid out of property rental profits should be exempt. Dividends received by an Irish tax resident company paid out of non-rental profits, including capital gains, will be subject to tax in Ireland. A credit for foreign taxation should be available in Ireland to set against Irish tax.

Accounting rules

As the REIT/Group REIT will be listed on an EU stock exchange, it will be required to prepare consolidated accounts under International Financing Reporting Standards (IFRS).

For periods commencing on or after January 1, 2015, the individual accounts of the parent company and any of its subsidiaries must be prepared under FRS101, FRS102 or IFRS.

The consolidated accounts prepared under IFRS will be used in determining the 75% asset/income test. Thus assets/income such as inter-company debt receivables, interest and dividends should not be taken into account in determining the 75% asset/income test.

Transition regulations

Conversion into REIT status
Subject to the below, there is no conversion charge on converting a company to a REIT.

However, where the company held property prior to conversion, then that property is deemed to have been sold by the company at market value at the date of conversion. Any gain would be subject to tax at 33%.

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3.2 Registration duties

Registration duties
Irish stamp duty of 1% will apply to the purchase of shares in a REIT. In certain cases, a 10% rate may also apply e.g. broadly where the REIT holds a portfolio of houses.

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Distributions from an Irish REIT to an Irish corporate shareholder will be chargeable to tax at 25%, with some exceptions - Generally, Capital Gains Tax at 33% will apply to any gains arising on a disposal of shares in a REIT	- Irish resident shareholders will be liable to income tax at marginal rates plus Universal Social Charge (USC) and Pay Related Social Insurance (PRSI) - Capital Gains Tax at 33% will apply to any gains arising on a disposal of shares	- Withholding tax is deducted at 25% on Property Income Dividends

Corporate shareholder

Subject to certain exceptions, Irish resident corporate shareholders will be liable to corporation tax at the rate of 25% on income distributions from a REIT.

Capital gains arising from the disposal of shares of an Irish REIT will be taxable at 33%.

Individual shareholder

Irish resident individual shareholders in a REIT will be liable to income tax on distributions at their marginal rates together with USC and PRSI. The Irish resident individual shareholders will receive a tax credit in Ireland for the withholding tax deducted by the REIT on payment of the dividend.

Capital gains arising from the disposal of shares of an Irish REIT will be taxable at 33%.

Withholding tax

Withholding tax is deducted at 25% on Property Income Dividends. Irish resident individuals and corporates will be able to credit this withholding tax against their final tax liability.

Non-Property Income Dividends will be subject to the normal Dividend Withholding Tax (Dividend Withholding Tax) rules. Thus Dividend Withholding Tax will be deducted from dividends made to individuals. Generally, Dividend Withholding Tax will not be deductible on dividends made to corporates subject to certain conditions being met.

Irish resident pension funds, insurance companies and other exempt persons will be exempt from Dividend Withholding Tax.

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4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- 25% final withholding tax for property income dividends - Disposal of shares in an Irish REIT is outside the scope of Irish Capital Gains Tax	- 25% final withholding tax for property income dividends - Disposal of shares in an Irish REIT is outside the scope of Irish Capital Gains Tax	- Certain non-residents may be entitled to recover some or all of the Dividend Withholding Tax deducted from the Irish Revenue Commissioners - Otherwise, a foreign investor may be in a position to claim credit for Dividend Withholding Tax against taxes in their country of residence

Corporate shareholder

Foreign shareholders will receive property income dividends net of 25% withholding tax.

Certain shareholders may be in a position to claim a refund or part refund of this Dividend Withholding Tax from the Irish Revenue Commissioners depending on the provisions of the relevant tax treaty. Note in this regard that Ireland deposited its ratification instrument with the OECD for the Multi-Lateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (‘MLI‘) on January 29, 2019. The MLI, therefore, needs to be considered in conjunction with the relevant double tax treaty when considering tax treaty relief.

Otherwise, a foreign tax credit should be available against the foreign tax charged on those profits (depending on the rules of the country in which the corporate is resident).

Other non-property income dividends will be subject to Dividend Withholding Tax, but generally, a corporate resident in an EU or treaty country or a corporate not resident in a non-EU/treaty country but under the control of person resident in an EU or treaty country is exempt from Dividend Withholding Tax.

Normally, the disposal of shares deriving their value from land and buildings in Ireland would be subject to WithCapital Gains Tax in Ireland. However, as the REIT will be a publicly listed company, Capital Gains Tax will not arise from the disposal of such shares.

Individual shareholders

Foreign shareholders will receive property income dividends net of 25% withholding tax.

Certain shareholders may be in a position to claim a refund or part refund of this Dividend Withholding Tax from the Irish Revenue Commissioners depending on the provisions of the relevant tax treaty and the MLI.

Otherwise, a foreign tax credit should be available against the foreign tax charged on those profits (depending on the foreign country’s rules in which the individual is resident).

Other non-property income dividends will be subject to Dividend Withholding Tax, but generally, an individual resident in an EU or treaty country should be exempt from Dividend Withholding Tax.

Normally, the disposal of shares deriving their value from land and buildings in Ireland would be subject to Capital Gains Tax in Ireland. However, as the REIT will be a publicly listed company, Capital Gains Tax will not arise from the disposal of such shares.

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Withholding tax

Regarding property income distributions, a Dividend Withholding Tax of 25% will be charged on distributions made to a corporate or individual non-resident shareholder. Treaty relief may be claimed retrospectively.

A Dividend Withholding Tax will apply on distributions made out of other non-property income subject to any of the normal exemptions.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Taxed under standard Irish tax rules	Taxable at 25%, but creditable	Subject to income tax, PRSI and USC

Foreign REIT

A REIT resident outside Ireland and investing in Irish property will be chargeable to corporation tax of 25% on Irish rental profits.

Tenants will be obliged to pay the non-resident landlord rent net of income tax of 20%. The tenant should pay the withholding tax to the Revenue Commissioners. Alternatively, the non-resident landlord may appoint a local agent. In this case, the tenant will pay the gross rent, but the agent will be assessed Irish tax on the rental income.

Gains on the disposal of Irish property will be subject to Irish corporation tax at an effective rate of 33%. However, where a property was acquired in the period from December 7, 2011, to December 31, 2014, and continues in the ownership of the person who acquired that property for a period of at least four years from the date it was acquired, then any uplift in the value of the property during that four-year period will be exempt from Capital Gains Tax. This exemption can be extended to seven years, where a relevant property is held for seven years from the date of acquisition. The tapering relief applies to properties held for longer than seven years. This provision has not been extended beyond December 31, 2014.

Corporate shareholder

Distributions from a foreign REIT will be subject to Irish tax at the rate of 25%. Credit against the Irish tax liability should be available for foreign taxes paid.

Capital gains arising from the disposal of shares of a foreign REIT will be taxable at 33%.

Individual shareholder

Income distribution from a foreign REIT will be liable to Irish income tax at the taxpayer’s marginal rate together with PRSI and USC. A credit against the Irish tax liability may be available for foreign taxes paid.

Capital gains arising on the disposal of shares in a foreign REIT will be taxable at 33%.

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SIIQ

A comparison of the
major REIT regimes
around the world.

2023

1 General introduction

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	Enacted year	Citation	REIT type
SIIQ/SIINQ	2007	- Law No. 296/2006 and subsequently issued Regulations and Guidance - Amended by Law Decree No. 133/2014 (converted into Law No. 164/2014)	Corporate entity

The Italian REIT regime was introduced in Italy by Law No. 296/2006, which provides for a special civil law and tax regime applicable to Italian-listed real estate investment companies that meet certain requirements defined by law and whose main activity is the rental of real estate properties (Società d'Investimento Immobiliare Quotate, SIIQs).

The SIIQ regime is also applicable to non-listed Italian real estate investment companies that are subsidiaries of SIIQs if certain conditions are met (Società d'investimento immobiliare non quotate, SIINQs).

The SIIQ regime has been subsequently amended by Law Decree No. 133/2014 (converted into Law No. 164/2014), which entered into force in September 2014 and whose principal purposes were to foster the use of this investment vehicle in the Italian real estate sector and to increase the permeability between SIIQs and Italian real estate investment funds. With such amendment, specific provisions regarding the conversion of real estate investment funds in the liquidation phase into SIIQs have been introduced, allowing the contribution of real estate assets to SIIQs with almost no tax burdens, both for direct and indirect taxes purposes.

Furthermore, recent amendments have been introduced by Law No. 234/2021 (Budget Law 2022) to the requirements for the qualification of a company as SIINQ to facilitate joint ventures between SIIQs and Italian real estate investment funds.

The legal framework for SIIQs and SIINQs also includes the secondary legislation (Decree of the Ministry of Finance No. 174/2007), which, at the date hereof, has not been amended yet in order to implement the changes introduced by Law Decree No. 133/2014.

The Revenue Agency provided the main clarifications regarding the SIIQ regime with Circular Letter No. 8/E/2008 and Circular Letter No. 32/E/2015 (the latter in order to clarify and implement the rules introduced with Law Decree No. 133/2014). Moreover, with the Regulations of 18 December 2015, the Revenue Agency provided for the form to be filed in order to exercise the option for the SIIQ and SIINQ regime. In the course of 2022 and 2023, the Revenue Agency rendered public several tax rulings addressing specific aspects of the SIIQ regime.

Sector summary*

Listing country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
Italy	1	1	267,22	0,01%

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Top REITs*

Company name	Mkt cap (EUR m)	1 yr return (EUR) %	Div yield	% of Global REIT Index
Igd - Immobiliare Grande Distribuzione	267,03	-24,08%	12%	0,01%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
- Election for the SIIQ and SIINQ regime must be filed with the Revenue Agency - Certain conditions are required for SIIQ and SIINQ status

An eligible listed real estate investment company must file a specific form with the Italian Revenue Agency to opt for the SIIQ regime by the end of the fiscal year prior to the year in which the company shall apply the SIIQ regime.

SIINQs must opt for the special regime jointly with the SIIQ parent company. In such regard, the Revenue Agency (Circular Letter no. 8/E/2008) clarified that ‘jointly’ must be intended as for the same or for a subsequent tax period to the tax period for which the SIIQ exercised the option.

It is not necessary that all the requirements to obtain the SIIQ status are met at the date of the filing of the form since specific provisions have been introduced by Law Decree No. 133/2014 extending the grace period during which such requirements must be met (so-called ‘preliminary SIIQ regime’ – see par. 2.3).

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Joint-stock company (for SIIQs) Joint-stock company, partnership limited by shares, limited liability company (for SIINQs)	Listing requirements (for SIIQs)

Legal form

The SIIQ must be a joint-stock company (Società per Azioni) listed on a regulated market.

Following the entry into the SIIQ regime, the company’s name must include the words ‘Società d’Investimento Immobiliare Quotata’ or ‘SIIQ’; therefore, the company’s by-law must be amended accordingly (together with other amendments required by law).

Following the amendments introduced by the 2022 Budget Law, the SIINQ may be a joint-stock company (Società per Azioni), a partnership limited by shares (Società in accomandita per azioni) or a limited

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liability company (Società a responsabilità limitata), with a minimum share capital of 50.000 Euros, whose shares are not listed.

Moreover, the SIIQ regime applies also to permanent Italian establishments of foreign REITs established in the EU/EEA States, which allow an adequate exchange of information with Italy.

Minimum share capital

The ordinary listing requirements in respect of share capital are applicable to SIIQs.

2.3 Shareholders requirements/listing requirements

Shareholders' requirements	Listing mandatory	Foreign Shareholders' Restrictions
- At least 25% of the shares must be 'widely held' - A single shareholder is not allowed to own more than 60% of voting rights and profit participation rights - For SIINQs, more than 50% of voting rights and profit participation rights must be owned by a SIIQ (or SIINQ) or, alternatively, 100% of voting rights and profit participation rights are owned by a SIIQ (or SIINQ) and Italian real estate investment funds with certain characteristics	- Yes, for the parent company (SIIQ) - Not for subsidiaries (SIINQ)	No specific foreign shareholders restrictions has been enacted

Shareholders requirements

With respect to ownership requirements for SIIQs, no single shareholder should hold, directly or indirectly, more than 60% of voting rights and profit participation rights.

The 60% shareholding requirement must be satisfied without interruption. An exception is provided if such a requirement is not satisfied because of M&A transactions or capital market transactions since, in this case, the SIIQ regime is suspended.

At least 25% of the SIIQ shares must be owned by shareholders that individually hold, directly or indirectly, less than 2% of voting rights and profit participation rights. It is worth noting that the 2% threshold is required for access to the SIIQ regime, but it does not affect the SIIQ status after the election. The 25% requirement is not applicable to companies already listed on regulated markets.

The aforesaid ownership requirements must be met within the end of the first fiscal year of application of the SIIQ regime. The SIIQ regime that has applied since the beginning of such a fiscal year.

However, Law Decree No.133/2014 has introduced a 'preliminary SIIQ regime' extending the timeframe within which the ownership requirements may be satisfied.

In particular, provided that the 25% free-floating threshold is met within the end of the first fiscal year for which the option has been exercised, the 60% shareholding requirement must be met within the 24 following months. In this case, the SIIQ regime has effect from the first day of the fiscal year in which the 60% threshold is satisfied.

Until both the ownership requirements are met, the Italian corporate income tax (IRES – a standard rate 24%) and Italian regional tax on business activities (IRAP – standard rate 3.9%) are due pursuant to the ordinary rules.

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On the contrary, the 'entry tax' due for access to the SIIQ regime (see par. 3.2) and other taxes (substitutive tax for direct taxes purposes and mortgage and cadastral taxes on the contribution of real estate assets to the SIIQ) are applied according to the more favourable rules set forth by the SIIQ regime. If the ownership requirements are not timely met, such taxes are re-determined based on the ordinary rules, and the amounts already paid can be offset as a tax credit.

With regard to ownership requirements for SIINQs, following the amendments introduced by the 2022 Budget Law, (a) a SIIQ (or SIINQ) must own more than 50% of the voting rights and profit participation rights of the SIINQ or (b) at least a SIIQ (or SIINQ) together with other SIIQs or SIINQs or Italian real estate investment funds with certain characteristics (i.e. real estate assets held for lease or participation in SIIQs, SIINQs and other real estate funds that invest in the same assets in the same proportions are at least 80% of the total assets) together own 100% of the voting rights and profit participation rights of the SIINQ (provided that the participating SIIQs or SIINQs own at least 50%). Moreover, following access to the special regime, the SIINQs must opt for the consolidation for tax purposes with the SIIQ parent company.

Listing requirements

SIIQ shares must be listed on the Italian stock exchange (Borsa Italiana) or any other recognised stock exchange of the EU/EEA Countries that allows an adequate exchange of information with Italy. The Italian Revenue Agency recently clarified that SIIQs might also be listed on a Multilateral Trading Facility (MTF), such as 'AIM Italia' (Answer to Tax Ruling No. 682/2021).

SIINQ shares must not be listed on a stock exchange.

2.4 Asset level/activity test

Restrictions on activities/investments
- 80% real estate assets requirement (asset test) - 80% real estate income requirement (profit test)

At least 80% of the SIIQ's assets must consist of ('asset test'):

i. Real estate properties to be leased (ownership or other rights); and

ii. Participations accounted as fixed assets in SIIQs/SIINQs/Italian real estate investment funds whose real estate assets held for lease or participation in real estate investment companies, real estate investment funds, SIIQs, SIINQs are at least 80% of the total assets ('Qualifying REIFs').

At least 80% of SIIQ's positive components of income must be ('profit test'):

i. Proceeds from lease activity;

ii. Dividends from leasing activity raising from participations in SIIQs/SIINQs/Qualifying REIFs; and

iii. Capital gains realised on the disposal of real estate properties held for lease or of participations in SIIQs/SIINQs/Qualifying REIFs.

Asset test and profit test must be calculated based on the financial statements (balance sheet and income statement), starting from the first year of application of the SIIQ regime. The Decree of the Ministry of Finance No. 174/2007 and the Revenue Agency (Circular Letter No. 32/E/2015 and Answer to Tax Ruling Nos. 109/2022, 195/2023 and 201/2023) provide further details regarding the tests (in particular, regarding assets and positive components of income to be excluded from the calculation).

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Regarding the asset test, both non-Italian real estate properties held for leasing and real estate assets under construction or subject to renovation works are included in the asset test if they are intended to be leased.

Participation in Qualifying REIFs and proceeds from leasing activity deriving from such participation have been included,in the asset and profile test and by Law Decree No. 133/2014. In such regard, the Revenue Agency (Circular Letter No. 32/E/2015) clarified that real estate SICAFs (i.e., investment companies with fixed capital, introduced in Italy following the implementation of Directive 2011/61/EU – AIFM Directive) are relevant for the purposes of asset test and profit test if they have the requirements to be considered 'Qualifying SICAFs' under the SIIQ regime (see point (ii) above) since they are subject to the same tax regime provided for real estate investment funds.

Moreover, pursuant to Law Decree No. 133/2014, the profit test calculation has been amended to include capital gains on real estate properties and capital gains on participations in SIIQ/SIINQ/Qualifying REIFs/Qualifying SICAFs.

The same tests must be satisfied by the SIINQs.

There are no specific restrictions regarding the activities that SIIQs and SIINQs may carry out. However, only the income deriving from the leasing activity would be exempt from taxation. Indeed, with reference to such income, SIIQs and SIINQs benefit from a favourable 'flow-through' tax treatment (26% withholding tax is applied to distributions). On the contrary, income deriving from activities different from the leasing activity is subject to ordinary income taxes (see par. 3.1).

2.5 Leverage

Leverage
The leverage cannot exceed the ratio resulting from the company's by-law

The company's by-law (after the election for the SIIQ regime) shall mandatorily include the maximum leverage ratio allowed. This provision aims to protect SIIQ's investors through the effective control of the National Security and Exchange Commission (CONSOB) and the Bank of Italy.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
70% of net profits deriving from the leasing activity	50% of capital gains from the leasing activity	- Net profits, annually - Capital gains in the two years subsequent to the disposal

Operative income

SIIQs, each year, must distribute at least 70% of the lower of:

i. Net profits deriving from the leasing activity or from participation in other SIIQs, SIINQs, Qualifying REIFs, Qualifying SICAFs; and

i. Total profits available for distribution, according to Italian civil law provisions.

Income is calculated by the SIIQ as an IFRS adopter, and, therefore, no depreciation of assets is admitted pursuant to IAS 40 (such as increasing profit distribution obligations).

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Capital gains

SIIQs must distribute at least 50% of net capital gains realised on the disposal of real estate properties held for leasing or on the disposal of participations in SIIQs, SIINQs, Qualifying REIFs and Qualifying SICAFs, in the two years subsequent to the disposal.

The Revenue Agency (Circular Letter No. 32/E/2015) clarified that unrealised capital gains accounted in the income statement according to the application of the 'fair value model' under the IAS 40 for real estate properties are not subject to distribution obligations (until they are effectively realised through the disposal of the assets).

The described distribution obligations regarding operative income and capital gains also operate for SIINQs.

2.7 Sanctions

Penalties/loss of status rules
- Loss of SIIQ/SIINQ status - No penalties

The SIIQ/SIINQ status withdrawal occurs if the company fails: (i) to distribute at least 70% of the net profits or (ii) to distribute at least 50% of the net capital gains. In these events, the SIIQ status ceases starting from the year in which operative income/capital gains have been accrued.

Furthermore, the SIIQ/SIINQ loses its status if it does not meet the asset or profit test for three consecutive years.

Finally, as regards SIIQs, they must uninterruptedly meet the maximum holding requirement of 60% (on the contrary, the free-floating requirement may be satisfied only at the moment of the option for the SIIQ regime, as described in par. 2.3).

The forfeiture of the SIINQ status occurs, in addition to the cases mentioned above, if the company ceases to meet ownership requirements or ceases to have the tax consolidation regime in place with the controlling SIIQ.

There are no specific penalties in the case of the withdrawal of the SIIQ or SIINQ status.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
- Income deriving from rental or leasing activity is tax-exempt - Other income is subject to the ordinary corporate and local taxation	- Capital gains deriving from the disposal of rented real estate properties andparticipation in SIIQs, SIINQs, Qualifying REIFs and Qualifying SICAFs are exempt - Other capital gains are subject to the ordinary corporate taxation	Proceeds from leasing activity distributed by Qualifying REIFs to SIIQs are not subject to withholding tax

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Current income

The SIIQ income deriving from the leasing activity and from dividends/proceeds from the leasing activity distributed by SIIQs, SIINQs, Qualifying REIFs, and Qualifying SICAFs are exempt from corporate income tax (IRES) and from regional tax on business activities (IRAP). The tax exemption applies from the beginning of the fiscal year in which the SIIQ regime is adopted. Such income will be taxed only in the hands of the shareholders upon distribution, applying a withholding tax (at a 26% rate), as better described below (par. 4).

The same tax exemption also applies to the lease income realised by SIINQs.

Income deriving from activities different from the leasing activity is subject to ordinary corporate income tax and regional tax on business activities (aggregate 27.9%).

With regard to such a portion of income, SIIQs are subject to ordinary corporate income tax provisions limiting the deduction of interest expenses. In particular, interest expenses (net of interest income) are deductible from IRES taxable base up to 30% of the gross operative income determined for tax purposes (risultato operativo lordo della gestione caratteristica – ROL, approximately, equal to the EBITDA) of the relevant tax period. This provision may not apply to interest expenses on loans secured by a mortgage on real estate assets held for leasing under certain conditions that should be verified on a case-by-case basis.

Capital gains

Capital gains on the disposal of rented real estate properties and from participation in SIIQs, SIINQs, Qualifying REIFs and Qualifying SICAFs are exempt from corporate income tax (IRES) and from regional tax on business activities (IRAP).

Capital gains different from those deriving from leasing activity are fully taxable according to the ordinary capital gains provisions.

Other taxes

Excluding income taxes, other taxes (e.g., property tax (IMU)) ordinarily apply.

Withholding tax

No withholding tax is levied on dividends received by the SIIQ from other SIIQs and SIINQs deriving from rental activities.

Moreover, according to the amendments introduced by Law Decree No. 133/2014, the 26% withholding tax ordinarily applied on proceeds distributed by Italian real estate investment funds is not applicable to proceeds from leasing activity distributed by Qualifying REIFs and Qualifying SICAFs to SIIQs or SIINQs.

Dividends distributed to SIIQs or SIINQs by other entities are subject to the ordinary regime.

Accounting rules

Since SIIQs are Italian publicly listed companies, they must adopt IFRS standards. In addition, SIIQs shall set up two different sets of accounts with the purpose of distinguishing the net profits deriving from the 'exempt' activity (i.e., the activities which can benefit from the tax flow-through treatment) and any other activities carried on.

Moreover, pursuant to the special regime, SIINQsmust adopt the IFRS standards for their financial statements.

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3.2 Entry tax

Conversion into REIT status
- 20% substitute tax on real estate properties contributed to SIIQs - 20% 'entry tax'

Real estate properties contributed to a SIIQ can be subject to a 20% substitute tax on realised capital gains instead of the ordinary taxation (by the option of the conferor), provided that the SIIQ retains the assets for a minimum three-year period.

Moreover, companies opting for the SIIQ regime are required to align the fiscal value of their real estate assets to their fair value, determined at the beginning of the first fiscal year in which the SIIQ regime applies (step-up of the fiscal value). Such an increase of the fiscal value may be alternatively subject to a 20% substitutive tax (so-called 'entry tax') or included in the taxable income for corporate income tax (IRES) and from regional tax on business activities (IRAP) purposes (under the ordinary rules). The Revenue Agency clarified that, in case of a previous step-up of the value of the real estate assets pursuant to specific rules, the fiscal value to be considered for entry tax purposes is the stepped-up value. However, in principle, such rules provide for the relevance of the higher fiscal value starting from a subsequent tax period (Answer to Tax Ruling Nos. 109/2022, 142/2023 and 201/2023).

If the capital gains are subject to the 20% entry tax (payable in five equal annual instalments), the higher fiscal value of the assets will be effective from the fourth period following that in which the company opted for the SIIQ regime. If the assets are sold before such date, capital gains are taxed at the ordinary tax rate (i.e., IRES and IRAP at an aggregate rate of 27.9%), while the 20% entry tax already paid can be offset as a tax credit. Thus, applying for the SIIQ regime offers the opportunity of reducing the tax burden on latent capital gains.

On the contrary, if capital gains are included in the taxable income, they are subject to the ordinary IRES and IRAP rules for the taxation of capital gains.

In addition, tax losses realised before the election for the SIIQ regime can be used to offset the tax base for the calculation of the 20% entry tax under the ordinary limits (i.e., within the limit of 80% of the taxable income, as clarified by the Revenue Agency in the Circular Letter No. 32/E/2015).

The same provisions also apply to SIINQs.

3.3 Registration duties

Registration duties
- Commercial buildings: VAT exempt (or subject to a 22% or 10% VAT under certain circumstances), EUR 200 registration tax, 2% mortgage and cadastral taxes - Residential buildings: (i) if the transfer is subject VAT (22% or 10% under certain circumstances), registration tax and mortgage and cadastral taxes are due at the fixed amount (EUR 200 each); (ii) if the transfer is VAT exempt, registration tax is due at the rate of 9%, mortgage and cadastral taxes are due at the fixed amount of EUR 50 each

Indirect taxes are applied to the transfers of real estate properties to a SIIQ as follows

- Commercial buildings are exempt from VAT, but opting for the VAT application (22% or 10%) is possible. In addition, the registration tax is applied at the lump sum of EUR 200 and, irrespective of the VAT application or not, 1.5% mortgage tax and 0.5% cadastral tax are levied on the fair market value (purchase price). If commercial buildings are transferred to a SIIQ from the companies that built them or carried out some restructuring works in the preceding five years, compulsorily VAT applies (at the rate of 22% or 10%).

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- Residential buildings are exempt from VAT; registration tax is applicable at 9% on the fair market value (purchase price); mortgage and cadastral taxes are applicable at a lump sum of EUR 50 each. Registration, mortgage and cadastral taxes apply at the lump sum of EUR 200 if VAT compulsorily applies (since the residential buildings are transferred by the companies that built them or carried out some restructuring works in the preceding five years) or if VAT applies by option (at a rate of 22% or 10% under certain conditions).

The contribution to a SIIQ of a portfolio consisting mainly of rented real estate properties falls out of the scope of VAT and is subject to registration, mortgage and cadastral taxes at a fixed amount (EUR 200 each).

4 Tax treatment at the shareholder level

4.1 Domestic shareholders

Corporate shareholder	Individual shareholder	Withholding tax
- Full taxation of dividends from exempted income - Dividends from non-exempted income subject to ordinary dividend taxation rules - Full taxation of capital gains (participation exemption not applicable)	- A final withholding tax is levied on SIIQ-exempted income - Dividends from non-exempted income are subject to ordinary dividend taxation rules - Full taxation of capital gains	- 26% withholding tax on the distribution of SIIQ-exempted income - Corporate and business shareholders can credit the withheld taxes

Corporate shareholder

Dividends deriving from the SIIQ's non-exempted income are subject to the ordinary tax regime; therefore, they are subject to corporate income tax (IRES at 24%) on the limited amount of 5% of such dividends (i.e., effective IRES rate of 1.20%).

Dividends deriving from the SIIQ's exempted income are fully taxable to corporate shareholders at IRES ordinary rate (24%), and the 26% tax withheld upon distribution (on account) is offset against corporate income tax.

Capital gains resulting from the disposal of SIIQ shares are fully subject to IRES at the ordinary tax rate (24%) since the participation exemption regime is not applicable by law on SIIQ shares.

Individual shareholder

Dividends deriving from the SIIQ's non-exempted income are subject to the ordinary tax regime.

In the case of the individual who holds the SIIQ shares in the course of business activity, dividends from the SIIQ's non-exempted income are subject to individual income tax (IRPEF) at progressive rates up to 43% on the limited amount of 58.14% of such dividends.

In the case of the individual who holds the SIIQ shares not in the course of business activity, following the amendments introduced by Art. 1(999-1006) of Law No. 205/2017, dividends from the SIIQ's non-exempted income are subject to a final 26% withholding tax.

Dividends deriving from the SIIQ's exempted income are subject to a specific regime provided for by Law No. 296/2006.

In the case of the individual who holds the SIIQ shares in the course of business activity, dividends from the SIIQ's exempted income are fully taxable in the hands of the shareholder at IRPEF progressive rates,

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and the 26% tax withheld at distribution (on account) is offset against individual income taxes.

In the case of SIIQ shares held by individuals not in the course of business activity, dividends from the SIIQ's exempted income are subject to a final 26% withholding tax upon distribution.

Capital gains realised on the disposal of SIIQ shares by individuals during business activity are fully subject to IRPEF at progressive rates.

Capital gains realised on the disposal of SIIQ shares by individuals, not in the course of business activity are subject to a 26% substitute tax (from 1 January 2019, following the amendments introduced by Art. 1 (999-1006) of Law No. 205/2017).

As a final remark, following the amendments introduced by Law No. 145/2018 and subsequently by Law Decree No. 124/2019, Law Decree No. 34/2020, Law Decree No. 104/2020 and Law No. 178/2021, Italian entities investing in real estate assets are considered eligible investments for special long-term savings schemes (piani di risparmio a lungo termine – PIR) regime. Such a regime provides for an exemption from income taxes on financial income realised by resident individuals investing in PIRs established in accordance with certain requirements provided for by the law.

Other taxes

No other taxes are levied.

Withholding tax

As anticipated, a 26% withholding tax applies on dividends paid out of the SIIQ's tax-exempted income upon distribution.

The withholding tax is applied as final for individual shareholders not carrying out a business activity. In contrast, it is applied on account for corporate shareholders and individual shareholders carrying out a business activity (they credit the withheld taxes to offset corporate income tax and individual income tax).

Distributions to pension funds and collective investment funds established in Italy are exempt from the withholding tax.

The withholding tax is levied by the financial intermediaries where the SIIQ shares are deposited.

4.2 Non-resident shareholders

Corporate shareholder	Individual shareholder	Withholding tax
Final withholding tax	Final withholding tax	- Double tax treaty benefits apply - Parent-Subsidiary Directive not applicable

Corporate shareholder

Dividends paid out of the SIIQ's non-exempted income are subject to the ordinary tax regime that foresees a 26% final withholding tax (provided that non-residents do not have a permanent establishment in Italy). This withholding tax rate may be reduced to1.20% if the dividends are paid to companies resident in the EU or in EEA Countries, provided that an adequate exchange of information with Italian Tax Authorities exists.

Dividends deriving from the SIIQ's exempted income are subject to a final 26% withholding tax upon distribution. Double tax treaties apply.

Capital gains deriving from the sale of shares in SIIQs are subject to the tax regime ordinarily applicable to the sale of Italian-listed shares (including certain domestic and Double tax treaty exemptions available to non-residents). Double tax treaty protection applies in most circumstances. Italian Budget law for 2023 introduced some amendments to the taxation of capital gains on the disposal, directly or indirectly, of Italian "property rich companies" (i.e. whose value derives from more than 50% of Italian real estate assets); however, such amendments do not apply with respect to shares listed on a regulated market (such as those of SIIQs).

Individual shareholder

Dividends paid out of SIIQ's non-exempted income are subject to the ordinary applicable tax regime, which provides a 26% final withholding tax. Dividends deriving from SIIQs exempted income will be subject to a final 26% withholding tax when distributed under the SIIQ regime. Double tax treaties apply.

Collective investments undertakings

Article 1(631-633) of Law No. 178 of 30 December 2020, (2021 Budget Law) introduced favourable provisions for foreign collective investments undertakings investing in Italian resident companies. In particular, starting from 1 January 2021, dividends and/or capital gains derived from shareholdings in Italian companies would not be subject to withholding tax or substitute tax in Italy if realised by collective investments undertakings established in an EU Member State or EEA Member State, allowing for an adequate exchange of information for tax purposes (i) compliant with Directive UCITS IV (2009/65/CE) or (ii) not compliant with it but whose manager is subject to regulatory supervision in the State where it is established pursuant to Directive AIFM (2011/61/EU). At the date hereof, the Italian Revenue Agency did not provide specific guidelines with respect to the application of such favourable provisions to investments in Italian SIIQs/SIINQs.

Withholding tax

Withholding taxes on dividends paid to non-resident shareholders is final, provided that the shares are not assets of a permanent establishment in Italy.

Non-resident shareholders may claim the Double tax treaties relief on the dividends (after the amendments introduced by Law Decree No. 133/2014).

The applicability of the Parent-Subsidiary Directive under the SIIQ regime is not allowed for the portion referring to dividends from the SIIQ-exempt income. The Parent-Subsidiary Directive is only applicable to the portion of dividends from the SIIQ non-exempt income.

5 SIIQ/REIT cross-border investments

Foreign REIT	Corporate shareholder	Individual shareholder
It follows the ordinary taxation rule at a rate of 24%	1.20% taxation may apply; an analysis of the foreign REIT is required	In principle, standard taxation rules for investments in non-resident entities; foreign tax credit may be available, but an analysis of the foreign REIT is required

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Foreign REIT

It follows the ordinary income tax rule applicable to non-residents. Consequently, any income deriving from immovable property in Italy will be subject to the general 24% corporate income tax rate applicable to non-resident entities if not covered by the provisions of any double tax treaty.

Moreover, as regards foreign investors, Law Decree No. 133/2014 extended the SIIQ regime to foreign REITs resident in EU/EEA white-list countries and having in Italy a permanent establishment which mainly carries out the leasing activity also through investments in Italian SIINQs. Starting from the fiscal year for which the option is effective, the lease income connected with the permanent establishment in Italy is subject to a 20% substitute tax. The Revenue Agency recently rendered public some tax rulings with respect to this rule, where in particular clarified that:

- The permanent establishment in Italy may apply the SIIQ regime also in the case that its assets are composed only by participations in Italian SIINQs (and not also by real estate assets leased) (Answer to Tax Ruling Nos. 109/2022 and 201/2023);
- The 20% substitute tax applicable to the lease income of the permanent Italian permanent establishment cannot be reduced to the lower rate provided for by Double Tax Treaties with respect to dividend distributions, even though this creates a misalignment if compared to the tax treatment applicable in case of investment by the foreign REIT into an Italian SIIQ (Answer to Tax Ruling No. 60/2023); and
- The foreign REIT may hold participation in Italian SIINQs only through its permanent Italian permanent establishment applying the SIIQ regime (and not directly from abroad) (Answer to Tax Ruling No. 61/2023).

Corporate shareholder

Subject to taxation in Italy. Domestic corporate shareholders receiving dividend income from certain foreign REITs may benefit from a 95% exemption (if certain conditions are met). The remaining 5% would be taxed at the ordinary 24% corporate income tax rate. Thus, the effective domestic taxation of dividends received from a foreign REIT would be equal to 1.20%. An exception is made for REITs residents in a black-listed Country. In this case, the 95% exemption would not apply, and the full amount of the dividends distributed would be subject to a 24% ordinary corporate tax rate. The foreign tax credit will be limited to the taxable amount.

Individual shareholder

Subject to taxation in Italy. In principle, the ordinary taxation rules provided for individual shareholders investing in non-resident entities apply (26% withholding tax or taxation on a limited amount of 49.72% or 58.14%). A foreign tax credit may be available. An analysis of the foreign REIT is required.

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REIT

A comparison of the
major REIT regimes
around the world.

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1 General introduction/history/REIT type

REIT objective	Enacted year	Citation	REIT type	REIT market
REIT for non-professional investors	2008	Law on Collective Investment Undertakings	Investment Company/ Investment Fund	There are no existing funds or companies
REIT for informed investors	2013	Law on Collective Investment Undertakings for Informed Investors	Investment Company/ Investment Fund	There are no existing funds or companies
REIT for professional investors	2013	Law on Collective Investment Undertakings for Informed Investors	Investment Company/ Investment Fund	There are no existing funds or companies

1.1 Non-professional investors

On 11 November 2007, the Lithuanian Parliament amended the Law on Collective Investment Undertakings, which came into force on 1 March 2008. The law regulates the activities of collective investment undertakings in which shares/units may be traded to non-professional investors. A systematic analysis of the provisions of the Law on Markets in Financial Instruments of the Republic of Lithuania reveals that an investor who does not have sufficient knowledge, skills and experience to make informed investment decisions independently and to properly assess the risks involved should be considered a non-professional investor.

The Law on Collective Investment Undertakings regulates the activities of special collective investment undertakings for non-professional investors, including the activities of Real Estate Investment Trusts (the REIT) for non-professional investors.

1.2 Informed investors

On 18 June 2013, the Law on Collective Investment Undertakings for Informed Investors was introduced into Lithuanian legislation, which came into force on 1 July 2013. The law regulates the activities of collective investment undertakings for informed investors. According to the law, an informed investor is:

(1) A professional investor (as described in MiFID);

(2) A natural person who has confirmed that he understands his status and

(i) Invest at least EUR 125,000; or

(ii) Receives a confirmation from a company authorised to provide investment services that such a person is capable of adequately perceiving risk related to investments;

(3) A natural person who is a manager or an employee who adopts the investment decisions of the investment fund, the management company of the investment fund or the investment company manager in which he intends to invest; or

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(4) A legal person who has confirmed that he understands his status and

(i) Invest at least EUR 125,000; or

(ii) Receives a confirmation from a company authorised to provide investment services that such a person can adequately perceive risk related to investments.

The Law on Collective Investment Undertakings for Informed Investors regulates the activities of collective investment undertakings for informed investors, including the activities of REITs for informed investors.

1.3 Professional investors

On July 1, 2013, the Law on Management Companies of Collective Investment Undertakings for Professional Investors was introduced into Lithuanian legislation (on February 1, 2019, the name of the law was changed to Law on Alternative Investment Fund Managers).

The Law on Alternative Investment Fund Managers lays down the rules for the authorisation, ongoing operation and transparency of the managers of alternative investment funds that manage and/or market alternative investment funds.

Since the Law on Collective Investment Undertakings, the Law on Collective Investment Undertakings for Informed Investors and the Law on Alternative Investment Fund Managers do not provide for a new form of entity, REITs for non-professional investors as well as for informed investors or professional investors are incorporated as a legal entity or an investment fund, managed by a management company or without management company (investment company may manage itself and is called investment company-manager).

2 Requirements

2.1 Formalities/procedure

Key requirements
Approval from the Bank of Lithuania

To become eligible for the regime, entities are required to have special collective investment undertaking status, which could be either (1) open-ended (variable capital investment company or open-ended investment fund) or (2) closed-ended (closed-ended investment company or closed-ended investment fund).

A variable capital investment company/open-ended investment fund is defined as an entity whose shareholders/co-owners have the right to request at any time that their shares/investment units be issued or redeemed. Also, the amount of capital of a variable capital investment company varies depending on the issue and redemption of shares.

A closed-ended investment company/closed-ended investment fund is defined as an entity with a fixed number of shares/investment units that are redeemed at the end of its activity or at any other time indicated in the articles of incorporation and are not redeemed upon the request of the investor.

To have the status of REIT, the investment company or investment fund's management company has to obtain a license (permit) from the Bank of Lithuania. The application for the license shall be accompanied by information about the company, its shareholders, members of the management bodies, the company's program of development and activities, initial capital and other documents, information and explanations specified in the licensing regulations approved by the Bank of Lithuania.

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The bylaws or rules of the REIT must contain a number of specific provisions that the Bank of Lithuania verifies during the procedure of granting a license for the activities.

The Bank of Lithuania shall notify the applicant of its consent or refusal to grant the license within three to six months from the filing of all documents, depending on the type of the REIT.

Prior to investing, the management company shall provide the information specified in Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019, on sustainability-related disclosures in the financial services sector and in Articles 5, 6 and 7 of the Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020, on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

2.2 Legal form/minimum share capital

REIT objective	Legal form	Minimum share capital	Net asset value (NAV)
REIT for non-professional investors	An investment company or an investment fund managed by a management company	EUR 125,000 for the management company	- EUR 300,000 for the investment fund - EUR 600,000 for the investment company
	An investment company-manager	EUR 300,000 for the investment company-manager	
REIT for informed investors	An investment company or an investment fund managed by a management company	Depends on the legal form of the management company	- EUR 1,000,000 for the investment fund - EUR 1,000,000 for the investment company
	An investment company-manager	Depends on the legal form of the investment company-manager	
REIT for professional investors	An investment company or an investment fund managed by a management company	EUR 125,000 for the management company	Not stated in the law
	An investment company-manager	EUR 300,000 for the investment company	

Legal form

The REIT for non-professional investors, REIT for informed investors and REIT for professional investors may be organised in different legal forms.

The REIT for non-professional investors should have the form of (1) an investment fund or an investment company managed by a management company or (2) an investment company manager. Additional statutory and management seat requirements apply. The management company or investment company manager has the legal form of (1) a joint-stock company or (2) a limited liability company.

The REIT for informed investors should have the form of either (1) an investment fund or (2) an investment company that has the form of (1) a joint-stock company, (2) a limited liability company or (3) a partnership. An investment company can be managed by the management company, or it can manage itself. Additional statutory and management seat requirements apply. The investment fund or investment company's management company has the legal form of (1) a joint-stock company or (2) a limited liability company.

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The REIT for professional investors should have the form of either (1) an investment fund or (2) an investment company that has the form of (1) a joint-stock company, (2) a limited liability company or (3) a partnership. An investment company can be managed by a management company, or it can manage itself. Additional statutory and management seat requirements apply. The investment fund or investment company's management company has the legal form of (1) a joint-stock company or (2) a limited liability company.

Minimum share capital

The REIT for non-professional investors, REIT for informed investors and REIT for professional investors are subject to different share capital (monetary contributions of founders) requirements under Lithuanian legislation. Please see paragraph 2.2.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
Requirements for shareholders and investors	No

Shareholder requirements

There are specific requirements for those who wish to become shareholders of a licensed entity (management company or investment company), e.g., unquestionable reputation and experience and financial stability.

Listing requirements

Listing is not a mandatory requirement.

2.4 Asset level/activity test

Asset level/ activity test for non-professional investors

Restrictions on activities/investments of REIT for non-professional investors
- No more than 20% of its net assets in securities of other companies - No more than 30% of its net assets in a separate real estate asset or real estate company (exceptions under certain circumstances may apply) - No more than 20% of its net assets in real estate under development - No more than 40% of its net assets in a single real estate property and any assets required for its maintenance - No more than 30% of its net assets in securities issued by a single real estate company, including liabilities arising from the transactions with real estate companies involving derivatives - No more than 30% of its net assets in the securities of a single real estate company and in the assets that such real estate company has invested in - Further restrictions apply - May invest in real estate abroad

The REIT for non-professional investors is allowed to invest in the following real estate assets: land, buildings and/or premises constituting separate real estate objects registered in the name of the investment company and other tangible assets that are necessary for the operations related to real estate.

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Following the provisions of the Law on Collective Investment Undertakings, the assets of the REIT for non-professional investors must consist of at least four separate real estate objects, i.e., the investment into a single real estate is not allowed. For the purposes of the diversification of assets, the REIT is allowed to invest in the following:

- No more than 20% of its net assets in securities of other companies or other liquid assets;
- No more than 30% of its net assets in a separate real estate asset or real estate company (exceptions under certain circumstances may apply);
- No more than 20% of its net assets in real estate under development;
- No more than 40% of its net assets in a single real estate property and any assets required for its maintenance;
- No more than 30% of its net assets in securities issued by a single real estate company, including liabilities arising from the transactions with real estate company involving derivatives; and
- No more than 30% of its net assets of the securities in a single real estate company and in the assets that such real estate company has invested in.

If the investments are made through an SPV controlled by the REIT, the diversification requirement should be met at the level of the SPV.

The REIT for non-professional investors is not permitted to invest in:

- Real estate assets whose ownership is restricted and which may result in loss of ownership; or
- Real estate assets that are not registered in the real estate or any other comparable registry.

Specific cases where the investments are allowed to:

Investments abroad	Allowed directly and indirectly*
Investments in residential properties	Allowed
Investments in developments	Allowed
Investments in subsidiaries	Allowed

** In the case of indirect investment, investments into units of other REITs registered in other EU or EEA Member States where they are regulated as strictly as in Lithuania*

The investment portfolio of a newly incorporated REIT for non-professional investors is allowed, for four years from the approval of its instruments of incorporation, to not comply with the diversification requirements mentioned above. However, in all cases, this should not waive the obligation of a management company and a REIT to invest the assets of a REIT in compliance with the requirements set in the Law on Collective Investment Undertakings.

Restrictions apply regarding investment in the securities of foreign companies incorporated in non-EU or non-EEA member states.

The REIT for non-professional investors is allowed to invest in real estate objects in development if their development is to be finished during an acceptable timeframe.

The REIT for non-professional investors is allowed to invest in the following:

- Securities of companies whose primary business activity is purchasing, reconstruction, leasing, trading or development of real estate;

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- Shares or units of other REITs registered in other EU or EEA member states; and
- Other securities (including shares), and money market instruments dealt in regulated markets.

The net assets of REIT for non-professional investors of the investment fund after a six-month period from the beginning of its activities should reach a level of EUR 300,000. The net assets of the REIT as an investment company should reach a level of EUR 600,000 within 12 months from the receipt of the license from the Bank of Lithuania.

The value of real estate assets of REIT shall be calculated every six months (or in the event of essential economic developments or changes in the market price of real estate assets).

Starting 1 February 2019, units of REIT may be settled by a non-cash contribution (assets conforming to the investment policy of a REIT).

Asset level/ activity test for informed investors

Following the provisions of the Law on Collective Investment Undertakings for Informed Investors, the assets of the REIT for informed investors has to be invested in objects indicated in REITs establishment documents.

REIT for professional investors is not permitted to provide loans to its participants, except for the members of the partnership, provided that it is stipulated in REITs establishment documents.

The net assets of REIT for informed investors should reach a level of EUR 1,000,000 within one year from the receipt of the license from the Bank of Lithuania. The assets and liabilities of REIT for informed investors should reach a level of EUR 2,000,000 within two years from the receipt of the license from the Bank of Lithuania.

2.5 Leverage

Leverage for REIT for non-professional investors
Limited to 50% of the value of real estate

REIT for non-professional investors may borrow up to 50% of the NAV of REIT for the period defined in REIT establishment documents.

Leverage for REIT for informed and professional investors is not regulated by the laws and should be defined in the REIT incorporation documents.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
No requirement	No requirement	No requirement

There is no legal requirement for profit distribution. The procedure of payment of dividends to the investors (periodicity, the share of income allocated for dividends) must be defined in the bylaws or rules of investment of the REIT.

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2.7 Sanctions

Penalties/loss of status rules
- No tax penalties - Administrative penalties - Revoking of the license

There are no tax penalties. However, the Bank of Lithuania shall have the right to apply the following measures to a REIT:

- Warn about the shortcomings and set a term for their elimination;
- Impose administrative penalties:
  - For non-professional investors, up to EUR 5,000,000 or up to 10% of annual income (considering which sum is higher) for a legal person and up to EUR 5,000,000 for management;
  - For informed investors, up to 10% of annual income for a legal person and up to EUR 50,000 for management; and
  - For professional investors, up to 10% of annual income for a legal person and up to EUR 50,000 for management.
- Temporarily suspend the license for the provision of one or more services;
- Revoke the license for the provision of one or more services;
- Instruct the management company or investment company to change the manager;
- Suspend the distribution or redemption of shares/units;
- Prohibit, for periods not longer than three months, the purchase of securities or money market instruments; and
- Appoint an interim representative of the Bank of Lithuania for the supervision of the activity.

3 Tax treatment at the level of the REIT
(under the assumption that it is treated as a collective investment undertaking) [1]

3.1 Corporate tax/ withholding tax

Current income	Capital gains	Withholding tax
- Investment income, dividends or any other income from distributed profits (e.g., rental income, capital gains upon disposal of property and shares) is tax-exempt	Tax-exempt	Not creditable for an investment fund

Current income

According to the provisions of the Law on Corporate Income Tax, investment income of the REIT with a status of an investment company or investment fund (i.e., dividends, capital gains and other income from distributed profits) is treated as not taxable income except if received from target territories.

1 If not specified, the tax treatment of the REIT for professional investors describes situations where REIT is established in a form of a joint stock company. Please note, that depending on the legal status of the REIT, tax treatment might be different.

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Capital gains

The treatment is the same as for current income. .

Withholding tax

Dividends distributed by the REIT to corporate recipients are exempt from withholding tax.

Accounting rules

Financial statements of the REIT should be drawn up in compliance with the Lithuanian GAAP, which is very close to IFRS. However, REITs whose securities are traded on regulated markets should draw up financial statements according to IFRS. Lithuanian laws make a distinction between group and single financial statements; therefore, single statements must always be prepared, whereas those of the group only in case of mandatory consolidation.

The REIT, whose securities are not traded on regulated markets, has an option between Lithuanian GAAP and IFRS.

For the purposes of corporate income tax calculation, the financial result of the REIT (calculated according to IFRS or Lithuanian GAAP) would be decreased by non-taxable income (i.e., investment income) and increased by non-deductible expenses (i.e., expenses related to the non-taxable income etc.)

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
- Land registration and real estate registration fees apply - Notary fees are 0.37% of the value of property capped at approx. EUR 5,000

Land ownership registration and real estate ownership registration fees apply. They are calculated based on the value of the property. For example, when registering a building valued at EUR 300,000, the fee is approximately EUR 150.

Notary fees are 0.37% of the value of the real estate but not less than EUR 33 and not more than EUR 5,000 (+21% VAT).

4 Tax treatment at the shareholder level

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4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- No withholding tax on dividends or other distributed profits - No capital gain taxation	- Final withholding tax of 15% on dividends - Capital gains exceeding EUR 500 are subject to a 15% or 20% income tax (progressive taxation)	Creditable

Corporate shareholder

Dividends distributed to domestic corporate shareholders are exempt from withholding tax.
Capital gains realised on the sale of the REIT's shares are generally exempt from corporate income tax.

Individual shareholder

Dividends distributed to domestic individual shareholders are subject to the final withholding tax at a rate of 15%.

Capital gains realised by an individual resident shareholder on the sale of the REIT shares are tax-exempt if the amount is less than EUR 500. The exceeding amount of capital gains is subject to a 15% or 20% residents' income tax (depending on the total income of the individual).

Return of capital distribution due to the redemption of shares shall be treated as capital gains from share sale and taxed accordingly. However, no exemptions apply.

Withholding tax

The obligation to calculate and pay the tax falls on the REIT. It is possible to credit withholding tax against the taxes payable on the same income; however, the credit should not exceed the tax due.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- No withholding tax on dividends or other distributed profits - No capital gain taxation	- Final withholding tax of 15% on dividends - Capital gains are tax-exempt	Treaty benefits are available

Corporate shareholder

Dividends paid to foreign shareholders are generally exempt from withholding tax.
Capital gains from the sale of shares are not subject to corporate income tax in Lithuania.
Return of capital distribution is not subject to profit tax in Lithuania.

Individual shareholder

Dividends paid to foreign shareholders are subject to a 15% withholding tax.
Capital gains from the sale of shares are not subject to the resident's income tax in Lithuania.
Return of capital distribution is not subject to the resident's income tax in Lithuania.

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Withholding tax

The obligation to calculate and pay the tax on dividends paid to corporate shareholders falls on the REIT. A non-resident shareholder may be entitled to a withholding tax reduction under the Treaty on Avoidance of Double Taxation

5 Tax Treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Non-taxable at the level of domestic shareholder	- Dividends from foreign REITs are tax exempt - No capital gain taxation	- Residents' income tax of 15% on dividends - Generally, capital gains are subject to a 15% or 20% income tax

Foreign REIT

Foreign REIT is generally non-taxable at the level of the domestic shareholder.

Corporate shareholder

Dividends received by domestic corporate shareholders from foreign REITs are tax-exempt.

Individual shareholder

Dividends received by domestic individual shareholders from foreign REITs are subject to a 15% Lithuanian residents' income tax.

Capital gains received by domestic individual shareholders from foreign REITs are subject to a 15% or 20% income tax.

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A comparison of the
major REIT regimes
around the world.

2023

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1 General introduction

	Enacted year	Citation	REIT type
SIF	2007	Law relating to specialised investment funds	- Contractual type - Corporate type - Other type
RAIF	2016	Law relating to Reserved Alternative Investment Funds	- Contractual type - Corporate type - Another type

A SIF shall be any undertaking for collective investment situated in Luxembourg (i) the exclusive object of which is the collective investment of its funds in assets to spread the investment risks and to ensure for the investors the benefit of the results of the management of its assets, (ii) the securities or partnership interests of which are reserved to one or several well-informed investors and (iii) the constitutive documents or offering documents or partnership agreement of which provide that it is subject to the provisions of the law of 13 February 2007, as amended, relating to specialised investment funds (SIF Law).

In 2016, the Reserved Alternative Investment Fund (RAIF), a new type of investment fund, was launched, as further detailed below. This new type is almost in every respect similar to a SIF, with the most important difference being that a RAIF is not directly supervised by the Luxembourg Commission de Surveillance du Secteur Financier (CSSF) but indirectly regulated via its mandatorily appointed authorised alternative investment fund manager (AIFM).

In addition, there are plans to enact a separate REIT regime comparable to those of other European countries. This new REIT regime is currently under discussion amongst the authorities and the market players.

In the event that the units or shares are offered to retail investors, Regulation (EU) No 1286/2014 concerns the key information documents for packaged retail and insurance-based investment products ("PRIIPs Regulation"), shall be applicable. The purpose of the PRIIPs Regulation is to improve information disclosures and protection of retail investors with the provision of a key information document (KID) prior to the subscription of a packaged retail and insurance-based investment product. The KID introduced common standards for the presentation of information for retail investors regarding packaged retail and insurance-based investment products, which must allow these investors to understand and compare the main risks, features, costs and possible future performance of the products concerned.

The law of 17 April 2018 on key investor documents for packaged retail and insurance-based investment products (PRIIPs Law) was published in the Mémorial A on 19 April 2018 and entered into force on 23 April 2018. The PRIIPs Law provides that the CSSF and the Commissariat aux Assurances (CAA) are designated as the authorities competent for the supervision of compliance with the PRIIPs Regulation at a national level.

2 Requirements regarding the SIF

2.1 Formalities/procedure

Key requirements
- Authorisation and ongoing supervision by the Luxembourg Supervisory authority - Requirement for a depositary

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Every SIF must be authorised by the supervisory authority of the financial sector, the CSSF. The CSSF will review and authorise the SIF's (i) constitutive documents (i.e., the Articles of Association for the corporate form of SIF or the management regulations for the contractual SIF) and offering document and (ii) approve the various intervening parties in the SIF (e.g., depositary, central administration, portfolio managers), its risk management process and other internal procedures (conflict of interest policy, etc.).

The CSSF will also look at the identity of the persons in charge of the management of the SIF (members of the board of directors, day-to-day managers, where applicable, etc.). Where the SIF qualifies as an Alternative Investment Fund (AIF) under Directive 2011/61/EC (AIFMD) transposed into Luxembourg legislation by the law of July 12, 2013, on alternative investment fund managers (AIFM Law), the CSSF will review compliance with the regulatory regime deriving from and in particular the appointment of an authorised or registered alternative investment fund manager.

Upon authorisation, each SIF is entered on the official SIF list maintained by the CSSF. Registration on this list signals that the SIF is subject to ongoing prudential supervision by the CSSF.

A SIF must entrust the custody of its assets to a depositary bank that is either (i) a credit institution or an investment company having its registered office in Luxembourg, (ii) the Luxembourg branch of a credit institution or an investment company having its registered office in another member state of the European Union or (iii) for closed-ended real estate SIFs (i.e., SIFs that do not foresee redemption rights for a period of five years from the date of the initial investment), a Luxembourg entity having the status of a professional depositary of assets other than financial instruments. The duties of the depositary of a SIF depend on whether or not the SIF qualifies as an AIF:

- In respect of SIFs qualifying as AIFs, the depositary rules derive from the AIFMD (assets safekeeping, cash flow monitoring and oversight duties); and
- In respect of SIFs that do not qualify as AIFs, the depositary's duties should be understood in the sense of 'supervision', which implies that the depositary must have knowledge at any time of how the assets of the SIF have been invested and where and how these assets are available.

For property investments, the depositary will monitor the acquisition and disposition process of either the property or property rights directly in an asset transaction or of the intermediate special purpose vehicle(s) if the property is held via special purpose vehicles.

Since January 1, 2019, the depositary of a SIF (qualifying as a SIF or not) must comply with the provisions of the CSSF circular 18/697, which, in particular, provides the organisational arrangements that need to be complied with by the depositary.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital/Net Assets*
- Contractual form (FCP) - Corporate form (SICAV) - Other form (e.g. SICAF)	EUR 1.25 million

Legal form

A SIF may be organised under any of the following three categories:

i. Common Fund (Fonds Commun de Placement or FCP):
The contractual type fund is a co-ownership of assets with no legal personality, which is managed, on behalf of the joint owners, by a management company based in Luxembourg. An investor in an FCP receives, as a counterpart for its investment, units of the FCP, which may be issued in registered or in bearer form and which represent a portion of the net assets of the FCP. Unlike shares of a corporate type fund, units of an FCP do not offer statutory 'shareholder' rights (unless expressly provided for in

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the management regulations of the FCP). Unitholders are only liable for up to the amount contributed by them.

ii. Investment Company with Variable Capital (Société d'Investissement à Capital Variable – SICAV):

A SIF may be incorporated in the form of a public limited company (société anonyme-SA), a corporate partnership limited by shares (société en commandite par actions-SCA), a limited partnership (société en commandite simple-SCS), a special limited partnership (société en commandite speciale-SCSp), a private limited liability company (société à responsabilité limitée-Sàrl) or as a cooperative company organised as a public limited company (société cooperative organisée sous forme de société anonyme-SCoopSA). The SICAV acronym only refers to the variable capital concept, whereby the variations in the capitalisation of the SIF are organised without any specific formal requirements.

iii. SIFs that are neither FCPs nor SICAVs:

This third category is a residual category allowing the formation of a SIF under other legal forms or arrangements such as an association or even a fiduciary contract or any of the corporate forms mentioned under item (ii) though with fixed capital (and then referred to as a SICAF).

All of the above fund types may be organised as single funds or umbrella (multi-compartment) funds. An umbrella fund (which merely exists through its compartments or sub-funds) is segregated into one or more compartments or sub-funds, each of which corresponds to a separate pool of assets and liabilities. Each compartment or sub-fund is linked to a specific pool of properties or property rights, which are ring-fenced from the properties or property rights in other compartments/sub-funds.

Although the umbrella fund constitutes a single legal entity (if a SICAV or SICAF) or a single contractual arrangement (if an FCP), unless otherwise provided for in the fund documentation, the assets of a compartment or sub-fund are exclusively available to satisfy the rights of investors and creditors existing in relation to that compartment or sub-fund only.

The umbrella structure and its terms must be detailed in the constitutive documents of the SIF. In addition to the umbrella structure, it is also possible to create various classes of units or shares in a SIF or within each compartment or sub-fund. Such classes of units or shares may differ, inter alia, as to their fee structure, distribution policy and type of target investors.

Minimum capitalisation

The minimum capitalisation for a real estate SIF is EUR 1.25 million. This minimum must be reached within 12 months from the authorisation by the CSSF of the SIF and may be constituted by the subscribed capital increased by the share premium or the value of the amount constituting partnership interest. In the case of an umbrella SIF, this minimum capital requirement applies to the SIF as a whole and not to a single compartment.

The Bill of Law proposes extending the ramp-up period to reach the minimum subscribed capital up to 24 months respectively. This change aims to address some of the market demand of the private fund sector and hence strengthen the attractiveness of Luxembourg fund products.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
Well-informed investors	No

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Shareholder requirements

Units, shares and other securities issued by SIFs are reserved for 'well-informed' investors. 'Well-informed' investors are institutional investors, professional investors, as well as any other investor that:

a. Has declared in writing his adhesion to the status of the well-informed investor; and

b. (i) Invests a minimum of EUR 125,000 in the SIF; or

(ii) Has obtained an assessment from a credit establishment as defined in Directive 2006/48/CE, from an investment firm as defined in Directive 2004/39/CE or from a management company as defined in Directive 2009/65/CE, certifying his expertise, his experience and his knowledge to appraise in an appropriate manner an investment in a SIF.

The Bill of Law has proposed to reduce the minimum investment capital threshold from EUR 125,000 to EUR 100,000 to qualify as a well-informed investor.

Listing requirements

There are no mandatory listing requirements to fulfil to achieve SIF eligibility.

2.4 Asset level/activity test

Restrictions on activities/investments
Principle of risk-spreading

A SIF may invest in any (transferable) real estate asset or right, and more particularly in (i) real estate (i.e., lands and buildings) registered in the name of the SIF, (ii) participation in real estate companies (including loans to such companies) the exclusive object and purpose of which are the acquisition, development and sale together with the letting and tenanting of real estate, and (iii) various long-term real estate-related interests such as rights to ground rents, long-term leases and option rights over real estate investments.

By and large, a SIF may invest in any type of real estate assets and pursue any type of real estate investment strategy subject to compliance with the principle of risk-spreading. Although the SIF Law does not provide for quantitative investment restrictions, the CSSF has issued further guidance in Circular 07/309.

In general, the CSSF considers that the risk-spreading principle is complied with if a SIF does not invest more than 30% of its assets or subscription commitments into (i) a single property, (ii) the same property right or (iii) the same issuer of property rights. Property whose economic viability is linked to another property is not considered a separate item of property for this purpose.

However, the CSSF may provide exemptions from the restrictions laid out in Circular 07/309 on a case-by-case basis (e.g., the 30% rule may not apply during a start-up period). The CSSF may also request that additional restrictions are adhered to in the cases of SIFs with specific investment policies.

2.5 Leverage

Leverage
No quantitative restrictions

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Though the SIF Law does not provide for quantitative borrowing restrictions, the CSSF requires clear disclosure of the contemplated borrowing ratio in the offering document. The CSSF will typically review borrowing ratios in light of market trends and may object to those ratios that are clearly outside those trends.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
No obligation	No obligation	N/A

No profit distribution obligations or restrictions are applicable to SIFs for as long as the minimum capitalisation is complied with. The net assets may, in principle, not fall below the legal minimum of EUR 1.25 million.

2.7 Sanctions

Penalties/loss of status rules
- Withdrawal from the official list - Dissolution and liquidation - Criminal penalties

The non-compliance with the SIF Law, applicable CSSF Circulars and certain other rules or regulations may result in the striking of the fund from the official SIF list by the CSSF, subsequently triggering a liquidation of the SIF. Criminal penalties may apply to those involved with managing or administrating a real estate SIF, although not to the fund itself.

3 Tax treatment at the level of the SIF

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Not subject to tax	Not subject to tax	Not subject to tax

Current income, capital gains and withholding tax

Luxembourg specialised real estate funds are not subject to corporate income, municipal business and net wealth tax on the profits derived from investments, whether such profits constitute current income or capital gains. They are also not subject to withholding tax upon dividend distribution, capital reduction, interest payment, etc.

Other taxes

Annual subscription tax

Specialised real estate funds are subject to a 0.01% annual subscription tax (taxe d’abonnement), which is payable quarterly and is calculated on the aggregate net assets of the fund as valued on the last day of each quarter.

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Examination fees

Specialised real estate funds are subject to an instruction tax (taxe d'instruction) amounting to EUR 4,400 due for the examination by the CSSF of the application for authorisation. In the case of a SIF with multiple compartments, the instruction tax amounts to EUR 8,800 and EUR 16,500 for an in-house managed SIF qualified as an alternative investment fund.

Capital duty

As such, no capital duty will be levied on the issuance of shares or increase in capital. That said, a fixed registration duty of EUR 75 would be applicable on transactions involving Luxembourg notaries (i.e., incorporation, amendments of by-laws and transfer of seat to Luxembourg).

Withholding tax

Dividend distributions made by a specialised real estate fund are not subject to dividend withholding tax.

Real estate tax

An annual 20% Real Estate Withholding tax (REWHT) applies on real estate income (rents and capital gains) derived from immovable properties located in Luxembourg by certain investment vehicles without the possibility of availing from any particular deduction. The investment vehicles that are in the scope of the present measure are the following entities having a legal personality distinct from their partners:

- Undertakings for Collective Investment 'UCIs' subject to part II of the law of December 10, 2010 (as amended) except those having the legal form of commonly limited partnerships 'CLPs' (Common Limited Partnerships – "Sociétés en Commandite Simples");
- SIFs, except CLPs; and
- RAIFs that are subject to Article 1 of the law of 23 July 2016 (as amended), except CLPs.

The 20% REWHT also applies to gains derived by the investment vehicles referred to above from the sale of shares or units in (tax transparent) partnerships or contractual funds holding Luxembourg real estate assets.

The 20% REWHT does not affect investment vehicles investing directly or indirectly into foreign real estate assets located outside of Luxembourg.

Relevant taxpayers (in-scope investment vehicles) have to file their real estate levy return by May 31 of each following calendar year in case any relevant income has been derived from Luxembourg real estate in the previous year.

The mandatory filing obligation must be carried out via the MyGuichet platform. Failure to comply with this reporting obligation may lead to a fine of EUR 10,000.

VAT

Based on established Luxembourg VAT administrative practice, Luxembourg-regulated funds are considered VAT-able persons carrying out VAT-exempt operations without being entitled to recover input VAT incurred on expenses. They are released from the obligation to be VAT registered in Luxembourg unless they are liable to declare and pay Luxembourg VAT on services received from foreign suppliers and owning and letting immovable property subject to VAT1 and/or performing intra-community acquisitions of goods exceeding EUR 10,000 per year (VAT excluded).

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Management services provided to a Luxembourg-specialised real estate fund are, in principle, exempt from Luxembourg VAT.

Accounting rules

Specialised real estate funds may either apply Luxembourg generally accepted accounting standards or IFRS.

3.2 Transition regulations

Conversion into REIF (SIF) status
Taxation of underlying assets or properties

The conversion may be a realisation event for tax purposes and thus trigger the taxation of any underlying properties or assets, provided that Luxembourg has the right to tax according to the relevant double tax treaties. Each conversion thus requires a detailed analysis of the potential tax implications.

3.3 Registration duties

Registration duties
Luxembourg real estate transfer tax (max. 10%)

Luxembourg's specialised real estate funds are subject to registration duties such as real estate transfer tax (droit de mutation à titre onéreux) on real estate acquisitions and transfers located in Luxembourg (i.e., 7%/10% depending on the municipality and the type of real property). If real property is contributed to a Luxembourg company against the issuance of shares, a reduced rate of 3.4% (2.4% registration duties and 1% transfer duty) for Luxembourg City is applicable. However, for certain types of properties located in Luxembourg City, the rate is increased by a municipal surtax bringing the aggregate rate to 4.6%.

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Corporate income tax (max. 18.19%) combined with municipal business tax (max combined rate of 24.94% for Luxembourg City in 202 Net wealth tax (0.5% and 0.05% for the net wealth tax basis exceeding EUR 500 million)	Income tax (max. 45.78%)	N/A

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Corporate shareholder

A corporate domestic shareholder will be fully subject to corporate tax on any income derived from a Luxembourg-specialised real estate fund in the form of a SA, SCA, Sàrl or Scoop SA. Therefore, dividends, capital gains and return of capital received by such shareholders are fully subject to Luxembourg corporate income tax (max. 18.19%) and municipal business tax, which may lead to an aggregate tax burden of up to 24.94% (for Luxembourg City for 2023). Income received from a Luxembourg specialised real estate fund in the form of an FCP or SCS (inclusive of SCSp), in principle, is also taxable unless the corporate shareholder could apply the participation exemption or a double taxation treaty in relation to the fund's underlying investments, if applicable.

A corporate domestic shareholder will also be subject to net wealth tax levied on its net assets. A digressive scare of net wealth tax rate applies as follows:

- 0.5 % of the unitary value up to EUR 500 million; and
- 0.05 % of the unitary value exceeding EUR 500 million.

By way of derogation from the net wealth tax rates above, minimum net wealth tax charges apply as follows:

(a) EUR 4,815 if the sum of financial assets receivable by affiliated companies, transferable securities and cash at the bank exceeds 90 % of the total gross assets and EUR 350,000 (based on the closing balance sheet of the preceding year); and

(b) For all other entities, the minimum net wealth tax charge should range from EUR 535 to EUR 32,100 (including the solidarity surtax) depending on the entity's total gross assets based on the closing balance sheet of the preceding year) as follows:

Total gross assets in EUR	Minimum tax in EUR
Up to 350,000	535
From 35,001 to 2,000,000	1,605
From 2,000,001 to 10,000,000	5,350
From 10,000,001 to 15,000,000	10,700
From 15,000,001 to 20,000,000	16,050
From 20,000,001 to 30,000,000	21,400
As from 30,000,001	32,100

Shares and units in a Luxembourg specialised real estate fund in the form of a SA, SCA, Sàrl or Scoop SA are fully subject to net wealth tax.

Underlying investments held through (a look-through basis) the units in FCP or CLP (including SLP) in the form of a specialised real estate fund are, in principle, also subject to net wealth tax unless the corporate shareholders could apply the Luxembourg participation exemption or a double taxation treaty, if applicable.

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Individual shareholder

Income and profit received by an individual domestic shareholder from a Luxembourg specialised real estate fund in the form of a SA, SCA, Sàrl or Scoop SA will be fully subject to Luxembourg tax and borne by the recipient (max. 45.78%).

Interest paid by the fund in the form of a SA, SCA, Sàrl or Scoop SA to an individual domestic shareholder managing his or her own private wealth may be subject to a final 20% withholding tax at the level of the fund and is not included in the taxpayer's income tax return.

Capital gain on the disposal of shares of a Luxembourg specialised real estate fund in the form of a SA, SCA, Sàrl or Scoop SA earned by an individual domestic shareholder in the management of his or her own private wealth is not subject to tax if the gain was realised at least six months after the acquisition of the shares, and provided that the investment in the fund does not represent a substantial (<10%) shareholding in the fund.

Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
No taxation	No Taxation	N/A

Income derived by foreign shareholders who have neither a permanent establishment nor a permanent representative in Luxembourg to which or to whom the shares or units of the Luxembourg fund are attributable are not subject to income taxes in Luxembourg.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Net wealth tax	Fully taxed	Fully taxed

Corporate shareholder

A corporate domestic shareholder will be fully subject to tax on any income derived from a foreign REIT unless the foreign REIT would qualify under the Luxembourg participation exemption. Therefore, dividends, capital gains and return of capital received by such shareholders should be fully subject to Luxembourg corporate income tax (max. 18.19%) and municipal business tax, which may lead to an aggregate tax burden of up to 24.94% (for Luxembourg City for 2023). Income received from a foreign REIT that is considered tax transparent from a Luxembourg tax perspective in principle is also taxable but not to the extent the corporate shareholder could apply the participation exemption or a double taxation treaty in relation to the fund's underlying investments if applicable.

For instance, since the entry into force of the new double tax treaty concluded between Luxembourg and France on 1 January 2020, dividends paid out of income derived from the immovable property by certain French investment vehicles (e.g., French OPCIs) that distribute most of this income annually and whose income and gains derived from immovable properties are exempt from taxation in France will be taxable in Luxembourg, while up until today these were often exempt under certain conditions (25% holding threshold). In addition, France will be allowed to withhold a 15% withholding tax when the resident of Luxembourg, who is the beneficial owner of the dividend, holds less than 10% of the capital of said investment vehicle. When the 10% or more threshold is met, the French domestic provisions will apply (i.e., 25% from 2022 onwards). The elimination of double taxation is achieved through the credit method.

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A corporate domestic shareholder will also be subject to net wealth tax levied on its net assets at the rates described above in section 4 of this survey; in principle, shares and units in a foreign REIT are fully subject to net wealth tax. Units in a foreign REIT that is considered tax transparent from a Luxembourg tax perspective are, in principle, also subject to net wealth tax, but not to the extent the corporate shareholders could apply (on a look-through basis) the Luxembourg participation exemption or a double taxation treaty , if applicable.

Individual shareholder

Income and profit received by an individual domestic shareholder from a foreign REIT should be fully subject to Luxembourg tax in the hands of the recipient (max. 45.78%) unless a specific exemption under a double taxation treaty exists.

6 The 'Reserved Alternative Investment Fund (RAIF)'

The Luxembourg law on reserved alternative investment funds (RAIF Law) was published on July 28, 2016.

The RAIF regime is substantially based on the regime for specialised investment funds (SIFs) previously described, and the RAIF Law has therefore been drafted by adopting many provisions from the SIF Law. The main similarities concern (i) the various legal forms (corporate and contractual) that are available, (ii) the absence of limitations as regards eligible assets or investment policies, (iii) the possibility of setting up an umbrella structure with multiple compartments and share/unit classes as well as (iv) in terms of flexible subscription, redemption and distribution features. In addition, in principle, RAIFs will be subject to a 0.01% subscription tax (or a zero rate in certain circumstances). However, the main difference is that RAIFs will not be subject to either prior CSSF approval or ongoing supervision by the CSSF. Once formed, the RAIF units can immediately be marketed to the AIFMD passporting requirements.

The RAIF regime is applicable:

- To Luxembourg AIFs managed by an authorised and fully licensed AIFM (which can also be based in an EU Member State other than Luxembourg), which must be an external entity (contrary to a SIF-AIF, a RAIF cannot be managed internally);
- That invest in accordance with the principle of risk-spreading (except for exclusive SICAR-like investments);
- Whose securities or partnership interests are reserved for well-informed investors; and
- Whose incorporating documents (i.e., articles of association, management regulations or partnership agreement) expressly provide that they are subject to the provisions of the RAIF Law (therefore, the RAIF regime is optional).

Being managed by an authorised and fully licensed EU-based AIFM, the RAIF will also benefit from all EU AIFMs' passporting advantages through a regulator-to-regulator notification regime. Consequently, the RAIF's units/shares and interests will be distributed by way of the marketing passport across Europe to professional investors only. Subject to an opinion and positive advice from the European Securities and Markets Authority (ESMA), the EU Commission may decide to extend the passport to non-EU AIFMs, which may then also manage RAIFs and benefit from the passport, subject to compliance with the AIFMD requirements. A Luxembourg-approved statutory auditor (Réviseur d'entreprises agréé) must audit the RAIF's annual accounts.

It should be noted that several investment regimes available in Luxembourg can be combined in order to comply with differing investor needs. In the first stage, a RAIF could be set up in a limited amount of time without prior CSSF approval in order to quickly organise a first closing for investors that do not compulsorily need a directly supervised structure. At a later stage, the RAIF could be converted into a SIF with prior CSSF approval in order to attract further investors who wish or are required to invest in a directly supervised investment vehicle.

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Following the formal adoption of the withdrawal agreement by the Council of the European Union on 30 January 2020, the United Kingdom left the European Union with a withdrawal agreement on 31 January 2020. According to the terms of the withdrawal agreement, a time-limited transition period was given until 31 December 2020 (Transition Period). During such a Transition Period, EU laws and regulations continued to apply in the United Kingdom and the United Kingdom entities could continue to work in Luxembourg on the basis of their passporting rights.

However, this Transition Period is over now, and ESMA might have to consider whether the application of the passport may also be extended to the United Kingdom. In connection with Brexit and in the broader context of the topic of reverse solicitation in relation to the provision of cross-border financial services, ESMA published a statement on January 13, 2021 (ESMA35-43-2509), reminding market participants about the strict limits of reverse solicitation exemption.

Tax treatment at the level of the RAIF

The tax treatment applicable to RAIF is similar to that of Luxembourg SIFs. In this regard, please refer to Section 4.

However, RAIF can opt for the risk capital tax regime (SICAR-like regime – "RAIF Article 48").

Corporate tax/withholding tax for RAIF Article 48

Current income	Capital gains	Witholding tax
Subject to CIT and MBT with an exemption on income and gains deriving from risk capital investments.	Subject to CIT and MBT with an exemption on income and gains deriving from risk capital investments.	Not subject to tax

Current income, capital gains and withholding tax of the RAIF Article 48

RAIF Article 48 under corporate form are subject to CIT and MBT on their income at an aggregate tax rate of 24,94% (in the municipality of Luxembourg City). However, income and capital gains derived from risk capital investments are tax-exempt. RAIF Article 48 should only be subject to the minimum NWT.

Finally, Article 48 should benefit from double tax treaties and EU Directives (to be assessed on a case-by-case basis).

Annual subscription tax

RAIF Article 48 is not subject to annual subscription tax (taxe d'abonnement).

Capital duty

As such, no capital duty will be levied on the issuance of shares or increase in capital. That said, a fixed registration duty of EUR 75 would be applicable on transactions involving Luxembourg notaries (i.e., incorporation, amendments of by-laws and transfer of seat to Luxembourg).

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Withholding tax

Dividend distributions made by RAIF Article 48 are not subject to dividend withholding tax.

VAT

RAIF Article 48 should be treated as a taxable person from a Luxembourg VAT perspective. Fees charged by service providers for the management of the RAIF Article 48 should fall within the Luxembourg VAT scope and benefit from the abovementioned VAT exemption, thus not triggering any VAT cost.

Tax treatment at the shareholder level

Domestic shareholder

Corporate shareholder	Individual shareholder	Witholding tax
- Corporate income tax (max. 18.19%) combined with municipal business tax (max combined rate of 24.94% for Luxembourg City in 2023) - Net wealth tax (0.5% and 0.05% for the net wealth tax basis exceeding EUR 500 million) - However, an exemption may apply to income and gains under the Luxembourg participation. Under the same conditions, the shares held may be exempt from net wealth tax.	Income tax (max. 45.78%) however, a 50% exemption may apply.	N/A

Corporate shareholder

A corporate domestic shareholder will be fully subject to corporate tax on any income derived from a Luxembourg RAIF Article 48 in the form of a SA, SCA, Sàrl or Scoop SA. Therefore, dividends, capital gains and return of capital received by such shareholders are fully subject to Luxembourg corporate income tax (max. 18.19%) and municipal business tax, which may lead to an aggregate tax burden of up to 24.94% (for Luxembourg City for 2023).

However, the Luxembourg participation exemption may apply, in which case dividends and capital gains may be tax-exempt in Luxembourg. Should the conditions of Luxembourg participation not be met, the corporate shareholder may benefit from a 50% exemption on dividends received from the RAIF Article 48.

Income and gains received from a Luxembourg RAIF Article 48 in the form of an FCP or SCS (inclusive of SCSp), in principle, is also taxable unless the corporate shareholder could apply the participation exemption or a double taxation treaty in relation to the fund’s underlying investments, if applicable.

A corporate domestic shareholder will also be subject to net wealth tax levied on its net assets. A digressive scare of net wealth tax rate applies as follows:

- 0.5 % of the unitary value up to EUR 500 million; and
- 0.05 % of the unitary value exceeding EUR 500 million.

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By way of derogation from the net wealth tax rates above, minimum net wealth tax charges apply (please refer to Section 4.1.)

Shares and units in a Luxembourg RAIF Article 48 in the form of a SA, SCA, Sàrl or Scoop SA are fully subject to net wealth tax unless the Luxembourg participation exemption regime applies.

Underlying investments held through (a look-through basis) the units in FCP or CLP (including SLP) in the form of a specialised real estate fund are, in principle, also subject to net wealth tax unless the corporate shareholders could apply for the Luxembourg participation exemption, if applicable.

Individual shareholder

Income and profit received by an individual domestic shareholder from a Luxembourg RAIF Article 48 in the form of a SA, SCA, Sàrl or Scoop SA will be fully subject to Luxembourg tax and borne by the recipient (max. 45.78%). However, a 50% exemption on dividends received from RAIF Article 48 may apply.

Capital gain on the disposal of shares of a Luxembourg RAIF Article 48 in the form of a SA, SCA, Sàrl or Scoop SA earned by an individual domestic shareholder in the management of his or her own private wealth is not subject to tax if the gain was realised at least six months after the acquisition of the shares and provided that the investment in the fund does not represent a substantial (<10%) shareholding in the fund.

Foreign shareholder

Corporate shareholder	Individual shareholder	Witholding tax
No taxation	No taxation	No taxation

Income derived by foreign shareholders who have neither a permanent establishment nor a permanent representative in Luxembourg to which or to whom the shares or units of the Luxembourg fund are attributable are not subject to income taxes in Luxembourg.

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EPRA

EUROPEAN PUBLIC
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GLOBAL
REIT SURVEY

EUROPE

Netherlands

FBI

A comparison of the
major REIT regimes
around the world.

2023

1 General introduction

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	Enacted year	Citation	REIT type
FBI	1969	FBI (art. 28 CITA)	In principle corporate type (only for corporate taxpayers)

The Netherlands introduced the Fiscal Investment Institution regime (fiscale beleggingsinstelling: FBI) in 1969. An FBI is, in principle, subject to Dutch Corporate Income Tax, albeit at a rate of zero per cent (0%) (a de facto full exemption). The FBI regime has been incorporated in the Dutch Corporate Income Tax Act 1969 (Wet op de vennootschapsbelasting 1969: CITA) and should be considered a tax facility. It may also apply to passive portfolio investments other than real estate.

The FBI regime was amended to comply with EU law regulations in 2007. From that moment on, it has formally become possible for a foreign entity to apply the regime insofar as it is comparable to a Dutch FBI and meets the requirements. If the regime can be applied, the income derived from (directly held) real estate in the Netherlands is effectively not subject to Dutch taxation. It is, however, not entirely clear when a foreign entity should be considered comparable to a Dutch FBI. Recent case law has provided guidance on certain aspects, while other cases addressing this question are still pending (see 5. below).

Over the past years, the application and scope of the FBI regime have been heavily debated. One of the unintentional possible side-effects identified is the situation in which no corporate income tax and dividend withholding tax would be levied on Dutch source real estate income derived by foreign investors directly investing in Dutch real estate or via an FBI. Another unintentional effect identified concerns the situation in which foreign investment institutions invest in Dutch entities and claim a refund of Dutch dividend withholding tax withheld on distributions by the Dutch entity based on the argument that they are comparable to an FBI and, therefore, should be able to apply the same dividend tax remittance rebate applicable to Dutch FBIs based on EU law.

In response to questions raised in Parliament, the Dutch Ministry of Finance initiated an investigation as to whether a targeted amendment of the FBI regime is required in order to prevent these undesired situations in which the Netherlands cannot (fully) exercise its taxing rights with regards to income derived from Dutch real estate held via FBIs (or foreign comparable entities).

This has resulted in the development that on 20 September 2022, the Dutch government announced its intention to disallow the FBI to directly invest in real estate. The FBI regime will remain available for other investments (e.g. securities) or indirect investment in real estate through taxable subsidiary entities. On 8 March 2023, the public consultation of the draft bill of law was published, providing more details on the proposed measures, including transitory measures in relation to real estate transfer tax for those FBIs which will be required to reorganise their investments. The final draft bill of law is expected around Dutch Budget Day (19 September 2023). The transitory measures are expected to enter into force on 1 January 2024, with the prohibition to make direct real estate investments entering into force on 1 January 2025.

Sector summary*

Listing country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
Netherlands	4	4	2.482,14	0,19%

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Top REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
EuroCommercial Ppty	1.122,37	11,20%	8%	0,09%
Wereldhave	560,66	5,91%	8%	0,05%
NSI NV	410,11	-32,26%	11%	0,03%
Vastned Retail	334,46	-0,22%	9%	0,03%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

*** Main listings done on Euronext Amsterdam, for Index purposes, classified as a Dutch company.*

2 Requirements

2.1 Formalities/procedure

Key requirements
Application in the corporate income tax return

In the Netherlands, an eligible investment company may elect to apply for the FBI regime by making the appropriate election in its corporate income tax return, which is filed after the end of the relevant tax year.

The FBI regime is a corporate income tax regime, and its application is not contingent on the satisfaction of regulatory requirements for purposes of, for instance, the Financial Supervision Act (Wet op het financieel toezicht: FSA). However, less restrictive shareholder requirements apply if the FBI is under the supervision of the Netherlands Authority for the Financial Markets (see 2.3 below).

In addition, it should be mentioned that an unregulated, open-ended mutual investment fund (fonds voor gemene rekening) will become tax transparent as of January 2025 as a consequence of intended changes to the Dutch tax entity classification rules. For this reason, under these proposals, the aforementioned unregulated funds currently using the FBI regime should monitor these developments as they could lose their status (see also 3.2).

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
- Dutch private limited liability company (BV) - Dutch public limited liability company (NV) - Open-ended mutual investment fund (FGR) - Comparable foreign legal entity	- BV: None - NV: EUR 45,000 - FGR: none

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Legal form

A Dutch public liability company (NV), a private limited liability company (BV), an open-ended mutual investment fund (fonds voor gemene rekening: FGR) or comparable foreign legal entities are eligible for the FBI regime. Comparable foreign legal entities are not required to have Dutch residency but should be liable to Dutch corporate income tax.

If an FBI takes the legal form of an FGR – an entity that in itself does not have legal personality – it is required to have a management company. An FBI can only be self-managed if it is in the form of a company, although a management company could also be used in that situation.

Due to proposed amendments to the Dutch tax entity classification rules as of 1 January 2025, an FGR should only be able to obtain or retain FBI status in case it is a regulated fund for purposes of the Financial Supervision Act. Unregulated FGR's will become tax transparent and, by that virtue, no longer be eligible for FBI status.

Minimum share capital

The FBI regime does not impose any requirements as to minimum share capital. However, minimum capital requirements do follow Dutch company law and are as follows for the various Dutch entities:

- BV: None
- NV: EUR 45,000
- FGR: None

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
If listed or regulatory licensed: - One single corporate entity may stand-alone – or together with affiliates – may not hold 45% or more of the shares - One single individual may not hold 25% or more of the shares **If not listed or licensed:** - Individuals/non-taxable corporate entities/regulated FBIs must own at least 75% of the shares in the FBI - One single individual may not hold 5% or more of the shares **Further, in both cases:** - Dutch corporate entities may not own 25% or more of the shares in the FBI through the interposition of foreign entities	None

Shareholder requirements

The FBI shareholder requirements are more lenient if either the FBI is listed on any recognised stock exchange, it (or its manager) has a licence pursuant to the FSA, or it (or its manager) benefits from an exemption of a license requirement as a result of being subject to regulatory supervision by another EU member state (hereinafter referred to as a 'regulated FBI'). If the FBI does not meet any of these requirements (hereinafter referred to as a 'non-regulated FBI') more stringent shareholder requirements must be met.

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In the case of a regulated FBI, the shareholder requirements can be summarised as follows:

- a single corporate entity (a regulated FBI excluded) which is subject to any form of profit tax or an entity whose profits are taxed in the hands of its participants (i.e. a transparent entity) may not own 45% or more of the shares together with affiliated entities; and
- a single individual may not own 25% or more of the shares.

In case of a non-regulated FBI, the shareholder requirements are as follows:

- A single corporate entity (a regulated FBI excluded) which is subject to any form of profit tax or an entity whose profits are taxed in the hands of its participants (i.e., a transparent entity) may not own 45% or more of the shares together with affiliated entities; and
- A single individual may not own 25% or more of the shares.

Irrespective of whether the FBI is regulated or not, all FBIs must meet the condition that their shares are not owned for 25% or more by Dutch resident entities through the interposition of non-Dutch entities that have a capital divided into shares or of non-Dutch mutual funds.

However, it is approved by the Dutch Ministry of Finance that non-regulated FBIs, having a non-regulated FBI as a shareholder who owns more than 25% of the shares, will meet the shareholder requirements, provided the non-regulated FBI distributes 95% of the available profits before closing its financial year to its non-regulated FBI parent company. Therefore, multi-layer FBI structures are possible to a certain extent.

Listing requirements

Listing is not required, but it does offer access to less restrictive shareholder requirements.

2.4 Asset level/activity test

Restrictions on activities/investments
- FBIs are only permitted to invest in passive portfolio investments - FBIs are allowed to invest abroad

The statutory purpose and the actual activities of an FBI must be restricted to portfolio investing only. Barring a few exceptions specified by law, the FBI is prohibited from being engaged in activities that go beyond the scope of making passive investments. This means that investments must have the objective of realising a return in terms of yield derived from investment and appreciation in value that one may reasonably expect from regular investment management (i.e., investments in shares, bonds and real estate).

An FBI investing in real estate must thus restrict its activities to the ‘passive’ renting out of and investing in real estate. The permitted activities of an FBI itself include (i) the granting of guarantees for the benefit of affiliated companies whose assets comprise at least 90% of real estate (and associated rights), and; (ii) financing such companies with external loans.

Real estate development is not regarded as a ‘passive’ investment activity and therefore prohibited. However, development activities on behalf of the FBI’s own investment portfolio itself are specifically permitted. These activities should be carried out by a subsidiary company that is subject to tax at the standard statutory corporate income tax rate (the taxable amount up to EUR 200,000 will be subject to a rate of 19%; in excess thereof, the rate is 25.8% (in 2023)). This ‘development subsidiary’ is not allowed to carry out any other activity than development activities for the FBI’s own portfolio of properties, and it should charge the FBI an at arm’s length (development) fee. For practical purposes, the law provides for a safe harbour rule to avoid discussions about the nature of relatively small investment activities: improving and expanding existing real estate objects will not be considered ‘development activities’ as long as the

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investments involved do not exceed 30% of the relevant property's market value determined under the Value of Immovable Property Act (Wet waardering onroerende zaken: 'WOZ').

Ancillary business activities, like specific property-related services, are permitted if they are related to the FBI's own portfolio of properties. These activities should also be carried out via a regularly taxable subsidiary (standard corporate tax rates of 19/25.8% in 2023). This subsidiary must charge the FBI an at arm's length (service) fee. The allowed ancillary business services may not exceed certain statutory qualitative and quantitative limits.

Following the recently proposed rules, an FBI will no longer be allowed to invest directly in domestic or foreign real estate as of 1 January 2025. An FBI would still be allowed to invest in shares in a regularly taxed subsidiary that owns real estate. However, the FBI may under the proposed rules not be involved in the management of such a subsidiary.

In addition, under the proposed rules, an FBI is still allowed to hold a regularly taxed subsidiary engaged in real estate development. However, such a development company may no longer develop real estate for the benefit of the FBI but must develop the real estate for the benefit of itself or related entities which are regularly taxed. A similar provision is introduced for regularly taxed subsidiaries which are engaged in ancillary property-related services. The FBI is not allowed to be involved in the management of these entities. As these proposals are part of a draft consultation proposal, these rules may be subject to change. The final legislative bill is expected to be released around Dutch Budget Day (19 September 2023).

2.5 Leverage

Leverage
- 60% of the tax book value of directly/indirectly held real estate and - 20% of the tax book value of all other investments

The debt of the FBI may not exceed the following:

- 60% of the tax book value of directly/indirectly held real estate; or
- 20% of the tax book value of all other investments.

Debt is defined as the total amount borrowed by the FBI, which is, in principle, calculated on a non-consolidated basis.

The 60% leverage ratio for investments in real estate also applies to equity investments through shares in affiliated companies whose assets comprise at least 90% of real estate (and associated rights). Further, intra-group loans to such real estate subsidiaries of an FBI may be externally funded by up to 100%. Therefore, intra-group loans to real estate subsidiaries effectively fall outside the FBI's leverage restriction. Consequently, an FBI will be able to attract external financing in order to provide back-to-back financing to real estate group subsidiaries without deteriorating its leverage limitations.

Pursuant to the proposed measure that disallows FBIs to (directly) invest in real estate, the current 60% financing limit for direct and indirect real estate investments will be abolished. This effectively means that if the FBI regime is to be retained, a reduced general financing limit has to be complied with, i.e. a maximum of 20% debt financing of the tax book value of the investments (like shares in the regularly taxed property-owning subsidiaries).

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2.6 Profit distribution obligations

Operative income	Capital gains	Timing
100% of taxable profit	Capital gains/losses can be allocated to a tax-free reserve	Within eight months after the end of its financial year

Current income

Dutch tax law requires that an FBI distributes all (100%) of its profits to its shareholders within eight months after the end of its financial year. The amount of taxable profit is calculated on the basis of the regular rules applicable to corporate income taxpayers, with some exceptions especially provided for FBIs. In accordance with the regular rules, depreciation on real estate held by FBIs is limited.

Capital gains

The net balance of unrealised capital gains on securities and realised capital gains on all other investments may be added to a so-called reinvestment reserve (herbeleggingsreserve). These capital gains are excluded from the taxable profit of the FBI and are not subject to the profit distribution obligation (see 3.1 below).

2.7 Sanctions

Sanction
Cancellation of FBI status

If at any point in time, an FBI fails to meet any of the requirements to qualify as an FBI, the FBI status will be cancelled as of the start of the financial year during which such failure occurred, except for a failure of the profit distribution obligation, which will cancel the FBI status as of the start of the accounting year of which the profits should have been distributed under this requirement.

The main consequence of a loss of the FBI status is that the relevant entity will become a regular taxpayer for Dutch corporate income tax purposes so that its profits, determined in accordance with the regular Dutch tax accounting principles, will be subject to Dutch corporate income tax at the standard rates (19/25.8% in 2023). Prior to the day on which the FBI becomes (or returns to be) a regular taxpayer for Dutch corporate income tax purposes, i.e., at the end of the preceding accounting year, its assets are revalued to fair market value for tax purposes. Consequently, any deemed capital gain recognised as a result of this revaluation is still subject to the FBI regime (i.e., taxed at 0%).

3 Tax treatment at the level of the REIT

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3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Real estate income is part of the taxable profit and is subject to a corporate income tax rate of 0% (effective exemption)	Capital gains/losses can be allocated to a tax-free reserve and are then effectively exempt from corporate income tax	Withholding taxes incurred are not refunded; FBIs are granted a Dutch dividend tax remittance rebate instead

Current income

An FBI is subject to corporate income tax in the Netherlands at a rate of 0%. The taxable profits of an FBI are, in principle, determined on the basis of the same tax accounting principles that apply to taxpayers regularly subject to Dutch corporate income tax. The taxable profits typically include the direct investment result and, if the reinvestment reserve is not applied, the net balance of capital gains and losses. However, some exceptions on the determination of the taxable profit apply to an FBI. Without being exhaustive, the main exceptions are:

- The participation exemption does not apply to share investments in entities made by an FBI;
- Subject to conditions and limitations, an FBI can elect to apply a rounding-off reserve (afrondingsreserve);
- Subject to conditions and limitations, an FBI can elect to apply a reinvestment reserve (see 2.6 above);
- Certain particular items which are not deductible for regular corporate income taxpayers are taken into account in calculating the taxable profit of an FBI (e.g., the earnings stripping interest deduction limitation); and
- Income that would be included in the tax base of regular corporate income taxpayers under the controlled foreign company (CFC) rules.

Capital gains

The FBI can elect to apply a reinvestment reserve. By doing so, the balance of capital gains and losses is allocated to the reinvestment reserve. By that operation, these items are excluded from the taxable income and therefore not included in the amount which compulsorily must be distributed to the FBI's shareholders. The remainder of taxable income represents the annual distribution obligation (see 2.6 above).

Withholding tax

Given that an FBI is liable to Dutch corporate income tax at a rate of 0%, the FBI is effectively unable to credit Dutch or foreign withholding taxes suffered against its Dutch corporate income tax liability. Moreover, unlike taxpayers who are regularly subject to Dutch personal income tax or corporate income tax, the FBI is not entitled to a refund of Dutch dividend withholding tax upon request.

However, subject to certain conditions and limitations, the FBI is allowed to apply a rebate to its obligation to remit the amount of Dutch dividend withholding tax that the FBI has to withhold in respect of its recurrent compulsory distribution of profits in an amount equal to the amount of withholding taxes suffered by the FBI (afdrachtvermindering). As such, the FBI can impute the domestic and foreign

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withholding tax it suffered on distributions it has received against its obligation to remit Dutch dividend withholding tax that it withholds from the profit distributions it makes to its shareholders.

With respect to such a rebate in respect of foreign withholding taxes suffered (on interest and dividend only), certain limitations apply. Such limitations are:

- A maximum underlying tax rate of 15% is taken into account with respect to foreign source tax on dividends and interests; and
- The rebate is further reduced if and to the extent the FBI has shareholders who are entitled to a reduction or rebate of Dutch dividend withholding tax under a prevailing arrangement for the avoidance of double taxation or by virtue of the Dutch Dividend Withholding Tax Act.

Accounting rules

There are no special commercial accounting rules for FBIs. A listed FBI is required to follow IFRS rules, just like any other listed company.

3.2 Transitional regulations

Conversion into REIT status
- All assets and liabilities are assessed at market value - Tax recognised reserves must be realised and should be added to the taxable profits - Hidden capital gains and losses must be recognised and are subject to corporate income tax at regular rates

At the end of the year, immediately prior to the year that the entity converts to an FBI, all its assets and liabilities must be revalued for tax purposes to market value. Unrealised capital gains are therefore recognised for tax purposes and subject to Dutch corporate income tax in accordance with the regular rules. Tax-free reserves must also be realised and added to the taxable profits. The final tax charge prior to conversion is levied and due at the regular Dutch corporate income tax rates (19/25.8% in 2023), i.e., a special conversion regime or payment delay scheme are not available.

A loss of FBI status also leads to a revaluation of the assets to a fair market value the very moment before losing the FBI status (see 2.7 above).

As a result of the proposed rules that will disallow FBIs to (directly) invest in real estate, FBIs which have invested in real estate will lose their FBI status. Some of these FBIs are expected to restructure their investments. As a transitory measure, an alleviating measure in relation to real estate transfer tax is anticipated to be proposed. This transitory measure takes the form of a conditional RETT exemption for restructurings directly caused by the FBI abolition. The exemption is expected to enter into force on 1 January 2024 and apply during the year 2024, with a view to the FBI abolition to enter into force as of 1 January 2025. As this is still a proposal that has been consulted, these rules may be subject to change. The final legislative proposal is expected to be released around Dutch Budget Day (19 September 2023).

3.3 Registration duties

Registration duties
- No capital duties - A real estate transfer tax of 10.4% applies if the FBI acquires Dutch real estate or shares of Dutch real estate companies

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A 10.4% real estate transfer tax (overdrachtsbelasting) applies if the FBI acquires Dutch real estate (in 2023). In addition, an acquisition leading to an interest of at least one-third in a real estate company owning in whole or in part Dutch real estate is subject to real estate transfer tax as well. Real estate transfer tax is levied on the acquirer of Dutch real estate (or the shares of the Dutch real estate company).

4 Tax treatment at shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Dividends and capital gains are taxable	The taxpayer is typically taxed on the basis of a deemed income	- In principle, a withholding tax of 15% - Creditable

Corporate shareholder

A Dutch corporate investor's investment in shares of an FBI in principle disqualifies for the Dutch participation exemption regime. Therefore, any benefits derived from this shareholding in terms of dividends and capital gains will be included in the taxable profits subject to corporate income tax at the standard rates (19/25.8% in 2023).

In principle, Dutch corporate investors can credit the Dutch dividend withholding tax that they have suffered on dividends distributed by the FBI against their Dutch corporate income tax liability (full credit). Any excess of dividend withholding tax is refundable. Application of the dividend tax remittance rebate (afdrachtvermindering) by the FBI does not affect the entitlement to a credit for such a Dutch shareholder.

Individual shareholder

The income tax consequences of a Dutch individual shareholder depend on the qualification of the FBI participation for the investor. In most cases, income from the investment will be taxed annually as a 'benefit from savings and investments' (voordeel uit sparen en beleggen). The benefit is calculated as a deemed return on the fair market value of a taxpayer's net assets ('yield basis' or rendementsgrondslag) at the beginning of the year in excess of the 'exempt net asset amount' (heffingvrije vermogen) of EUR 57.000 (2023)[1]. Investments such as a shareholding in an FBI are deemed to yield at a rate of 6.17% of the fair market value of the investment whereas personal held debts are deemed to lead to costs at a rate of 2.46% of the value of the debts. This deemed total return is subsequently divided by the yield basis. The percentage resulting from this calculation is then multiplied with the yield basis in excess of the exempt net asset amount to reach the benefit from savings and investments.These benefits are taxed at a rate of 32% (2023). The fair market value of the investment in the FBI thus forms part of the total yield basis of an individual taxpayer. Actual benefits derived from the participation in the FBI, including any gains realised on the disposal of the shares therein, are not as such subject to Dutch income tax.

If an individual owns, alone or together with certain family members, an interest of 5% or more in an FBI (which is only possible if the FBI is regulated, because otherwise the FBI would fail the shareholder requirements), the dividend distributions and capital gains are subject to the so-called 'substantial interest' taxation rules (aanmerkelijk belang). Basically, all results from a substantial interest (dividends

1 The Dutch government announced that its intention to introduce new taxation rules for 'benefits from savings and investment' based on actual returns as of 2025.

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and capital gains included) are taxed at a flat rate of 26.9% (2023) if and when realised.[2]

If an individual owns FBI shares in the course of his enterprise, the proceeds derived from the investment in the FBI could be subject to tax at progressive income tax rates (up to 49.50%).

Individual shareholders are allowed to credit the Dutch dividend withholding tax that they have suffered on dividends distributed by the FBI against their personal income tax liability in the Netherlands (full credit). Application of the dividend tax remittance rebate (afdrachtvermindering) by the FBI does not affect the entitlement to a credit for such a Dutch shareholder.

Withholding tax

Distributions of profits in whatever name or form made by an FBI are subject to 15% Dutch dividend withholding tax. Distributions made from the reinvestment reserve (herbeleggingsreserve) are considered capital repayments for withholding tax purposes and therefore are not subject to Dutch dividend withholding tax (if certain formalities are complied with). The repayment of nominal share capital is generally not subject to Dutch dividend withholding tax. However, the redemption of share premium is only free from Dutch dividend withholding tax if the FBI does not have any net profit (zuivere winst), such as available profit reserves or hidden reserves.

As stated above, Dutch taxable corporate and individual shareholders are allowed to credit the Dutch dividend withholding tax against their corporate income tax or personal income tax liability in the Netherlands.

A Dutch entity that is not subject to Dutch corporate income tax (e.g., pension funds) can claim a refund of Dutch dividend withholding tax suffered on distributions by an FBI.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Generally speaking, should not be subject to corporate income tax	Generally speaking, should not be subject to personal income tax	- In principle, a withholding tax of 15% - Tax treaty relief might apply - Parent-Subsidiary Directive does not apply

Corporate shareholder

Generally speaking, foreign corporate investors should not be subject to Dutch corporate income tax with respect to their investment in an FBI. However, a foreign corporate investor that owns a so-called ‘substantial interest’ in a Dutch FBI (generally speaking, 5% or more of the FBI’s aggregated nominal share capital) may be liable to Dutch corporate income tax on the dividends received and capital gains realised in respect of this substantial interest (standard rates of 19/25.8%). Conventions for the avoidance of double taxation concluded by the Netherlands may limit the Netherlands in fully exercising those taxing rights.

Individual shareholder

Generally speaking, foreign individual investors should not be liable to Dutch personal income tax with respect to their investment in an FBI. However, a foreign individual investor who owns a so-called

2 In the Spring Budget Report 2022, the Dutch government announced its intentionds to introduce as of 2023 a two-bracket system for income derived from a ‘substantial interest’ with a regular rate of 26% for income up to EUR 67,000 (per taxpayer) and 29.5% on the excess. The implementation of the two-bracket system for income derived from a ‘substantial interest’ has been postponed to 2024.

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'substantial interest' in a Dutch (regulated) FBI (generally speaking, 5% or more of the FBI's aggregated nominal share capital) may be liable to Dutch personal income tax at a flat rate of 26.9% (2023) on the dividends and capital gains realised in respect of this substantial interest.3 Conventions for the avoidance of double taxation concluded by the Netherlands may limit the Netherlands in fully exercising those taxing rights.

Withholding tax

Distributions of profits in whatever name or form made by an FBI are subject to 15% Dutch dividend withholding tax.

Distributions made from the reinvestment reserve (herbeleggingsreserve) are considered capital repayments for withholding tax purposes and therefore are not subject to Dutch dividend tax (if certain formalities are complied with). The repayment of nominal share capital is generally not subject to Dutch dividend withholding tax. However, the redemption of share premium is only free from Dutch dividend withholding tax if the FBI does not have any net profit (zuivere winst), such as available profit reserves or hidden reserves.

A corporate shareholder that is neither subject to corporate income tax in its country of residence nor would be subject to Dutch corporate income tax if the entity were established in the Netherlands can file a request to the Dutch tax authorities for a refund of Dutch dividend withholding tax. For non-EU/EEA investors, it is required that their investment falls within the scope of the EU free movement of capital.

Furthermore, a partial reclaim of Dutch dividend withholding tax is possible under certain conditions following the European Court of Justice case law which has meanwhile been incorporated into Dutch tax law. Such may be the case if the foreign shareholder is confronted with a levy (i.e., the withheld dividend tax, potentially up to 15%) which is more burdensome (i.e., higher) than the tax treatment of that shareholder would have been if it had been a Dutch resident. For the treatment of Dutch domestic shareholders, reference is made to 4.1 above.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
A foreign REIT should be tax-exempt	No specific tax privileges	No specific tax privileges

Foreign REIT

A foreign entity that is comparable in nature, form and behaviour to the qualifying Dutch FBI and that complies with all the FBI requirements (shareholder, leverage, distribution obligation, etc.) can obtain FBI status in respect of its qualifying Dutch sources of income (Dutch real estate, etc.). In that case, qualifying FBI income derived from Dutch taxable sources will be subject to a corporate income tax rate of 0%.

It is the view of the Dutch tax authorities that foreign REITs that are not subject to Dutch dividend withholding tax are not comparable to a qualifying Dutch FBI. However, the Dutch Supreme Court reconsidered its previous judgment that a foreign REIT is not comparable to a Dutch FBI because such a foreign REIT is not subject to withholding tax in the Netherlands. In addition, following a judgment of the EU Court of Justice, the Dutch Supreme Court ruled that a foreign REIT that meets all requirements except the distribution requirement is still comparable to a Dutch FBI in case it voluntarily submits a substitute payment for its profits calculated according to Dutch standards.

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Corporate shareholder

The participation exemption, in principle, does not apply to participation in a Dutch resident or foreign resident company that qualifies as an FBI. Hence, a Dutch corporate shareholder owning participation in a foreign entity that qualifies as an FBI cannot apply for the participation exemption in respect of income and capital gains derived from the participation in the FBI.

The participation of a Dutch corporate taxpayer in a foreign REIT is, in principle, eligible for the participation exemption, provided certain conditions are met. However, under anti-hybrid rules, the Dutch tax authorities take the position that the participation exemption does not apply to received dividends if the foreign REIT applied a mechanism of deductible dividends.

Individual shareholder

There is no specific tax privilege. General rules apply (see 4.1 above).

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SIGI

A comparison of the
major REIT regimes
around the world.

2023

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1 General introduction

	Enacted year	Citation	REIT type
SIGI	2019	Decree-Law No. 19/2019 of 28 January 2019, as amended by Law No. 97/2019 of 4 September 2019	Corporate type

Following international trends, Decree-Law No. 19/2019 of 28 January 2019 (which entered into force on 1 February 2019) introduced a model of REIT into the Portuguese legal framework by creating the so-called Real Estate Investment and Asset Management Companies (Sociedades de Investimento e Gestão Imobiliária) or 'SIGI'.

Upon parliamentary review of the regime, the first amendment to the legislation on SIGIs was enacted by Law No. 97/2019 of 4 September 2019.

SIGIs are vehicles designed for real estate investment, with the particularity that the shares representing their share capital must be listed and subject to specific free-floating requirements. SIGIs also need to comply with strict requirements as regards the composition of portfolios, limits on indebtedness and mandatory distribution of profits. From a tax perspective, SIGIs benefit from the express reference to the favourable tax regime currently applicable to real estate investment funds/companies. However,they are not subject to the legal framework applicable to collective investment vehicles nor to the supervision of the Portuguese Securities Market Commission (CMVM).

From a tax perspective, the SIGIs benefit from an express reference to the tax regime already in force for real estate investment funds/companies (collective investment vehicles or CIVs), meaning that, in the absence of a specific legal provision, there is no specific and separate tax regime for the SIGIs. Current rules, approved in 2015, enacted a tax regime according to which, despite being technically subject and not exempt from Corporate Income Tax (CIT), certain items of income, including rents and capital gains, are not taxed at SIGI level. Shareholder-level taxation applies on distributions, redemptions and capital gains with a reduced rate of 10% applying to non-resident shareholders with no Portuguese-situs permanent establishment.

Sector summary*

Listing country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
Portugal	2	0	155,77	0.00%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
Within one year after incorporation (or the effects of the conversion of already existing companies), SIGI shares must be admitted to trading in a regulated market or in a multilateral trading facility in Portugal or in the EU/EEA.

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SIGIs must be listed in a regulated market in Portugal or in other members of the European Union (or within the European Economic Area). Listing in alternative multilateral trading facilities also qualifies for the purposes of the application to a company of the legal framework of SIGIs. The listing process shall be completed within one year after the incorporation of the company or the effects of the conversion in the case of already existing companies.

In Portugal, a single regulated market is Euronext Lisbon, managed by Euronext. Euronext Access and Euronext Growth are two alternative multilateral trading facilities also managed by Euronext that are also eligible for trading shares representing the share capital of a SIGI.

In addition to newly incorporated SIGIs, which can be set up through private or public placement, the conversion into SIGIs of existing private limited liability companies by shares is also permitted and regulated, as well as the conversion of real estate collective investment vehicles provided that these take corporate form already. It should be noted that for the purposes of incorporating a SIGI by way of a demerger from an existing company, the branch of activity comprising one or more real estate assets or holdings is considered from a legal perspective as an economic unit.

Limited liability companies by shares may be converted into SIGIs subsequently to a resolution of its shareholders' meeting taken by the qualified majority applicable to the amendment of the by-laws and provided that all legal requirements applicable to SIGIs are met. In these cases, the conversion into SIGI is effective from the first day of the financial year immediately after the registration of the amendments to the by-laws of the company.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Limited liability company by shares (Sociedade Anónima)	EUR 5 million

SIGIs must take the form of private limited liability companies by shares (sociedades anónimas) with a minimum share capital of EUR 5 million represented by ordinary and nominative shares, having head offices in Portugal.

Besides, it is compulsory that their corporate name includes the name or acronym by which they are known in Portugal,; i.e., 'Sociedade de Investimento e Gestão Imobiliária, SA' or 'SIGI, SA'.

The SIGI's main corporate purpose must consist of the following:

i. The acquisition of freehold rights, surface rights or other rights over the property of similar nature, to be allocated to leasing or other atypical contractual models that include the provision of services required for the utilisation of property, including leases under the form of agreements for the use of units or spaces in shopping centres or offices, which are very common in Portugal. Among others, SIGIs can also invest in development and urban regeneration projects, as well as in land that will qualify as urban land for construction purposes within three years from the acquisition;

ii. The holding of participations in other SIGIs, or in companies with registered offices in Portugal or in another Member State of the European Union or European Economic Area subject to the exchange of tax information equivalent to the standards applicable within the EU (in this case, provided that such resident or non-resident companies meet the requirements applicable to SIGIs as regards to corporate purpose, the composition of the portfolio and profits distribution); and

iii. The holding of stakes in Portuguese real estate collective investment vehicles regulated under the Portuguese Collective Investment Schemes 16/2015 Act or residential letting real estate investment funds that have a similar income distribution policy.

The SIGI must hold both real estate assets and participations for a minimum period of three years.

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2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
- Until the end of the third complete calendar year upon admission to trading, at least 20% of the shares representing a SIGI's share capital must be spread across investors with holdings corresponding to less than 2% of voting rights. - Until the end of the fifth complete calendar year upon admission to trading, at least 25% of the shares representing SIGI's share capital must be spread across investors with holdings corresponding to less than 2% of voting rights. - Certain limitations apply to banks.	Yes

Shareholder requirements

Until the end of the third complete calendar year, upon admission to trading, at least 20% of the shares representing SIGI's share capital must be spread across investors with holdings corresponding to less than 2% of voting rights. This minimum free float requirement is increased to 25% by the end of the fifth complete calendar year upon admission to trading.

Credit institutions such as banks are only allowed to hold participations above 25% in SIGIs for a maximum period of three or five years (consecutive or cumulative).

Additional free float requirements may apply depending on the specific rules of the stock exchange on which the shares are admitted to trading (see below).

There are no restrictions on foreign shareholders under the SIGI regime.

Listing requirements

Within one year after incorporation or effects of conversion, a SIGI's shares must be listed in Portugal, in the EU or the European Economic Area in (i) an official regulated market (e.g., Euronext Lisbon) or (ii) a multilateral trading facility (e.g., Euronext Access Lisbon or Euronext Growth Lisbon). In the case of admission to trading in multilateral trading facilities such as Euronext Access Lisbon or Euronext Growth Lisbon, the rules applicable by virtue of the admission to trading of the shares are simplified.

The SIGI regime sets out specific free float requirements for SIGI's shares (see section Shareholder requirements), although additional free float requirements may apply depending on the specific rules of the stock exchange on which the shares are admitted to trading. Generally, the minimum free float for listing in Euronext Lisbon (regulated market) is 25%. In the case of listing in Euronext Growth Lisbon, a SIGI's shares having a value of at least EUR 2.5 million shall be spread across the public. No free float requirements apply for listing in the Euronext Access Lisbon standard segment.

Only in specific cases will SIGIs have 'public company status' (i.e., being subject to the supervision of the Portuguese Securities Market Commission and to a wide and stricter set of obligations, notably information obligations), in particular in the case of incorporation through public placement or in the case that its shares have been, inter alia, the subject of a public offering or admitted to trading in a regulated market, which is not the regime generally applicable.

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2.4 Asset level/activity test

Restrictions on activities/investments
- The composition of the portfolio of the SIGI must comply with two cumulative limits, starting from the second year upon incorporation or conversion into SIGI: (a) at least 80% of the total value of a SIGI's assets must correspond to rights over real estate assets (free of liens or encumbrances) and holdings, (b) at least 75% of the total value of a SIGI's assets must correspond to rights over real estate assets (free of liens or encumbrances) subject to a lease or other atypical contractual models that include the provision of services required for the utilisation of properties. - The SIGI must hold real estate assets and participations for a minimum period of three years; otherwise, the company loses its status as a SIGI.

Asset level/activity test

The composition of the portfolio of a SIGI must comply with two cumulative limits, starting from the second year upon incorporation or conversion into a SIGI:

i. The value of rights over real estate assets (free of liens or encumbrances) and holdings (comprised of the SIGI's main corporate purpose, as per the limitations set out above) shall represent at least 80% of the total value of the assets of the SIGI; and

ii. The value of rights over real estate assets (free of liens or encumbrances) subject to a lease or other atypical contractual models that include the provision of services required for the utilisation of properties shall represent at least 75% of the total value of the assets of the SIGI.

These limits are assessed in accordance with the individual accounts or, in the case that the SIGI has subsidiaries, in the consolidated accounts.

Guarantees obtained in the framework of financing for the acquisition, construction or rehabilitation do not affect the value of the real estate.

No asset diversification rule exists, and SIGIs are entitled to hold a single property asset.

SIGIs may invest not only in urban property but also in rural land that is capable of autonomous economic exploitation, including the forestry industry.

Real estate assets and holdings must be subject to valuation every seven years at least by an independent external appraiser registered with the CMVM.

Minimum holding period

Both real estate assets and holdings (comprised of the SIGI's main corporate object, as per the limitations set out above) must be held by the SIGI for a minimum period of three years; otherwise, the company loses its status as a SIGI.

2.5 Leverage

Leverage
A SIGI's indebtedness shall not exceed, at any time, 60% of the SIGI's total assets

A SIGI's indebtedness shall not exceed, at any time, 60% of the SIGI's total assets. This limit is assessed in accordance with the individual accounts or, in the case that the SIGI has subsidiaries, in the consolidated accounts.

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2.6 Profit distribution obligations

Operative income	Capital gains	Timing
- 90% of the profits of the financial year that result from dividends on shares or income from participation units. - 75% of the remaining distributable profits of the financial year.	- No requirement - However, 75% of the net proceeds deriving from the sale of assets allocated to the core corporate purpose shall be reinvested within three years in other assets to be allocated to the development of such corporate purpose.	Within nine months after the end of the financial year.

SIGIs are obliged to distribute their profits to shareholders in the form of dividends, as set out below. It should also be noted that the legal reserve of SIGIs shall not exceed 20% of their share capital.

Operating income

It is compulsory to distribute at least 90% of the profits of the financial year that result from dividends on shares or income from participation units.

Capital gains

No requirement. However, at least 75% of the net proceeds deriving from the sale of assets allocated to the core corporate purpose shall be reinvested within three years in other assets to be allocated to the development of such corporate purpose.

Other profits

At least 75% of the remaining distributable profits of the financial year.

Timing

Within nine months after the end of each financial year.

2.7 Sanctions

Sanction
- Loss of SIGI status - No specific monetary penalties are foreseen

Companies lose their SIGI status upon the occurrence of any of the following events:

i. Ceasing to be private limited liability companies by shares, changing their corporate purpose or reducing their share capital below EUR 5,000,000;

ii. Not requiring the admission to trading of their shares within one year after incorporation or effects of conversion;

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iii. Not complying for more than six months with (a) free-float requirements of 20% following the end of the third complete calendar year upon listing (or 25% following the 5th complete calendar year upon listing); or (b) 2% minimum voting rights;

iv. Not complying with the requirement of holding the real estate assets and holdings (comprised of the SIGI's main corporate object, as per the limitations set out above) for a minimum period of three years;

v. Simultaneously not complying with all the portfolio composition requirements for more than six months;

vi. Not complying with any of the requirements on portfolio composition for two consecutive financial years or for any two financial years within a five-year period; or

vii. Failing to meet indebtedness limits.

The loss of SIGI status prevents the company from reacquiring such status in the following three years.

The management and supervisory board members are accountable before the shareholders for direct damages caused as a result of the loss of SIGI status.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
- Income derived from rental/lease activity is tax-exempt. - Other income may be subject to corporate taxation.	Capital gains deriving from the disposal of rented real estate properties and of participations are exempt.	Proceeds from lease activity are not subject to withholding tax.

Corporate taxes

As a rule, a SIGI is liable to CIT at the rate of 21% but not subject to Municipal and State Surtaxes. Income qualified under the following three categories, as defined by the Personal Income Tax Code, is excluded from taxation at the level of the SIGI:

- Investment income (e.g., dividends and interest);
- Rental income (e.g., rental/lease income); and
- Capital gains (e.g., derived from the disposal of real estate or from the sale of shares or units).

A specific provision was included in the tax regime of SIGIs, which provides that capital gains from the disposal of real estate by a SIGI will only be tax-exempt (under the said regime of the CIVs) to the extent that the property disposed of has had a lease or service agreement in place for at least three years.

A recent ruling issued by the Portuguese Tax Authorities (PTA) for Portuguese funds is also applicable for a SIGI, whereby the PTA considered that any onerous transfer of a real estate asset should be considered as a capital gain, irrespective of any subjective considerations on whether such transfer is linked to a broader trading/development activity or if it has a passive or active nature.

All expenses directly connected to the categories of income excluded from taxation should not be tax-deductible when computing the taxable profit of the SIGI, namely expenses incurred with the acquisition

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(e.g., depreciation) and disposal of real estate, insurances, as well as interest and other financial expenses obtained for acquiring, maintaining and repairing assets generating exempt income.

The taxable income of a SIGI is obtained by offsetting tax losses (if any) to the taxable profit. A SIGI may carry forward tax losses in the subsequent years without a timeline limitation, which may only be offset against 65% of the entity's taxable profit in any given year.

SIGIs are not obliged to make any payments on account or special payments on account of future CIT in any given year.

A SIGI remains subject to autonomous corporate taxation (levied at different rates) on certain qualifying expenses, such as car expenses, per diem allowances, representation expenses and management employee bonuses exceeding certain thresholds, among others.

Withholding tax

Income derived or accrued by a SIGI is not subject to any Portuguese withholding tax.

Other taxes

Currently, the tax law specifically states that CIVs are also subject to Stamp Tax at a tax rate of 0.0125% on the global net asset value (due on a quarterly basis). SIGIs do benefit from assimilation to the tax regime currently applicable to real estate investment funds/companies (CIVs). Nonetheless, SIGIs are not CIVs. The PTA has not, to date, issued guidance as to whether SIGIs are subject to Stamp Tax. Note that, in a policy document authored by members of the Cabinet of the Secretary of State for Tax Affairs, recently published on the website of the Portuguese Parliament (Assessment Report)., Iit is recommended that the authorities consider reviewing the Stamp Tax rules applicable to all the entities that apply the tax regime applicable to CIVs to ensure tax equality among different investment vehicles.

Accounting rules

The SIGIs may choose to follow Portuguese GAAP or IFRS until it is officially listed on a regulated market. Then, it must follow IFRS.

3.2 Subsidiaries

Holdings in other entities are subject to the limitations set out above in section [2.2]. Only if the Portuguese subsidiaries are deemed as a CIV or as SIGI may they benefit from the same tax regime. Portuguese subsidiaries not qualifying as CIV or SIGI are taxed under the general CIT regime for companies.

3.3 Transitional regulations

Conversion into REIT status
Possible

There is no special transitional tax regime applicable to the conversion of a regular company into a SIGI. In the framework of CIVs, the PTA has already confirmed that the conversion of a legal entity in a CIV should not be treated as a taxable liquidation or liable to real estate transfer tax. The SIGI obtains tax-exempt status at the beginning of the following taxable year in which the company has been registered as SIGI.

Nonetheless, the Assessment Report, among other measures, recommends the approval of an anti-abuse regime that extends to converting corporate entities into CIVs in corporate form, a regime equivalent to the transitional rules enacted in 2015 when the Portuguese legislator enacted the tax regime in force.

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Note that such transitional regime established inter alia, pro rata temporis rules applicable to immovable property capital gains realised at the CIV level as well as to the income derived at the level of the investor. At this stage, it is unclear how such a regime, if enacted, would apply to SIGIs.

There are, nevertheless specific tax rules put in place to clarify tax aspects in the event of loss of quality of SIGI. In such cases, the favourable tax regime ceases from that fact (loss of status) and the period onwards until the end of the calendar year will be considered a taxable period under the general CIT regime. In addition, any income paid to shareholders post-termination of a SIGI regime will be taxed under the general regime (depending on the individual shareholder or corporate shareholder).

3.4 Registration duties

Registration duties
- No tax is due upon the incorporation of the SIGI - Real estate transfer tax

No tax is due upon incorporation and capital increases.

The transfer of real estate to and from a SIGI is not exempt from real estate transfer taxes. Real estate transfer tax is due by the purchaser on the higher of the purchase price or cadastral tax value at a rate of up to 6.5%. Stamp Tax is also due on the acquisition of real estate at a 0.8% tax rate unless the acquisition is subject to VAT. Even if the purchase or sale is subject to VAT, real estate transfer tax is always levied.

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Distributions, redemptions and capital gains are taxable. Whether the participation exemption could apply is subject to confirmation by the PTA.	28% on the distribution of income, including redemptions and capital gains.	- 25% for resident corporate shareholders (unless participation exemption could apply). - 28% for resident individual shareholders.

Corporate shareholder

In the case of resident corporate investors, any income derived from the SIGI (including income distributed by the SIGI and capital gains from the disposal of the shares) will be subject to CIT on the general terms (21% CIT plus applicable surtaxes). Withholding tax imposed on distributions and redemptions (10%) is treated as a payment on account in the case of resident corporate shareholders.

In Portugal, there is a participation exemption regime which applies, in general, to dividends received (and capital gains derived) by resident corporate entities subject to CIT – which is the case for a SIGI, provided some conditions are met, namely a minimum participation of at least 10% (vote or capital) directly, or directly and indirectly held for a minimum consecutive period of one year.

Since the option was to apply the CIV tax regime to SIGIs, it is important to mention that the law for those CIVs provides that “income from units in real estate investment funds and holdings in real estate investment companies, including capital gains arising from their transfer, redemption or liquidation, shall

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be deemed as immovable property income". Due to the potential domestic qualification of income paid by SIGIs, it remains unclear if the participation exemption regime is applicable to qualifying corporate shareholders.

Individual shareholder

Distributions of income, redemptions and capital gains will be subject to general rules, meaning income received from the SIGI will be taxed at a flat rate of 28%. Distributions and redemptions may be subject to withholding tax. Such withholding is a final tax unless the individual shareholder holds the investment as part of business activity.

The Assessment Report recommends that the rules governing the elimination of double taxation be reviewed to facilitate the elimination of economic double taxation at the shareholder level for any residual taxes levied upon the vehicle. For the time being, no further details were provided in this respect, including whether any additional measures could apply at the level of SIGI's shareholders.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Withholding tax on dividends and redemptions is the final levy for foreign corporate shareholder.	Withholding tax on dividends and redemptions is the final levy for a foreign individual shareholder.	- A 10% withholding tax for dividends and redemptions. - Capital gains from transfer are subject to self-assessment by a foreign shareholder.

Distributions of income

In the case of a non-resident investor without a permanent establishment in Portugal, a final 10% is withheld on any distributions, including redemptions, made by the SIGI.

The 10% reduced rate will depend on the foreign shareholder proving non-resident status towards the paying agent by no later than the last day to deliver the withholding tax to the PTA. Non-residency status may be verified by a tax residence certificate (or an equivalent document) issued by foreign tax authorities attesting to the respective residency.

In the same way as for domestic shareholders, and since SIGIs are subject to (and not exempted from) CIT, it remains unclear if, for tax purposes, the distribution of income by a SIGI should be qualified as income from the immovable property for purposes of applying the participation exemption regime (i.e., if real estate qualification overrides the dividend qualification, qualifying participation by a shareholder of more than 10% will not access the 0% withholding tax).

Capital gains

Capital gains arising from the disposal of shares of the SIGI will be subject in Portugal to autonomous taxation of 10%. The domestic exemption for the sale of shares by non-residents does not apply as we are dealing with a real estate entity (with more than 50% of its asset value composed of real estate).

As the domestic law also provides that capital gains arising from the sale of real estate investment companies are qualified as income from immovable property, the application of tax treaties, which may in some cases restrict Portugal's ability to tax, may be relevant.

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4.3 Anti-abuse Measures

Foreign shareholders
The increased rate is applicable to certain foreign shareholders.

The 10% rate is not applicable when shareholders are deemed residents in a blacklisted jurisdiction mentioned in a list approved by the Portuguese Government unless an EU/EEA Member State subject to administrative cooperation on a tax matter or a third country with a tax treaty in force with Portugal with tax exchange of information provision. Likewise, the reduced 10% rate does not apply in the case of income payable or made available to omnibus accounts held on account of undisclosed third parties. In those cases, a 35% rate is due on distributions and a 25% or 28% on capital gains derived by corporate or individual shareholders.

The 10% reduced rate will also not be applicable in the case of non-resident beneficiaries directly or indirectly held, in more than 25%, by Portuguese residents (individuals or entities), except when such non-resident shareholders are residents, for tax purposes, in an EU Member State, in a Member State of the European Economic Area ('EEA') provided that, in this case, such EEA Member State is subject to administrative cooperation obligations in the field of taxation equivalent to those in force in the EU, or in a country with which Portugal has a double tax treaty in force.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Taxed under normal Portuguese tax rules.	A foreign REIT distribution to a Portuguese shareholder is likely to be treated as a normal dividend from the non-resident company (will depend on the structure of the foreign REIT).	A foreign REIT distribution to a Portuguese shareholder or gains from the disposal is taxed under the general tax rules.

Foreign REIT

A foreign REIT will be taxable under normal Portuguese rules and taxed as a non-resident on the income directly derived from real estate assets located in Portugal at a 25% rate or as a resident company if a permanent establishment exists.

The Portuguese regime was drafted so that the SIGI regime only applies to entities incorporated and effectively managed in accordance with Portuguese legislation. If the foreign REIT is investing in Portugal through a Portuguese subsidiary or permanent establishment, the tax regime of the SIGI is not applicable to that entity or permanent establishment. Portuguese subsidiary requires full qualification as SIGI (including free float requirements at the Portuguese level) to apply to the tax regime.

In 2022, the CJEU decided the AllianzGI-Fonds case (C-545/19), where it considered that Portuguese legislation is in breach of EU law (free movement of capital) since dividends distributed by resident companies to CIVs established in other EU member states are subject to withholding tax, whereas dividends distributed to CIVs established in Portugal are exempt. Although none of these decisions involved a foreign REIT, the parallelism seems clear. Portugal has not yet amended its internal legislation. However, after this decision, foreign REITs – subject to analysis of their legal characteristics and applicable tax framework – may have arguments to file refund claims for taxes imposed on dividends and other upstream flows, such as capital gains and interest, on the basis of a discriminatory treatment vis-a-vis the SIGIs.

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Corporate shareholder

A foreign REIT distribution to a Portuguese corporate shareholder (and gains from the disposal of shares) is likely to be treated as a dividend (or gain), which may be fully exempt under certain conditions and subject to the structure of the foreign REIT.

Individual shareholder

As a rule, dividends and gains will be subject to taxation in Portugal at a 28% tax rate. Double taxation relief may be available, subject to the nature of the foreign REIT.

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SOCIMI

A comparison of the
major REIT regimes
around the world.

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1 General introduction/history/REIT type

	Enacted year	Citation	REIT type	REIT market
SOCIMI	2009	Act 11/2009	Corporate type	Spanish Alternative Stock Market (BME Growth) segment and Spanish continuous market (only to the main SOCIMI)

Act 11/2009 governing the 'Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario' (known as 'SOCIMI') introduced the REIT vehicle to the Spanish real estate market. However, a substantial change in the SOCIMI regime was enacted in December 2012, with effects as of 1 January, 2013. As a result, the new SOCIMI system has been assimilated into other European REITs, in which the main feature is the elimination of direct taxation on the SOCIMI, transferring such taxation to the final investors. Specifically, the SOCIMI will be taxed at a 0% rate. Furthermore, and like in other European REIT systems (i.e. SIICs or UK-REITs), a special levy of 19% has been introduced with the aim of avoiding schemes in which profits distributed by the SOCIMI are free or subject to low taxation at the investor level. On July 2021, another special levy of 15% on the amount of the profits obtained in the financial year that are not distributed, in the part that comes from income that has not been taxed at the standard rate of Corporate Income Tax and is not income covered by the reinvestment period.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Spain	85	3	22.136,20	0.39%

Top REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Merlin Properties Socimi SA	3.670,96	-3,14%	6%	0,21%
Inmobiliaria Colonial S.A.	2.946,60	-5,48%	4%	0,15%
Lar Espana Real Estate SOCIMI SA	456,65	29,19%	3%	0,03%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

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2 Requirements

2.1 Formalities/procedure

Key requirements
- To be listed on regulated or alternative markets - The decision to apply the special tax regime

SOCIMIs must be listed on a regulated market in Spain, in the European Union (or within the European Economic Area) or on a regulated market of any country or territory in which there is an actual exchange of tax information uninterruptedly for the entire tax period. Furthermore, after the amendment of the SOCIMI Act in December 2012, listing on alternative multilateral trading markets is also permitted. Likewise, this alternative multilateral trading listing is allowed not only on the Spanish alternative market (BME Growth,) but also on any alternative multilateral trading market of the European Union (i.e. Alternative Investment Market), the European Economic Area or any country or territory with which there is an actual exchange of tax information. In this sense, 77 SOCIMIs have been admitted to the BME Growth, and 28 SOCIMIs have been admitted to the Euronext Access Paris. Finally, 4 SOCIMIs are listed on the Spanish Continuous Market (Mercado Continuo) (e.g. Merlin Properties Socimi, SA).

Furthermore, the decision to apply this special tax regime must be adopted by the general shareholders meeting and notified to the Tax Authorities prior to the final quarter of the financial period in which it is intended the special tax regime be applied (for example, for the financial year 1 January, 2022 – 31 December, 2022, the decision must be adopted before 1 October, 2022). This tax regime will take effect from that financial period (2022) until notification is given to stop applying this special regime. The communications notified to the Tax Authorities after this deadline shall prevent the application of this special tax regime in the said tax period.

Finally, the 11/2021 Act of 9 July, has imposed that in the report of the annual accounts, the companies that have opted for the application of the special tax regime established in this Law must create a new section with the title “Information requirements derived from the condition of SOCIMI, Law 11/2009”.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Listed join stock corporation (*Sociedad Anónima*)	EUR 5 million

SOCIMIs must take the form of a listed joint-stock corporation with a minimum share capital of EUR 5 million. Furthermore, SOCIMI’s shares must be nominative, and only one single class of shares is permitted.

Besides, it is compulsory that their corporate name include the name or acronym by which they are known in Spain, i.e. ‘Sociedad Anónima Cotizada de Inversión en el Mercado Inmobiliario, Sociedad Anónima’ or ‘SOCIMI, SA’.

Lastly, SOCIMI’s main corporate object must consist of the following:

i. The acquisition and development (refurbishment included) of urban real estate for rental purposes;

ii. The holding of shares of other SOCIMI or other REITs not resident in Spain but have a similar corporate purpose and similar income distribution requirements; and

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iii. The holding of registered shares in the capital stock of Sub-SOCIMI: non-listed companies – regardless of whether or not they are tax residents in Spain – whose primary corporate purpose is the acquisition of urban real estate for rent and who are subject to equivalent investing, income distribution and leverage requirements.

    This Sub-SOCIMI may not hold shares in the capital stock of other entities. Furthermore, the Sub-SOCIMI's shares must be nominative. Only a SOCIMI or other entity, as defined in point ii above, may be the sole shareholder of the Sub-SOCIMI's share capital.

iv. The holding of shares/participations in real estate collective investment schemes regulated under the Spanish Collective Investment Schemes 35/2003 Act.

Please note that foreign SOCIMIs or REITs had to be tax residents of countries or territories with which there is an actual exchange of tax information in accordance with the First Additional Provision of the 36/2006 Act. The real estates located abroad owned by non-resident entities described in point ii above shall be of a similar nature to the real estates located in Spain.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
- No threshold of ownership percentage - Minimum free float depending on the listing system	Yes

Shareholder requirements

There is no prohibition on the acquisition of a holding exceeding a certain percentage of the share capital. However, different free float requirements would apply depending on the listing system (see below).

Listing requirements

Listing is mandatory, but there is a two-year grace period as of the date of the application for the SOCIMI regime to become listed.

The SOCIMI's shares must be listed in Spain, in the EU or in the European Economic Area on (i) an official regulated secondary market (e.g. Spanish Continuous Market (Mercado Continuo or Bolsa)); or (ii) a multilateral alternative market (e.g. BME Growth, EURONEXT). Furthermore, SOCIMI's shares can be listed on a regulated market of any country or territory with which there is an actual exchange of tax information.

As a general rule, the minimum free float for listing on the Spanish Continuous Market is 25%. In the case of BME Growth listing, shareholders holding a percentage of less than 5% of the share capital must own a number of shares which, as a minimum, represents either (i) an estimated market value of EUR 2 million; or (ii) 25% of the SOCIMI's issued shares. Such calculation will include the shares made available to the liquidity provider to carry out its liquidity duties.

BME Growth Regulations

Notwithstanding the above, and according to the BME Growth Regulations, prior to 31 July , 2017, a SOCIMI would have a maximum term of 12 months from its listing to ensure that its shares are effectively distributed within several shareholders throughout the market (i.e. after a 12 months period the free float requirement would not be fulfilled anymore by making available the free float shares at the disposal of the Liquidity Provider). As from 1 August, 2017, this provision shall cease to be applicable.

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Besides, the BME Growth Regulations provide for a lock-up period of one year from the 'listing date', only applicable to reference shareholders.

It should also be noted that the requirements and the procedure applicable to the inclusion and exclusion in the BME Growth of shares issued by SOCIMI will be subject by the consolidated text approved to the Circulate 1/2020.

Additionally, by means of Circular 2/2022 of 22 July, it has introduced, among others, the following newmain requirments are (i) a maximum capitalisation limit in BME Growth for SOCIMIS has been increased from the previous EUR 500 million to EUR 1,000 million, provided that the following requirements are met:

- Their capitalisation exceeds EUR 500 million for a period exceeding six months.
- The percentage of shares allocated to "the public" at the close of the market on the day on which the preceding six-month period ends is less than 25% of the shares forming its share capital. For this purpose "the public" means any shareholders holding 3% or more of the company's shares, not including members of its Board of Directors.

To remain exempt from the obligation to be listed on a regulated market due to a capitalisation of more than EUR 1,000 million, the requirement of distribution of shares to the public below must be maintained.

Finally, this Circular has included certain new reporting requirements.

Portfolio Stock Exchange

At the end of the second quarter of 2022, emerged a new market where SOCIMIS can be listed in Spain, the Portfolio Stock Exchange. At the beginning of 2023, the first Spanish SOCIMI started listing and, at least one SOCIMI has changed BME Growth by Portfolio Exchange.

Some of its main characteristics are the following:

- SOCIMIS must be advised by a law firm of recognised prestige, known in this market as "Legal Trusted Partners" which are defined as law firms classified as Band 1, Band 2 or Band 3 in a legal practice area related to financial markets by the independent research company Chambers and Partners. In addition, the annual accounts and financial reports must be audited by a "Big Four" or BDO unless otherwise authorised.
- The number of mandatory intermediaries in other markets, such as liquidity providers, is reduced. This will lead to cost and time savings in the execution of orders in the market.
- As a general rule, the minimum free float for listing is 25% or when the free float has an estimated market value of at least, EUR 3,000,000. However, after an initial public offer, an extraordinary grace period of 5 years can be granted. This period may be extended provided that the SOCIMI has reached at least, 50% of the requirement.

2.4 Asset level/activity test

Restrictions on activities/investments
- Asset test: At least 80% of their assets must be invested in (a) urban real estate (acquired or developed) for rental or, (b) other SOCIMIs, (c) foreign REITs and (d) Spanish or foreign qualifying subsidiaries ('Sub-SOCIMI') and real estate collective investment schemes - Revenue test: At least 80% of SOCIMI's revenue must derive from (i) the lease of qualifying assets and/or (ii) the dividends distributed by qualifying subsidiaries - Minimum holding period: Qualifying assets are subject to a minimum three-year holding period owned by the SOCIMI

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Asset test

At least 80% of SOCIMI's assets shall consist of 'qualifying assets':

i. Urban real estate for rental purposes, plots destined for the development of the real estate for rental purposes (so long as the development starts within a three-year period following the purchase date);

ii. Shares in similar entities (i.e. other SOCIMI, Sub-SOCIMI, international REITs); and

iii. Shares in real estate Collective Investment Schemes.

This percentage (i.e. 80% of SOCIMI's assets) shall be calculated on the consolidated balance sheet.

No asset diversification rule exists, and SOCIMIs are entitled to hold a single property asset.

Please note that for the purpose of the provisions of the Spanish SOCIMI regulation, the following shall not be considered real estates:

i. The real estates with special features to cadastral effects according to the Spanish Cadastral Act; and

ii. The real estates assigned to third parties in virtue of agreements equivalent to leasing for the purposes of the Spanish Corporate Income Tax (Ley del Impuesto sobre Sociedades).

The real estates acquired shall be owned by the SOCIMIs (including, for these purposes, surface rights, elevation rights and rights to build under the existent building that are filed in the Land Registry, as well as the real estates assigned by third parties to the SOCIMIs in virtue of agreements equivalent to leasing for the purposes of the Spanish Corporate Income Tax (Ley del Impuesto sobre Sociedades).

Activity test

Furthermore, at least 80% of the SOCIMI's revenues must derive from the lease of qualifying assets, or from dividends distributed by qualifying subsidiaries (Sub-SOCIMI, foreign REITs and real estate collective investment schemes). Therefore, SOCIMIs are able to develop ancillary activities which represent less than 20% of the total SOCIMI's revenues during the tax period.

Lease agreements between related entities would not be deemed a qualifying activity, and therefore, the rent deriving from such agreements cannot exceed 20% of SOCIMI's total revenue.

Capital gains derived from the sale of qualifying assets are, in principle, excluded from the 80/20 revenue test. However, if such a qualifying asset is sold prior to the minimum three-year holding period, then (i) the capital gain would compute as non-qualifying revenue; and (ii) it would be taxed at the standard corporate income tax rate, currently set at 25%. Furthermore, the entire rental income derived from this asset would also be subject to the standard corporate income tax rate (25%).

Minimum holding period

Finally, qualifying assets must be owned by the SOCIMI for a three-year period since (i) the acquisition of the asset by the SOCIMI or (ii) the first day of the financial year that the company became a SOCIMI if the company owned the asset before becoming a SOCIMI. In the case of urban real estate, the holding period means that these assets should be rented; the period of time during which the asset is on the market for rent (even if vacant) will be taken into account, with a maximum of one year.

However, if such a qualifying asset is sold prior to the minimum three-year holding period, then (i) the capital gain would compute as non-qualifying revenue; and (ii) it would be taxed at the standard CIT rate, currently set at 25%. Furthermore, the entire rental income derived from this asset would also be subject to the standard CIT rate (i.e. 25%).

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2.5 Leverage

Leverage
No restrictions

The reform of the SOCIMI Act enacted in 2012 eliminated the leverage restrictions.

Recently approved tax limitations by the Spanish Government (tax deduction of financial expenses and annual depreciation, carrying-forward of tax losses and tax credits) should have no practical impact provided that the SOCIMI is taxed at 0% CIT rate on all income.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
- 80% as a general rule (i.e. profits obtained from rental income and ancillary activities) - 100% of profits stemming from dividends distributed by qualifying entities	- 50% of profits derived from the transfer of qualifying property and holdings where the holding period has been met - The remaining 50% must be reinvested in qualifying assets within three years	- In a maximum of six months from the financial year-end - Dividends must be paid to SOCIMI's investors within one month

The SOCIMIs that have opted for the SOCIMI special tax regime are obliged to share their profits in the form of dividends to their shareholders once the required obligations have been duly completed, as follows.

Operating income

Distributing 100% of profits stemming from dividends distributed by qualifying entities is compulsory.

Capital gains

At least 50% of the profit corresponding to income derived from the transfer (where the holding period has been met) of real estate assets and qualifying holdings must be distributed. The other 50% of that profit must be reinvested in qualifying assets within a period of three years or, otherwise, distributed to SOCIMI's shareholders. If the object of the reinvestment (i.e. the new qualifying assets) is transmitted before the period of three years, the profit must be distributed to SOCIMI's shareholders.

Other profits

At least 80% of the rest of the profits must be distributed.

Timing

All income must be effectively paid to the shareholders in the month following the date of the distribution resolution. The distribution resolution needs to be adopted within six months of the financial year-end.

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2.7 Sanctions

Penalties/loss of status rules
- Loss of SOCIMI status (i.e. loss of the SOCIMI special tax regime) - Penalties of between EUR 1,500 and EUR 30,000 in the event of failure to comply with information obligations

The recent reform of the SOCIMI Act has softened the circumstances in which the SOCIMI can be sanctioned with the loss of the SOCIMI status (as regards SOCIMI special tax regime). In particular, such circumstances are:

i. Loss of listed status;

ii. Substantial failure to comply with the information and reporting obligations, unless such failure is remedied in the annual accounts;

iii. Failure to adopt the dividend distribution resolution or the failure to effectively pay the dividends within the deadlines established in the SOCIMI Act. In this case, the loss of SOCIMI status would have effects in the tax year in which the profits not distributed were obtained;

iv. Waiver of the SOCIMI regime by the taxpayer; and

v. Failure to meet the requirements established in the SOCIMI Act unless such failure is remedied the following year. However, the failure to observe the minimum holding period of the assets would not give rise to the loss of SOCIMI status, but (i) the assets would be deemed non-qualifying assets, and (ii) income derived from such assets would be taxed at the standard corporate income tax rate (i.e. 25%).

Should the SOCIMI fall into any of the above scenarios, the SOCIMI special tax regime will be lost, and it will not be eligible for the special tax regime for three years.

On the other hand, in the event of non-compliance with information obligations stated by the SOCIMIs Act, the SOCIMIs Act establishes penalties of between EUR 1,500 and EUR 30,000 depending on the kind of information not provided.

3 Tax treatment at the REIT level

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
- 0% of the corporate income tax rate (general rule) - A special levy of 19% on dividends paid to certain shareholders may be imposed on the SOCIMI - A special levy of 15% on the amount of the profits obtained in the financial year that are not distributed as dividends	Same rules apply	General withholding tax rules

The SOCIMIs that fulfil the legal requirements may opt for the SOCIMI special tax regime, which will also be applicable to SOCIMI shareholders. The decision to apply this special tax regime must be adopted by the general shareholders meeting and notified to the Tax Authorities prior to the final quarter of the financial period in which the special tax regime is intended to apply.

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The SOCIMI special tax regime is incompatible with the implementation of the special regime provided for Title VII of the Spanish Corporate Income Tax (Ley del Impuesto sobre Sociedades), except for mergers, divisions, transfers of assets, exchanges of shares and change of registered office of a European company or a European cooperative society from one Member State to another, the international fiscal transparency system and certain leasing.

Furthermore, in case a SOCIMI generates negative tax bases, are not applicable:

(i) Article 25 of the Spanish Corporate Income Tax (Ley del Impuesto sobre Sociedades); and

(ii) the deduction or exemption regime provided for Chapters II, III and IV of the Title VI of the Spanish Corporate Income Tax (Ley del Impuesto sobre Sociedades).

Current income

As of 1 January, 2013, all the income received by a SOCIMI will be taxed under the Spanish Corporate Income Tax ('CIT'), at a 0% rate. Nevertheless, rental income stemming from qualifying assets sold before the minimum holding period (three years) would be subject to the standard CIT rate (i.e. 25%).

Capital gains

As a general rule, a SOCIMI will be taxed under CIT, with a 0% flat rate being applicable.

Nevertheless, a SOCIMI will be taxed at the standard CIT rate of 25% if the relevant asset has been sold before the minimum holding period (three years) in the circumstances described above.

Other taxes

The incorporation/share capital increase of a SOCIMI, as well as the contribution of assets to the latter, are eligible for a capital duty exemption. See also section 3.3.

Withholding tax

General withholding tax rules normally apply in connection with payments made by a SOCIMI. However, dividend payments within a SOCIMI group would be exempt from withholding taxes.

Anti-abuse measures

The SOCIMI will be taxed at a 19% rate over the full amount of dividends distributed to shareholders representing 5% or more of the total share capital when the mentioned dividends, at the shareholder level, are exempted from taxes or will be taxed at a rate lower than 10%. This rate shall be considered as CIT.

The preceding paragraph shall not apply when the shareholder is a company which be applied SOCIMI Act. See also section 4.3.

By means of the 11/2021 Act of 9 July, all the SOCIMIs are subject to a special levy of 15 per cent on the amount of the profits obtained in the financial year that are not distributed (as dividends or other means), in the part that comes from income that has not been taxed at the standard rate of Spanish CIT and is not income covered by the reinvestment period (as explained in Section 2.6 above). This levy shall be treated as a corporate income tax liability.

The special tax shall accrue on the date of the resolution of the general meeting of shareholders, or equivalent body, to apply the profit for the year, and must be self-assessed and paid within two months of the date on which it accrues.

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Accounting rules

SOCIMIs will apply Spanish GAAP. Furthermore, according to the SOCIMI Act, the SOCIMI will be obliged to keep separate accounts for each of the properties held. Additionally, the SOCIMI will be obliged to report some information in the descriptive memorandum (e.g. reserves from the financial years preceding, distributed dividends, etc.).

3.2 Sub-SOCIMI

Current income	Capital gains	Withholding tax
0% of the corporate income tax rate (general rule)	Same rules apply	General withholding tax rules; no withholding tax over the dividends paid within a SOCIMI group

Some qualifying subsidiaries resident in Spain for tax purposes could, even if not listed, enjoy the same special tax regime as a SOCIMI. In particular, such Sub-SOCIMI must:

i. be wholly owned by (i) a Spanish SOCIMI, (ii) a foreign REIT or (iii) a foreign company assimilated to a SOCIMI;

ii. have a main corporate object consisting of the acquisition and development (refurbishment included) of urban real estate for rental purposes;

iii. not hold a stake in other subsidiaries (two levels of subsidiaries are not permitted); and

iv. meet the same SOCIMI mandatory dividend distribution requirements and the 80/20 asset/revenue tests.

If the above conditions are met, the Sub-SOCIMI could apply for the special tax regime within the same terms and deadlines as the ones described above.

3.3 Registration duties

Registration duties
95% exemption on Transfer Tax and Stamp Duty

A 95% rebate of Transfer Tax (tax rate between 6% and 11%) and Stamp Duty (tax rate between 0.75% and 2.5%) is applicable to residential real estate acquired for rental purposes, provided that the assets acquired are maintained during the three-year holding period.

Likewise, the incorporation and increase of capital operation in relation to SOCIMIs, as well as non-cash contributions, will be exempted from Transfer and Stamp Duty (ITP and AJD) in the modality of company operations.

Please note that there are some special provisions in relation to the Spanish Value Added Tax (VAT) and the Canary Islands tax system (special regime similar to VAT) regarding SOCIMIs.

3.4 Transition regulations

Conversion into REIT status
- No exit tax payment - Tax losses carried forward generated before becoming a SOCIMI are maintained - The requirements of the SOCIMI regime must be met in the two years following the decision to opt for this tax regime

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No exit tax payment is due as a result of the conversion into a SOCIMI; however, upon the transfer of a real estate asset, the stake of the capital gain corresponds to the period pre-SOCIMI under the general tax regime (currently set at 25%).

Tax losses existing prior to the application of the special tax regime can be offset with future positive tax bases of SOCIMI taxable income. This is a scenario that would only arise in cases where the asset maintenance requirements (three years) are breached or where it finds itself in any of the scenarios where it would lose its special tax regime (de-listing, failure to distribute dividends, etc.).

Even if a SOCIMI does not meet all the necessary requirements, it can apply the special tax regime provided that the requirements are met in the following two years after the decision to opt for this tax regime is made.

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
General rules, but without the possibility of applying deductions for double taxation on dividends	General rules, but without the possibility of applying for exemption on dividend income	General rules apply

Corporate shareholder

i. Dividends will be subject to general taxation. Consequently, dividends received from the SOCIMI will be included in the taxable base of the shareholder and will, in principle, be taxed at the standard 25% CIT rate. No deductions are allowed (i.e. deduction for double taxation).

ii. Capital gains will be taxed at the standard 25% tax rate. Deduction or exemption to avoid double taxation does not apply. As of 1 January, 2017, the exemption to avoid double taxation (art. 21 of Spanish Corporate Income Tax 27/2014 Act) does not apply to the positive incomes obtained.

Individual shareholder

i. Dividends will be subject to general taxation. Consequently, dividends received from the SOCIMI will be taxed at the fixed Personal Income Tax rate. No exemptions are allowed.

ii. Capital gains will also be subject to general taxation. Consequently, dividends received from SOCIMI will be taxed at a fixed rate. No deductions are allowed (i.e. deduction for double taxation).

Withholding tax

Dividends distributed to shareholders are subject to general rules regarding withholding taxes.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
General rules apply, but without the possibility of applying for exemption on capital gains for listed investment funds.	General rules, but without the possibility of applying for exemption on dividend income and on capital gain for listed investment funds.	- General rules apply. - EU Parent-Subsidiary Directive and double taxation treaties could apply provided that the relevant conditions are met.

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Corporate shareholder

The following relates to foreign corporate shareholders not acting in Spain through a permanent establishment (if the foreign corporate shareholders were acting in Spain through a permanent establishment, the applicable tax treatment would be the same as for Spanish resident corporate shareholders). In this respect, we should highlight the following:

i. Dividends will be subject to Non-Resident Income Tax at the standard withholding tax rate. This standard rate can be reduced or eliminated as per the application of the EU Parent-Subsidiary Directive or the relevant double taxation treaties that may be applicable; and

ii. Capital gains will also be subject to Non-Resident Income Tax at the standard rate for capital gains. Again, this standard rate can be reduced or eliminated as per the application of the relevant double taxation treaties. The exemption on capital gains derived from the transfer of shares of listed investment funds regulated would not be applicable. However, capital gains obtained by those shareholders owning a percentage lower than 5% in the listed SOCIMI would be exempt from Spanish taxation.

Individual shareholders

The tax treatment for foreign individual shareholders would be similar to the tax treatment applicable to foreign corporate shareholders, with the following specialities:

i. The foreign shareholder will not be entitled to exemptions; and

ii. The foreign shareholder will not be eligible under the EU Parent-Directive.

Withholding tax

Dividends distributed to non-resident shareholders are subject to general withholding tax provisions. Thus, non-resident corporate shareholders could be eligible under the EU Parent-Subsidiary Directive and the relevant double taxation treaties provided that the relevant conditions were met.

4.3 Anti-abuse Measures

Specific levy of 19%
Applicable to the dividends paid by the SOCIMI to domestic or foreign shareholders under certain circumstances

A special levy regime applies to the dividends paid by the SOCIMI to domestic or foreign shareholders under certain circumstances.

The SOCIMI must assess and pay a 19% levy in respect of the dividends distributed if the beneficiary of the dividends is a Spanish or foreign taxpayer (i) that holds at least 5% of the financial rights of the SOCIMI and (ii) that is either exempt from any corporate tax on the dividends or subject to tax on the dividend received (i.e. a rate lower than 10%). However, this special levy shall not be applicable to the beneficiary of the dividends that (i) is a company regulated by the SOCIMIs Act (although this company meets both previous points) or (ii) is a company non-resident in Spain (but is resident of countries or territories with which there is an actual exchange of tax information in accordance with the First Additional Provision of the 36/2006 Act) provided that the dividends or profits are subject at least a 10% charge rate.

This special levy will be accrued on the date on which the dividend distribution is formally approved by the SOCIMI. Payment to the Tax Authorities will be due within the two months following the distribution resolution.

5 Tax treatment of the foreign REIT and its domestic shareholder

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Foreign REIT	Corporate shareholder	Individual shareholder
- Taxed in Spain, as a non-resident, for the income derived from real estate assets located in Spain - Potential application of the SOCIMI regime to the Spanish subsidiary of the foreign REIT	- Subject to taxation in Spain - Specific analysis of foreign REIT is required	- Subject to taxation in Spain - Specific analysis of foreign REIT is required

Foreign REIT

The foreign REIT could be subject to taxation in Spain, as a non-resident, on the income derived from the real estate assets located in Spain.

If the foreign REIT is investing in Spain through a Spanish subsidiary, such Spanish subsidiary could enjoy, under certain circumstances, the Sub-SOCIMI regime described above.

Corporate shareholder

Subject to taxation in Spain. Double-taxation relief credit or participation exemption may be available, though a specific analysis of foreign REIT is required.

Individual shareholder

Subject to taxation in Spain. Double-taxation relief credit may be available, though a specific analysis of foreign REIT is required.

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GLOBAL
REIT SURVEY

EUROPE

United Kingdom

UK-REIT

A comparison of the
major REIT regimes
around the world.

2023

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1 General introduction

	Enacted year	Citation	REIT type
UK-REIT	2007	- Finance Act 2006, and subsequently issued regulations - Legislation re-written with enactment during Spring 2010 - Subsequent amendments made 2012-2023	Corporate entity

The UK REIT was introduced in the UK with effect from 1 January, 2007, by the Finance Act 2006. On 1 January, 2007, nine companies elected to become REITs – a number that grew significantly within the first year of the regime. Since then, the numbers have continued to increase, in part due to the various changes introduced to the rules. The most recent changes, which took effect in April 2023, included certain relaxations to the REIT conditions. In particular, for accounting periods beginning on or after 1 April, 2022, not all REITs are required to be listed.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
UK	49	39	56.567,92	4,17%

Top five REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Segro	10.101,72	-24,08%	4%	0,82%
Land Securities Group	4.961,80	-7,87%	7%	0,40%
Unite Group	4.058,33	-15,22%	4%	0,26%
British Land Co	3.271,25	-27,65%	7%	0,26%
Tritax Big Box REIT	2.722,20	-27,60%	6%	0,22%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
- An election must be filed prior to conversion - Certain conditions for REIT status

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An election must be filed prior to conversion. In order to become a UK REIT, a group of companies has to confirm that the parent company:

- Is a UK resident and not a resident elsewhere;
- Has shares that are admitted to trading on a recognised stock exchange;
- In addition, has shares that meet the definition of 'listed' on the London Stock Exchange (or foreign equivalent main market exchange) or are traded on a recognised stock exchange (does not apply for the first three years);
- Is not an open-ended investment company;
- Is not a close company (does not apply for the first three years);
- Only has shares that are either ordinary shares (of which there can only be one class) or non-voting restricted preference shares;
- Has no performance-related loans; and
- Will produce financial statements.

Note, however, the relaxation of the listing requirements in certain circumstances following the Finance Act 2022 (FA 2022) (See 2.3 below).

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Listed closed-ended company	GBP 50,000 (and a market capitalisation of GBP 30m if listed in the UK on the London Stock Exchange)

Legal form

The parent company of a UK REIT must be a (non-open-ended) company that meets the listing requirements in 2.3 below (subject to the relaxations introduced from April 2022). However, there is no requirement as to where it is incorporated. It must be a tax resident in the UK and must not be a tax resident in another country.

Subsidiary entities can be tax-residents outside the UK, but such entities may be subject to the local tax regime in that overseas jurisdiction and may suffer tax.

Management may be internal or external.

Minimum share capital

There are no specific requirements regarding share capital, and the normal listing requirements in respect of share capital in relation to the stock exchange on which the shares are listed are applicable.

For example, a UK company that lists on the London Stock Exchange must have a share capital of at least GBP 50,000 and a market capitalisation of GBP 30 million.

2.3 Shareholder requirements/listing requirements

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Shareholder requirements	Listing mandatory
- Not a 'close company' - There are potential penalties if a single corporate shareholder owns 10% or more of the shares/voting rights - No restriction on foreign shareholders	Yes, must be admitted to trading on a recognised stock exchange and either listed on the London Stock Exchange (or foreign equivalent main market exchange) or traded on any Stock Exchange recognised by the UK tax authorities (within three years) (subject to relaxations introduced from April 2022, where at least 70% of the REITs ordinary shares are directly or indirectly owned by one or more 'institutional investors').

Shareholder requirements

A UK REIT cannot be a 'close company'. A company is 'close' where it is controlled by five or fewer shareholders. A listed company will not be closed if at least 35% of the shares are owned by the public. 'Public' for this purpose includes shareholders owning less than 5% and pension funds (who do not provide pensions for the employees of that REIT) but excludes non-close companies. Broadly, shares held by institutional investors will count towards those shares treated as widely held. Institutional investors include charities, registered providers of social housing, sovereign wealth funds, pension funds, managers/trustees of authorised unit trusts and OEICs and UK REITs and overseas equivalents to UK REITs.

If a corporate shareholder holds 10% or more of the shares or voting rights in a UK REIT (a holder of excessive rights or HoER), a penalty tax charge will arise (on the REIT) if the REIT pays any dividend to such a corporate shareholder without having taken reasonable steps to prevent the payment of such a dividend. UK REITs, therefore, usually have restrictions in their Articles of Association that prevent distributions from being made to corporate shareholders who hold 10% or more of share capital or voting rights and allow a UK REIT to force shareholders to sell their stock if they are in danger of breaching the 10% limit. However, FA 2022 introduced changes that mean from 1 April, 2022, a UK tax resident corporate shareholder will no longer be treated as a HoER.

There are no restrictions on foreign shareholders under the REIT rules.

Listing requirements

Admission to trading on a recognised stock exchange and, within three years, either listing on the LSE (or foreign equivalent main market exchange) or trading on any other 'recognised stock exchange' (which includes AIM) are usually required. HM Revenue & Customs maintain a list of recognised stock exchanges across the world.

There has, however, been a relaxation of the listing requirement for accounting periods beginning on or after 1 April, 2022. The requirement that the company's ordinary share capital is admitted to trading on a recognised stock exchange, and the further condition relating to listing or trading on a recognised stock exchange, have been removed where at least 70% of the REIT's ordinary shares are directly or indirectly owned by one or more institutional investors (see below).

To determine whether the 70% requirement is met, ownership can be traced through companies, partnerships and other types of entities, including unit trust schemes and contractual co-ownership schemes.

A person who is acting on behalf of a collective investment scheme partnership, which also meets the genuine diversity of ownership requirement, is also to be treated as an institutional investor in its own right when establishing the 70% requirement and is therefore not traced through for these purposes.

2.4 Asset level/activity test

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Restrictions on activities/investments
- At least 75% of a REIT's net profits must be derived from the property rental business (measured using financial statements) - At least 75% of a REIT's assets must be used in the property rental business (measured using financial statements) - The REIT must hold at least three separate property assets (subject to proposed relaxation from Summer 2023 in certain circumstances where there is a single property with a value of at least £20m) - No one property asset may exceed 40% of the total assets (again subject to proposed relaxation from summer 2023 in certain circumstances where there is a single property with a value of at least £20m) - May invest outside the UK in real estate wherever located

Restrictions are imposed by the balance of business tests, which limit the amount of investment permitted in non-rental generating assets and the amount of non-rental income. However, other activities are permitted subject to these restrictions. Essentially, only rental profits and capital gains realised on the direct (or qualifying indirect) disposal of properties used in the UK property rental business will be exempt from UK tax.

The balance of business tests states that:

- At least 75% of a UK REIT's net profits must be derived from the property rental business (wherever located); and
- At least 75% of a UK REIT's assets must be used in the property rental business (wherever located).

A UK REIT must hold at least three separate assets directly, and no one asset can exceed 40% of the market value of the total portfolio. (Note that a single property that is multi-tenanted or is capable of having multiple tenants) will count as more than one asset). Qualifying properties may be residential or commercial and in any location worldwide.

However, this will be amended from Royal Assent of Finance (No. 2) Bill 2022/23 so that it will also be possible to satisfy the property rental business condition where the relevant property rental business involves at least one property, the value of which is equal to or exceeds, £20 million at the 'relevant time' and which is a designed, fitted or equipped for the purpose of being rented, and is rented or available for rent as a commercial unit.

The 'relevant time' is on entry into the REIT regime (and therefore, a subsequent fall in the value of the property would not result in a 'breach'), except where the REIT has previously met the three property test but then has to rely on the single property test (e.g. where it has disposed of its other properties). In the latter case, the single property would need to have a value of at least £20 million on the date that the three property test ceased to be met.

There have been changes to the Balance of Business test for accounting periods beginning on or after 1 April, 2022. The first has modified the rules that require the provision of financial statements to demonstrate that a REIT has met the balance of business tests. They provide simplified requirements for group REITs that, if met, remove the need to perform certain calculations and provide full financial statements for each group member.

The second change provides that profits of the (taxable) residual business resulting from compliance with planning obligations under section 106 of the Town and Country Planning Act 1990 entered into in the course of the property rental business are to be disregarded when performing the balance of business profits test and the assets excluded from the Balance of Business assets test. Certain other assets will also be excluded from the Balance of Business asset test, where they are held solely in connection with other items that are also excluded from the Balance of Business profits test.

Cash counts as a good asset for the balance of business test, although interest is still taxable, as is an income of the residual business.

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Owner-occupied assets (that is, property used by the UK REIT, e.g., a head-office building) are not qualifying rental assets for the purposes of the balance of business test.

Development by the UK REIT for investment on its own account is permitted, and any direct (or qualifying indirect) disposals are generally included within the property rental business unless development costs exceed 30% of the acquisition cost (or the property's value at the time of entry to the UK REIT regime if higher), and the property (or the shares in the company holding the property) is sold within three years of completion.

The rule is amended by Finance (No. 2) Bill 2022/23 so that the 30% is calculated by reference to the highest of the fair values at the following times:

- Entry into the REIT regime
- The acquisition of the property, and
- The beginning of the accounting period in which the development commenced.

Subject to the enactment of the Finance Bill, this change will take effect in relation to disposals of assets made on or after 1 April, 2023.

Property trading is permitted but is taxable and falls outside of the property rental business for the purpose of the balance of business restrictions.

The parent company must own at least 75% of the nominal value of the share capital of a subsidiary company for the subsidiary to be a member of the UK REIT group; such members can, in turn, own at least 75% of subsidiaries, but the parent must ultimately more than 50% of the economic rights attaching to the shares of all the subsidiaries in a group. Where a UK REIT has the right to at least 40% of the profits of a joint venture company, then the proportion of rental-exempt income and gains that are attributable to the UK REIT will be exempt from tax if an election is made.

Where the UK REITs are partners in a partnership with a share of 20% or less, the share of assets and income are treated as part of the residual business for the balance of business tests, although the share of income and gains in relation to qualifying assets will be treated as tax-exempt. Similar provisions apply where the UK REIT has an interest of 20% or less in a unit trust, such as a Jersey Property Unit Trust that is a 'Baker trust' (where the income belongs to the investor, but the capital is under the control of the trustees), and where a transparency election is made for capital gains purposes.

2.5 Leverage

Leverage
Interest cover test

Interest expense is limited by the Financing Cost Ratio. The ratio is defined as 'property profits' that is, profits of the property rental business before a deduction for interest, losses from a previous accounting period and tax depreciation (capital allowances) divided by the property financing costs (that is, finance related to the property rental business that is broadly defined). Finance costs are limited to interest costs and amortisation of discounts relating to financing. They do not include SWAP break costs but do include periodic SWAP payments. The property profits must be at least 1.25 times the property financing costs. Where income cover is less than 1.25 times, a tax charge will arise based on the amount of the property financing costs that cause the ratio to fall below 1.25 times.

As the test looks only at the relationship between rental income and interest costs, a sudden unexpected increase in interest rates or a drop in income may result in a tax penalty. HMRC has the power to waive this penalty charge if the UK REIT is in severe financial difficulty, the ratio is breached due to unexpected circumstances, and the UK REIT could not reasonably have taken action to avoid the ratio falling below 1.25 income cover.

2.6 Profit distribution obligations

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Operative income	Capital gains	Timing
- 90% of tax-property rental profits - 100% of PIDs from other REITs	Not included in the distribution obligation	Within 12 months of the end of the year

A distribution out of the property rental business of the REIT (i.e., exempt rental income and capital gains) is called a Property Income Distribution – a 'PID'.

Income

90% of the (tax-exempt) income from the property rental business must typically be distributed within 12 months of the end of the accounting period (however, profit from the residual business income does not have to be distributed). REITs can pay stock dividends (i.e., with the option to issue new shares to shareholders) in lieu of cash dividends, and these are treated as qualifying distributions.

Where a REIT invests in another REIT, 100% of the PID dividends received by the investing REIT must be distributed within 12 months of the end of the accounting period.

Capital gains

Tax-exempt capital gains arising from the disposal of either real estate used in the property rental business or shares in UK property-rich companies do not have to be distributed.

2.7 Sanctions

Penalties/loss of status rules
Tax penalties and the potential loss of the REIT status

The legislation makes provision for penalties or the withdrawal of UK REIT status where certain requirements are breached. These provisions are complex. There are different remedies and time limits, plus some breaches may occur a number of times, whereas others may be only breached once before UK REIT status is lost. Consequently, care needs to be exercised to determine how a particular breach may be dealt with. Here is an outline of the rules that will be applied.

Where the parent company of a group UK REIT or a single company UK REIT loses its stock exchange listing or becomes close, then its UK REIT status may be withdrawn with effect from the end of the previous accounting period. In certain circumstances, there will not be a breach, for example:

- If the loss of a stock exchange listing arises from the takeover by another group or a single UK REIT; or
- Where the group UK REIT or single company UK REIT becomes close as the result of the action of others, but this is remedied by the end of the next accounting perio

Failure to meet the property rental business tests (at least three properties must be held by the REIT, and no property can be worth more than 40%, subject to the Finance (No. 2) Bill 2022/23 relaxation) is a breach that can occur more than once.

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Failure to distribute 90% of the taxable profits of a property rental business and 100% of any PIDs received from other UK REITs is a breach. Where the profit distribution obligation is not complied with, a tax charge (currently 19%) will arise on the UK REIT.

It is possible to breach the balance of business test for assets at the beginning of the first accounting period of a UK REIT so long as the test is complied with at the beginning of the next accounting period.

Thereafter, failure to meet the 75% assets test is assessed as a minor breach if more than 50% of the assets are qualifying assets at the beginning of the accounting period, but a major breach if less than 50% of the assets are qualifying assets at that time. Similar provisions apply to the balance of business tests when considering what proportion of the UK REIT's income is rental income.

The UK REIT will usually incur a 20% tax charge on the amount equivalent to a PID paid to a corporate shareholder who holds 10% or more of the shares in the UK REIT (a Holder of Excessive Rights (HoER)) . However, FA 2022 made a change so that, from April 2022, investors in UK REITs who are entitled to payment of PIDs without tax being deducted, such as UK companies, will not be treated as HoERs. Consequently, no charge will arise on the UK REIT when a PID is paid to such an investor holding 10% or more of the shares in the REIT.

Nevertheless, it is usual for the REIT to take steps to discourage such a level of investment (e.g., by amending the company's Articles of Association to prevent such distributions).

There are special rules to deal with multiple breaches, which are too detailed to deal with here, but note that in the event of breaches of a number of different requirements in a ten-year period, HMRC can require the group UK REIT or single company UK REIT to leave the REIT regime.

HMRC has significant powers that permit them to make a UK REIT group or single UK REIT company leave the UK REIT regime and can also levy additional taxes if they consider that the UK REIT has entered into arrangements with the sole or main purpose of obtaining a major tax advantage.

Where HMRC issues a notice to leave the UK REIT regime, the UK REIT rules will cease to apply from the start of the current accounting period and for future years; however, the taxpayer can appeal.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
- Income from a property rental business is exempt from corporation tax - Residual business income is taxable at the current rate of corporation tax (25%)	- Gains realised on disposals of assets used in the property rental business are not subject to tax - A REIT is also exempt from corporation tax on sales of shares in UK property-rich companies (i.e., which derive at least 75% of their value from UK land). The exemption applies to the proportion of the gain that relates to the company's property rental business assets	- No withholding tax levied on distributions that are made out of the residual business income - Distributions out of the property rental business profits (PIDs) are generally subject to 20% withholding tax unless the recipient is a UK corporate, UK charity or UK pension fund - Withholding tax suffered by a UK REIT on its property rental income from directly held non-UK real estate may be deducted in the calculation of the required PID - Withholding taxes suffered on distributions in respect of shares will be part of the REIT's residual business, and if taxable, tax credit relief may be available

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Current income

Income from the property rental business is not subject to UK corporation tax. Investment by a UK REIT in another UK REIT will be included as an asset of the investing REIT's property rental business. PIDs received will be included as part of the property rental business and tax-exempt, but 100% of PIDs received must be distributed. Non-rental business income (residual income) is taxable in an ordinary manner at the current rate of corporation tax (currently 25%, 19% pre-April 2023). REITs are subject to the finance cost restrictions introduced in the UK in line with the OECD's BEPS Action 4 recommendations, subject to certain modifications to take account of the REIT regime. The starting point of the rules is to restrict finance cost deductions to 30% of tax EBITDA. There is also a GBP 2 million de minimis and the option of using an alternative group ratio or a Public Infrastructure Exemption if this will provide a better result. In addition, for REITs, rather than the restriction requiring the REIT to distribute more profit, there is an option (or, in some cases, it is mandatory) to treat the restriction as taxable income. The property rental business of the UK REIT is ring-fenced for corporation tax purposes, which means that it is not possible to offset profits and losses of the property rental business against profits and losses of its residual activities.

Capital gains

Capital gains or losses that arise on the disposal of property used in a UK REIT's property rental business are not chargeable to tax. The sale of 'developed properties' may be subject to tax if they are disposed of within three years of the completion of any development activities conducted by the UK REIT. A 'developed property' is any property whose cost of development (where the development is conducted by the UK REIT) exceeds 30% of the property's fair value as of a certain date. Prior to April 2023, the relevant fair value was the property's acquisition cost, or its value at entry into the REIT regime, if later. From 1 April, 2023, the 30% is calculated by reference to the highest of the fair values at the following times:

- Entry into the REIT regime
- The acquisition of the property, and
- The beginning of the accounting period in which the development commenced.

A REIT is also exempt from corporation tax on sales of shares in UK property-rich companies (i.e., that derive at least 75% of their value from UK land). The exemption applies to the proportion of the gain that relates to the company's property rental business assets. This can, therefore, include companies that have developed UK property unless the development costs exceed 30% of the higher of the acquisition cost of the property, its value at the time of entry to the UK REIT regime, or, from 1 April, 2023, the beginning of the accounting period in which the development commenced, and the shares are sold within three years of completion.

Reporting

Strictly, two tax returns (relating to the property rental business and residual business of the UK REIT group) should be filed annually. Three sets of financial statements (that demonstrate that the UK REIT group fulfils the various qualifying tests and conditions) need to be filed annually.

The rules that require the provision of financial statements to demonstrate that a REIT has met the balance of business tests have, however, been modified by the FA 2022. The revised rules provide for simplified requirements for a UK group REIT, which, if met, remove the need to perform certain calculations and provide full financial statements for each group member.

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Withholding tax

The UK does not levy dividend withholding taxes in case of a normal distribution to any investor, regardless of tax residence, but in the case of a distribution by a UK REIT out of its exempt property rental business profits or gains (a PID), tax of 20% will be withheld by the UK REIT and paid to HMRC (although PIDs can be paid to UK companies, UK charities and UK pension funds gross). Overseas investors may be entitled to treaty relief or sovereign immunity but have to reclaim tax from HMRC.

Where a PID is paid to a partnership where all of the partners would not be entitled to gross payment of the PID if made directly (e.g., where they are UK tax resident companies or UK registered pension schemes), the REIT is currently obligated to withhold tax on the whole of the PID. However, following royal assent of the Finance (No. 2) Bill 2022/23, it will be possible for a PID to be paid to a partnership partly gross and partly with tax withheld, the distribution being gross to the extent that it is the income of partners that would be entitled to gross payment if they held an interest in the REIT directly. The new basis of not withholding tax on the whole of the PID will require additional administration and will be at the option of the payer (which will need to elect).

If an overseas jurisdiction levies a withholding tax on the payment of a dividend to a UK REIT, the UK REIT is unlikely to be able to obtain credit for such tax if the income is exempt in the UK. If, however, the income is taxable, it may be possible for the UK REIT to credit this against any UK tax due.

Other taxes

Stamp duty, stamp duty land tax, employee taxes, uniform business rates and value-added tax apply to UK REITs in the same way that they apply to ordinary property companies.

Accounting rules

A UK REIT is taxed based on UK entity accounts for each group company (either UK GAAP or IFRS). Group UK REITs are required to consolidate each company's financial statements under IFRS for the purposes of calculating the balance of business tests.

3.2 Transition regulations

Conversion into REIT status
No conversion charge

Companies entering the UK REIT regime are not subject to an entry charge. For UK tax purposes only, a new accounting period begins at the time of conversion, and the base cost of property rental assets is rebased on market value. Any latent capital gains on property within the UK REIT at the date of conversion are extinguished, but in certain circumstances, the rebasing may be reversed.

3.3 Registration duties

Registration duties
- Stamp Duty Land Tax (SDLT) in England and Northern Ireland of between 0% and 5% for commercial property and 0% to 17% for residential property - Scotland has a Land and Buildings Transactions Tax with rates of between 0% and 5% for commercial property and between 0% and 18 % for residential property - Wales has a Land Transaction Tax with rates of between 0% and 6% for commercial property and between 0% and 16% for residential property

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4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Distributions out of property rental business income (PIDs) are treated as rental profits currently taxable at 25% (for a large company) - Distributions out of residual business profits (non-PIDs) may be tax-exempt - Capital gains on the disposal of UK REIT shares are taxable under normal capital gains rules	- A 20% tax on PIDs (collected by way of the withholding tax) - Higher rate taxpayers pay an additional tax (the amount of which depends on their personal tax position) through their tax returns - Capital gains on the disposal of REIT shares taxable in the normal manner	- A withholding tax is deducted at 20% on PIDs to individual shareholders - Where the distribution is a PID, there is a withholding tax exemption where the REIT has a reasonable belief that the person entitled to the PID is a UK corporate, UK charity or UK pension fund - UK REIT shares held via a 'tax wrapper' such as an ISA can be paid gross

Corporate shareholder

Distributions relating to property rental business (PIDs) are treated as rental profits in the hands of the recipient. These are taxed at the corporation tax rate applying to that company (currently 25%; 19% pre April 2023). Distributions of taxed profits (distributions out of the residual business) are likely to be tax-exempt in the hands of UK corporate shareholders.

Distributions of gains from UK REITs are taxed as if they were a distribution of property rental business income.

Capital gains on the disposal of shares in a UK REIT are taxable under normal capital gains rules.

Individual shareholder

PIDs are taxed as UK property rental business income, whether the PID represents distributed rental profits or capital gains. The shareholder will be taxed at either 20% (already levied with the withholding tax) or at 40% or 45% for higher rate taxpayers and additional higher rate taxpayers. In this case, the shareholder will pay 20% via withholding tax and the remaining amount through his tax return. Distribution of taxed profits (distributions out of the residual business) will be taxable in the same way as ordinary dividends; that is, individual shareholders receiving total dividends above GBP 1,000 will be taxed at the marginal rates of 8.75%, 33.75% and 39.35%.

Capital gains on the disposal of UK REIT shares are fully taxable in the normal manner. The rate of tax on capital gains on shares for individuals is 10% rising to 20% for higher rate taxpayers.

Withholding tax

Withholding tax is not deducted where a PID payment is made to a UK corporate shareholder, UK charity or a UK pension fund. A withholding tax of 20% is levied on PIDs to individual shareholders by the UK REIT.

UK REIT shares held via a 'tax wrapper' such as an ISA can be paid in gross.

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4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- A 20% withholding tax for PIDs - The disposal of shares in a UK REIT is within the scope of UK tax on capital gains as a result of the 2019 immovable property gains rules (subject to the terms of any relevant Double Tax Treaty) - A UK company REIT or, from 10 April, 2020, the principal company of a group UK REIT, falls within the definition of 'Collective Investment Vehicle' and so will not benefit from the exemption from the 2019 immovable property gains rules where the shareholding is less than 25%. However, investors that are qualifying overseas life insurance companies or certain offshore CIVs meeting the non-UK real estate condition and that hold less than 10% of the REITs shares may benefit from an exemption in respect of disposals of interests in CIVs introduced with retrospective effect in 2021	- A 20% withholding tax for PIDs - The disposal of shares in a UK REIT is within the scope of UK capital gains tax as a result of the 2019 immovable property gains rules (subject to the terms of any relevant Double Tax Treaty) - An A UK company REIT or, from 10 April, 2020, the principal company of a group UK REIT, falls within the definition of 'Collective Investment Vehicle' and so will not benefit from the exemption from the 2019 immovable property gains rules where the shareholding is less than 25%	- Tax treaty relief is available if claimed following receipt - A refund of the withholding tax may be available under the terms of a relevant Tax Treaty or if the recipient has Sovereign Immunity - The Parent-Subsidiary Directive is not applicable

Corporate shareholder

Foreign shareholders receive dividends from the tax-exempt property rental business (PIDs) net of withholding tax (20%).

Individual shareholders

Foreign shareholders receive dividends from the tax-exempt property rental business (PIDs) net of withholding tax (20%).

Withholding tax

A corporate or individual non-resident shareholder suffers a withholding tax of 20%. However, any tax suffered may be reclaimed if Treaty relief is available. The PID is only taxed as rental income in the UK. A refund of the withholding tax may be available under the terms of a relevant Tax Treaty, or if the recipient has Sovereign Immunit. The EU Parent-Subsidiary Directive is not applicable.

5 Tax treatment for the foreign REIT investing in UK property and of UK shareholders in the non-UK REIT

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Foreign REIT	UK Corporate shareholder	Individual shareholder
Taxed under normal UK tax rules	May be tax-exempt	20%, 40% or 45% tax on foreign income

Foreign REIT

A foreign REIT investing in UK property through a non-UK company will be taxable under normal UK rules as a non-resident landlord. In respect of income, it was, therefore, subject to UK income at 20% until 5 April, 2020, and to UK corporation tax at 25% from 1 April, 2023 (19% from 6 April, 2020 to 31 March, 2023). It is subject to UK corporation tax at 25% on capital gains (including shares in UK property-rich entities).

Corporate shareholder

A distribution by a foreign corporate REIT of income from property in the UK is likely to be treated as a normal dividend from an overseas company and may benefit from tax exemption. In the case of a non-corporate foreign REIT, the treatment will depend on the legal structure of the foreign REIT.

Individual shareholder

A distribution by a foreign corporate REIT of income from property in the UK is likely to be treated as a normal dividend from an overseas company. In the case of a non-corporate REIT, the treatment will depend on the structure of the foreign REIT.

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FII

A comparison of the
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1 General introduction

	Enacted year	Citation	REIT type	REIT market
FII	1993	Federal Law 8.668/93, amended by Federal Law 9.779/99, and regulated by Rulings (ICVM) 472/08 and 516/11	Fund type	- 818 FII (429 listed) - BRL 260 billion NAV (approx. EUR 46 billion as of May 2023)

In Brazil, an investment fund for real estate endeavours is called a 'Fundo de Investimento Imobiliário' (FII). This vehicle was introduced in 1993.

The FII is governed by Federal Law 8.668/93, amended by Federal Law 9.779/99 and regulated by the Brazilian Securities Commission (CVM – Brazilian equivalent to US SEC) under Rulings (Instrução CVM) 472/08 and 516/11.

As of May 2023, there were 818 FIIs in operation in Brazil with a net asset value in excess of over BRL 260 billion, 429 of which are listed on the São Paulo Stock Exchange, BM&FBovespa.

1.1 SECTOR SUMMARY

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
BRAZIL	114	0	€ 0,00	0,00%

2 Requirements

2.1 Formalities/procedure

Key requirements
- Must be approved by the Brazilian Securities Commission (CVM) - Managed by a financial institution - Subscriptions for units must be registered with the CVM

The FII is regulated and supervised by the Brazilian Securities Commission, CVM.

The FII must be formed and managed by financial institutions duly authorised by the CVM. Only financial institutions with investment portfolios, real estate assets, credit portfolios or other financial instruments are authorised to manage an FII.

The fund manager should seek CVM approval before setting up the FII by providing the following:

i. Fund by-laws and regulations;

ii. Information on the fund's records with the Public Notary;

iii. Appointment of an independent auditor and other service providers;

iv. Appointment of a director employed by the fund manager; and

v. Proof of Corporate Taxpayers ID (CNPJ) registry.

The fund operation depends on prior registration with the CVM, which should be filed with the fund's tax reference number (CNPJ) along with the documents above.

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2.2 Legal form/minimum initial capital

Legal form	Minimum initial capital
Fund (Contractual agreement between investors and fund manager)	No

Legal form

The FII is not a legal person but rather a contractual agreement between investors and a fund manager. The FII is close-ended with limited or unlimited duration.

Minimum initial capital

There is no minimum initial capital requirement. Investors will be issued with fund units, which may be acquired with cash or in exchange for contributions of real estate or in rem rights.

2.3 Unitholder requirements/listing requirements

Unitholder requirements	Listing mandatory
Construction companies may not hold more than 25% interest in an FII	No

Unitholder requirements

Construction companies involved in the activities invested in by the FII may hold a maximum of 25% interest in the FII. Where the 25% threshold is breached, the FII will lose its tax benefits and suffer tax as an ordinary corporation for income tax purposes.

Unitholders may be individuals or legal entities in Brazil or abroad, and there is no discrimination between Brazilian and foreign investors.

Listing requirements

FII units are tradable securities that may be traded on the Stock Exchange or on the private ’over-the-counter’ market.

The FII does not allow redemption of units, so units can only be sold in the open market through the Stock Exchange or over the counter.

Where the duration of the FII is not determined, capital can only be returned to unitholders through a unanimous decision of the unitholders.

2.4 Asset level/activity test

Restrictions on activities/investments
- The minimum real estate investment was previously set at 75% of an FII’s total assets, although this requirement has been revoked by ICVM 472/08 effective from December 3, 2008 - New regulations set out a list of authorised investments

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Under the regulatory rules applicable before ICVM 472/08 (effective on December 3, 2008), FIIs were required to invest at least 75% of their total assets in real estate. ICVM 472/08 has revoked all previous regulations applicable to FIIs. However, it has not introduced a new requirement of a minimum level of investment in real estate. Instead, it has introduced a comprehensive list of real-estate-related assets in which an FII may invest (see below). Nevertheless, it is not entirely clear whether FIIs may invest in non-real estate assets (e.g., bonds, fixed-income funds, etc.) under the new regulations. .

Under ICVM 472/08, an FII can hold the following assets:

i. Any rights in rem on real estate (e.g., freehold or leasehold);

ii. Stock, debentures, subscription warrants, subscription receipts and similar securities, provided their issuance or trade was registered with or authorised by the CVM, as well as any other securities whose issuers have activities predominantly allowed to the FII;

iii. Shares in companies whose sole purpose fits into the activities allowed to the FII;

iv. Shares in private equity investment funds (FIP) where the investment policy of the FIP relates only to activities allowed to the FII or shares in stock investment funds (FIA) which are divided into sectors and exclusively undertake property development or investment activities;

v. Some types of construction certificates;

vi. Units in other FIIs;

vii. mortgage-backed securities and shares in CVM-registered investment funds in credit rights ('FIDC') where the investment policy of the FIDC relates only to activities allowed to an FII;

viii. mortgage bills; and

ix. real estate credit bills.

An FII that predominantly invests in securities should observe the investment limits per issuer and type of financial assets set out in ICVM 409/2004.

2.5 Leverage

Leverage
No leverage restrictions are applicable

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
At least 95% of income arising on a cash basis	At least 95% of capital gains arising on a cash basis	Every six months

Operative income

At least 95% of the net operating income must be distributed bi-annually (June 30 and December 31).

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Capital gains

At least 95% of the capital gains must be distributed bi-annually (June 30 and December 31). This requirement only applies to capital gains recognised on a cash basis.

2.7 Sanctions

Penalties/loss of status rules
Loss of tax exemption

Construction companies involved in the projects invested in by the FII may not hold up to 25% interest in the FII. Where this condition is breached, the FII will be taxed as a corporation for income tax purposes (34%).

Further sanctions by the CVM may be applicable on a case-by-case basis.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
- Income from real estate activities is tax-exempt - Income from other activities is subject to withholding income tax	Capital gains are treated as income from real estate activities and, therefore, tax-exempt	Withholding tax suffered by the FII may be set against tax on distribution to investors

Current income

Income from real estate activities (e.g., rental income or income from certain real-estate-related securities) is tax-exempt.

Income from fixed-income and variable-income investments is subject to withholding income tax. An exception is made to some particular securities, such as Mortgage Notes (Letras Hipotecárias), Housing Financing (Letras de Crédito Imobiliário) and Agricultural Warrants (Warrant Agropecuário).

This withholding tax may be offset against the withholding tax payable on profits distribution to unitholders.

Capital gains

Capital gains are treated as income from real estate activities and, therefore, tax-exempt.

Withholding tax

Earnings from investments in fixed income are subject to withholding tax at a rate between 15% and 22.5%, depending on the length of the holding of the investment, and it can be set against tax payable on profits distribution from the FII.

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Earnings from investments in variable income are taxed between 15% and 20% and can be offset against tax payable on profits distribution.

Other taxes

Transfers of real estate to an FII are subject to a real estate transfer tax (ITBI) imposed by the municipality where the property is located. The rates vary according to the location and value of the property.

The property ownership in Brazil is also subject to an annual property tax (IPTU) applied by the municipalities. Again, in this case, the rates vary according to the municipality in which the property is located.

Accounting rules

The FII must produce its financial statements, and its accounts should be segregated from the fund manager's. The financial statements should be produced under Brazilian GAAP, which is entirely in line with IFRS for accounting periods ending after 2015.

The accounting period must have 12 months, and the financial statements must be published within 90 days of the end of the accounting period.

The preparation of financial statements must:

- observe the specific rules provided by CVM;
- be audited annually by an independent auditor; and
- observe the rules governing the exercise of that activity.

3.2 Transition regulations

Conversion into REIT status
N/A

Existing entities cannot be converted into FIIs.

3.3 Registration duties

Registration duties
Municipal real estate transfer tax (ITBI) applicable

Transfers of real estate to an FII are subject to a real estate transfer tax (IBTI) imposed by the municipality where the property is located. The rates vary according to the location and value of the property.

4 Tax treatment at the unitholder's level

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4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Withholding tax
Withholding income tax at 20% on distributions from the FII or capital gains on the disposals of units in the FII	Withholding income tax at 20% on distributions from the FII or capital gains on the disposals of units in the FII. Income may be exempt from withholding tax if special conditions are met	Corporate unitholders may credit for withholding tax applied by the FII on distributions

Corporate unitholder

Withholding income tax at 20% applies to distributions made by the FII to companies resident in Brazil and on capital gains arising from the disposal of units in the FII. The withholding tax can be offset against the unitholder's corporate income tax liability.

Individual unitholder

Final withholding income tax at 20% applies to distributions made by the FII to individuals resident in Brazil and on capital gains arising from the disposal of units in the FII.

Law 11.033/2004 sets out that individuals may be exempt from withholding tax on income provided:

- Units are negotiated exclusively on the stock exchange or over-the-counter;
- The fund has at least 50 unitholders; and
- The individual benefitting from the tax exemption does not hold 10% or more of the fund's units or is entitled to more than 10% of the fund's earnings.

Withholding tax

Corporate unitholders may credit for withholding tax applied by the FII on distributions and capital gains. However, there is no tax credit for individual unitholders who do suffer withholding tax (i.e. individual unitholders who are not compliant with Law 11.033/04) and the withholding tax is final.

4.2 Foreign Unitholders

Corporate unitholder	Individual unitholder	Withholding tax
- Withholding tax at 20% as a general rule - Withholding tax at 15% on income, providing some conditions are met - Capital gains at 0%, providing some conditions are met	- Withholding tax at 20% as a general rule - Withholding tax at 15% on income, providing some conditions are met - Capital gains at 0%, providing some conditions are met	Questionable whether tax treaty relief is available

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Corporate unitholder

A reduced withholding tax rate of 15% applies to income and capital distributions made by the FII, where the foreign investment is registered with the Brazilian Central Bank (Resolução 4.373), and the beneficiary is not resident in a low-tax jurisdiction.

Capital gains arising to the foreign unitholder from the disposal of units in the FII are not subject to tax in Brazil provided:

i. The unit is traded on the stock exchange;

ii. The investment is registered with the Brazilian Central Bank; and

iii. The beneficiary is not resident in a low-tax jurisdiction.

If either of the conditions above is not met, withholding tax will apply at 20%.

Individual unitholder

The same beneficial tax rates described above (corporate unitholder) apply to individuals who meet the conditions.

Withholding tax

It is still unclear whether non-resident unitholders in a Brazilian FII may be able to rely on double tax treaties to further reduce the withholding tax rate on distributions made by the FII. As the legal nature of the FII is a contractual relationship between the fund manager and the investors, the Brazilian tax authorities may argue that the FII is not a person to apply double tax treaties.

5 Tax treatment of foreign REIT and its domestic unitholders

Foreign REIT	Corporate unitholder	Individual unitholder
Taxed with a 15% withholding tax on income and capital gains	Income and capital gains arising from a corporate unitholder are taxed at 34% (45% if the beneficiary is a financial institution, insurance or related company)	Income and capital gains arising from an individual unitholder are taxed at rates from 7.5% to 27.5%

Foreign REIT

A foreign REIT is only taxable in Brazil regarding its income arising from a Brazilian source (e.g., rental income or capital gains related to a Brazilian property). Such income will be subject to a 15% withholding tax in Brazil.

Corporate unitholder

Income (including capital gains) arising from a foreign REIT to a corporate unitholder resident in Brazil is subject to Brazilian tax at a combined rate of 34% (45% if the beneficiary is a financial institution, insurance or related company). Any withholding tax suffered by the Brazilian unitholder on the distribution from the foreign REIT may be set against the Brazilian unitholder's tax liability in Brazil, limited to the amount of Brazilian tax due on such distribution.

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It is unclear whether the Brazilian resident investor may also claim a credit for any other underlying taxes suffered by the foreign REIT (e.g., withholding tax on rental income).

Individual unitholder

Income (including capital gains) arising from a foreign REIT to an individual unitholder resident in Brazil is subject to Brazilian tax at rates varying from 7.5% to 27.5% (in practice, individual investors in foreign REITs are likely to be higher-rate taxpayers, so the 27.5% should apply). Any withholding tax suffered by the Brazilian unitholder on the distribution from the foreign REIT may be set against the Brazilian unitholder's tax liability in Brazil.

It is unclear whether the Brazilian resident investor may also claim a credit for any other underlying taxes suffered by the foreign REIT (e.g., withholding tax on rental income).

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MFT

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1 General introduction

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	Enacted year	Citation	REIT type
MFT	1994	Income Tax Act	Trust

The specified investment flow-through rules (SIFT Rules), enacted in 2007 and amended in 2009, have significantly negatively impacted non-qualifying Canadian real estate investment trusts (REITs) and their unitholders by making them subject to entity-level tax. However, qualifying REITs (as specifically defined for this purpose) are exempted from the SIFT Rules.

Canadian REITs may qualify as 'mutual fund trusts' (MFTs) under the Canadian Income Tax Act (ITA), for which comprehensive and detailed rules exist. An MFT provides for a flow-through of income, dividends and capital gains to unitholders and, in addition, has many tax benefits associated with vehicles that are qualified for distribution to the public and not available to trusts that do not qualify as MFTs.

The ITA governs the MFT regime and is subject to provincial securities legislation. Generally, an MFT that is a REIT is not a mutual fund under applicable securities legislation.

The SIFT Rules generally do not apply to a publicly-traded trust that qualifies as a 'real estate investment trust' (as defined in the SIFT Rules) throughout a taxation year (the 'REIT Exception'). For purposes of the SIFT Rules, a trust will be a 'real estate investment trust' for a particular taxation year if:

d. The trust is resident in Canada throughout the taxation year;

d. At each time in the taxation year, at least 90% of the total fair market value of the trust's 'non-portfolio property' is 'qualified REIT properties'. In general, the non-portfolio property includes (i) securities of a 'subject entity' (other than a 'portfolio investment entity') that have a total fair market value greater than 10% of the equity value of the 'subject entity' or a total fair market value greater than 50% of the equity value of the trust; (ii) Canadian real, immovable or resource property, if at any time in the taxation year, the fair market value of all such properties held by the trust is greater than 50% of the equity value of the trust; and (iii) property that the trust, or a person or partnership with whom the trust does not deal at arm's length, uses in the course of carrying on a business in Canada;

d. Not less than 90% of the trust's 'gross REIT revenue' for the taxation year is from one or more of the following: (i) 'rent from real or immovable properties' (as defined in the SIFT Rules), (ii) interest, (iii) dispositions of 'real or immovable properties' (as defined in the SIFT Rules) that are capital properties (as defined in the ITA), (iv) dividends, (v) royalties and (vi) dispositions of 'eligible resale properties' (as defined in the SIFT Rules) (the 'revenue test');

d. Not less than 75% of the trust's 'gross REIT revenue' for the taxation year is from one or more of the following: (i) 'rent from real or immovable properties', (ii) interest from mortgages, or hypothecs, on 'real or immovable properties' and (iii) dispositions of 'real or immovable properties' that are capital properties;

d. At all times in the taxation year, an amount that is equal to 75% or more of the equity value of the trust at that time is the amount that is the total fair market value of all properties held by the trust, each of which is 'real or immovable property' that is a capital property, 'eligible resale property', indebtedness of a Canadian corporation represented by a bankers' acceptance or property described by either paragraph (a) or (b) of the definition 'qualified investment' in section 204 of the ITA (i.e., generally, certain deposits with financial institutions or certain government debt), or a deposit with a credit union; and

d. At any time in the taxation year, investments in the trusts are listed or traded on a stock exchange or other public market.

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For purposes of the REIT Exception, 'qualified REIT property' of a trust means a property held by the trust that is:

a. A 'real or immovable property' that is a capital property, an 'eligible resale property', an indebtedness of a Canadian corporation represented by a bankers' acceptance, the property described by either paragraph (a) or (b) of the definition 'qualified investment' in section 204 of the ITA (i.e., generally, certain deposits with financial institutions or certain government debt), or a deposit with a credit union;

b. b.A security of a 'subject entity', where all, or substantially all, of the 'gross REIT revenue' is from maintaining, improving, leasing or managing real or immovable properties that are capital properties of the trust or of an entity of which the trust holds a share or interest, including real or immovable properties that the trust, or of an entity of which the trust holds a share or interest, holds together with one or more other persons or partnerships;

c. a security of a 'subject entity' if the entity holds no property other than:

    i. a legal title to 'real or immovable property' of the trust or of another subject entity all of the securities of which are held by the trust (including 'real or immovable property' that the trust or the other subject entity holds together with one or more other persons or partnerships) and

    ii. a property described in paragraph (d); or

d. Ancillary to the earning by the trust of rent from and capital gains from the disposition of 'real or immovable property' other than equity of an entity or a mortgage, hypothecary claim, mezzanine loan or similar obligation.

Rent from real or immovable properties includes:

a. Rent or similar payments for the use of, or right to use, 'real or immovable properties'; and

b. Payment for services ancillary to the rental of 'real or immovable properties' and customarily supplied or rendered in connection with the rental of 'real or immovable properties'.

But does not include:

(a) management fees;

(b) payments for hotel rooms or similar lodging facilities; or

(c) rent based on profits.

'Real or immovable property' includes a security of an entity held by the taxpayer that would itself satisfy conditions (b) through (e) of the REIT Exception listed above if such entity was a trust or an interest in real property or a right in immovable property but does not include any depreciable property, other than (i) a property included, otherwise than by an election permitted by regulation, in Class 1, 3 or 31 of Schedule II to the Income Tax Regulations (generally buildings); (ii) a property ancillary to the ownership or utilisation of a property described in (i); or (iii) a lease in, or a leasehold interest in respect of, land or property described in (i).

'Eligible resale property' includes 'real or immovable property' that is not capital property or contiguous to a particular 'real or immovable property' that is either capital or 'eligible resale property' of the entity or an affiliated entity and is ancillary to the holding of that particular property.

For purposes of the REIT Exception, 'gross REIT revenue' of a trust means the total of all amounts received or receivable in the year by the entity in excess of the total amounts, each of which is the cost of property disposed of in the year.

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Canadian hotel and senior living income trusts generally do not qualify for the REIT Exception due to their operations being active rather than passive in nature, and accordingly, such REITs are generally subject to entity-level corporate tax.

The REIT Exception includes looking through rules for certain trust revenues and a re-characterisation rule for certain changes in the value of a foreign currency and from certain hedging activities in respect of the REIT's real or immovable property. Generally, these amounts will be included in 'gross REIT revenue' to the extent they were realised on revenue in respect of 'real or immovable properties' or on debt incurred for the purpose of earning revenue from 'real or immovable properties'. For example:

- Amounts of income payable by a subsidiary entity to its parent, or an affiliated entity, will generally be deemed to maintain their source character for the parent or affiliated entity where it is included in the parent's 'gross REIT revenue';
- Foreign currency gains included in the trust's 'gross REIT revenue' and realised in respect of 'real or immovable property' situated in a foreign country will be treated as having the same character as 'gross REIT revenue' in respect of the 'real or immovable property';
- Foreign currency gains from debt incurred for the purpose of earning revenue from a qualifying source of REIT revenue (e.g. Euro-denominated debt incurred by the REIT to acquire real or immovable property in a European country from which the REIT earns rental revenue) will be deemed to have the same character as the 'gross REIT revenue' to which it relates; and
- Amounts included in the trust's 'gross REIT revenue' and received under, or as a result of, an arrangement that hedges risk stemming from fluctuations in foreign currency related to sources of revenue in respect of 'real or immovable property' situated outside Canada would also be treated as qualifying REIT revenue.
- Amounts included in the trust's 'gross REIT revenue' from an agreement that is used to hedge its interest rate risk in respect of debt incurred to acquire or refinance real or immovable properties will be deemed to have the same character as 'gross REIT revenue' in respect of that real or immovable property.

Amendments to the SIFT Rules were enacted on 12 December 2013, in response to the government's concern over certain transactions involving publicly traded stapled securities (i.e., securities that are legally separate but which must be bought and sold together). With respect to stapled securities to which the rules apply that involve debt stapled to equity, the rules deny a deduction in computing the income of the payer for the interest that is paid or payable on the debt. In addition, where, for example, units of a REIT can only be transferred together with interest in another entity, the rules would cause any amount (including, but not limited to rent) that is paid or payable by the other entity (or its subsidiaries) to the REIT (or its subsidiaries) on or after 20 July 2011, to be non-deductible in computing the income of the payer for income tax purposes. In both of these cases, there does not appear to be any offsetting adjustment with respect to the income earned by the REIT or its subsidiaries that could result in double taxation of the earnings represented by the non-deductible payments.

The legislation included a transitional period for the application of the rules that, in general terms, delayed their application until 1 January 2016, when the stapled securities were issued on 31 October 2006 (when the SIFT Rules were announced), or before 20 July 2012, for other stapled securities that were issued at the date of the announcement of the rules of 20 July 2011. This legislation applies, in particular, to those REITs that attempted to qualify for REIT status by issuing stapled securities. The rules meant that stapled restructurings used by some Canadian hotels and senior living REITs to remain in the REIT regime were no longer effective. Therefore, relevant REITs that have not already been reorganised can now no longer do so in order to avoid the application of these rules.

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Despite the various amendments to the rules, a number of Canadian publicly-traded REITs have been able to meet the REIT Exception criteria either through the purification of operations or through restructuring. Qualifying Canadian REITs have been created based on the sizeable real property holdings of large publicly traded Canadian retail companies. Such companies have decided to transfer their real property to a Canadian REIT in order to monetise some of the inherent value in their property portfolio, which may be undervalued within their operating businesses. Those trusts impacted by the SIFT rules that fail to meet the REIT Exception criteria will be subject to the entity-level SIFT tax.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Canada	41	15	€ 48.573,67	2,67%

Top five REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Canadian Apartment Props REIT	5.902,58	9,40%	3%	0,48%
Riocan REIT	4.004,61	-5,32%	6%	0,32%
Granite Real Estate	3.458,70	-3,36%	4%	0,26%
Choice Properties	3.080,83	-4,87%	6%	0.19%
Dream Industrial REIT	2.516,38	15,23%	5%	0,20%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
Election in tax return

Generally, a trust will not meet the requirements of an MFT at the time of its formation because of the unitholder requirements discussed below. If a trust qualifies as an MFT before the 91st day after the end of its first taxation year and elects in its tax return for that year, the trust will be deemed to be an MFT from the beginning of its first taxation year.

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2.2 Legal form/minimum initial capital

Legal form	Minimum share capital
Unit trust	No

Legal form

In Canada, the MFT structure has developed into the most popular publicly traded investment vehicle for Canadian real estate investments. While other tax-efficient vehicles have been considered, the MFT provides the most favourable tax treatment in terms of eliminating entity-level taxation and maximising cash flow for reinvestment or distribution to unitholders.

A unit trust is simply a type of inter vivos trust under which the interest of each beneficiary is described by reference to units of the trust. A trust refers to a specific legal relationship created when a person (trustee) holds property for the benefit of another person (beneficiary). The unitholders are the beneficiaries of the trust, and their units represent their right to participate in the income and capital of the trust. The exercise by the trustee of the trustee's duties and powers under the trust is subject to fiduciary and statutory obligations. An advantage of using a trust vehicle is that it allows for the control and management of assets to be separated from their ownership.

The trust indenture or agreement for a REIT will generally provide that no unitholder will be subject to any liability in connection with the REIT or its obligations and affairs and, in the event that a court determines unitholders are subject to any such liabilities, the liabilities will be enforceable only against and will be satisfied only out of, the REIT's assets. All Canadian provincial jurisdictions, with the exception of the Maritimes, Nunavut, Northwest Territories and the Yukon, have enacted statutes providing a statutory limitation on the liability of unitholders of MFTs (including REITs), as discussed below.

The Income Trusts Liability Act (Alberta) came into force on 1 July 2004. The legislation provides that a unitholder of a trust created by a trust instrument governed by the laws of Alberta and that is a 'reporting issuer' under the Securities Act (Alberta) will not be, as a beneficiary, liable for any act, default, obligation or liability of the trustee of the Alberta income trust that arises after the legislation came into force. Ontario's Trust Beneficiaries Liability Act, 2004, which came into force on 16 December 2004, has a substantially similar provision. It states that the beneficiaries of a trust are not, as beneficiaries, liable for any act, default, obligation or liability of the trust or any of its trustees if the trust is governed by the laws of Ontario and is a reporting issuer under that province's Securities Act, The Investment Trust Unitholders' Protection Act (Manitoba), which came into force on 16 June 2005; the Income Trust Liability Act (British Columbia), which came into force on 30 March 2006; and the Income Trust Liability Act (Saskatchewan), which came into force on 19 May 2006, contain similar provisions that limit the liability of income trust beneficiaries.

The Civil Code of Quebec also provides the limitation of beneficiary liability for the acts of the trustees of a trust in the absence of fraud.

Minimum initial capital

No minimum initial capital is required to establish an inter vivos trust structured as a unit trust.

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2.3 Unitholder requirements/listing requirements

Unitholder requirements	Listing mandatory
- Minimum of 150 unitholders, each of whom holds not less than one 'block of units' and has an aggregate fair market value of no less than CAD 500 - Generally, MFTs cannot be established or maintained primarily for the benefit of non-residents of Canada	Required to avoid redemption right of unitholders

Unitholder requirements

The Canadian rules applicable to MFTs require that there be at least 150 unitholders, each of whom holds not less than one 'block of units' that has a fair market value of no less than CAD 500. The number of units required in a block will depend on its fair market value (e.g., 100 units if the fair market value of one unit is less than CAD 25). There are rules that deem a 'group' of persons holding units to be one person for the purposes of determining whether there are 150 unitholders. In addition, a class of units of the trust must be 'qualified for distribution to the public', which is defined to include a lawful distribution in a province to the public of units of the trust in accordance with a prospectus or similar document.

Listing requirements

Unit trusts that are not redeemable at the demand of the holder and that qualify as unit trusts because of their real property holdings must be listed on a designated stock exchange in Canada.

In general, to qualify as a 'unit trust' (where the units are not redeemable on demand by the holder), the following requirements in respect of property ownership and income must be satisfied:

- At least 80% of its property consisted of any combination of the following:
  a. Shares;
  b. Any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,
  c. Cash;
  d. Bonds, debentures, mortgages, hypothecary claims, notes and other similar obligations;
  e. Marketable securities;
  f. Real property situated in Canada and interests in real property situated in Canada (which would include leasehold interests); and
  g. Rights to and interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada.
- No less than 95% of its income was derived from, or from the disposition of, investments described in (a) through (g) above; and
- No more than 10% of its property consisted of bonds, securities or shares in the capital stock of any one corporation or debtor other than His Majesty in the right of Canada or a province or a Canadian municipality.

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2.4 Asset level/activity test

Restrictions on activities/investments
- Investing in property (other than real property or an interest in real property) is allowed - Acquiring, holding, maintaining, improving, leasing or managing any real property (or interest in real -property) that is the capital property of the trust is allowed - Any combination of the foregoing activities

To qualify as an MFT, the only undertaking of a trust must be:

- The investing of its funds in the property (other than real property or an interest in real property or an immovable or a real right in an immovable);
- The acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) or of any immovable (or real right in immovables) that is the capital property of the trust; or
- Any combination of the foregoing activities.

An MFT may not directly carry on a business. Consequently, an MFT may not directly engage in trading in real estate and may not directly operate hotels or nursing homes, which are considered businesses and not passive sources of income.

It should be noted that if an MFT carries on business through a subsidiary trust or corporation, it will generally not violate the MFT undertaking restrictions above. In addition, if an MFT carries on business through a limited partnership and its only direct investment is in respect of an interest in which its liability is limited (i.e. limited partnership interest), it will generally not violate the undertaking restrictions above.

However, publicly traded Real Estate MFTs have to monitor the extent of their ‘business’-related activities throughout the year to ensure they qualify for the REIT exception at all times.

2.5 Leverage

Leverage
No limitation on leverage specifically, but thin capitalisation rules may apply to limit tax-deductible interest.

The ITA does not impose any leverage rules specifically aimed at MFTs. However, Canada’s general thin capitalisation rules could technically apply to limit the deductibility of interest where, in broad terms, the percentage of debts owing by the MFT to certain specified (i.e., unitholders who hold at least 25% of the units) non-resident unitholders of the MFT exceeds a 1.5:1 debt to equity ratio. It is common for there to be limitations on leverage as a matter of investment policy set out in the declaration of trust establishing the MFT and disclosed in the prospectus.

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2.6 Profit distribution obligations

Operative income	Capital gains	Timing
All income of the MFT for a taxation year is paid or payable to unitholders in the year so that MFT does not incur tax	All capital gains are paid out and retain their character as such in the hands of unitholders provided a designation is made by the MFT	All income must be paid or recognised as payable in the taxation year of the MFT. If it is payable, then the amount can be paid out within a reasonable timeframe.

Operative income

An MFT is not required by the ITA to pay out all of its income and capital gains. However, this is the invariable practice as a trust may deduct in computing its income for a taxation year all income paid or payable to unitholders in such year, with any remaining income being subject to income tax at the highest marginal personal income tax rate at the trust level. An amount would be 'payable' to a unitholder in a taxation year if the unitholder was entitled in the year to enforce payment. The declaration of trust establishing an MFT normally includes provisions ensuring that the income is 'payable' so the MFT may deduct amounts of income it has not actually paid out by the end of its taxation year. Distributions in excess of income may be designated to be income rather than a return of capital, with a consequential deduction from income in the following year.

Capital gains

See above.

2.7 Sanctions

Penalties/loss of status rules
Loss of MFT status

If a REIT loses its MFT status, there will be several negative consequences, including the following:

a. The REIT will be subject to a special 40% tax on its 'designated income', which includes income from real property in Canada and taxable capital gains from dispositions of real property in Canada and any other 'Canadian taxable property', creditable against any such income of unitholders subject to Canadian income tax;

b. Units of the REIT will become 'taxable Canadian property', with the result that non-residents would generally be taxable in Canada on any gain from disposition of such units, and such dispositions by non-residents would become subject to reporting and withholding requirements;

c. Units of the REIT may cease to be qualified investments for certain deferred income plans, such as 'registered retirement savings plans';

d. The REIT can be subject to an alternative minimum tax

e. The REIT will be ineligible to use the capital gains refund mechanism, which is an important mechanism that can help minimize double tax where the REIT sells property and triggers a capital gain that is used to fund redemptions of trust units; and

f. Transfers of REIT units may give rise to land transfer taxes if the REIT owns real property in certain provinces, such as Ontario.

For these reasons, it is considered critical for a REIT to maintain its MFT status. There are special rules that may deem a REIT to retain its MFT status for the balance of the year where such status is lost midway through the year.

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3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
An MFT is entitled to deduct in a year all income determined for purposes of the ITA paid or payable to unitholders in the year, so it may reduce its net taxable income to nil.	Capital gains follow the same system for income, except only 50% of a capital gain (a 'taxable capital gain') is included in taxable income, and 50% of a capital loss can be applied to offset taxable capital gains	Credit or refund of foreign withholding tax possible

Current income

An MFT is not exempt from income tax under the ITA. Rather, an MFT computes its income in the same manner as any other resident of Canada and is entitled to deduct in computing its income for a taxation year all income paid or payable to a unitholder in such taxation year. Consequently, distributions by an MFT are affected on a pre-tax basis. An MFT cannot flow through any losses to unitholders.

The tax treatment of distributions to unitholders of an MFT will generally depend on their characterisation for purposes of the ITA and the residency of the unitholder. As noted above, the SIFT rules may apply an entity-level corporate-style tax on certain REITs that do not qualify for the REIT exception.

Capital gains

Only 50% of a capital gain realised is taxed in the MFT unless this income is distributed to unitholders during that taxation year, in which case the value of the distribution is deducted from taxable profits (as described above). The other 50% is exempt from income tax, whether distributed or not. 50% of a capital loss can be applied as an allowable capital loss to reduce or eliminate taxable capital gains in any of the three years preceding the year or any year following the year in which the taxable gains were realised.

Withholding tax

If a REIT invests outside Canada, it may be subject to foreign income and withholding taxes. Provided the REIT makes the appropriate designation, investors in the REIT can generally claim a foreign tax credit for all or a portion of the foreign taxes when the related foreign source income is distributed by the REIT. Alternatively, the REIT may deduct such foreign taxes in computing its own income in some circumstances.

Other taxes

All provinces eliminated capital taxes effective 1 July 2012. In any case, as legal entities that are organised as trusts, REITs were generally not subject to provincial capital taxes.

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REITs or their unitholders may be subject to provincial and municipal land transfer taxes in respect of acquisitions of real property. For instance, the highest provincial rate in Ontario is 2% for commercial property calculated on the value of the consideration and payable by the purchaser. Ontario taxes both registered and unregistered conveyances of land. There is limited relief from the tax. The City of Toronto imposes a similar land transfer tax.

Canada has a federal Goods and Services Tax and Harmonised Sales Tax (GST/HST), which is a value-added tax. The province of Quebec also has a value-added tax known as the Quebec Sales Tax (QST). The provinces of British Columbia, Manitoba and Saskatchewan have traditional sales taxes (PST). The current combined GST/HST/PST rate ranges from 5% to 15%, depending on the province. Canadian REITs generally pay GST/HST on input costs and possibly on QST and/or PST.

On 28 March 2023 as part of the 2023 Federal Budget, Finance released draft legislation that proposes to impose a 2% tax on share/unit buybacks by publicly traded entities (including REITs, SIFTs, and publicly traded income trusts and partnerships that would be considered SIFTs if their assets were located in Canada). The proposed tax will be based on the total fair market value of units redeemed less the fair market value of equity issued during a taxation year. The proposals include exclusions for redemptions of shares/units that have debt-like characteristics, were part of a reorganisation or acquisition transaction or were less than CAD 1,000,000 for the entity's fiscal year. As of the date of this report, legislation has not been enacted but it is important to consider this going forward.

Accounting rules

In Canada, accounting rules for all Canadian entities outside of the public sector are established by the Accounting Standards Board of Canada (AcSB) and published in the CPA Canada Handbook.

Publicly-accountable entities, as defined in the CPA Canada Handbook, are required to report financial statements in accordance with IFRS® Standards that have been adopted by the AcSB (IFRS); therefore, all publicly-traded REITs in Canada are required to report under IFRS.

Provided a REIT is a private enterprise (i.e., a profit-oriented entity that is not a publicly accountable enterprise), it can choose to follow the Accounting Standards for Private Enterprises (ASPE) or IFRS. However, certain Private REITs may be required to report under IFRS in accordance with regulations imposed by the Securities Exchange Commission in the province it is resident.

3.2 Transition regulations

Conversion into REIT status
N/A

Where a trust-owning property commences qualifying as an MFT, there is no deemed or actual disposition of property and, therefore, no tax payable under the ITA. There are not any rules permitting a tax-deferred transfer of property to an MFT, except if there is a qualifying transfer of property to the MFT by another MFT or by a 'mutual fund corporation' and if other conditions are satisfied. These latter provisions, in effect, provide for a tax-free merger of MFTs.

Some REITs have established Canadian subsidiaries (or indirectly held partnerships) so that transfers to them can qualify for tax deferral. The vendor of the property cannot receive non-share (or non-partnership interest) consideration (e.g., cash, debt) that exceeds the tax cost of the transferred property; otherwise, recapture and gain will be triggered. The shares or partnership interests acquired by the vendor are typically exchangeable for units of the MFT. The exercise of such exchangeable shares or partnership units would generally be a taxable event. Care must be taken to avoid the newly enacted 'character conversion transaction' rules in such arrangements that could convert a capital gain, only 50% of which is included in income, into a fully taxable gain.

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3.3 Registration duties

Registration duties
Real estate transfer tax

Some provinces impose a transfer tax on the acquisition of real estate payable by the purchaser. For instance, Ontario calculates the tax based on graduated rates applied to the value of the consideration for the land. The highest rate for commercial property is 2.0%. See the above discussion in section 3.1 under the heading ‘Other Taxes’.

4 Tax treatment at the unitholder level

4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Withholding tax
Taxable	Taxable	N/A

Corporate unitholder/individual unitholder

Income (including the taxable portion of capital gains and dividends) paid or payable by an MFT to unitholders will be included in the income of unitholders resident in Canada and will be subject to the normal rules of taxation. The rates of taxation will depend on whether the unitholder is an individual or a corporation and the province of residency. For example, in Ontario, the generally prevailing combined federal-provincial income tax rate for 2023 is 26.5% for corporations, and the top combined rate for individuals is 53.53% on taxable income exceeding CAD 220,000.

If a REIT earns taxable dividends from Canadian corporations, provided that the REIT makes the appropriate designation, those amounts will retain their character as such when distributed. Unitholders that are corporations will generally be entitled to a full dividends-received deduction in respect of such dividends but may, in certain cases, be subject to a refundable Part IV tax on the dividends. Unitholders that are individuals will generally be entitled to preferential tax treatment by claiming a dividend tax credit. Distributions of income that are subject to the new entity-level SIFT tax discussed above will be considered to be dividends to unitholders.

If a REIT realises capital gains, provided the REIT makes the appropriate designation, those amounts will retain their character as such when distributed. One-half of capital gains are included in income as ‘taxable capital gains’ for the unitholder.

Distributions by an MFT in excess of income may arise because of non-cash deductions such as capital cost allowance that apply to reduce the MFT’s taxable income in a year. These distributions provide a form of tax deferral because they reduce the tax cost of the units as a return of capital without immediate taxation unless the tax cost becomes negative.

As noted above, capital gains, dividends, and foreign source income will retain their character in the hands of unitholders if appropriate designations are filed. Otherwise, the ‘source’ of income is treated as income from a trust.

On the disposition of a unit of an MFT, the unitholder will realise a capital gain (or a capital loss) to the extent the proceeds of disposition exceed (or are exceeded by) the aggregate of the tax cost of a unit and any disposition costs.

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Withholding tax

There is no withholding on distributions made to residents of Canada.

4.2 Foreign unitholder

Corporate unitholder	Individual unitholder	Withholding tax
- To the extent the distribution is made out of the REIT's income, the withholding tax is imposed at a statutory rate of 25% - Tax exemption for capital gains	- To the extent the distribution is made out of the REIT's income, the withholding tax is imposed at a statutory rate of 25% - Tax exemption for capital gains	Tax treaty relief available

Corporate unitholder/individual unitholder

Distributions

A foreign unitholder (whether a corporation or an individual) will generally be subject to withholding tax on distributions from a REIT.

To the extent the distribution is made out of the REIT's income, the withholding tax is imposed at a statutory rate of 25%. However, under many treaties, the rate is reduced to 15%.

To the extent the distribution exceeds the REIT's income, the ITA provides for a 15% tax if the REIT is a 'Canadian property mutual fund investment' – which essentially means that more than 50% of the value of the REIT's units is attributable to Canadian real property or resource property.

All MFTs, including REITs, are required to keep track of their net capital gains from disposals of 'taxable Canadian property' in a 'TCP gains distributions account'. For example, if the REIT realises a gain on the disposal of a Canadian real property investment, the full amount of that capital gain will be added to the TCP gains distribution account (despite the fact that only one-half of the capital gain is included in the taxable income of the REIT). When the REIT makes a distribution to a foreign investor, the distribution is treated as coming out of the balance, if any, in the TCP gains distribution account, and any portion of the distribution that would otherwise have escaped Canadian withholding tax is subject to a 15% withholding tax under various double tax treaties. Note that this applies only where more than 5% of the designated capital gains for a fiscal year of the MFT are allocated to non-resident persons and partnerships that are not Canadian partnerships.

Capital gains

Foreign unitholders (whether corporations or individuals) will generally not be subject to Canadian tax on gains from disposals of REIT units, provided an ownership test is met. In particular, the unitholder, combined with non-arm's length persons, must not own 25% or more of the REIT's outstanding units at any time during the 60 months preceding the disposal.

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5 Tax treatment of the foreign REIT and its domestic unitholder

Foreign REIT	Corporate unitholder	Individual unitholder
Taxed on rental income and gains	Fully-taxable	Fully-taxable

Foreign REIT

A foreign REIT generally will be subject to the normal Canadian tax rules applicable to other foreign investors in Canada, including the following:

- Rental income earned by a foreign REIT from Canadian real estate will generally be subject to a 25% withholding tax levied on gross rentals; and
- Gains realised from the disposal of Canadian real estate by a foreign REIT will be subject to Canadian tax.

In many cases, foreign REITs acquire Canadian properties through special-purpose corporations, unlimited liability companies or trusts. Through the use of leverage, both internal and external, it is normally possible to reduce or, in some cases, eliminate Canadian tax on rental income. Canada's tax treaties generally permit Canada to tax capital gains realised by foreign investors, including REITs, from disposals of real property in Canada or shares of Canadian companies whose value is derived principally from real property in Canada, although certain treaties provide an exemption in the case where the real property is used in a business of the company.

Corporate unitholder

A corporate unitholder of a foreign REIT will generally be required to include in income any distributions received, whether or not those distributions were sourced from income generated in Canada.

Individual unitholder

An individual unitholder of a foreign REIT will generally be required to include in income any distributions received, whether or not those distributions were sourced from income generated in Canada.

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FI and FIP

A comparison of the
major REIT regimes
around the world.

2023

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1 General introduction

	Enacted year	Citation	REIT type
FI and FIP	2014	Law No. 20,712 on Administration of Funds and Individual Funds Portfolio (the Funds Law)	Fund type

Public Investment Funds (FI) and Private Investment Funds (FIP) are regulated in Law No. 20,712, published in the Official Gazette on January 7, 2014, and in force from May 1, 2014.

The recent Tax Reform, contained in Law No. 20.210, introduced modifications to the Funds Law mainly related to form, no substance and in force since March 1, 2020.

In general terms, funds are defined by law as the equity constituted by contributions made by individuals or entities, exclusively for investment in securities and property that the law allows, which management is the responsibility of an entity different from the contributors.

FIP and FI must not be confused. Indeed, FI must publicly offer their participation quotes, have at least 50 sharers (or at least one institutional investor), and be managed only by an Investment Fund Manager. FIP have less than 50 shares, do not make a public offer of their quotes and are managed by an 'Investment Fund Manager' or a Closed Stock Corporation.

According to the Chilean legislation, an FI and FIP could invest in shares or quotas (interest ownerships) of an entity, which in turn has an investment in a real estate asset; the foregoing, since an FI or a FIP cannot invest invest directly in real estate.

Thus, in Chile, there are no funds equally structured, such as REITs, but rather Investment Funds with investments in companies which, in turn, have an investment in real estate assets.

In this regard, FI and FIP investors are subject to tax on the dividends received by individuals from the FI or FIP and are subject according to general rules with respect to the gains/loss derived from the transfer of their quotas.

2 Requirements

2.1 Formalities/procedure of FI and FIP

Key requirements
- Approval of the fund by the Chilean Securities Commission (FI) - Management by a Chilean corporation

In the case of an FI, the Chilean Securities Commission (Comisión para el Mercado Financiero or CMF) must approve the internal regulation and the agreements between the fund and its investors, including their amendments.

The FI must be managed by an entity that has to be organised as a special Chilean Stock Corporation in Chile (sociedad anónima especial), named 'Investment Fund Manager'. The Investment Fund Manager will be supervised by the CMF and subject to the regulations stated in Law No. 20,712.

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The CMF must also authorise the existence of the Investment Fund Manager, and it has to fulfil the requirements stated in Art. 126 of Law No. 18.046. Its business activity must be limited exclusively to the management of funds or resources from third parties, and it is required to have a minimum paid-in share capital in cash of UF 10,000 (approximately USD 440,000).

Notwithstanding the above mentioned, these manager companies may include within their object other complementary activities authorised by the CMF.

With respect to FIP, they may be organised without the approval and audit of the CMF. Notwithstanding this, the FIP must be audited by a registered external auditor and fulfil certain corporate requirements. These types of funds may be managed by an Investment Fund Manager, as explained above, or by a Closed Stock Corporation.

2.2 Legal form/minimum initial capital

Legal form	Minimum share capital
Unincorporated entities	- No initial requirement - After one year, UF 10,000 in case of FI

Legal form

Funds (i.e., FI and FIP) may only be organised as unincorporated entities (i.e., do not have the status of a separate legal entity) that are formed by the contributions made by individual and corporate investors. In this sense, since funds are considered as a co-ownership without legal status, they may not be considered a taxpayer of Corporate Tax.

Minimum initial capital

In the case of FI, there is no minimum initial capital required, although the law requires that after a year from the commencement of the fund’s operations, its total equity must be at least an amount expressed in units of an indicator indexed for inflation called Unidad de Fomento or UF. This minimum total equity amount is UF 10,000, which is equivalent to approximately USD 400,000.

If this obligation is not met, the Investment Fund Manager must communicate it to the CMF within the next business day. From this moment, the CMF may grant the FI a period of a maximum of one year to reach the minimum equity requirement. If the situation has not been amended, the fund must be liquidated.

FIP has no minimum initial capital required by law. Regarding this, the procedure and the applicable penalty, the FIP must follow the rules stated in the respective internal regulation.

2.3 Unitholder requirements/listing requirements for FI and FIP

Unitholder requirements	Listing mandatory
- FIP: less than 50 members that are not ‘members of the same family’ (those who maintain among them a certain degree of consanguinity or affinity relationship, and entities directly or indirectly controlled by each of those people) - FI: at least 50 members or one institutional investor	No

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Unitholder requirements

FIP cannot have 50 or more members. If a FIP reaches 50 or more members, it will be treated as an FI and subject to the same rules and requirements set for FI. On the other hand, after a year from the commencement of the fund's operations, the FIP must be held by at least eight unitholders, and none of them, together with their related parties, must hold participation over 20%. The foregoing applies unless an institutional investor is a member of the fund with more than 50% of the quotas issued by the FIP.

The requirement for FI is that after one year from the approval by the Chilean Securities Commission of the FI's internal regulations, the FI must permanently have at least 50 members unless an institutional investor is a member of the fund. In the latter case, just a single institutional investor is required.

Regarding the FI, the Investment Fund Manager, persons or entities related to it and employees of the managing entity may not own individually or considered together more than 35% of the units of the fund that it manages. Any amount owned over 35% would not have voting rights in the fund's unitholders meetings. They would be required to dispose of their excess units within the term set by the Chilean CMF and may be subject to administrative penalties imposed by the Chilean CMF.

FIP and FI cannot conduct operations between themselves unless managed by unrelated entities.

Listing requirements

In the case of FI, the Fund Manager will be responsible for the custody and maintenance of a participation quotas registry, which in turn has to comply with the CMF instructions.

2.4 Asset level/activity test

Restrictions on activities or direct investments
- Real estate - Water rights - Vehicles of any kind - Intellectual Property - Mining properties - Directly perform productive activities (mining, real estate, agriculture, insurance, etc.)

Law No. 20,712 establishes in Article 57 that direct investments, among others, in real estate are forbidden for FI and FIP. The law also forbids the FI and FIP to directly perform productive activities.

According to Article 56 of Law No. 20.712, the investment of the fund may be made in shares or rights of real estate stock corporations or companies, respectively.

FI and FIP cannot hold shares in another FI or FIP if the same managing entity manages both . Regarding FI, the foregoing applies unless to fulfil the requirements stated in Art. 61. No specific consequence has been contemplated for this.

2.5 Leverage

Leverage
Liabilities may not exceed the limit set by the internal rules of the fund.

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2.6 Profit distribution obligations of FI and FIP

Operative income	Capital gains	Timing
At least 30% of the fund's annual profits	At least 30% of the fund's annual profits	Annually

Operative income

At least 30% of the FI and FIP annual profits must be distributed each year. Distributions must be paid within 180 days following the close of the commercial year. Provisional distributions in advance of final distributions are allowed.

To distribute profits, 'income' is defined as the net received benefits comprising the sum of profits, interest, dividends, and capital gains effectively received during the calendar year (cash basis) less the losses and expenses accrued during the same calendar year.

Capital gains

No distinction is made between capital gains and operative income when calculating the fund's annual profits, at least 30% of which must be distributed each year.

2.7 Sanctions

Penalties/loss of status rules
Loss of FI or FIP status and liquidation possible

If the FI or FIP invests in non-authorised assets, it will lose its status and must be dissolved and liquidated.

The law does not provide for any specific consequence if the profit distribution obligation is not complied with.

Where membership in the FI falls below the 50 member requirement, the Investment Fund Manager must communicate this to the CMF the next business day. From this moment, the CMF may grant the FI a period of a maximum of one year to reach the minimum member requirement. If the situation has not been amended, the fund must be liquidated.

Finally, if the FIP does not fulfil the corporate requirements mentioned in point 2.3. above, it will be taxed as a Chilean Stock Corporation (Sociedad Anónima – SA).

3 Tax treatment at the level of the FI and FIP

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt	Tax-exempt	N/A

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Current income

Funds in Chile do not have a separate legal personality. However, a fund constitutes a separate estate, a pool of assets different from the assets of the management company and the assets of the individuals or entities participating in it.

According to Chilean Tax Law, funds (i.e., FI and FIP) are not considered 'taxpayers'; therefore, they are not levied with a corporate tax on their received or accrued profits. Accordingly, the tax authorities may consider that they are not a resident person for treaty purposes, except in cases where the treaty specifically provides otherwise, as provided in the treaties, with Croatia, Poland, Peru, South Korea and the UK, for instance.

Notwithstanding that funds are not considered taxpayers, investment fund manager companies are legally obliged to act on the account and on behalf of the funds they manage, being lawfully required to comply with all administrative and tax obligations on their behalf (i.e., withhold, declare and pay taxes imposes on distributions made to their non-resident shareholders).

Capital gains

Tax-exempt.

Withholding tax

FIP and FI receipts are not subject to withholding taxes in Chile.

Other taxes

No other income taxes would be apply to the fund. However, according to Article 81 of Law No.20.712, a 40% tax would apply on the following disbursements or operations made by an FI or FIP:

- those not required for the development of the fund's activities and investments not authorised by the law;
- loans made by the fund to their individual and non-resident investors;
- those providing to its investors the use of one or more of the assets that compose the fund; and
- those guaranteeing obligations of the fund's individual and non-resident investors with assets belonging to the fund.

In such cases, the Investment Fund Manager is liable for the payment of the tax.

Notwithstanding the foregoing, it should be considered that the distribution of any amount from the profits generated by the fund, including that made by reducing the quota value not imputed to capital, will be taxed with complementary or additional global taxes, unless they correspond to exempt income, not constituting income, or the return of the capital and its readjustments.

Accounting rules

IFRS would have to be followed.

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3.2 Transition regulations

Conversion into REIT status
No regulations

No pre-REIT structure is contemplated by Chilean law.

Chilean law does not contemplate the possibility of conversion into a REIT or vice versa.

However, under general rules, the gain derived from the sale of real estate held by individuals or non-residents is exempt up to an amount of UF 8,000 (this amount is the summation of all capital gains obtained by the individual or non-resident for real estate sales during his life).

Any gain is treated as ordinary income if the seller is an entity subject to corporate tax.

3.3 Registration duties

Registration duties
Notary fees and register fees

Transfers of real estate located in Chile must be formalised in a public deed signed before a public notary and registered with the land register. Notary fees and land register fees apply. In addition, in order to authorise the public deed, evidence must be provided to the notary that there are no outstanding unpaid real estate taxes.

No real estate transfer tax applies in Chile.

VAT is levied on the sale of real property, whether new or used, regardless of who owns the property if the sale is through someone whose ordinary business is the sale of real estate.

4 Tax treatment at the unitholder level

4.1 Taxpayers domiciled and resident in Chile

Corporate unitholder	Individual unitholder	Withholding Tax
- Corporate tax 27% o 25% - A tax credit for 65% of the corporate tax paid by such profits at the level of the fund ́s portfolio companies, if any	- Personal income taxes (IGC) - A tax credit for 65% of the corporate tax paid by such profits at the level of the fund ́s portfolio companies, if any	- Entities not subject to tax - Individuals, general income tax

Corporate unitholder

Taxable profits distribution and capital gains realised on the sale of units held in a fund are treated in the same way as gains derived from the sale of publicly traded shares of Chilean corporations subject to provisions of article 14 A of the Income Tax Law.

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There is a tax credit for 65% of the corporate tax paid by such profits at the level of the fund́ s portfolio companies, if any.

A return of capital would be tax-free to the extent of basis recovery. Any excess would be treated as dividend income and subject to the treatment discussed above.

Individual unitholder

Dividends are subject to personal income taxes. In the case of a fund investing in corporate entities, a credit for 65% of corporate taxes paid on the underlying investments may be available.

A return of capital distribution is treated the same as for corporate domestic unitholder.

Capital gains realised on the sale of the fund shares are treated the same as for corporate domestic unitholders.

Individual unitholders are liable to self-assess and file the corresponding personal or corporate taxes that apply.

Withholding tax

Dividends paid to Chilean residents that are legal entities organised in Chile are not subject to withholding tax. Individuals are subject to the general rules of income tax.

4.2 Taxpayers without domicile and residence in Chile

Corporate unitholder	Individual unitholder	Withholding tax
- FI: 10% WHT as sole tax - FIP: 35% WHT (with a 65% tax credit for corporate tax paid by the underlying investments; the tax credit increases up to 100% when the beneficial owner is resident in a tax treaty country)	- FI: 10% WHT as sole tax - FIP: 35% WHT (with a 65% tax credit for corporate tax paid by the underlying investments; the tax credit increases up to 100% when the beneficial owner is resident in a tax treaty country)	- No tax treaty relief is available - If the holder is resident in a country with a tax treaty, the tax credit could be 100%

Corporate or Individual unitholder

From 1 January 1, 2017, the local taxation of non-residents investors is as follows:

a. Taxable profits distributions:

FIP: Non-resident holders are subject to a 35% withholding tax on the taxable profit distributions made to them by a fund, with a tax credit for 65% of the corporate tax paid by such profits at the level of the fund́ s portfolio companies, if any.

If the holder is resident in a country with which Chile has a valid tax treaty, the tax credit could be 100% of the corporate tax paid by the underlying investments. To be able to use the tax credit benefits, the holder must obtain a 'certificate of residence' from the corresponding tax authority.

The corporate tax rate is 25 or 27%.

FI: Dividends paid by an FI are subject to a 10% withholding tax as a sole tax, without credit against

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corporate taxes paid by the underlying investments.

In both cases, capital reductions or liquidations qualify as non-taxable income. However, all cash flows must follow the imputation rules set forth in Aarticle 14 A of the Chilean Income Tax Law, according to which distributions shall be firstly allocated to taxable income and then to non-taxable income.

b. Capital Gains:

FIP: Non-resident holders are subject to a 35% withholding tax on the capital gain obtained from the sale or redemption of its quotas in a fund.

FI: The capital gain obtained from the sale or redemption of the quotas is subject to a 10% withholding tax as sole tax.

Withholding tax

Non-resident investors of FI and FIP are non-required to file tax returns for taxable profits distributions, but they are subject to withholding taxes.

The fund's management company should withhold, declare and pay the tax imposed on distributions made to non-resident holders. The dividend withholding tax must be filed and paid until the twelfth day of the month immediately following the month in which the dividend was paid.

Regarding the tax rate, no major differences would exist in a case where the investor is resident in a tax treaty country because all Chilean tax treaties have a provision that Chilean dividend Income tax is not subject to the limitation of the dividends article of the treaties. However, as we mentioned before, there will be differences regarding the % of tax credit that could be used against the withholding tax when this credit proceeds.

Income tax exemption

Except for the amounts referred to in letter c) below, the remittance, distribution, payment, payment into account or provision of profits made to these taxpayers, including that made by reducing the share value of the fund not allocated to capital, so no withholding of any kind will be applicable on said amounts, provided that during that business year the following copulative conditions are met:

a. That for at least 330 continuous or discontinuous days, 80% or more of the value of the total assets of the fund, defined in accordance with what is established in the Regulations, is made up of investments in:

   i. 1. Instruments, titles or securities issued abroad by persons or entities without domicile or residence in Chile, or in certificates that are representative of such instruments, titles or securities;

   ii. 2. Assets located abroad or instruments, titles, securities or certificates that are representative of such assets, and, or

   iii. 3. Derivative contracts and others of a similar nature that meet the requirements established by the Superintendency through a general regulation.

   The instruments, titles, securities, certificates or contracts referred to in numbers 1 and 3 above may not have as underlying assets or refer to assets located or activities carried out in Chile, nor be representative of titles or securities issued in the country.

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b) The investment policy established in its internal regulations is consistent with letter a) of this number.

c) That its internal regulations establish the obligation on the part of the administrator to distribute, among the participants, all the dividends, interests, other income from movable capital and capital gains received or realizsed by the fund, as appropriate, that do not benefit from an additional tax exemption and that come from the instruments, titles, securities, certificates or contracts issued in Chile and that originate income from a Chilean source according to the Income Tax Law, during the course of the fiscal year in which said amounts have been received or realizsed, or within the 180 calendar days following the end of said fiscal year, and up to the amount of the net benefits determined in that period, less the amortizsations of financial liabilities that correspond to said period and provided that such liabilities have been hired at least six months prior to said payments.

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A comparison of the
major REIT regimes
around the world.

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1 General introduction

	Enacted year	Citation	REIT type
REIF	1997 and 2009, respectively	Securities Market Regulatory Act (Law7732) and General Regulations of Fund Management Companies and Investment Funds	Fund (showing some characteristics of a REIT)

Real Estate Investment Trusts do not exist in Costa Rica, per se. However, the Securities Market Regulatory Act establishes a type of investment fund with similar characteristics.

In general, investment funds are treated as independent estates owned by several investors. Only authorised investment fund management companies (Sociedades Administradoras de Fondos de Inversión, SAFI) can manage an investment fund. The participation units of the investors are represented by participation certificates (participations) issued with the same characteristics and under the same conditions for each investor. Only investment funds authorised by the General Superintendence of Securities (Superintendencia General de Valores, SUGEVAL) may conduct a public offering of its participation units or quote on a local securities exchange.

Costa Rican legislation establishes two types of real estate investment funds: a) Real Estate Investment Funds (REIF) and b) Real Estate Development Investment Funds (REDIF). The principal difference between these investment funds refers to the type of assets each is allowed to invest in.

REIFs should only be organised as closed-ended funds and can only assume risks related to real estate activity. These funds mainly invest in real estate for leasing and, eventually, selling. The real estate must be facilities that have already been built. The REIF's assets could be located within Costa Rica or abroad. In the former case, the minimum amount an investor can invest into a REIF is USD 1,000, and when the investment is in real estate assets located abroad, the investment must be at least USD 5,000. The minimum number of investors in the REIF is 50.

For SUGEVAL to authorise a REIF, it must have minimum net assets of USD 5 million, and the diversification of assets is subject to the following rules: 80% annual average of monthly balances of the fund assets must be invested in real estate assets, and 20% must be kept in cash in a current account to attend cash needs or in publicly-traded securities. Participants or related entities or individuals cannot act as lessees of the assets of the fund. However, the SAFI or related entities could act as lessees of the fund, provided that the total monthly income they generate does not exceed 5% of the total monthly revenues of the fund. The assets must be valued on an annual basis.

REDIFs should only be organised as closed-ended funds, and their public trade is restricted. These funds must invest in real estate development projects, which may be in different development stages, such as the design or construction phase. Once the construction is finished, the real estate must be sold or leased. The assets could be located within Costa Rica or abroad. The minimum amount an investor can invest in a REDIF is USD 1,000. For SUGEVAL to authorise a REDIF, it must have minimum net assets of USD 5 million. The minimum number of investors is 25. The SAFI or related entities could act as lessees of the REDIF, provided that the total monthly income they generate does not exceed 5% of the total monthly revenues of the REDIF.

The investment funds are governed by the Securities Market Regulatory Act (Law 7732 dated December 17, 1997, and published in the Official Gazette No. 18 of January 22, 1998) and the General Regulations of Fund Management Companies and Investment Funds (issued by the Financial System Oversight National Board on December 19, 2008, and published in the Official Gazette No. 10 of January 15, 2009).

2 Requirements

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2.1 Formalities/procedure

Key requirements
- Licence from the National Securities Commission (SUGEVAL) for the investment fund management company (SAFI) - Registration on the REIF list - Fund must be authorised by the SUGEVAL - Approved prospectus by the SUGEVAL

The Investment Fund Management Company (SAFI) could be a local entity or a branch of a foreign entity, but its business purpose must be to act as an investment fund management entity. However, as an ancillary business, they can buy and sell local or foreign investment funds. They must obtain authorisation to operate within the local market from SUGEVAL. Among other requirements, the request must be filed by the person who will act as the legal representative of the company, and a draft of the articles of incorporation must be attached to the request, along with the shareholders, directors and legal representatives' résumé and a sworn statement indicating that none of them has been convicted of a crime during the previous five years.

Other requirements include:

a. Capital stock must be paid and subscribed;

b. A description of the Integrated Risk Management Unit, which should be structured to comply with the rules of the regulations; and

c. Policies and procedures manual of the SAFI. This manual should include selling and marketing rules.

The license to operate granted by the SUGEVAL to a SAFI is conditional on filing the original documents within a six-month period after the authorisation date. Therefore, the SAFI has a six-month period to register the original documents of incorporation before the Mercantile Section of the Public Registry. The SAFI has a one-year term to begin operations as of the date of communication that final requirements have been completed. If the SAFI fails to begin operating during that year, the licence will be cancelled. It is understood that a SAFI has begun operations if it registers at least one investment fund.

As for investment funds, the authorisation process is performed online. Once the authorisation is obtained, the original documentation should be filed within three months.

After obtaining the authorisation, the investment fund will be registered before the Securities and Intermediaries National Registry.

The requirements to register an investment fund include:

a. A request signed by the legal representative of the SAFI and filed before the SUGEVAL;

b. A board of directors agreement in which the board agreed on the organisation of the investment fund. This agreement should comply with the requirements specified by the SUGEVAL;

c. Investment fund prospectus;

d. Code ISIN issued by the authorised codified entity;

e. Procedures manual; and

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f. When the fund is to be publicly traded, it must comply with additional requirements established in the Securities Public Trade Regulations.

The prospectus should include relevant information about the investment fund to allow the investors to make an informed investment decision. Therefore, the investment fund prospectus should contain the following information:

a. Purpose of the investment fund;

b. Main characteristics of the investment fund (i.e., characteristics of the participation units and of the issuance and redemption of units procedures, the term of the fund, mechanisms for estimating returns and distributions to investors, and commissions payable to the SAFI, among others);

c. Terms of investment policy;

d. Description, policies and warnings in relation to the risks associated with the investment;

e. General description of the entity responsible for the management of the investment fund (SAFI); and

f. Legal declarations indicating that all information is reliable.

Investment funds must start operations within a nine-month period following the notification from SUGEVAL that all requirements have been completed. This term may be extended upon request for an additional nine-month period. If they do not start operations during this time, the authorisation to operate the fund will become invalid. However, regarding REDIFs, the term to start operations is extended to 18 months.

2.2 Legal form/minimum initial capital

Legal form	Minimum share capital
The SAFI must be a corporation or a branch of a foreign fund manager company.	The SAFI must have a minimum share capital of CRC 142 million[1] (approx. approx. USD 262,278)[2], as of May 2023; an amount is updated annually

1 In accordance with the General Superintendence of Financial Entities decree SGV-A-227, in effect as of May 27, 2023.

2 US$ 1 = CR¢ 541.41 on May 27, 2023. Source: Costa Rica Central Bank. Website: www.bccr.fi.cr

Legal form

The fund management company can be a Costa Rican corporation or a branch of a foreign fund management entity, both of which should be incorporated before the Public Registry as established by the Commerce Code.

Suppose a foreign management company is interested in marketing a foreign REIF in Costa Rica. In that case, the regulations allow the local trading of authorised REIF from the following countries: the United States of America, Spain, Mexico, Colombia, Chile, Canada, Brazil, the United Kingdom, France, the Netherlands, Australia, Germany, Ireland, Italy, Luxemburg, Switzerland, Portugal, Japan and Hong Kong.

Minimum initial capital

The SAFI must have a minimum share capital of CRC 142,000,000 (approx. USD 262,278). However, this amount is updated every year through a resolution from SUGEVAL.

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For REIFs and REDIFs, the real estate investment fund must have USD 5 million in net assets.

The minimum investment value for an investor in REIFs that only invest in assets located in Costa Rica is USD 1,000, and if the REIF invests in assets located outside of Costa Rica, the minimum investment amount is USD 5,000.

2.3 Unitholder requirements/listing requirements

Unitholder requirements	Listing mandatory
REIF: Minimum 50 participants REDIF: Minimum 25 participants	Yes

Unitholder requirements

The minimum number of participants in a REIF is 50, and a REDIF is 25. However, the general rule for investment funds is 50. If the investment fund does not comply with the minimum investors' requirement for a period exceeding six months, the fund will be deregistered.

Listing requirements

Closed-ended investment funds are required by law to be registered for trading on an organised local exchange market.

If the investor decides to sell his/her participation interest, the participation cannot be redeemed directly by the investment fund except in the circumstances established by law. The latter include, for example, when the investors request that their units be bought back, which can be requested when they do not agree with the amendments made to the fund's investment policies.

Therefore, when selling participation in a REIF/REDIF, the participant would have to trade the participation on a stock exchange. The participation value will be determined both by the valuation of the assets and by their fair market value according to the stock exchange.

The SAFI must be registered before the SUGEVAL. However, the SAFI is not a listed company on the Costa Rican Stock Exchange; only the investment fund is listed.

2.4 Asset level/activity test

Restrictions on activities/investments
- The main activity must be the acquisition and/or leasing of real estate - 80% of property in real estate assets - The remaining percentage could be invested in other financial investments, such as publicly-traded securities - No more than 25% of the REIF's income can derive from one individual or corporation that belongs to the same economic unit (does not apply to REDIFs) - There are some limitations regarding the sale of the REIF's assets (which do not apply to REDIFs)

At least 80% of the annual average remaining balance of assets must be invested in real estate. The remaining 20% must be kept in a checking account or invested in publicly traded securities. The 80/20 percentages apply to both Costa Rican investment funds investing in Costa Rican assets as well as CR funds investing in non-Costa Rican assets. However, these percentages should not apply to foreign

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funds registered with SUGEVAL since foreign funds must comply with the regulations of their country of incorporation.

REIFs have three years to fulfil these investment percentage requirements.

No more than 25% of the REIF's income can be derived from one individual or corporation that belongs to the same economic unit.

Real estate assets may not be sold by the REIFs until three years after the acquisition and registration as the REIF's property.

Neither investors, individuals, nor companies related to the fund may lease real estate belonging to the fund. The SAFI manager or companies integrated into its economic group may lease real estate from the fund if it does not represent more than 5% of the REIF's monthly income.

2.5 Leverage

Leverage
- Loans to SAFI are limited to 25% of their equity - Loans to REIFs and REDIFs are limited to 60% of their real estate property and 10% of any other securities owned by the fund (this 10% cap is the same that applies to financial funds)

Loans to SAFI are limited to 25% of their equity3. Loans to financial funds are limited to 10% of their assets. In exceptional cases, the SUGEVAL may authorise a 30% limit on loans to financial funds; however, the investors' assembly must agree on this.

Non-financial investment funds may have leverage of up to 60% of the total value of their assets. This cap applies to REIFs and REDIFs.

In general, with the exception of the specific situations described above, an investment fund may not encumber or lien its assets to obtain debt.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
No requirement	No requirement	No requirement

Operative income

The law does not establish a mandatory percentage to be distributed or specific timing. This will be established in the investment fund's prospectus. In practice, Costa Rican Funds substantially distribute all of their income to their investors.

Capital gains

The law does not establish a mandatory percentage to be distributed or specific timing. This will be established in the investment fund's prospectus.

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2.7 Sanctions

Penalties/loss of status rules
Determined by the SUGEVAL

If the Costa Rican investment fund fails to comply with regulatory requirements, the SUGEVAL could take control of the REIF/REDIF or liquidate it.

In the case of closed-ended funds, such as REIFs, the SUGEVAL may call for an investors' assembly to determine if the fund must be liquidated or not. Also, the investors' assembly may decide to liquidate the fund, and the Superintendent from SUGEVAL will ratify the decision.

3 Tax treatment at the level of REIF

3.1 Corporate tax/withholding tax

In December 2018, the Costa Rican Congress enacted a comprehensive tax reform legislation, through which it established a new Value Added Tax and introduced several amendments to the Income Tax Law, including changes in how passive income is taxed and a new capital gains tax.

The first aspect to point out from the Tax Reform is that Article 100 of the Securities Market Regulatory Act was repealed. Currently, the following taxation system will apply to passive income and capital gains:

Current income	Capital gains	Withholding tax
15% rate on 85% of gross receipts. (Certain companies can be taxed at 30% on receipts net of tax-deductible expenses, but this option is not likely to apply to REIFs	15% on an adjusted basis	N/A

The amended Income Tax Law modifies the rules applicable to passive income obtained from immovable and movable capital and states that investment funds are considered taxpayers under the new provisions.

Regarding income derived from immovable capital (i.e., rental income), as a general rule, the investment fund would be subject to a 15% tax on a tax basis corresponding to 85% of the gross amount obtained monthly as rental income. Nevertheless, the same law provides those taxpayers who have hired at least one employee to generate rental income the option to inform the Tax Administration of their intention to be taxed under general income tax rules. Although a 30% tax rate would be applicable to the annual rental income, the general income tax rules, allow taxpayers to deduct all expenses incurred to obtain said income. It is not typical that REIFs that meet the conditions can opt for this tax regime.

Furthermore, passive income from movable capital, such as dividends and interest, obtained by the investment fund will be taxed with a 15% tax on gross income, which will generally be withheld at the source.

The same law also introduces a 15% capital gains tax imposed on the adjusted basis, corresponding to the difference between the transfer value and the acquisition value. When an asset is disposed of other than through a sale (e.g., by donation), the market value will be used to determine the gain (or loss).

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3.2 Transition regulations

Conversion into REIT status
N/A

Not applicable under Costa Rican legislation.

3.3 Registration duties

Registration duties
Transfer tax

A transfer tax applicable upon the transfer of real estate is levied at 1.5%. Additionally, the sale of real estate to or from a fund will still be subject to other stamp duties and registration fees, which amount to approximately 1% of the value of the transaction.

4 Tax treatment at the unitholder level

4.1 Domestic and foreign unitholder

Corporate unitholder	Individual unitholder	Withholding tax
Exempt	Exempt	N/A

Passive income and capital gains derived by the investor from their participation in the investment fund are exempt from any tax, as both capital gains and income are already taxed at the REIF level.

5 Treatment of the foreign REITs and their domestic unitholder

Foreign REIT	Corporate unitholder	Individual unitholder
Taxed under standard Costa Rican income tax rules, whether as a non-resident taxpayer (subject to WHT) or as a PE subject to ordinary income tax	Not liable to tax or 15% withholding tax	15% withholding tax

Foreign REIT

According to Articles 52 and 59 of the Income Tax Law, a foreign REIT that derives Costa Rican source income would be subject to the non-resident withholding tax, the rate of which may range from 5% to 30%, depending on the characterisation of the income.

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A foreign REIT that owns and rents or develops real estate in Costa Rica could be considered a permanent establishment (PE) in Costa Rica. According to Article 2 of the Income Tax Law, a foreign entity would have a PE in the country if it has a fixed place of business through which it conducts for-profit activities. According to that same provision, a fixed place can be any factory, building or real estate used for those purposes. A PE is considered an autonomous taxpayer for Costa Rican income tax purposes and would be subject to a 30% corporate income tax rate computed on net income. Consequently, it would be required to prove the existence of deductible expenses by complying with several tax obligations, including bookkeeping, filing of tax returns, issuance of invoices, etc.

If a foreign REIT wants to be registered before the SUGEVAL, it must comply with certain requirements established by the SUGEVAL, such as being authorised by a regulatory entity that is a member of IOSCO. Also, the investment fund should have at least one year of operation and must have an equity of at least USD 20 million, and the fund manager should have a minimum of three years of experience in the field and should have an independent custodian entity, among others. However, only the commercialisation of real estate investment funds duly authorised in the United States, Spain, Mexico, Colombia, Chile, Canada, Brazil, the United Kingdom, France, the Netherlands, Australia, Germany, Ireland, Italy, Luxemburg, Switzerland, Portugal, Japan and Hong Kong are permitted.

Domestic corporate unitholder

When the foreign REIT distributes its profits to its investors, such distribution of dividend income from the foreign REIT to its corporate unitholders in Costa Rica will not be subject to Costa Rican tax.

Domestic individual unitholder

When the foreign REIT distributes its profits to its investors, such distribution of dividend income from the foreign REIT to its individual unitholders in Costa Rica will not be subject to Costa Rican tax.

If the foreign REIT only has investments abroad, with no connection to Costa Rica other than the tax residency of the unitholders (individuals or legal entities), neither the REIT nor the unitholders' income is subject to taxation in Costa Rica.

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A comparison of the major REIT regimes around the world.

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1 General introduction

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	Enacted year	Citation	REIT type
FIBRAS	2004 Last amended in 2020	Mexican income tax Law	Trust

‘FIBRAS’ (Fideicomisos de Inversión de Bienes Raíces) was introduced in Mexico in 2004 to encourage real-estate investment following the same model as the US REITs (Real Estate Investment trust). Basically, FIBRAS afford a special tax treatment to trusts whose purpose is to acquire or construct real properties to be leased or those whose purpose is to acquire the right to receive income from leasing such properties, as well as those whose purpose is to grant financing for such objectives.

During its first stage (2004-2006), tax incentives were not sufficient to attract investors, so additional amendments were introduced in 2007 to attract small and institutional investors to a portfolio of real properties in a diversified array of real property products, such as shopping centres, industrial facilities, office buildings, apartment complexes and hotels, through the issuance of publicly traded securities or real property participation certificates. A New MITL was enacted in December 2013 and became effective on January 1, 2014, pursuant to which some minor aspects are to be considered in FIBRAS. The tax reform in force on January 1, 2020, includes some changes in the Sector. Basically, Public FIBRAS are allowed to be traded in the special regime of FIBRAS solely. Private FIBRAS must be traded as a regular corporation. It is important to point out that a transition provision sets forth that those contributions of real properties to trusts that would have been done prior to the effectiveness of this reform and whose gain on those contributions has not been accrued will be accrued no later than in the annual income tax return of the tax year 2021.

The Tax Reform for 2022 included an authorisation for the Mexican tax authority to issue additional rules to generate better compliance with the provisions that regulate the tax treatment of FIBRAS (enabling clauses) established in the tax legislation.

In order to generate legal certainty and encourage Foreign Direct Investment (FDI) in Mexico, for the tax year 2023, no amendments were published to the tax provisions, including the tax treatment of FIBRAS.

Recently the FIBRAS have become much more attractive as an investment real estate vehicle for both Mexican and non-Mexican investors.

Sector summary*

Listing country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
Mexico	18	5	23.767,92	0,69%

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Top REITs*

Company name	Mkt ca (EUR m)	1 yr return (EUR) %	Div yield	% of Global REIT Index
Fibra Uno Administracion S.A. de C.V.	5.119,67	56,46%	8%	0,31%
Prologis Property Mexico S.A. de C.V.	3.431,00	42,42%	5%	0,15%
Administradora Fibra Danhos S.A. de C.V.	1.763,05	19,47%	10%	0,02%
PLA Administradora Industrial S. de R.L. de C.V.	1.356,19	46,24%	6%	0,11%
Macquarie Mexico Real Estate Management S.A. de C.V.	1.225,88	48,84%	10%	0,09%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Formation of FIBRAS

2.1 Formalities

Key requirements
- Incorporation under Mexican law - Mexican trustee - FIBRAS: listed and private

First, the trust must be created or established in accordance with Mexican law, and the trustee must be a Mexican banking institution authorised to act as such in Mexico.

The primary objective of the trust must be to acquire or construct real properties in order to lease them, to acquire the right to receive income from leasing such properties or to grant financing for such purposes backed by mortgage security on the leased assets.

Only Listed FIBRAS, whose trust certificates for the assets that make up the trust property are placed in Mexico among the general investing public, can apply for the special tax treatment explained hereinafter. Private FIBRAS must be taxed as a regular corporation.

2.2 Legal form/minimum initial capital

Legal form	Minimum initial capital
Trust	No

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Legal form

The legal form to establish a FIBRA is through a trust.

Trusts in Mexico are governed by the Mexican General Law of Negotiable Instruments and Credit Operations and are entered into with an authorised Mexican financial institution, which acts as the trustee. The settlor in the trust is the investor who contributes real property, funds or both to the trust, and the beneficiaries are the parties that are entitled to receive the benefits from the gains or income of the trust.

According to the Mexican Income Tax Law ('MITL'), real property trusts are considered as FIBRAS provided they meet the following requirements:

a. The purpose of the trust must be: (i) the acquisition or the construction of real estate property intended for lease; or (ii) the acquisition of the right to receive income from the leasing of such assets; in addition to (iii) granting financing for such purposes backed by mortgage security on the leased assets;

b. At least 70% of the funds of the trusts are invested in real estate properties or in the rights or credits referred to above, and the remainder is invested in Federal Government Securities registered in the National Securities Registry or in shares of debt-instrument mutual funds;

c. The real estate properties that are constructed or acquired must be leased and not be sold for at least four years as of the conclusion of their construction or their acquisition. Real properties that are sold before the said term has ended will not receive the preferential tax treatment at hand; and

d. The trust shall be enrolled at the Registry of Trusts engaged in the acquisition and construction of real estate pursuant to the general rules issued by the Mexican Tax Administration Service. This requirement is deemed to be met when the relevant trust obtains a favourable ruling issued by the Mexican Tax Authorities concerning the tax treatment applicable to such trust, among other requirements.

Minimum initial capital

Mexican legal and tax provisions do not establish any limits relating to the initial capital of FIBRAS, but it is natural that a substantial amount of capital will be required for its operation. It is also important to note that Mexico has enacted thin capitalisation rules, which will be explained hereinafter.

2.3 Certificate holder requirements/listing requirement

Listing requirement

Listed FIBRAS certificates are required to be listed on the Stock Exchange in order to receive preferential tax treatment as well as be incorporated in accordance with Mexican law.

2.4 Patrimony of FIBRAS

Restrictions on activities/investments
70:30 ratio

At least 70% of the patrimony of FIBRAS must be invested in real estate property or rights to receive income from leasing or acquisition of real estate properties, and the remainder must be invested in securities issued by the Federal Government registered at the National Registry of Securities or in shares

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of debt-instrument mutual funds.

In general, there are no restrictions regarding real property developments. Please take into consideration that lodging properties are required by Mexican tax regulations to meet some additional requirements.

2.5 Leverage

Leverage
Thin capitalisation rules

Interest payments made to foreign-related parties are subject to thin capitalisation regulations, which provide that interest payments made to foreign-related parties arising from foreign-related debt exceeding three times the average equity of the company ('3:1 debt/equity ratio') will not be deductible. Nevertheless, in certain cases, taxpayers may seek a ruling from Mexican tax authorities in order to exceed the 3:1 debt/equity ratio mentioned above.

2.6 Taxable income distribution/obligations of the trustee

Taxable income distribution	Timing
95% of taxable income	Annually

Taxable income

At least once a year, no later than March 15, the trustee must distribute to the holders of the investment certificates at least 95% of the taxable income of the immediately preceding fiscal year generated by the assets that make up the trust property.

2.7 Sanctions

Penalties/loss of status rules
- Tax incentives do not apply - May lose its status as a FIBRA

In the event of non-compliance with organisational and asset rules, the trust may lose its status as a FIBRA. The sale of real property prior to the four-year holding period does not constitute 'non-compliance'. In this case, the tax benefit is lost only for the property that is sold.

3 Tax treatment at the Level of FIBRAS

3.1 Corporate taxes/tax withholding

In general terms, income tax is levied at a rate of 30% on taxable income (taxable revenues minus authorised deductions) calculated on an accrual basis.

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Operating income

Mexican tax regulations provide that a trustee of a FIBRA is required to determine, on behalf of the beneficiaries, the income tax arising from the activities of the FIBRA as any corporation or company would, i.e., it will be entitled to deduct any expense that complies with Mexican tax requirements. Once the net gain or taxable income is determined, upon distribution, the trustee will be required to make a tax withholding unless the beneficiary of the income is exempt from paying such tax (i.e., registered pension or retirement funds). Any distribution made by the trustee to the beneficiaries during the tax year will be creditable against the annual tax liability of the beneficiary.

Mexican tax residents are required to add any distribution made by FIBRAS to other income they receive during the tax year, and they will be entitled to credit the tax withholding made by FIBRAS.

FIBRAS have no obligation to make estimated payments of income tax. This allows the trust to allocate cash to project financing rather than paying estimated taxes. However, the trust has an obligation to file and pay income tax, as applicable, on an annual basis.

Mexican tax provisions establish that the net operating losses for income tax purposes (NOLs) may be carried forward for ten years and that the trust may use its losses sustained in prior taxable years to offset taxable income for the year.

Capital gains

Upon disposition of any portion of the estate of the FIBRAS, income tax will apply. Please note that the tax must be updated for inflation from the month when the real property was contributed into the trust and up to the month in which the transfer takes place.

Other taxes

Local land taxes (property tax and transfer tax) will apply to the real property owned by the FIBRAS.

Accounting rules

In Mexico, the Federal Fiscal Code (FFC) lists the requirements with which the books and records must comply, among which we find the following:

a. The accounting systems and records must comply with the requirements listed in the Regulations of the Federal Fiscal Code (RFFC) (i.e., preparing financial statements, linking the financial statements with accounts, identifying transactions and preparing transaction vouchers as evidence of transactions);

b. The accounting records must be analytical and must be registered within two months following the date on which the respective transactions were performed;

c. The accounting books must be kept at the tax domicile of the taxpayer;

d. The books and records must follow the Mexican Financial Information Norms and be kept in Mexican Pesos;

e. Certain accounting records must be submitted to the Mexican Treasury electronically on a monthly basis; and

f. Mexican entities must also ensure that all invoices and receipts (including for withholding tax) are generated electronically (Comprobante Fiscal Digital por Internet) and must comply with various requirements.

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3.2 Transition regulations

Conversion into FIBRA status
Deferred taxation of contributions to the trust

A contribution of real property is deemed a taxable event. Nevertheless, persons who, in their capacity as settlors, contribute real properties to the trust and receive investment certificates for the total or partial value of said properties may defer the payment of the income tax liability on the gain obtained on the sale of such properties until they sell each such certificate. The tax liability corresponding to each certificate sold for the period from the month of the contribution of the real properties to the trust until the month in which the certificates are sold will be updated by inflation.

The tax will be calculated by applying the 30% rate to the amount of the gain obtained in the sale of the real properties and must be paid within fifteen days following the sale of the corresponding investment certificates.

The gain will be calculated in accordance with this MITL. For this purpose, the sale price of said properties will be considered to be the value assigned to them in the indenture of the aforementioned certificates, and the resulting gain will be divided by the number of investment certificates, which is determined by dividing the aforementioned value by the par value of the individual investment certificate.

The tax payment deferral will end when the trustee sells the real properties. The settlor who has contributed said properties must pay this tax within fifteen days after the day on which said properties are sold.

3.3 Other fees

Other Fees
- Local property transfer tax - Public registry fees - Notary public fees - Trustee fees - Other local fees

In Mexico, the transfer of real property is subject to a real property transfer tax at the state level. Generally, property transfer tax is triggered when the trustee receives the certificates, but if dealing with a FIBRA, the property transfer tax may be deferred up to the moment the certificate is sold or when the real property is sold by the trust, depending on state laws. The transfer tax rate varies depending on the state where the real property is located.

With regard to the fees of the Public Registry, the Notary Public, the trustee and any other local fees that may apply depending on local laws, please note that while the amount to be paid varies depending on the state where the FIBRA is formed, it is important to take such fees into consideration since such can amount to a considerable sum.

4 Tax treatment at the certificate holder level

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4.1 Domestic holder

Corporate certificate holder	Individual certificate holder	Tax withholding
- 30% income tax on the taxable income resulting from the sale of the certificates - Sale of certificates through an authorised Stock Exchange are tax-exempt for income tax in some cases	- 30% income tax on the taxable income resulting from the sale of the certificates - Sale of certificates through an authorised Stock Exchange are tax-exempt for income tax	- The trust must withhold income tax on the taxable income distributed to the holders of the investment certificates by applying the 30% rate to the distributed amount of said taxable income unless the holders that receive the income are exempt from paying income tax on such amounts - The purchaser of the investment certificates must withhold from the seller 10% income tax on the gross income that the seller receives for such certificates, without any deductions, unless the seller is a legal entity residing in Mexico for tax purposes or is income tax-exempt for the item of income earnt from the goods, rights credits or securities that compose the trust estate

Corporate certificate holder

The distributions paid by the trust to Mexican entities are considered taxable income and are subject to income tax at a rate of 30%. The income that derives from the sale of certificates is considered to be taxable income for income tax purposes and is taxed at a 30% tax rate. Please take into consideration that the trust will carry out a withholding tax at the rate of 30%.

Individual certificate holder

The distributions paid by the trust, as well as income earned for the disposition of the certificates by Mexican individuals, are considered taxable income and is subject to income tax at variable rates depending on the amount of the income. The top rate for individuals in Mexico pursuant to MITL is 35% rate. Please take into consideration that the trust will carry out a withholding tax at the rate of 30%.

Finally, the income from the sale of participant certificates through an authorised Stock Exchange and received by Mexican individuals who are resident in Mexico is exempt from income tax.

Tax withholding

The distributions paid by the trust to Mexican entities and individuals are subject to a tax withholding made by the trustee or by the financial broker who has the certificates in deposit unless such entities or individuals are exempt from such payment. Further, the tax so withheld is a tax credit for Mexican entities or individuals.

The purchaser of the investment certificates must withhold from the seller a 10% income tax on the gross income that the seller receives for such certificates, without any deductions, unless the seller is a Mexican resident individual and the transaction is undertaken in the stock exchange.

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4.2 Foreign certificate holder

Corporate certificate holder	Individual certificate holder	Tax withholding
Final income tax withholding	Final income tax withholding	- 10% tax withholding made by the purchaser of the certificates unless the transaction is undertaken in a recognised stock exchange - Tax withholding of 30% on the distribution of profits

Corporate certificate holder

Amounts withheld from corporate holders of certificates who are foreign residents are deemed as a final tax payment.

If the owner of the certificate is a foreign pension and retirement fund, trust distributions and the transfer of certificates are exempt for income tax purposes. Certain requirements must be met in order to be considered a foreign pension and retirement fund for Mexican tax purposes.

Individual certificate holder

Amounts withheld from individual holders of certificates who are foreign residents shall be deemed in Mexico as a final tax payment.

Tax withholding

Distributions paid by the trust to foreign entities and individuals are subject to a tax withholding made by the trustee or by the financial broker who has the certificates in deposit at a rate of 30% unless such entities or individuals are exempt from such payment, and is considered a final tax payment.

The purchaser of the investment certificates must withhold from the seller a 10% income tax on the gross income that the seller receives for such certificates, without any deductions, unless the seller is a foreign resident and the transaction is undertaken in the stock market.

As of 1 January 2021, foreign transparent entities that manage capital invested for Mexican tax residents, such as FIBRAS, can still be treated as transparent for Mexican tax purposes as long as certain requirements are met.

Finally, it is important to point out that foreign shareholders may take advantage of the benefits afforded by the tax treaties entered by Mexico.

5 Treatment of the foreign trust

Foreign trust
ncome tax if the foreign trust is considered a resident in Mexico; otherwise -taxation depends on a tax treaty.

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Foreign trusts

The benefit of the special tax regime applicable to FIBRAS will not be applicable to a foreign trust because, in order to obtain the special tax regime granted to FIBRAS, the trust must be incorporated under Mexican law. In this case, the activities of the foreign trust in Mexico will determine the applicable tax regime. It is possible that the foreign trust would be treated in Mexico as a permanent establishment. In this case, it would be subject to income tax.

It is possible that it would be treated as a foreign resident with revenues from a source of wealth located in Mexico; accordingly, the income tax treatment will depend on the type of Mexican source income obtained by the non-resident and whether the non-resident resides in a country with which Mexico has a tax treaty.

SIBRAS

Until 2014, investors could also incorporate Mexican entities commonly referred to as SIBRAS (Sociedades Inmobiliarias de Bienes Raices. However, as we mentioned before, a new MITL was enacted in December 2013 and became effective on 1 January 2014, pursuant to which such possibility is now repealed.

Please take into consideration that pursuant to the new MITL, commercial corporations that took the tax incentive for SIBRAS shall abide by the following:

1. Shareholders that contributed real estate to the corporation shall include in gross income the gain from the disposition of the goods so contributed when any of the following situations takes place:

   a. They dispose of the shares of such corporation – in the proportion that such shares represent with regard to all the shares received by the shareholder for the contribution of the real property to the corporation, provided that such gain was not included in gross income previously; and

   b. The corporation disposes of the contributed goods – in the proportion that the part being transferred represents such goods, provided that such gain was not included in gross income previously.

   If any of the situations described in the two preceding subsections has not taken place through 31 December 2016, the shareholders of the SIBRAS shall include in gross income the full amount of the gains from the disposition of the contributed goods that were not included in gross income previously.

2. The gains that are included in the gross income described shall be updated from the month in which they were earned through the month in which they are included in gross income.

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AMERICAS

Puerto Rico

REIT

A comparison of the major REIT regimes around the world.

2022

1 General introduction

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	Enacted year	Citation	REIT type	REIT market
REIT	- Enacted in 1972 - Amended in 2000, 2006, 2011, 2014, 2018 and 2020	- Internal Revenue Code for a New Puerto Rico, as amended (IRCNPR) - IRCNPR §1082.01 to §1082.03 and §1101.01(a)(8)(F) (previously PRIRC of 1994 1500 to §1502 and §1101(18))	In principle, corporate type (election for tax status)	- Significant improvements were expected from the 2006 changes in the PRIRC. However, no statistics are available that evidence such improvement - Amendments made during 2014 change certain requirements to increase investment in REITs and the creation of new REITs - In 2018, an amendment was included in §1101.01 specifying every non-profit entity must request a determination from the Secretary approving the tax exemption (applicable to foreign REITs)

The law that established Real Estate Investment Trusts ('REITs') in Puerto Rico was enacted in 1972 and amended in 2000, 2006, 2011, 2014, 2018 and 2020. The REIT provisions are found in the Internal Revenue Code for a New Puerto Rico (IRCNPR)[1], Sections 1082.01 to 1082.03 and Section 1101.01(a)(8)(F) (previously PRIRC of 1994, Sections 1500 to 1502, and Section 1101(18)).

REIT legislation prior to the 2006 amendments was very restrictive and did not result in the expected investment and development that was contemplated when originally enacted. The 2006 amendments liberalised certain requirements to promote REIT market activity in Puerto Rico. However, the Puerto Rico Commissioner of Financial Institutions does not maintain separate statistics for REITs in Puerto Rico. Therefore, there is no public data available to assess any changes to REIT market activity as a result of the 2006 amendments.

In 2014, the REIT legislation was further amended to liberalise certain requirements and include, as an eligible activity, the income from the purchase of real property to be remodelled and rented. The intention of this amendment is to promote the purchase of redeveloped properties by the REITs and help to reduce large inventories held by local banks. In addition, the IRCNPR was amended in 2014 to defer the gain realised on certain assets when the total proceeds from the sale of such assets are invested in a REIT. The purpose of this amendment is to promote the investment of local capital into REITs.

In 2018, the IRCNPR was amended to require that every non-profit entity request a determination from the Secretary approving the tax exemption granted under section 1101.01. The Secretary may request a Report of Previously Agreed Procedures or a Compliance Report issued by an Authorised Public Accountant, with a valid license in Puerto Rico, to confirm that the entity meets the requirements to obtain the requested exemption. In these cases, the request will be deemed approved in thirty days unless the Secretary rejects the request before the said period is complete. The Secretary is empowered to establish, through regulations, administrative determinations, circular letters or bulletins of a general nature, the conditions under which the Compliance Report will apply and the procedures that the Certified Public Accountant must follow to issue the report. This requirement applies to foreign REITs described below in Section 5.

1 On January 31, 2011, the Governor of the Commonwealth of Puerto Rico signed into law a new Puerto Rico Internal Revenue Code, to be known as the 'Internal Revenue Code for a New Puerto Rico' (hereinafter referred to as the 'IRCNPR' or the '2011 Code'). The 2011 Code repealed almost in its entirety the Puerto Rico Internal Revenue Code of 1994, as amended. However, the new code incorporates many of the provisions of the 1994 PR Code, including the REITs provisions. There are no substantive changes to such provisions in the 2011 PR Code. The 2011 Code also provides further guidance to US REITs that may qualify for tax exemption.

In 2019 and 2020[2], the IRCNPR was amended to expand the definition of shareholders.

The REIT regime is principally a tax regime; corporations, trusts, certain partnerships and associations can elect for REIT status. However, the entity must be created or organised in the Commonwealth of Puerto Rico. In this survey, we refer to the corporate REIT type.

2 Requirements

2.1 Formalities/procedure

Key requirements
- Election with the income tax return - REITs are regulated by the Puerto Rico Commissioner of Financial Institutions. - Managed by one or more trustees or directors

Once the legal structure is created, to operate as a REIT for tax purposes, an election is required. The election is made together with the filing of the income tax return for the year in which the tax regime is intended to be effective.

The Commissioner of Financial Institutions will oversee the operations of the REIT as a regulator. Pursuant to the Puerto Rico Uniform Securities Act, all stocks or shares in a REIT will be considered 'Securities'.

In order to comply with federal laws:

1. The investor must register the issuance of securities as part of the 'full and fair disclosure' policy stated by the Securities Act of 1933;
2. Sales could be regulated by the Securities Exchange Act of 1934; an
3. The REIT must also comply with the Uniform Securities Act of Puerto Rico[3].

The guidelines established by the North American Securities Administration Association (NASAA) will apply until otherwise modified by the Commissioner of Financial Institutions of Puerto Rico via regulations.

For taxable years beginning after 31 December, 2019, REITs with a volume of business equal to or greater than USD 3,000,000 but less than USD 10,000,000 must file Audited Financial Statements (AFS), an Agreed Upon Procedure (AUP) or a Compliance Attestation (CA) completed by a Puerto Rico licensed Certified Public Accountant ('CPA') with its income tax return. If the REIT's business volume is greater than USD 10,000,000, the REIT must submit AFS with the income tax return. There are special rules for a group of related entities.

The REIT must be managed by one or more trustees or directors.

2 On July 1, 2019 the Governor the Puerto Rico Incentives Code, Act 60 of 2019 and introduced amendments to Sections 1082.01 and 1082.02. Further, on April 16, 2020, the Governor of Puerto Rico signed Act 40 of 2020 to introduce various technical amendments to the IRCNPR.

3 Act 20 of 2014 clarifies that REITs must comply with the provisions established by the Uniform Securities Act of Puerto Rico.

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2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Corporation, partnership, trust or association	No minimum capital

Legal form

REITs may be organised as corporations, certain types of partnerships, trusts, or associations. These entities must be domestic entities, organised or created under the laws of the Commonwealth of Puerto Rico. The entity must be one that would be taxable as a domestic corporation if it were not for the tax exemption provided for by the Puerto Rican REIT legislation. As a grandfathering provision, any partnerships in existence as of 1 January, 2011, the effective date of the 2011 Code, remained in the REIT regime to the extent they have filed an election to be treated as a corporation. Partnerships created on or after 1 January, 2011, cannot be REITs.

The REIT cannot be a financial institution as defined under Section 1033.17(f) of the IRCNPR (previously Section 1024(f) of the 1994 PRIRC) or an insurance company subject to taxation under Subchapter A of Chapter 11 of the IRCNPR.

Minimum share capital

There are no minimum capital requirements in Puerto Rico. Transferable capital must be represented by stocks or participation certificates.

All of its stocks, shares or interests must be transferable and issued exclusively in exchange for cash.

2.3 Shareholders requirements/listing requirements

Shareholder requirements	Listing mandatory
At least 20[4] (50 shareholders prior to 24 January , 2014) shareholders or partners	No

4 Act 20 of 2014 reduced the amount of shareholders from 50 to 20 effective after January 24, 2014. Act 40 of 2020 expanded the definition of shareholders to determine this requirement.

Shareholder requirements

A REIT must be composed of at least 20 shareholders or partners (50 shareholders before 24 January, 2014). For this purpose, the shareholder of an exempt investment trust shall be classed as shareholders of the REIT.

At no time during the last half of its taxable year should more than 50% of the total value of outstanding shares be owned by less than six individuals, based on the attribution rules of Section 1033.17(b)(2) of the IRCNPR (previously Section 1024(b)(2) of the 1994 PRIRC). To comply with these provisions, the REIT must maintain records that demonstrate the actual ownership of its outstanding shares or interests.

At present, there are no distinctions between resident and non-resident shareholders.

Listing requirements

Listing of a REIT is not mandatory.

2.4 Asset level/activity test

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Restrictions on activities/investments
- At least 95% of gross income must be qualifying investment income - At least 75% of gross income must be qualifying real estate investment income - At least 75% of the value of total assets must be represented by real estate assets, cash or equivalents, and securities and obligations of Puerto Rico - Not more than 25% of the value of total assets is represented by securities other than those mentioned above

At least 95% of gross income must be derived from dividends, interest, rents from real property, gain from the sale of stocks, securities, real property and rights to real property, the net gain from the sale of certain real estate assets, payments received or accrued for entering into agreements to execute loans guaranteed with mortgages on real property or acquire or lease real property, the net gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely, qualified temporary investment income and income from the purchase of property to be remodelled and rented.

At least 75% of gross income must be derived from:

(i) Rents derived from real property located in Puerto Rico;

(ii) Interest on obligations secured by a mortgage on real property or rights to real property located in Puerto Rico;

(iii) Gain from the sale or other disposition of real property that is not of the type of property that qualifies as inventory;

(iv) Dividends or other distributions and gains derived from the sale or other disposition of shares of transferable stock, certificates, or participation in another REIT;

(v) Amounts received or accrued as consideration for entering into agreements to make loans secured by mortgages on real property and/or rights to real property located in Puerto Rico, and/or to buy or lease real property and/or rights to real property located in Puerto Rico;

(vi) Net gains derived from the sale or other disposition of real property which is not a prohibited transaction; and

(vii) Qualified temporary investment income.

At the end of each quarter of each taxable year, at least 75% of the value of total assets must be represented by real estate assets, cash or equivalents, and securities and obligations of Puerto Rico and/or of the US (and whichever instrumentality or political subdivision thereof); and not more than 25% of the value of total assets must be represented by securities other than those mentioned above. For the purpose of these sections, real property means land located in Puerto Rico or improvements thereon used as hospitals, schools, universities, public or private housing, transportation facilities and/or public or private roads, office buildings, governmental facilities, facilities of the manufacturing industry, recreational centres, parking facilities, residential properties, shopping centres, hotels and buildings or structures acquired from the government of Puerto Rico, its agencies and instrumentalities.

Subsidiaries of a REIT will not be treated as a separate entity, and all its assets, liabilities, income items, deductions and credits will be considered to belong to the REIT. Subsidiary means a corporation, company, or partnership wholly owned, directly or indirectly, by a REIT.

Starting 1 January, 2007, the acquisition of real property must be made through the purchase of assets, stocks or participations in a transaction that generates Puerto Rican source income subject to tax in Puerto Rico, except for assets bought from the government of Puerto Rico. This acquisition of real property can be done either directly or through related companies.

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2.5 Leverage

Leverage
No restrictions

There are no leverage restrictions. The IRCNPR provides a special rule for the income (interest and gain) generated by the REIT with respect to certain hedging instruments for the purpose of determining compliance with the 95% qualifying gross income requirement.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of net taxable income must be distributed as a taxable dividend, and 90% of its exempt income must be distributed as an exempt dividend.	Included in net income	Annually

Operative income

At least 90% of the net taxable income and exempt net income of a REIT must be distributed annually as taxable and exempt dividends, respectively. If the REIT does not distribute such net income, it will be taxable as a regular corporation at a maximum tax rate of 37.5%[5].

Capital gains

Gains from the sale of capital assets are part of a REITs gross income computation and, therefore, part of its net income determination. Also, certain net gains from the sale or disposition of real property that does not constitute a prohibited transaction are part of the net income determination of the REIT.

2.7 Sanctions

Penalties/loss of status rules
- Loss of REIT tax exemption - Loss of REIT status

The election to operate as a REIT could be terminated if the provisions and requirements under the IRCNPR are not satisfied for the taxable year for which the election is made or for any succeeding taxable year. The loss of REIT status requires a five-year waiting period to re-elect unless waived by the Puerto Rico Secretary of Treasury for reasonable cause.

A REIT that fails the gross income tests above, one or both, may be treated as satisfying those tests to maintain its election if:

1. Certain disclosures are made with the income tax return for such taxable year;

5 Act 40 of 2013 increased the maximum corporate tax rate from 30% to 39%, effective for taxable years commencing after December 31, 2012. Act 257 of 2018 decreased the maximum corporate tax rate from 39% to 37.5% for taxable years commencing after December 31, 2018.

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2. The inclusion of any incorrect information on those disclosures is not due to fraud with the intent to evade taxes; and
3. The failure to meet the test or tests is due to reasonable cause and not to gross negligence[6].

However, if a REIT fails to comply with the gross income tests above to operate as such during the taxable year, but its election is not deemed terminated, the imposition of taxes will be applicable. The penalty is calculated as a tax charge of 100% on the greater of:

i. the excess of:
   a. 95% of the gross income (excluding gross income from prohibited transactions) of the REIT, less
   b. The amount of such gross income derived from the dividends, interest, rents from rental property and other qualified income; or
ii. the excess of:
   a. 75% of the gross income (excluding the gross income from prohibited transactions) of the REIT, less
   b. The gross income derived from qualified domestic income multiplied by a fraction, the numerator of which is the taxable income of the REIT for the taxable year (without taking into account any deduction for net operating loss) and the denominator of which is the gross income for the taxable year (excluding gross income from prohibited transactions).

In addition, the REIT is subject to a 100% tax on prohibited transactions, as discussed below.

4 Tax treatment at the level of the REIT

4.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Eligible income is tax-exempt	Eligible capital gains are tax-exempt	Eligible income received by the REIT is not subject to withholding tax

Current income

The eligible income is not taxed at the level of the REIT to the extent that the distribution requirements are met.

Income from prohibited transactions is subject to tax at a rate of 100%. This tax is levied upon the net income from prohibited transactions, excluding prohibited transactions for which there was a loss. A prohibited transaction is the sale or disposition of property primarily held for sale to customers in the ordinary course of a trade or business (inventory). The sale of certain real property shall not be treated as a prohibited transaction if certain requirements are met, and the property is held for one year or more.

If the REIT does not comply with distribution requirements, it will be taxable as a regular corporation.

Capital gains

Eligible capital gains are not taxed at the level of the REIT.

6 Act 20 of 2014 substituted the term ‘willful neglect’ for ‘gross negligence’ effective January 24, 2014.

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Withholding tax

No withholding tax is levied on eligible income received by the REIT. As an otherwise taxable corporation, it would be subject to any other income tax withholding rules on income from prohibited transactions and other related income.

Other taxes

The REIT is subject to taxes like municipal license taxes (similar to a gross receipt tax) and real and personal property taxes. For property tax purposes, the REIT may take advantage of other tax exemptions that might be available under the Municipal Property Tax Act, depending on the type of activity or industry in which the property is used.

Accounting rules

There are no special accounting rules existing for a REIT. Generally, the REIT will follow US GAAP.

4.2 Transition regulations

Conversion into REIT status
No regulations

4.3 Registration duties

Registration duties
Stamp duties and register fees

The acquisition of real estate by the REIT will be subject to various kinds of stamp duties, registration, and notary fees. These stamp duties and notary fees depend on the value of the property and vary from transaction to transaction.

5 Tax treatment at the shareholder level

5.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Final withholding tax on distributions - Capital gains are taxable	- Final withholding tax on distributions - Capital gains are taxable	Withholding tax of 10% on distributions

Corporate shareholder

Dividends are subject to a final withholding tax of 10%.

If the shareholder is a resident entity, gain from the sale of the shares in a REIT would be taxable at special rates if considered long-term capital gains (corporations will be taxed at 15% or 20% for

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transactions after 30 June, 2014[7], rather than at a maximum tax rate of 39% or 37.5% for taxable years beginning after 31 December, 2018[8]).

Individual shareholder

Dividends are subject to a final withholding tax of 10%

Residents of Puerto Rico would be subject to taxation on capital gains from the sale of the shares in a REIT. The special rate is available if the gain is considered a long-term capital gain (individuals and trusts will be taxed at 10% or 15% for transactions after 30 June, 2014[9], rather than at a maximum tax rate of 33%[10]).

Withholding tax

Taxable distributions are subject to withholding tax at the rate of 10%, as defined in Section 1082.02 of the IRCNPR (previously Section 1501 of the 1994 PRIRC). The trustees or directors to whom the management of the REIT has been delegated are responsible for deducting and withholding the required tax rate on the taxable distributions.

5.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Withholding tax on distributions - Potentially withholding tax on capital gains	- Withholding tax on distributions - Potentially withholding tax on capital gains	- Withholding tax of 10% on distributions - Puerto Rico has not entered into any Tax Treaties

Corporate shareholder

Dividends will be subject to a 10% withholding tax.

Taxation of capital gain income in the case of a foreign shareholder will depend on the source of the gain and the residency status of the shareholder. If the shareholder is a non-resident entity, income tax withholding at source would be applicable only if the gain is considered from sources within Puerto Rico. Generally, the rule to determine the source of the gain in the case of personal property (shares) is the residence of the seller, with the exception of property that constitutes inventories, depreciable property, and intangible property, each of which is subject to specific rules.

The tax on dividends distributed by the REIT will be imposed at the equity-holder rather than the entity level.

Individual shareholder

The foreign individual shareholder is subject to a 10% withholding tax.

Taxation of capital gain income in the case of a foreign shareholder will depend on the gain's source and the shareholder's residency status. The rules to determine the source are the same as we indicated above

7 Act 77 of 2014 increased the special tax rate on long term capital gains applicable to corporations from 15% to 20% for transactions executed after June 30, 2014.

8 On December 10, 2018, Act 257 of 2018 was enacted in which various amendments were introduced to the IRCNPR, including changes in the tax rate for taxable years commencing after December 31, 2018.

9 Act 77 of 2014 increased the special tax rate on long term capital gains applicable to individuals from 10% to 15% for transactions executed after June 30, 2014

10 On December 10, 2018, Act 257 of 2018 was enacted in which various amendments were introduced to the IRCNPR, for taxable years beginning after December 31, 2018, an individual's tax is ninety-five (95%) percent of the sum of the regular and gradual tax adjustment.

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under 'Corporate shareholder'.

The tax on dividends distributed by the REIT will be imposed at the equity-holder rather than the entity level.

Withholding tax

Taxable dividends, as defined in Section 1082.02 of the IRCNPR (previously Section 1501 of the 1994 PRIRC), are subject to withholding tax at the rate of 10% as provided by Sections 1062.08 and 1062.11 of the IRCNPR (previously Sections 1147 and 1150 of the 1994 PRIRC) related to income tax withholding at source on payments to non-resident persons. Treaty relief is not available.

6 Treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Foreign REITs cannot qualify for REIT status. US REIT may qualify as a tax-exempt organisation.	No specific tax privilege for corporate shareholders of foreign REIT	No specific tax privilege for individual shareholders of foreign REIT

Foreign REIT

A foreign REIT will not qualify as a REIT in Puerto Rico since the entity must be created or organised under the laws of Puerto Rico. However, an entity organised or created under the laws of any state of the United States of America qualifying during the taxable year as a real estate investment trust under the United States Internal Revenue Code of 1986, as amended, may qualify as a tax-exempt organisation in Puerto Rico to the extent that certain investment requirements are met. This exemption may be extended to related persons of the US REIT. As a tax-exempt organisation, the foreign REIT must request a determination with the Secretary to approve the exemption[11].

Corporate shareholder

No specific tax privilege. Distributions from a foreign REIT to a Puerto Rican corporate shareholder will be subject to tax as any other income at the regular rates.

Individual shareholder

No specific tax privilege. Distributions from a foreign REIT to a Puerto Rican individual shareholder will generally be subject to tax as any other income at the regular rates.

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11 Act 257-2018 incorporated this requirement.

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A comparison of the major REIT regimes around the world.

1 General introduction

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	Enacted year	Citation	REIT type
US-REIT	1960	Internal Revenue Code	Corporate type

The US Congress created the Real Estate Investment Trust (US-REIT) in 1960 to make large-scale, income-producing real estate investments accessible to smaller investors. Congress reasoned that the average investor should be able to invest in large-scale commercial properties just as if it were any other kind of investment, that is, through the purchase of equity. Similar to shareholders benefiting from the ownership of stocks in other corporations, the stockholders of a REIT also receive economic benefits from the production of income through commercial real estate ownership. REITs offer distinct advantages for investors. Firstly, greater diversification is achieved by investing in a portfolio of properties rather than just in a single property. Second, the managerial activities are performed by experienced real estate professionals. Also, in order not to be subject to a corporate-level tax, REITs are required to distribute almost all of their taxable income to shareholders, who benefit from this stream of cash distributions.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
United States	173	107	1.137.231,81	71,86%

Top five REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Prologis	103.797,10	2,91%	3%	8,39%
Equinix Inc	67.195,13	16,74%	2%	5,42%
Public Storage	47.031,29	-3,58%	4%	3,39%
Welltower Inc.	36.796,76	-2,57%	3%	2,98%
Realty Income	36.199,46	-11,83%	5%	2,93%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

The US REIT regime, governed by tax laws, has been modified on several occasions since its inception, most recently in the tax reform legislation known as the Inflation Reduction Act as signed into law on 16 August, 2022. The essential rules for the US REIT can be found in sections 856 and 857 of the Internal Revenue Code.

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2 Requirements

2.1 Formalities/procedure

Key requirements
Entities must file Form 1120-REIT with the Internal Revenue Service

To elect REIT status in the US, a company must file a special tax return (Form 1120-REIT) for the year in which the company wishes to become a REIT. There is no requirement to request prior approval or to submit a prior notification of regime election. Furthermore, the REIT must annually send letters of record to its shareholders requesting the details of the beneficial share ownership. Modest monetary penalties may be imposed on a REIT that fails to send these letters unless it is shown that failure is due to reasonable cause and not willful neglect.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Any legal US entity taxable as a domestic corporation	No

Legal form

A US REIT can have the form of any legal US entity (corporation, partnership, business trust, limited liability company, etc.), which is taxable as a domestic corporation. This status can be achieved by a ‘check the box’ election with the IRS. As a result, the entity would be treated as a corporation for tax purposes. However, the company cannot qualify for this option if it is a financial institution such as a bank or an insurance company.

Further requirements are that the REIT has to be managed by one or more trustees or directors and that the shares of a US REIT must be transferable.

A taxable REIT subsidiary (see section 2.4) is permitted to be located or organised abroad.

Minimum share capital

There is no minimum share capital requirement for a REIT.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
- At least 100 shareholders - Five or fewer individuals or foundations may not hold more than 50% of the shares - No restriction on foreign shareholders	No

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Shareholder requirements

Firstly, REIT shares must be transferable. Beginning with the REIT's second taxable year, the REIT is required to have a minimum of 100 shareholders. Also, no more than 50% of its shares may be held by five or fewer individuals or private foundations during the last half of the taxable year. A number of 'look through' rules can determine whether the latter criterion is met.

Various stock classifications (i.e., different classes of shares, such as common stock and preferred stock) are allowed. However, all shareholders within the same class of stock must be treated equally. Otherwise, dividends from such classes of stock would no longer be considered eligible for the dividends paid deduction. Effective January 1, 2015, these so-called 'preferential dividend' rules for all 'publicly offered' REITs (REITs whose securities are registered with the SEC) were repealed. The Internal Revenue Service has issued two taxpayer-specific rulings in which it concluded that subsidiary REITs of publicly offered REITs were not subject to the 'preferential dividend' rule. However, they have not issued precedential guidance to this effect.

There is no restriction on foreign shareholders other than possible 'FIRPTA' consequences, under which foreign shareholders are treated as doing business in the US, unless certain exceptions apply.

Listing requirements

Listing is not mandatory to obtain REIT status. A private REIT is allowed.

2.4 Asset level/activity test

Restrictions on activities/investments
- At least 75% of its assets must be real estate, government securities or cash - 75% asset test and 75% and 95% income tests - Cannot own more than 10% of another corporation's stock other than in another REIT or a taxable REIT subsidiary (ownership of a 100% owned 'qualified REIT' subsidiary is ignored) - No more than 5% of the value of its assets can be represented by securities of any one issuer other than another REIT or a taxable REIT subsidiary (ownership of a 100% owned 'qualified REIT' subsidiary is ignored) - Cannot own more than 20% of its assets in securities of one or more taxable REIT subsidiaries

75% of a REIT's assets must be comprised of real estate (including mortgages), government securities or cash items (including money market funds). In 2016, the IRS issued final regulations concerning the definition of real estate. In general, these regulations provide that land, inherently permanent structures and structural components are real estate for the purposes of this 75% asset test rule. In addition, they provide a set of per se examples of assets that are considered real estate, and they set forth a facts and circumstances test as well as a set of examples for assets that are not per se real property.

In particular, parking facilities; bridges; tunnels; roadbeds; railroad tracks; transmission lines; pipelines; and fences are considered inherently permanent structures that are real estate and wiring; plumbing systems; central heating and air conditioning systems; elevators or escalators; walls; floors; ceilings; permanent coverings of walls, floors and ceilings; windows; doors; insulation; chimneys; fire suppression systems, such as sprinkler systems and fire alarms; fire escapes; central refrigeration systems; integrated security systems; and humidity control systems would be considered structural components that are real property.

At least 75% of the gross income must be derived from real estate property rental or interest on real estate property mortgages. Furthermore, at least 95% of the gross income must come from a combination of real estate-related sources and passive sources, such as dividends and interest. No more

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than 5% of a REIT's income may come from non-qualifying sources.

At the end of each quarter, the REIT may not have securities of taxable REIT subsidiaries (TRSs) that represent more than 20% of the REIT's total asset value. Further restrictions apply. As part of renting real estate, a REIT may provide all kinds of tenant services customarily expected in the real estate rental business. Services are broad and extensive, e.g., providing utilities (sub-metering), security services, cleaning services in common areas, internet and cable TV, etc.

A US REIT may own, operate, manage and develop real estate for its own portfolio. If it develops real estate for third parties, the resulting income is disqualified and must fit under the 5% 'bad income' allowance. US REITs may develop real estate for third parties or trade real estate through their TRSs.

A REIT is allowed to invest in non-US real estate assets, which are considered real estate under the 75% asset test.

A REIT's ownership interests in a partnership are ignored. Instead, the REIT is considered an owner of the partnership's assets to the extent of the REIT's capital interest in the partnership. Also, the ownership of one REIT by another REIT is considered ownership of the real estate, i.e., a good asset. If the REIT is a shareholder of a company other than another REIT or a TRS, then the REIT cannot own more than 10% of the shares. Further, the REIT may have no more than 5% of its total assets represented by securities of any one issuer other than another REIT or a TRS.

2.5 Leverage

Leverage
No legal restrictions

There are no statutory or regulatory leverage limits for US REITs. However, the tax reform bill passed in December 2017 limits the deductibility of business interest to 30% of a taxpayer's tax version of EBIT starting in 2022. A taxpayer conducting a real estate trade or business may elect out of these limits, but then it must use longer cost recovery periods for its depreciable real estate assets.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
At least 90% of its taxable ordinary income	Not required to distribute	Annually

Operative income

US law requires the REIT to annually distribute at least 90% of its ordinary taxable income in the form of dividends. If a REIT declares a dividend in the last quarter of the year but pays it by the end of January, the dividend distribution is treated as if it had occurred the previous December. These 'relationship back rules apply if the REIT makes the actual distribution the following year. However, a 4% excise tax is imposed if the REIT fails to distribute at least 85% of its income within the year the income is generated.

Capital gains

US REITs are not required to distribute capital gains. Capital gains not distributed are subject to corporate income tax (lowered to 21% after 2017), but then, at the REIT's election, the shareholders get an increased tax basis for their pro-rata share of the tax as well as a tax credit for the taxes paid by the REIT.

2.7 Sanctions

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Penalties/loss of status rules
- Various penalties - Possible loss of REIT status

Various penalties may occur. The REIT might compensate with taxable deficiency dividends if insufficient income was distributed. If the REIT fails a de minimus amount of the asset test, it must fix the failure within six months of discovery. If the REIT fails the asset test by more than a de minimus amount, the REIT must pay corporate taxes on all income from non-qualified assets. In this case, it must also show reasonable cause for the failure. A USD 50,000 penalty is imposed for failures other than asset test failures. A reasonable cause must also be proven in such cases. If there is no reasonable cause, the REIT may technically lose its REIT status. Usually, however, the IRS will consider a closing agreement for some lesser amount.

If the REIT fails either the 75% or 95% gross income tests, it is subject to a penalty essentially equal to 100% of the amount by which it failed the respective tests, less allocable deductions.

After the loss of REIT status, the entity must observe a five-year waiting period before it can re-apply. The government may waive this penalty, depending on the reasonable cause.

A USD 50,000 penalty is imposed if the REIT shareholder limitations are disregarded.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt to extent distributed	Tax-exempt to extent distributed	- No refund of foreign withholding tax - It can use a foreign tax as a deduction

Current income

Distributed dividends are deducted in calculating a REIT's taxable income. Retained income is subject to ordinary corporate income tax, but tax depreciation deductions are made in calculating taxable income. Dividends from ordinary income are generally taxed as ordinary dividends, less a 20% deduction under section 199A through 2025. The profits of a taxable subsidiary are subject to corporate income tax.

A REIT that acts as a dealer, as contrasted with an investor, is subject to a 100% excise tax on the profit from dealer sales. There is a safe harbour under which a REIT can be certain it will not be subject to the 100% excise tax if it complies with multiple objective tests.

Non-arm's length transactions conducted with a taxable REIT subsidiary (as well as non-arm's length transactions between a TRS and a REIT's tenants) are taxed at a 100% rate.

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Capital gains

Retained capital gains are subject to corporate income tax.

Withholding tax

A US REIT is not entitled to obtain a refund for its foreign withholding tax credit. The credit applies to its foreign source income. However, it can use a foreign tax as a deduction.

Other taxes

State income tax regimes virtually always follow the federal income tax rules.

Accounting rules

US GAAP rules apply. A public US REIT (a REIT whose securities are registered with the SEC) and its subsidiaries must file a consolidated financial statement.

3.2 Transition regulations

Conversion into REIT status
- 'Built-in gains' are taxable - Exemption is possible if assets are held for five years

By the end of the REIT's first taxable year, the REIT must distribute all the earnings and profits for years before it becomes a REIT. Also, the REIT must pay a corporate tax on 'built-in gains' (the value of its assets at the time of REIT conversion minus the assets' tax basis). The taxes may only be excused if the REIT does not sell or exchange those assets in a taxable transaction for five years. 'Like-kind' exchanges in which no built-in gain is recognised are permitted.

Many REITs use a UPREIT structure, which means 'Umbrella Partnership'. Under this structure, the REIT's sole asset is its interest in a partnership called the 'Operating Partnership' (OP). The REIT almost always has the general partner interest and typically owns more than half of the partnership interests. Property owners transfer either their assets or partnership interests to the OP in exchange for limited partnership interests (LP units). As with any other transfer to a partnership, the contribution of these assets or other partnership interests is a tax-deferred transaction in which gain is not realised until the transferor's debt obligations shift or the transferor disposes of the partnership interest in a taxable transaction.

Usually, after a year, the OP limited partners may exchange their OP units either to the REIT or the OP (depending on the particular transaction) and then the REIT or the OP, as the case may be, has the option of either transferring to the LP unitholder REIT stock on a one-for-one basis with each unit the LP unit owner exchanges or cash equal to the fair market value of such stock. The exchange of the LP units for REIT stock or cash is a taxable transaction.

3.3 Registration duties

Registration duties
Transfer tax

Real estate acquisition is usually subject to transfer taxes in most states.

4 Tax treatment at the shareholder level

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4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Income, capital gains and return of capital distributions are taxed at a rate of 21%	- Capital gain dividends are taxed at the maximum 23.8% rate - Return of capital is tax-deferred - Individual shareholders receive a 20% deduction on ordinary REIT dividends through 2025	N/A

Corporate shareholder

US corporations pay the same 21% rate on REIT capital gains and REIT ordinary income distributions. Corporate shareholders do not receive typical dividends receive deductions with respect to REIT dividends. The return of capital distribution reduces the shareholder's tax basis in its shares of the REIT.

Individual shareholder

An individual US shareholder is subject to an income tax of up to 37%. An additional 3.8% surtax on investment income for taxpayers with adjusted gross income in excess of USD 200,000 (USD 250,000 for taxpayers who file a tax return as a married couple) is also applicable.

REIT ordinary dividends qualify for the lower 20% rate on 'qualified dividend income' (plus the 3.8% surtax, if applicable) only if they are paid out of income that has already been subject to corporate taxes, e.g., dividends attributable to distributions from a taxable REIT subsidiary. REIT dividends that are neither 'qualified dividend income' nor capital gain dividends are termed 'qualified REIT dividends' and receive a 20% deduction. Therefore, the top marginal rate (including the 3.8% surtax) on dividends other than 'qualified dividends' is 33.4%.

Shareholders are taxed on capital gain distributions from assets the REIT held for at least one year at a 23.8% rate (including the 3.8% surtax). However, if the gain is attributable to the recapture of depreciation, the tax burden is 28.8%, including the surtax.

Return of capital distributions reduce the shareholder's tax basis and are therefore tax-deferred. To the extent a return of capital distribution exceeds tax basis, it is treated as a sale of the stock, and the gain is taxable at the 23.8% maximum rate (including the 3.8% surtax). (The return of capital rules for a REIT are the same as for non-REIT corporations).

Withholding tax

No withholding tax is levied on distributions to US shareholders.

4.2 Foreign shareholders

Corporate shareholders	Individual shareholders	Withholding tax
- 30% on income dividends - 21% on capital gain dividends - 10% on return of capital	- 30% on income dividends - 21% on capital gain dividends - 10% on return of capital	Tax treaty relief available

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Corporate shareholders

Final withholding tax.

Individual shareholders

Final withholding tax.

Withholding tax

A withholding tax of 30% is levied on ordinary income dividends. This rate may be reduced by a double tax treaty. The US usually imposes a 15% tax on dividends paid by REITs in countries with which the US has a valid double tax treaty. The amount of the repayment of capital that is not subject to a withholding tax is taxed at a rate of 10%. The rate returns to 30% in most treaties for foreign shareholders who own more than 10% of a REIT. Non-US pension funds and certain governmental entities, such as sovereign wealth funds, might benefit from a tax exemption.

Capital gain dividends attributable to the sale of US real property are subject to the Foreign Investment in Real Property Tax Act (FIRPTA). According to FIRPTA, foreign shareholders are treated as if they were US taxpayers. Unless the shareholder owns 10% or less of a listed REIT, the capital gain dividends are subject to a 21% (plus branch profits tax) withholding tax. If the shareholder owns 10% or less of the REIT shares, then the treatment of capital gain dividends is similar to that of ordinary dividends. Legislation enacted on December 18, 2015, exempts non-US pension plans from FIRPTA.

A return of capital distribution is subject to a 10% withholding tax. If a withholding certificate is obtained, 0%.

The sale of stock of a listed US REIT (if the non-US shareholder owns 10% or less of the REIT) or any domestically controlled REIT is not subject to FIRPTA or any US tax.

5 Treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Generally, 30% withholding tax	- Dividend distributions are taxed at a rate of 21% - Return of capital is tax-deferred	- Dividends are generally taxed at the maximum 23.8% rate if the foreign REIT is not a 'PFIC'. - Return of capital is tax-deferred

Foreign REIT

Unless the foreign REIT elects to be taxed on a nett basis or is actively operating rental property so that it is considered doing business in the US, there is a 30% withholding tax on gross rental income. Most non-US investors filing as a US business heavily leverage to reduce US taxable income.

Corporate shareholder

US corporate shareholders generally are taxable at a 21% rate on distributions from foreign REITs. The return of capital distribution reduces the shareholder's tax basis in its shares of the REIT. Furthermore, no credit is available to US corporate shareholders for US withholding taxes paid by the foreign REIT with respect to US source income. Generally, these dividends are not eligible for the dividends received deduction applicable to dividends from US corporations.

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Finally, if the foreign REIT is considered a 'passive foreign investment company' (PFIC), which may be the case if the rental income of the foreign REIT is not attributable to the activities of its own employees, a US shareholder either is subject to tax and substantial interest charges upon receipt of a distribution from the PFIC (or disposition of the PFIC stock) or may elect instead to be taxed on the PFIC investment on a current basis using an earnings flow-through approach or a mark-to-market approach.

Individual shareholder

An individual US shareholder is generally subject to an income tax at the maximum rate of 23.8% (including the 3.8% surtax noted above) on dividends distributed by a foreign REIT if the foreign REIT is both eligible for treaty benefits under a US tax treaty and is not a PFIC, as described above (although the maximum withholding tax rate for portfolio investors with respect to REIT dividends under most treaties is 15%). Return of capital distributions reduce the shareholder's tax basis and are therefore tax-deferred. To the extent a return of capital distribution exceeds tax basis, it is treated as a sale of the stock, and the gain is taxable at the 23.8% maximum rate (including the 3.8% surtax). The return of capital rules for a REIT is the same as for non-REIT corporations. Furthermore, no credit is available to a US individual shareholder for US withholding taxes paid by the foreign REIT with respect to US source income.

If the foreign REIT is considered a PFIC, which may be the case if the rental income of the foreign REIT is not attributable to the activities of its own employees, an individual US shareholder either is subject to tax at rates of up to 40.8% (including the 3.8% surtax noted above) and substantial interest charges upon receipt of a distribution from the PFIC (or disposition of the PFIC stock) or may elect instead to be taxed on the PFIC investment on a current basis using an earnings flow-through approach or a mark-to-market approach.

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UNIT TRUST

A comparison of the major REIT regimes around the world.

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1 General introduction

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	Enacted year	Citation	REIT type
- Unit Trust (esp. listed Property Trust) - Public Trading Trust	1985	- (Public) Unit Trust and Equity Law - Trust Income', Division 6, ITAA 1936 - 'Public Trading Trusts' Regime, Division 6C, ITAA 1936 - 'Managed investment trust', Subdivision 12-H of Schedule 1 of the Tax Administration Act 1953, Division 275, ITAA 1997 - 'Attribution managed investment trust', Division 276, ITAA 1997 - 'Collective Co-operate Investment Vehicle', Subdivision 195-C, ITAA 1997	Trust type

Fixed trusts have traditionally been the preferred vehicle for holding real estate investments in Australia. They are typically set up as a listed (public) or unlisted fixed unit trust (i.e., investors subscribe for units). Unit trusts are generally treated as transparent for Australian tax purposes. One of the key tax benefits arising for the investor from a trust structure is that distributions from the trust retain their tax attributes (flow-through entity), making an investment via a fixed trust generally comparable in most respects to a direct interest in the real estate. Unit trusts stapled to company structures are common in Australia.

Unit trusts are legally established under a Trust Deed pursuant to the general principles of the law of equity. Certain trusts with pooled investments from a group of investors may also qualify as Managed Investment Schemes regulated under Corporations Law. Division 6 of the ITAA 1936 (Trust Income rules) sets out the taxation of income derived by a trust (that is not an attribution managed investment trust (AMIT)), whilst Division 6C of the ITAA 1936 (Public Trading Trust Regime) assesses some trusts effectively as companies (depending on the type of activity undertaken by the trust), and Divisions 275 and 276 of the Income Tax Assessment Act 1997 (ITAA 1997) regulates the taxation of Managed Investment Trusts (MIT) and AMITs respectively. Distributions to non-Australian investors from a unit trust that is qualified as a withholding-managed investment trust (withholding MIT), including AMIT, are taxed under the withholding tax rules contained in Subdivision 12-H of Schedule 1 of the Tax Administration Act 1953.

The application of certain tax law provisions for trusts (such as loss rules and scrip-for-scrip CGT rollover) varies depending on whether a trust is classified as a fixed or a discretionary trust. After the Full Federal Court judgment in Colonial First State Investments Ltd v Commissioner of Taxation, there is uncertainty around the ability of a trust (and a unit trust in particular) that is not an AMIT to qualify as a fixed trust for Australian tax purposes without seeking confirmation from the Australian Taxation Office (ATO). Under current Australian tax law, where a trust does not meet the legislative definition of fixed trust, the Commissioner can exercise his discretion to treat that trust as a fixed trust. Given the large number of tax provisions that rely on the concept of a fixed trust and the wide-ranging impacts on business, it has been long-standing industry practice (that applied before this decision) for most unit trusts (including property trusts) to be treated as if they qualify as a fixed trust (without seeking written confirmation from the ATO). This judgment highlights the weaknesses in the existing law that have been inherent since the concept of fixed trust was first introduced and the need for trust law reform.

The Practical Compliance Guideline PCG 2016/16 outlines the factors the Commissioner will consider when deciding whether to exercise discretion to treat an interest a trust's income or capital as a fixed entitlement. The PCG includes a proposed safe harbour compliance approach that allows certain trusts to be treated as though the Commissioner had exercised the discretion to treat a trust as a fixed trust. Further, under the AMIT regime, an AMIT is provided fixed trust treatment subject to certain conditions being satisfied.

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On 22 February 2022, the tax and regulatory framework for the corporate collective investment vehicle (CCIV) regime received royal assent with a commencement date of 1 July 2022.

From 1 July 2022, a CCIV is a type of company limited by shares that can be used as an umbrella vehicle for funds management. It is comprised of one or more sub-funds operated by its single corporate director.

The deeming principle, under subdivision 195-C, deems a trust relationship to exist between a CCIV, the business assets and liabilities referable to a subfund, and the relevant class of members. As a result of this deeming principle, the tax provisions apply to the CCIV as trustee of the CCIV sub-fund trust and its shareholders as beneficiaries of the trust.

Where a CCIV subfund trust meets the AMIT eligibility criteria, it will be taxed as an AMIT under the attribution. However, if the CCIV sub-fund fails to meet the AMIT eligibility criteria, the CCIV sub-fund trust will be taxed in accordance with general trust provisions under Division 6.

The objective of the CCIV regime is that the general tax treatment of CCIVs and their members aligns with the existing tax treatment of AMITs and their members. The investors in CCIVs will generally be taxed as if they had invested directly in the underlying assets.

This is consistent with the current outcomes for AMITs and their members.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Australia	36	23	81.686,55	3,95%

Top five REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Scentre Group	8.392,01	0,62%	6%	0,68%
Stockland	5.869,62	10,59%	7%	0,47%
Mirvac Group	5.440,91	11,12%	5%	0,44%
Vicinity Centers	5.124,44	-1,42%	6%	0,34%
Dexus Property Group	5.118,62	-12,94%	7%	0,41%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

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2.1 Formalities/procedure

Key requirements
- No special legal or regulatory requirements - Certain requirements to benefit from withholding tax concessions and capital account election measures under the MIT rules

A trust is established according to a trust deed, which sets out the terms of the trust.

No special legal or regulatory requirements need to be satisfied for a property trust to be established. Property trusts whose units are offered to the public may be subject to regulatory requirements such as the Managed Investment Scheme rules under the Australian Corporations Law, which includes that the trust must be managed by a corporate trustee/responsible entity/fund manager. However, these requirements do not impact the tax treatment of the trust as a flow-through entity.

MIT requirement

Certain withholding tax concessions apply to distributions to non-Australian investors from a withholding MIT (refer to 4.2).

Under the MIT definition, the broad requirements to be satisfied for a trust to qualify as an MIT include the following:

- It must have a relevant connection to Australia (i.e., Australian managed and controlled or have an Australian resident trustee);
- It must be a Managed Investment Scheme (MIS) within the meaning of the Corporations Act 2001 that is either:
    - A registered MIS under the Corporations Act 2001 (registered MIS); or
    - An unregistered MIS that satisfies a wholesale test (wholesale trust) and certain licensing requirements.
- It is not a trading trust (i.e., the trust must not carry on, or control, a trading business as defined);
- It satisfies the relevant widely-held requirement (refer below); and
- It is not closely held (that is, a 75% or greater interest is not held by 20 or fewer persons (retail trust) and ten or fewer persons (wholesale trust), excluding interests held by specified eligible widely-held investors. Also, a foreign individual cannot have an interest of 10% or more).

The widely-held requirement test is complex. The test will be easier to satisfy where ownership interests (even up to 100%) are held by eligible widely-held investors, which include:

- Domestic and foreign life insurance companies;
- Compliant superannuation funds with at least 50 members;
- Foreign superannuation funds (indefinitely continuing provident, benefit, retirement, or superannuation funds that are established outside Australia, managed and controlled outside

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Australia and have a majority of non-Australian resident members) with at least 50 members;

- Pooled superannuation trusts that have at least one member that is a complying super fund that has at least 50 members;
- Other managed investment trusts;
- Foreign collective investment vehicles which have at least 50 members and are recognised under foreign law as being used for collective investment where member contributions are pooled together and members do not have the day-to-day control over the operation of the entity;
- Certain tax-exempt foreign government pension funds (or their wholly owned subsidiaries);
- Certain sovereign wealth funds;
- Entity wholly owned by an Australian government agency; and
- An entity of a kind listed in specified regulations.

The structure by which otherwise eligible investors hold an interest in an Australian trust will influence whether these widely held requirements can be satisfied.

The widely-held requirement test includes the ability to:

- Look through wholly-owned companies in a broad range of circumstances; and
- Allow tracing through a Collective Investment Vehicle and a limited partnership in which other qualifying investors hold at least 95% of the interests and the remaining interests are held by a general partner habitually exercising management powers.

Furthermore, MITs are separated into one of three classes. Each of these classes is required to fulfil the MIT requirements above, noting the following exceptions:

- **Capital election MIT** – A trust can make an election to treat certain assets as being held on the capital account if it is able to satisfy the above requirements. Where the substantial proportion of investment management activities carried out in Australia with respect to the trusts Australian assets requirement is not satisfied, the trust will be unable to access the MIT withholding tax regime.
- **Withholding MIT** – A MIT that will also meet the requirements to have a substantial proportion of investment management activities carried out in Australia for the trust's Australian assets and can access the concessionary MIT withholding tax rates. Further, a withholding MIT will only be subject to the attribution rules where it meets the AMIT requirements and makes an election to apply the rules. At present, there is little guidance on what a substantial proportion of investment activities in Australia means; however, at a minimum, we would expect an Australian investment manager to be actively engaged in the management of Australian assets, such as identification and review of investments, due diligence as well as responsibility for undertaking the analysis for investment decisions being considered.
- **AMIT** – In addition to meeting the MIT eligibility requirement to be an AMIT, AMITs members must have clearly defined interests, and the trust must make an irrevocable election to be an AMIT. Should these requirements be satisfied, an AMIT will be able to access the attribution regime as discussed below.

There are limits on the MIT 15% withholding tax concession availability. Broadly, the 15% withholding tax rate will not apply to non-concessional MIT income. Non-concessional MIT income is amounts attributable to income from certain cross-staple arrangements, income from underlying trading trusts, income from an asset that is agricultural land for rent or income from certain residential housing investments. Under these measures, non-concessional MIT income would be subject to withholding at the top corporate tax rate (currently 30%). However, there is transitional relief that is available for certain existing arrangements. This is discussed in more detail below.

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2.2 Legal form/minimum initial capital

Legal form	Minimum initial capital
Unit trust	AUD 1

Legal form

A unit trust generally qualifies for the flow-through tax treatment, and the flow-through treatment is not limited to resident trusts.

A non-resident entity will be treated as transparent for tax purposes, provided it can be properly characterised as a trust for Australian tax purposes.

However, a trust treated as a public unit trust (e.g., units offered to the public, listed or at least 50 investors and certain exempt entities) does not qualify for flow-through treatment if it is carrying on, or controls, ineligible trading activities (as defined).

The term property trust used with respect to Australia in the remainder of this report refers to such a fixed unit trust unless otherwise specified.

Minimum initial capital

Apart from the requirement that there must be at least a nominal corpus of the trust estate, no minimum initial capital is required.

2.3 Unitholder requirements/listing requirements

Unitholder requirements	Listing mandatory
No requirements	No

Unitholder requirements

No requirements exist with respect to the profile of the investor.

Listing requirements

Listing is not mandatory in Australia to obtain flow-through status. However, large property trusts (known as listed managed investment trusts or A-REITs) are typically listed in Australia for commercial purposes. Qualifying as an MIT is easier if the trust is listed on the Australian Securities Exchange.

A number of requirements must be met to be listed on the Australian stock exchange, including, among others, minimum net tangible assets or profit requirements and minimum unitholders numbers and parcel value requirements.

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2.4 Asset levels/activity test

Restrictions on activities/investments
- Public unit trusts and MITs investing in land must do so for the purpose, or primarily for the purpose, of deriving rent (eligible investment business) - Public unit trusts that carry on a trading business (i.e., a business that does not wholly consist of eligible investment business) are not accorded flow-through treatment, and unit trusts that carry on a trading business will not qualify as an MIT - May invest in a single property

There are no restrictions on the type of activities that a property trust can undertake unless the trust qualifies as a public unit trust (broadly, unit trusts that are listed have at least 50 unitholders, units offered to the public, or 20% of the units are held by certain exempt entities) or wishes to qualify as an MIT or AMIT. Other than public unit trusts and MITs, unit trusts can engage in trading activities, for example managing and developing real estate, without losing the benefits of flow-through treatment.

Public unit trusts, MITs and AMITs must only carry on an eligible investment business in order to be eligible for flow-through treatment. Eligible investment business covers investing in land for the purpose (or primarily for the purpose) of deriving rent (except for profit-based rentals derived from land) and/or investing or trading in various financial instruments, including units in unit trusts, shares in companies (including foreign hybrid companies), loans and derivatives. The definition of land has included fixtures on the land and certain moveable property (e.g., chattels) customarily supplied, being a property that is incidental and relevant to the renting of the land and ancillary to the ownership and utilisation of the land. Ineligible activities are regarded as trading activities.

A safe-harbour rule operates to broadly allow a trust to derive up to 25% of its income from investments in the land (excluding capital gains from asset realisation) in the form of trading income (i.e., not rent) so long as it is incidental and relevant to the eligible investment business being the leasing of land. Further, none of the rental income should be excluded rent, i.e., rent intended to transfer all or substantially all of the profits of another person to the lessor.

Where a trust does not meet this safe-harbour test, it can assess whether it is investing in land for the purpose or primarily for the purpose of deriving rent under the existing law. Furthermore, a 2% safe-harbour allowance for non-eligible investment business income (at the whole of trust level) reduces the scope for inadvertent minor breaches of the eligible investment business requirement. The trustee of a unit trust is taken not to carry on a trading business in a year if no more than 2% of the gross revenue of the unit trust is derived from a non-eligible investment business.

In summary, provided the public unit trust, MIT or AMIT carries on primarily (i.e., predominantly) eligible passive land investment activities and non-eligible activities are incidental and relatively insignificant, the public unit trust should retain the flow-through treatment for that income year and/or the trust will retain MIT status.

If the public unit trust carries on a trading business, it will be taxable as if it was a company (at the company rate of 30%) and its unitholders were shareholders. Additionally, the trust will lose the MIT and AMIT status.

A public unit trust may not control or have the ability to control directly or indirectly an entity that carries out ineligible trading activities. As a consequence, it is common for Australian property trusts to form part of a stapled security with a passive trust undertaking a range of activities relating to passive property holdings (i.e., management, redevelopment, funds management etc.) and a stapled company or trading trust actively participating in property development activities (and other active business activities). This effectively allows the management function to be internalised.

A property trust may invest in a single real property asset.

A property trust can hold property investments offshore. Property trusts can hold investment properties

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indirectly through SPVs. However, the key benefits arising for an investor from a trust structure (i.e., where the benefits of direct ownership are replicated) may be lost where the interposed SPV does not qualify for look-through tax treatment.

2.5 Leverage

Leverage
Unlimited, but the extent to which interest is deductible is limited by the general thin capitalisation rules.

Australian tax law has no specific gearing limits for unit trust structures . However, the general thin capitalisation rules may apply to effectively impose a gearing limit where the property trust is controlled by non-resident unitholders and/or if the property trust controls a foreign entity. Exemptions from the thin capitalisation rules apply where total debt deductions (including associates' deductions) are AUD 2 million or less or where an Australian outbound investor that is not foreign controlled has average Australian assets (including its associates' assets) that represent 90% or more of its average total assets (including its associates' assets).

Under the existing thin capitalisation rules, the safe harbour test broadly provides for a maximum gearing (both related and third party) of 60% of the gross assets net of non-debt liabilities based on the accounting balance sheet. The thin capitalisation rules also contain an arm's length debt test. This essentially looks at the amount that an independent commercial lending institution would reasonably be expected to lend as well as the amount of debt that the entity would reasonably be expected to borrow, having regard to its Australian business only (i.e., without the benefit of any parent support or guarantees, etc.). A third worldwide gearing approach is also available, whereby the thin capitalisation capacity of the Australian entity (as a percentage of gross assets net of non-debt liabilities) will be to equal the external gearing of the worldwide group (determined on the same basis).

Subject to the thin capitalisation rules, a tax deduction should be available for interest expenses incurred with loans used to acquire the income-yielding property. Breaches of thin capitalisation rules will result in a proportion of interest deductions being denied.

The thin capitalisation provisions prevent foreign investors from using multiple layers of flow-through entities (i.e., trusts and partnerships), each issuing debt against the same underlying asset. In addition, investors with an ownership of 10% or more in a unit trust will need to consider the debt funding in downstream entities when considering the investors' thin capitalisation position.

The Federal Government announced the thin capitalisation rules will be changed with effect from the first income year commencing on or after 1 July 2023. In March 2023, the Treasury released the exposure draft legislation for the announced changes. Broadly based on the Exposure Draft legislation, three new tests will be introduced to determine the maximum allowable debt deduction:

- Replacing the existing safe harbour debt ratio with a new test to limit debt-related deductions to 30% of tax earnings before interest, taxes, depreciation and amortisation (EBITDA) (i.e., the fixed ratio test, "FRT"), which is consistent with the OECD's recommended approach under BEPS Action 4 (Limiting Base Erosion Involving Interest Deductions and Other Financial Payments Action 4 and 2016 update). Denied interest can be carried forward for up to 15 years.
- A new external third-party debt test ("ETPDT") to replace the existing arm's length debt test. The ETPDT only applies to debt from third-party lenders and the lender must have recourse only to the borrower's assets. Also, the debt proceeds should only be used to fund Australian business operations. Additional rules around conduit financer arrangements allow ETPDT to apply under limited circumstances if considerations are met and requirements that certain related entities also make the ETPDT election.

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- The existing worldwide gearing test will be replaced by a new test which will allow an entity in a group to claim debt-related deductions up to the level of the worldwide group's net interest expense as a share of earnings.

Based on the exposure draft legislation, no grandfathering or other form of transitional relief exists. Given the restricted application of the ETPDT to third-party debt only and the inability to generate income for certain classes of assets (e.g., development projects), these measures are expected to alter the tax profile of real estate investments in the future.

We note that the proposed new thin capitalisation rules are currently in an exposure draft form and are, therefore, not yet law. The public consultation process ended in mid-April 2023. We expect the final legislation to be available prior to 30 June 2023.

Australia has also implemented a version of the anti-hybrid rules developed by the OECD under Action Item 2 of the Base Erosion and Profit Shifting Action Plan, which goes further than the OECD's proposal.

The purpose of the anti-hybrid rules is to prevent multinational companies from gaining an unfair competitive advantage by avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements. Broadly, hybrid mismatch arrangements arise where an entity enters into a scheme to exploit differences in the tax treatment of an entity or instrument under the laws of at least two tax jurisdictions to defer or reduce income tax. Australia's version of the OECD hybrid mismatch rules received royal assent on 24 August , 2018, and applies to income years beginning on or after 1 January, 2019, except for imported mismatch rules which only apply in respect of structured arrangements for income years commencing on or after 1 January, 2019, and the complete imported mismatch rules applying from 1 January, 2020.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
Typical distribution of 100% of the trust's income as defined in the trust's constitution	To the extent included in the trust's income, any capital gains realised on disposal of property, including interests held in other sub-trusts or other entities	Annually or semi-annually

There are no prescribed minimum distribution rules (except in relation to MITs). However, to ensure that the trustee is not subject to tax on the property trust's taxable income at the top marginal tax rate (currently 45% + 2% Medicare levy (if applicable)), the unitholders must be presently entitled to all of the trust's trust law income at year-end. Property trusts, therefore, typically distribute their trust income (including tax-deferred amounts) on at least an annual basis, and listed trusts generally distribute on a quarterly or six-monthly basis.

MITs are required to distribute an amount at least equal to their taxable income. To the extent that MIT distributes less than its taxable income, the trustee will be taxed on that portion of the taxable income at the top marginal tax rate.

Under the AMIT regime, the present entitlement system of trust taxation is replaced by an attribution system under which the trustee allocates all of the trust's taxable income to the unitholders on a fair and reasonable basis. The trustee will not be subject to tax on the trust's taxable income (rather, the unitholders will be assessed on the taxable income of the trust that is allocated by the trustee) and clearly defined rules to carry forward prior year under/over amounts. This attribution regime is only available for eligible MITs that have made an irrevocable election to apply the attribution rules.

2.7 Sanctions/integrity provisions

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Penalties/loss of status rules
- As outlined above, Public unit trusts that carry on a trading business (i.e., a business that does not wholly consist of eligible investment business) are taxed as if they are a company and are not accorded flow-through treatment - In addition, MITs need to satisfy an arm's length income rule; to the extent to which the income derived exceeds an arm's length amount, the trustee will be subject to 30% on the income derived more than an arm's length amount

A non-arm's length income rule applies to all MITs (i.e., MITs and AMITs). Where the Commissioner determines an MIT or AMIT to be in receipt of non-arm's length income (e.g., interest), the trustee will be liable to taxation at 30% on the excess income above the arm's length amount. That is, the analysis is only of the income received by an MIT rather than expenses incurred.

Certain exceptions and a safe harbour exist to protect against this rule.

3 Tax treatment at the level of REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Not taxable in the hands of the trustee, provided the unitholders are presently entitled to the trust's income at the end of the income year; otherwise, the trustee is taxed at the highest marginal rate	- Tax treatment of capital gains is similar to that of ordinary - CGT discounts of up to 50% may be available for Australian resident unitholders; however, discount will not apply to non-resident unitholders on capital gains accruedd	N/A

Current income and capital gains

Provided the unitholders are presently entitled to the property trust's trust income (as calculated under the trust deed) at year-end, the trustee is not liable to tax on the trust's taxable income, including capital gains. Income derived by the property trust will generally retain its character in the hands of the unitholders as it is the unitholders themselves that are subject to tax according to their own specific circumstances.

If there is a portion of the property trust's trust income to which unitholders are not presently entitled at year-end, then the trustee is subject to tax on the same proportion of the trust's taxable income at the top marginal tax rate (currently 45% + 2% Medicare levy (if applicable)). Where the taxable income includes capital gains, a resident trustee may be able to apply the CGT (capital gains tax) discount. The CGT discount is not available for non-residents.

As outlined above, under the attribution system, the taxable income of the AMIT will not be taxable in the hands of the trustee provided that the trustee has allocated all of the taxable income of the trust to the unitholders on a fair and reasonable basis. More detailed comments on the tax treatment of an AMIT have been provided below.

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Tax losses

Tax losses are quarantined in the trust and cannot be distributed to unitholders. They can be carried forward to offset against future income and capital gains subject to satisfying the trust loss recoupment tests, the most important of which is a greater than 50% continuity of ownership test. A trust that does not satisfy the requisite trust loss tests cannot offset those income losses in future years. There is no loss carry-back. There is a similar business test, but this is only available to trusts that have been listed at all times from the beginning of the loss year until the end of the year of recoupment.

Capital losses can only be offset against capital gains derived by the trust. The capital losses of trusts are not subject to the tax loss rules and can be utilised post an acquisition, in most cases.

Withholding tax

An Australian resident property trust is generally not subject to any domestic withholding tax on income earned in Australia, provided that the income is attributed to a beneficiary (for an AMIT) or a beneficiary is made presently entitled to it (other trusts). This is discussed further in section 4 below.

Tax offsets for foreign withholding tax deducted from foreign income derived by the property trust will attach to distributions of foreign income made by the trust to unitholders. The relevant portion of the foreign tax offsets will be available for offset against tax on foreign income of the property trust if the trustee is subject to tax on that amount, as discussed above.

The property trust may have certain withholding tax and other tax obligations in respect of the net income distributed to unitholders. These are discussed in section 4 below.

Accounting

Australian listed property trusts are required to prepare accounts under IFRS.

Tax treatment of an AMIT

As noted above, the attribution regime replaces the existing Division 6 present entitlement provisions, and each member is attributed a determined member component of assessable, exempt and non-assessable, non-exempt characters. The trustee will attribute those amounts to members on a fair and reasonable basis, consistent with the trust documents, as if the members had derived, received or made the amounts in their own right.

Other features of the tax treatment of an AMIT include:

- A formal introduction of an unders and overs system:
  This system allows a trustee to carry forward errors in calculations of taxable income to the year that the errors are discovered. Discovered unders and overs are included in the trust's income components in the discovery year.

- Fixed review periods:
  Income tax calculations for AMITs are subject to a four-year discovery period, after which they are no longer subject to ATO review. No time limits are applicable to other trusts.

- Cost base adjustments:
  Members of AMITs are able to make an upward as well as downward cost base adjustment in the units they hold (for both capital and revenue account holders), reflecting the difference between the amount distributed and the taxable income applicable to the distribution.

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- Tax-deferred amounts not assessable:
  Under the previous law, uncertainty existed in connection to whether distributions of tax-deferred income to certain investors could be considered to be ordinary income and taxable in the hands of the beneficiary. For AMITs, an amount of tax-deferred income received by a member of an AMIT will be treated as non-assessable but may result in a tax cost base adjustment.

- Fixed trust treatment:
  As noted above, AMITs are deemed to be fixed trusts for tax purposes.

- Units capable of being treated as debt interests:
  Certain debt-like interests in an AMIT are capable of being treated as a debt interest, and distributions in relation to these instruments will be deductible to the AMIT and assessable to the members as interest for the purpose of interest withholding tax.

- Multiple classes of units:
  Where an AMIT has multiple classes of members, it will be able to make an irrevocable election to treat each class of units as separate AMIT classes. These AMITs would then be able to issue different classes of units to investors seeking exposure to different categories of assets.

Transition regulations

Conversion into REIT status
N/A

3.2 Registration duties

Registration duties
No duty on capital contributions

There is no duty on capital contributions.

4 Tax treatment at the unitholder level

4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Superannuation Fund	Withholding tax
- 30% tax on the share of the trust's worldwide taxable income, including capital gains - Capital gains on disposal of units taxed at 30% with no CGT discount available	- Tax at rates of up to 47% (including Medicare levy) on the share of the trust's worldwide taxable income - 50% CGT discount may be available to resident individuals on capital gains distributed and on the disposal of units	- Tax at the rate of 15% on the share of the trust's worldwide taxable income, including capital gains. - 33% CGT discount may be available to superannuation funds on certain capital gains distributed and on disposal of units	- There is no final withholding tax imposed - The trustee pays tax on behalf of a foreign resident beneficiary in certain circumstances - Withholding at 47% (inclusive of the Medicare levy) is required where an Australian tax file or business number is not quoted

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Corporate unitholder

A resident corporate unitholder is subject to tax on its share of the property trust's worldwide taxable income, including capital gains, at the current corporate tax rate of 30%.

Tax-deferred distributions, being in excess of the property trust's taxable income (e.g., an amount representing plant and equipment depreciation), are generally only taxable to the extent that the amount exceeds the cost base of the unitholder's investment. The unitholder's CGT cost base is otherwise reduced by the tax-deferred amount, effectively defers taxation until the units are disposed of. For certain investors, such as those that hold their investment on revenue account, these tax-deferred distributions may be assessable on receipt.

Capital/revenue gains realised on the disposal of units in the property trust are subject to tax at the current corporate tax rate of 30%.

Individual unitholder

An individual unitholder is subject to tax at the prevailing tax rate of up to 47% (inclusive of the medicare levy) on its share of the property trust's worldwide taxable income. However, to the extent that the trust's taxable income is made up of capital gains, the domestic unitholder may be entitled to a 50% CGT discount.

Tax-deferred distributions, being in excess of the property trust's taxable income (e.g., an amount representing plant and equipment depreciation), are generally only taxable to the extent that the amount exceeds the cost base of the unitholder's investment. The unitholder's CGT cost base is otherwise reduced by the tax-deferred amount, which effectively defers taxation (in the form of a higher capital gain) until the units are disposed of.

Capital gains realised on the disposal of units in the property trust may also be eligible for the 50% CGT discount in the hands of the domestic unitholder. No discount is available for revenue gains. The trustee may pay tax on behalf of a beneficiary in certain limited circumstances.

Australian superannuation fund

A qualifying Australian superannuation fund unitholder is subject to tax on its share of the property trust's worldwide taxable income, including capital gains, at 15%.

Tax-deferred distributions are generally taxable to the extent that the amount exceeds the cost base of the unitholder's investment. The unitholder's CGT cost base is otherwise reduced by the tax-deferred amount, effectively defers taxation until the units are disposed of. For certain investors, such as those that hold their investment on revenue account, these tax-deferred distributions may be assessable on receipt.

Capital gains realised on the disposal of units in the property trust may also be eligible for the 33% CGT discount from the superannuation fund unitholder. No discount is available for revenue gains.

Withholding tax

Withholding from property trust distributions or from a present entitlement to trust income is required at the rate of 47% (inclusive of the medicare levy) where an Australian tax file number (TFN) or Australian business number (ABN) or other exception is not quoted to the property trust. Unitholders are entitled to a tax credit for the amount withheld.

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4.2 Foreign unitholder

	Corporate unitholder	Individual unitholder	Withholding tax
Trust is not an MIT	- Non-resident unitholders are subject to Australian tax at the corporate tax rate of currently 30% (except for certain eligible small businesses) on their share of the trust's taxable income that is attributable to sources within Australia - Capital gains on non-real property are tax-exempt	- Non-resident individual unitholders are subject to Australian tax on a progressive scale, starting at 32.5% on their share of the trust's taxable income that is attributable to sources within Australia - Capital gains on non-real property are tax-exempt. Capital gains from real property are taxed as above	- Dividends and interest paid to non-resident unitholders are subject to a final withholding tax in accordance with domestic rules/treaty rules on dividends or interest

Trust is an MIT (including AMIT)	- Capital gains on non-real property are tax-exempt - Dividends and interest distributed to non-resident unitholders are subject to a final withholding tax in accordance with domestic rules/treaty rules on dividends or interest - For other types of Australian source income, the rate of withholding tax depends on the country of residence of the foreign investor - For foreign investors resident in a country with which Australia has an effective exchange of information (EOI) on tax matters1, the income is subject to a final withholding tax for distributions of 15% and a 10% withholding for distributions from Green Building MITs (Withholding MITs and AMITs only). Distributions of non-concessional MIT income are subject to a withholding tax of 30% - For foreign investors in a country with which Australia does not have an effective EOI, the income is subject to a final withholding tax at the rate of 30%

General position

In general, for non-resident beneficiaries that are presently entitled to the property trust's trust income (or have been allocated a direct member component by an AMIT), the trustee will be required to deduct tax on Australian-sourced income distributed, other than income which is subject to a final withholding tax (e.g., interest/dividend and MIT withholding tax, as withholding tax is a final tax). This tax deducted is not final.

Non-MITs

Tax is deducted in accordance with the type of unitholder – companies at 30%, individuals on a progressive scale starting at 32.5%, and non-resident trustee beneficiaries at 45%. The unitholder is entitled to lodge a tax return for these trust distributions (for corporate and individual unitholders but not non-resident beneficiaries that are trusts) and can claim a deduction for certain costs incurred in deriving this income. The tax deducted by the trustee may be claimed as a tax credit, with any excess tax deducted by the trustee refunded to the unitholder.

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MITs

A concessional withholding tax regime applies to distributions made by withholding MITs and AMITs of taxable income attributable to Australian sources to all types of non-residents, including trustees. This replaced the non-final 30% withholding regime that was formerly applied.

For Australian source income, the rate of withholding tax on distributions by a withholding MIT and AMIT depends on the country in which the foreign investor is resident:

- For foreign investors residing in a country with which Australia has an effective exchange of information (EOI) on tax matters, the concessional MIT income is subject to a final withholding tax of 15% and 10% for distributions from Green Building MITs. Distributions of non-concessional MIT income are subject to a final % withholding tax of 30%.
- For foreign investors in a country with which Australia does not have an effective EOI, the income is subject to a final withholding tax of 30%.
- Where a foreign investor is a trust that is resident in a country with which Australia has an effective EOI and has a beneficiary resident in a country with which Australia does not have an effective EOI, except in the case where the foreign investor is a beneficiary in an AMIT, the beneficiary is required to top up the 15% withholding tax deducted on the distribution to the trust to reflect the 30% withholding tax rate applicable for distributions to beneficiaries resident in a non-EOI country.

For capital account MITs, no concessionary MIT withholding rates will apply, but rather distributions to non-residents will be subject to the same withholding rates as if it were a non-MIT.

In addition, different withholding rates apply to distributions by a withholding MIT and AMIT that qualifies as a Clean Building MIT. This MIT only holds clean buildings that commenced construction on or after 1 July 2012. For such Clean Building MITs, the withholding rate on distributions to foreign investors residing in countries with which Australia has an effective EOI is 10% rather than 15%.

As announced in the Federal Government Budget for 2023/24, the Clean Building MIT withholding tax concession will be extended to data centres and warehouses meeting the relevant energy efficiency standards, where construction commences after 7:30 PM (AEST) on 9 May 2023.

The minimum energy rating requirement of clean buildings will change to 6 stars, up from the current 5 Star Green Star rating (Green Building Council of Australia) or 5.5 star energy rating (National Australian Built Environment Rating System). The concession will apply from 1 July 2025. The Government will also consult on transitional arrangements for existing buildings.

Non-concessional MIT income includes income from underlying trading businesses, income from cross-staple arrangements in certain circumstances, and income from certain residential land investments and investments in agricultural land. There is transitional relief that is available for certain existing arrangements. Refer below for our more detailed comments in relation to the proposed changes.

For foreign investors that are trusts (other than non-Australian Pension Funds that are constituted by way of a trust), higher rates of tax may be applicable if MIT distributions derived by such trusts are not subsequently distributed to their beneficiaries.

Dividend, interest and royalty income will generally continue to be excluded from MIT withholding tax and are subject to the specific withholding tax rules. Capital gains on assets other than taxable Australian property will also continue to be generally excluded (discussed below).

MIT Integrity measures – an overview

The use of stapled structures has been subject to uncertainty since the Australian Taxation Office (ATO) issued a Taxpayer Alert (TR 2017/1) on perceived abuses of the structures on 31 January 2017.

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The perceived abuse related to concerns that taxpayers were establishing stapled structures to convert active business income (which would generally be subject to a 30% corporate tax rate) to passive income through leasing non-traditional real estate assets to an MIT (with lease rentals subject to a concessional 15% MIT withholding tax rate).

The integrity measures impact stapled structures and the broader tax concessions available to foreign investors under the managed investment trust (MIT) regime. These measures have been implemented to limit the availability of the concessional 15% to only certain income derived by an MIT.

The measures treat income derived from stapled arrangements as subject to a 30% rather than a 15% tax rate (subject to limited exceptions) and also prevent income from residential housing investments from accessing the 15% tax rate (amongst other measures, as noted below). The decision to limit the 15% withholding tax rate to investments in real estate other than residential housing reflects the legislature intended the concessional withholding tax rate only to apply to investments in traditional commercial real estate investments and that MITs were increasingly being used to invest in residential housing investments.

Specifically, these measures apply the corporate tax rate of 30% to distributions of income that are derived from:

- MIT cross staple arrangement income;
- MIT trading trust income;
- MIT agricultural income; or
- MIT residential housing income (other than affordable and certain disability housing).

Cross staple arrangement income is broadly derived by the MIT (or is referable to income derived by the MIT) from economically or legally stapled entities that carry on a trading business (i.e., a stapled operating entity). Where the operating entity derives rental income from third parties, the rental income derived by MIT would not be subject to the 30% withholding tax. There are also exceptions from the 30% withholding for cross-staple rent, for example, where the cross-staple rent is de minimis. As stapled arrangements are a common feature in the student accommodation and hotel sectors, many investments in these sectors have been impacted.

MIT trading trust income is income derived from an underlying trading trust in which MIT has a direct or indirect interest.

MIT residential housing income is income that is from residential premises but not commercial residential premises, including capital gains from disposals of entities with residential housing assets in certain circumstances. The definition of residential premises and the application of a non-concessional 30% withholding tax rate to income from residential premises has impacted a range of sectors, including retirement villages, aged care and serviced apartment investment assets. As noted above, there is an exception to the 30% withholding in relation to affordable housing and certain student accommodation assets.

To encourage investment in eligible new “build-to-rent (BTR) projects”, the recent 2023/24 Federal Budget announced that for BTR projects with construction commences after 7:30 PM (AEST) on 9 May 2023, it could be eligible to the MIT regime and hence a reduction to the final withholding tax rate from 30% to 15% as eligible fund payments from MIT investment.

It is currently proposed that the applicable BTR projects are to consist of 50 or more apartments or dwellings with the following conditions (subject to specific rollout details to be confirmed following consultation):

1. These dwellings must be made available to rent to the general public with a lease term of a minimum of 3 years for each dwelling; and
2. These dwellings are retained under single ownership for a minimum of 10 years before sale.

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The Government will undertake a consultation on the requirements that need to be satisfied for BTR projects to qualify for the MIT regime. One of the requirements highlighted in the 2023/24 Federal Budget (and for which no parameters were included) is that there needs to be a minimum proportion of dwellings being offered as affordable tenancies. The other requirement flagged for consultation is the minimum length of time dwellings must be retained under single ownership.

MIT Integrity measures – transitional rules

Transitional rules will apply to certain existing investments that meet pre-defined qualifying criteria and to certain pre-existing arrangements.

If the transitional rules apply, the existing MIT withholding tax rate of 15% should continue to apply until, broadly:

- For MIT cross staple arrangement income relating to a facility that is not an economic infrastructure facility (i.e., typical real eState investments) – 1 July 2026;
- fFor MIT cross staple arrangement income relating to a facility that is an economic infrastructure facility — 1 July 2034;
- For MIT trading trust income – 1 July 2026;
- For MIT agricultural income – 1 July 2026; and
- For MIT residential housing income (other than affordable housing) – 1 October 2027.

The application of the transitional provisions, in particular, is complex and will depend on the particular factual circumstances.

The ATO has issued Law Companion Ruling LCR 2020/2 provides the ATO's guidance on the staples legislation and associated Non-concessional MIT income (NCMI) rules.

In order to be eligible for transitional relief, each facility needs to have existed or been sufficiently committed to prior to 27 March 2018. While this is a question of fact, LCR 2020/2 states that an unconditional contract must have been entered into before this date, excluding call options or licences (except in specific circumstances).

To have applied for transitional relief, an irrevocable transitional election must have been made by each stapled entity partaking in a cross-staple arrangement in the approved form no later than 30 June 2019, and must have been given to the ATO within 60 days after the entity made a choice.

Once the election is made, the ATO has indicated that it may review the historical risk of the stapled group and will closely monitor ongoing compliance with the integrity provisions related to the pricing of cross-staple lease arrangements during the transitional period. The ATO is already focused on identifying stapled arrangements that do not comply with its guidance in Tax Alert TA 2017/1 Re-characterisation of income from trading businesses.

Tax-deferred distribution

Tax-deferred distributions, being over the property trust's taxable income (e.g., an amount representing plant and equipment depreciation), are generally only taxable to the extent that the amount exceeds the cost base of the unitholder's investment. The unitholder's CGT cost base is otherwise reduced by the tax-deferred amount, which effectively defers any taxation (in the form of a higher capital gain) until the units are disposed of. For certain investors, such as those that hold their investment on revenue account, these tax-deferred distributions may be assessable on receipt.

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As noted above, an AMIT has additional flexibility to adjust its cost base upwards. This situation is likely to arise where a member has been attributed and taxed on a direct member component that is in excess of the amount being paid.

Distributions of capital gains

Trustees of property trusts that distribute capital gains on assets that are not taxable Australian property are not required to withhold tax from that amount as foreign resident beneficiaries will not be taxable on the gains distributed. Gains from investments held by the trust in other trusts are eligible for the exemption provided at least 50% of the market value of CGT assets of the other trust (or trusts in which the other trust has an interest), are not taxable Australian property at the relevant CGT event time. Taxable Australian property includes real property held directly or indirectly that is situated in Australia; therefore, it usually follows that capital gains distributions from Australian property trusts remain taxable.

Non-residents holding their investment in a capital account will only be taxable on capital gains realised on the disposal of units in an Australian resident property trust if the unitholder held at least 10% of the units in the trust and more than 50% of the market value of the assets of the trust comprises Australian real property or interests in other entities whose assets are principally Australian real property.

Capital election requirement

Certain MITs can elect for capital account treatment for certain of their investments. Broadly, under the deemed capital rules, Australian MITs (this definition is broadly the same as the MIT definition for MIT withholding tax purposes with a few exceptions) will be entitled to make an irrevocable election to apply the CGT treatment to eligible assets disposals. If the trust makes a valid election, certain assets (broadly, land, shares in companies and units in unit trusts) are deemed to be held in a capital account, and therefore disposal of these assets may be eligible for the capital gains tax discount and the exemption for non-residents (where assets are non-taxable Australian property). The election must be made in the first year the trust qualifies as an MIT. If no election is made, the assets will be deemed to be held in a revenue account. The concessions will also apply to unit trusts 100% owned and controlled by MITs if the trust is eligible for flow-through treatment (i.e., carry on only an eligible investment business).

Other Withholding Taxes

Dividend and interest income paid to non-resident unitholders are subject to a final withholding tax in accordance with domestic rules/treaty rules. To the extent that the income has been subject to final Australian withholding tax or would have been subject to withholding tax had an exemption not applied, no further tax is levied.

Withholding from other property trust distributions (or from a present entitlement to other trust income) is required at the rate of 47% where an Australian tax file number (TFN) or Australian business number (ABN) or other exception is not quoted to the fund. Unitholders are entitled to a tax credit for the amount withheld. For amounts that have tax withheld under the managed investment trust, withholding tax provisions discussed above are exempted from this requirement.

A foreign resident capital gains withholding (FRCGW) of 12.5% will apply to vendors disposing of certain taxable property (including units in trusts) under contracts with a contract price of AUD 750,000 or more. There are exceptions from the obligation to withhold, for example, if the vendor provides a declaration to the purchaser that the vendor is an Australian resident. Additionally, a vendor may apply to the Commissioner for a reduction in the withholding tax rate, for example, if the vendor is not expecting a gain on disposal. The withholding is a non-final withholding tax and is creditable against the vendor's income tax liability on the lodgment of a tax return.

2.1 Australian Stamp Duty

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Landholder duty

All States and Territories impose landholder duty on acquisitions of interests in trusts that directly or indirectly, hold interests in land and land-type assets exceeding a value threshold. Depending on the jurisdiction where the landholdings are located, the duty payable is calculated at rates up to 6.5%.

The trust's landholdings are not restricted to land in the ordinary sense and take into account broad categories of land-type assets, including tangible assets that are physically fixed to land or leased premises. In addition to land, goods in New South Wales, Western Australia and Tasmania are also included in the landholder duty base when triggered.

All States and Territories (except the Australian Capital Territory) impose landholder duty on acquisitions of 90% or more in a listed trust, although concessional rates apply in most jurisdictions. For unlisted trusts, landholder duty is imposed in all States and Territories (except Queensland) on acquisitions of 50% or more (and 20% or more in Victoria).

A significantly higher rate of duty can apply where the underlying land of the trust is residential land and the acquiring unitholder is a foreign person. Generally, this is referred to as foreign purchaser duty. Residential land and foreign person are defined in each relevant State and Territory. Currently, the maximum rate of foreign purchaser duty is 8%. Foreign purchaser duty is payable in addition to landholder duty triggered on an acquisition of landholding trusts.

Trust acquisition duty

Queensland imposes a duty on changes of interests in certain private trusts. In Queensland, trust acquisition duty is imposed where the trust has a direct or indirect interest in Queensland's dutiable property. The definition of dutiable property is broad and includes land.

Duty is imposed at rates of up to 5.75%, calculated on the greater of the unencumbered market value and the consideration paid. Unlike the landholder duty regime, there is no acquisition threshold in relation to acquiring interests in private unit trusts that hold land in Queensland.

CCIV Treatment

The stamp duty treatment of CCIVs is still being determined as each State and Territory is considering its position. There has been no published position on CCIVs by any Australian state or territory from a stamp duty perspective except Victoria. Victoria will apply stamp duty to a CCIV at the sub-fund level rather than a CCIV as a legal form company. This is achieved by treating each sub-fund of a CCIV as a separate and distinct unit trust scheme and translating the corporate features of the CCIV to each unit trust scheme. Whilst there are substantial technical arguments that a CCIV, due to the legal characterisation, should be treated like a company in other jurisdictions (such that landholder duty rules discussed above should apply) as opposed to a unit trust (where the trust acquisition duty rules in Queensland), it is important that the position is confirmed if a CCIV is planned to be used.

5 Tax treatment of the foreign REIT and its domestic unitholder

Foreign REIT	Corporate unitholder	Individual unitholder
Similar to an Australian Trust, however, with modifications	Like corporate unitholder of an Australian trust	Like individual unitholder of an Australian trust

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Foreign REIT

Foreign REITs are taxed on Australian-sourced income and capital gains on taxable Australian property. The taxation of a foreign REIT will depend on the type of entity the REIT is for Australian tax purposes and the structure of the investments adapted. If the foreign REIT is a trust, the tax implications will broadly be in accordance with 3.1 and 4.2 above. Such foreign REITs may qualify as eligible widely held investors for MIT purposes (depending upon the structure used to invest in Australia).

Corporate unitholder

Corporate unitholders of a foreign trust are taxed on income broadly as above, with a tax offset for foreign tax paid (subject to an offset cap amount).

Individual unitholder

Individual unitholders of a foreign trust are taxed on income broadly as above, with a tax offset for foreign tax paid (subject to an offset cap amount).

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China

C-REIT

A comparison of the major REIT regimes around the world.

2023

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1 General introduction

Note: The below summary reflects the position as of June 13, 2023. Given that the Real Estate Investment Trust regime in China (C-REIT) is a pilot programme, with the detailed rules currently 'on trial' and subject to ongoing developments, we recommend that the position is monitored regularly.

Enacted year	Citation	REIT type
2020 (pilot programme, with certain rules still 'on trial')	- Securities Law of the People's Republic of China, Presidential Decree No. 37 (Securities Law) - Securities Investment Fund Law of the People's Republic of China, 2015 Amendment (Securities Investment Fund Law) - Notice on Promoting the Infrastructure REITs Pilot Work, Zhengjian Fa [2020] No. 40 (Notice) - The Guidelines on Public Offering of Infrastructure Securities Investment Funds (Trial), CSRC [2020] No. 54 (Guidelines) - A set of implementation rules issued in 2021 by the Shanghai & Shenzhen Stock Exchange on C-REIT application, sales, listing, trading and management	Public fund

In 2020, China established an infrastructure C-REIT pilot programme in key regions and industries on a case-by-case basis. By learning from the mature international REIT market, the aim is to effectively free up capital for reinvestment, reduce existing corporate leverage and provide a new financial product that broadens channels for investment.

On April 24, 2020, under the current framework of the Securities Law and Securities Investment Fund Law, the China Securities Regulatory Commission (CSRC) and the National Development and Reform Commission (NDRC) jointly published the Notice, which took effect on the same day. On April 30, 2020, the CSRC published the Guidelines in draft form in order to provide further detailed regulations supplementing the Notice, mainly by standardising the definition of the product, outlining the required qualifications and responsibilities of the participants, and details of the product registration, offering of fund units, investment operations, project management, information disclosure and regulatory administration, etc. On August 6, 2020, the draft Guidelines officially took effect. Furthermore, in 2021, a set of implementation rules were introduced by Shanghai & Shenzhen Stock Exchange on C-REIT application, sales, listing, trading and management. Since then, the regulatory framework and blueprint of the C-REIT have provided more clarity and further supported the trial and launch of C-REIT products in China.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
China	8	3	4.469,24	0,11%

** Market cap rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

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Top REITs

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
CapitaLand China Trust Management	1.157	-6,78%	7,35%	0,06%
Yuexiu Real Estate Investment Trust (Red Chip)	€ 944	-44,45%	7,79%	0,03%
Sasseur REIT (S Chip)	€ 589	-2,62%	9,33%	0,02%

2 Requirements

2.1 Formalities/procedure

Key requirements
- Issuance of opinion from the NDRC - Establishment of the infrastructure asset-backed security (ABS) through the Asset Management Association of China (AMAC) - Approval from a competent stock exchange and registration of the REIT as an infrastructure securities investment fund with the CSRC

A C-REIT is set up as a publicly offered infrastructure securities investment fund by a securities company or fund management company qualified in public funds management (Fund Manager). It can hold an infrastructure asset via an ABS offered by an ABS manager, under common control with the Fund Manager. Under the ABS scheme, the underlying ABS assets consist of shares in an infrastructure project company, which holds 100% of the infrastructure project assets (collectively referred to as the Special Purpose Vehicle (SPV).

In general, we have summarised the procedural steps as follows:

3. The provincial DRC will issue special opinions on the infrastructure investment project to advise whether the project conforms to China's national strategic objectives, macro-control policy, industrial policies, and laws and regulations on fixed assets investment management, as well as whether it can generate capital recovery to strengthen local infrastructure development. Based on these special opinions issued by the provincial DRC, NDRC will refer qualified infrastructure projects to CSRC;
4. The ABS manager sets up the infrastructure ABS consisting of an underlying infrastructure asset, submitting relevant details to AMAC;
5. The competent stock exchange issues a no-action letter in relation to the listing of the C-REIT/ infrastructure securities investment fund;
6. CSRC and the relevant stock exchange independently perform the duties of registration and review/ approval procedures in compliance with the laws, regulations and market principles and notify the final decision; and
7. Once the registration with CSRC is completed, the Fund Manager fundraises by publicly offering units

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in the C-REIT to investors and purchases the approved infrastructure ABS.

The Fund Manager is also subject to the following regulatory requirements:

- Its registered capital should be not less than RMB 100 million (approx. USD 14,000,000), fully paid up in cash;
- It needs to have been established for at least three years, with sufficient experience in asset management, sound corporate governance and sophisticated internal control policies;
- It needs to establish an independent department of investment management for the infrastructure asset, with at least three responsible persons, each with more than five years' experience in investment management or operation of an infrastructure project;
- It should have a sound financial status to satisfy its continuous operation, business development and risk control, a good social reputation and record; and complete and effective policies and procedures for investment management, project operation, internal control and risk management; and
- Other requirements as set by the CSRC.

Please note that the Fund Manager or its affiliated entity under the same control should also have sufficient professionals with research experience in the real estate sector, as well as professional experience in investment management or operation of the same product/business without significant outstanding risks.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Public fund + infrastructure ABS	No

The C-REIT should be established by a Fund Manager as a contractual-type public fund investing in marketable securities (in this particular case, one that invests in infrastructure ABS), in line with the Securities Investment Fund Law.

The infrastructure ABS set up by an ABS manager refers to the special infrastructure asset-backed programme offered in accordance with the 'Administrative Provisions on Asset Securitisation of Securities Companies and Subsidiaries of Fund Management Companies' and relevant rules. Under the infrastructure ABS programme, the complete ownership or operating right of the underlying infrastructure project is legally held by the SPV. The securities are issued to the C-REIT, giving it beneficial entitlement to the underlying infrastructure project assets, i.e., the C-REIT's ownership of the infrastructure project is through its holding of this infrastructure ABS.

The Fund Manager and the ABS manager should have an actual control relationship or be under a common control (noting that there is not currently a regulatory definition of control, but it is generally accepted as greater than 50% equity or as set out in contracted terms).

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
- Strategic investors are to hold not less than 20% of the fund units at each separate issuance, and the term for holding infrastructure fund units shall be no less than five years (20% of the total fund units) or three years (more than 20% of the total fund units) from the date of listing - Offline investors are to hold not less than 70% of the amount offered in the public offering after having deducted the allotment to strategic investors - Public investors have no special requirements.	Whilst not specifically confirmed, the Guidelines imply that listing is not mandatory.

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Shareholder requirements

Strategic investors: As the original equity holders of an infrastructure project or their affiliated entities under a common control (i.e., prior to the establishment of a C-REIT), they must participate in the strategic investors' allotment of C-REIT units with not less than 20% of the units at each separate issuance. The term for holding the C-REIT units should be not less than five years (20% of the total fund units) or three years (more than 20% of the total fund units) from the date of listing. In addition, there may be an opportunity for certain professional institutional investors (other than the original equity holders of an infrastructure project or their affiliated entities under common control) to participate in this process, with the proportion of the strategic investors' allotment reasonably determined by the Fund Manager. In this case, the holding period of C-REIT units by professional institutional investors should be not less than one year from the date of listing.

Offline investors: Refers to investors that can participate directly, 'offline' from any public stock exchange offering and includes securities companies, fund management companies, trust companies, finance companies, insurance companies, qualified foreign institutional investors, commercial banks and their wealth management subsidiaries, qualified private fund managers and other professional institutional investors (i.e., those that do not qualify as strategic professional institutional investors) approved by CSRC. After deducting the allotment to strategic investors, the proportion of C-REIT units offered to offline investors should be no less than 70% of the amount offered in the public offering. Where classified allotment for offline investors is conducted, the allotment proportion for investors of the same category should be the same.

Public investors: No special requirements. Public investors may participate in the subscription of C-REIT units through a fund sales agency at the subscription price determined via price quote.

In addition, one of the high-level principle requirements of the Guidelines is that the Fund Manager, in conjunction with the fund sales agency, strictly implements an investor competency management system, under which they assess the risk tolerance of the investor in the context of the infrastructure investment and other investor appropriateness management with the aim of selling appropriate products to appropriate investors.

Listing requirements

An infrastructure fund adopting a closed-end operation that satisfies certain requirements can be listed on a stock exchange upon approval. Listing and trading of C-REIT units should satisfy the following criteria:

1. The offering of the units should comply with provisions under the Securities Investment Fund Law;
2. The C-REIT contract period should be not less than five years;
3. The amount of funds raised in the offering should be not less than RMB 200 million (approx. USD 28,000,000);
4. The number of C-REIT unitholders should not be less than 1,000; and
5. Any other relevant criteria stipulated by the listing and trading rules for securities fund units.

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2.4 Asset level/activity test

Restrictions on activities/investments
- At least 80% of C-REIT assets should be invested in all of the units in infrastructure ABSs that hold infrastructure assets located in China. - The remaining C-REIT assets should be legally invested in interest rate securities, AAA-rating credit securities or money market instruments.

In accordance with the Guidelines, C-REITs should conform to the following:

1. At least 80% of C-REIT assets should be invested in all of the units in infrastructure ABSs which hold infrastructure assets located in China (i.e., investment is not limited to a single infrastructure ABS);
2. The remaining C-REIT assets should be legally invested in interest rate securities, AAA-rating credit securities or money market instruments, with no current requirement under the Guidelines for these to be Chinese assets;
3. The infrastructure assets can include transportation-related assets such as toll roads, railways, airports and ports,; energy infrastructure assets such as wind power, photovoltaic power generation, hydroelectric power generation and natural gas power generation; municipal facilities assets such as water, power and heating; ecological and environmental protection infrastructure assets such as urban sewage, warehousing and logistics assets and park infrastructure; new infrastructure assets such as data centers, artificial intelligence; affordable rental housing; consumer infrastructure assets such as department stores, shopping malls, farmers' markets and other infrastructure assets such as pollution management, information networks and industrial park assets etc.,urban and rural commercial network projects or commercial community projects which ensure basic livelihood; and other infrastructure assets, such as natural and cultural heritage, and national 5A tourist attractions; but shall exclude commercial residential and commercial real estatebuildings;
4. The infrastructure ABS should also hold 100% of the shares in an infrastructure project company;
5. The Fund Manager shall proactively operate and manage the infrastructure project to meet the main purpose of obtaining stable cash flow through rents, charges, etc.; and
6. The closed-end fund operation is adopted under which no less than 90% of the consolidated distributable income should be distributed to the fund investors.

2.5 Leverage

Leverage
- The total amount of fund assets shall not exceed 140% of the fund net assets, and the borrowing for project acquisition shall not exceed 20% of the fund net assets; - If the total amount of fund assets passively exceeds 140% of the fund net assets (e.g., due to changes in the fund's unit price), no new borrowing is allowed.

If there exist borrowings of the infrastructure project before establishing the infrastructure fund, the borrowings shall be repaid with the funds raised, except for the situation as set out below.

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The total amount of fund assets shall not exceed 140% of the fund net assets, and borrowing is allowed daily operation, maintenance and reconstruction and the acquisition of the infrastructure asset/project. For project acquisition purposes, the borrowing shall satisfy the following conditions:

1. The total amount shall be not more than 20% of the fund's net assets;
2. The infrastructure fund is operating smoothly without significant legal, financial and operational risks;
3. The infrastructure held or to be acquired by the fund has the ability to be split and transferred to satisfy the repayment without affecting the stable operation of the fund;
4. The cash of the fund is sufficient to pay the borrowing and interest and can ensure the stability of fund distributions;
5. The fund has a sound financing arrangement and risk response plan; and
6. Any other requirements provided by CSRC.

If the total amount of fund assets passively exceeds 140% of the fund net assets (e.g., due to changes in the fund's unit price), no new borrowing is allowed, and the Fund Manager shall report to the CSRC and then take appropriate actions.

2.6 Profit distribution obligations

Operative income	Timing
At least 90% of its consolidated distributable income	Annually

A C-REIT shall distribute at least 90% of its annual consolidated distributable income.

Where conditions for income distribution are met, the C-REIT must make a distribution at least once per year.

2.7 Sanctions

Penalties/loss of status rules
- Various sanctions and penalties - Potential suspension of C-REIT business

In accordance with the Securities Investment Fund Law, examples of sanctions include (without limitation):

- Persons who violate the provisions by making a public offering of funds arbitrarily or under any pretext shall be ordered to stop raising funds, return all funds raised (including interest pursuant to the market interest rate of a commercial bank deposit for the same period), have any illegal income confiscated and be subject to a fine ranging from 1% to 5% of the number of funds raised. Person(s)-in-charge who is/are directly accountable, and other directly accountable personnel shall be subject to a warning and a fine ranging from RMB 50,000 to RMB 500,000 (approx. USD 7,000 to USD 70,000).

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- Persons who violate the provisions by withdrawing funds deposited into a designated account before completion of the offering shall be ordered to return the funds, have any illegal income confiscated and be subject to a fine ranging from one to five times the illegal income amount (where there is no illegal income, or the illegal income amount is less than RMB 500,000 (approx. USD 70,000), a fine ranging from RMB 50,000 to RMB 500,000 (approx. USD 7,000 to USD 70,000) shall be imposed). Person(s)-in-charge who is/are directly accountable, and other directly accountable personnel shall be subject to a warning and a fine ranging from RMB 30,000 to RMB 300,000 (approx. USD 4,200 to USD 42,000).
- Where a person violates the provisions by using the wording 'fund', 'fund management' or similar names without registration to engage in securities investment activities, any illegal income shall be confiscated and be subject to a fine ranging from one to five times the illegal income amount imposed (where there is no illegal income, or the illegal income amount is less than RMB 1 million (approx. USD 139,000), a fine ranging from RMB 100,000 to RMB 1 million (approx. USD 13,900 to USD 139,000) shall be imposed). Person(s)-in-charge who is/are directly accountable, and other directly accountable personnel shall be subject to a warning and a fine ranging from RMB 30,000 to RMB 300,000 (approx. USD 4,200 to USD 42,000).

3 Tax treatment at the level of the REIT

3.1 China tax implications on the income received by C-REIT

Enterprise Income Tax/Individual Income Tax

The taxation rules in relation to C-REITs are still under development. Suppose a C-REIT is established in the form of a contractual-type public fund investing in infrastructure ABS (see Section 2.2). In that case, its tax treatment is likely to be similar to the treatment generally applicable to contractual-type public funds investing in marketable securities (public securities investment funds). According to current tax regulations and practice, any income or gains received by a public securities investment fund is exempt from Enterprise Income Tax (EIT) and Individual Income Tax (IIT) at the level of the fund.

However, certain types of income may be subject to withholding tax. For example, where a public securities investment fund holds stocks listed on a domestic exchange, dividend income may be subject to a 20% withholding tax (which can be reduced by 50% if the investment has been held for more than one month but not more than one year or wholly exempt if the investment has been held for more than one year). However, given the taxation rules in relation to C-REITs are still under development, the treatment of a C-REIT and infrastructure ABS for income tax purposes remains uncertain. We recommend the position is confirmed once these rules are finalised.

Value-Added Tax and miscellaneous surcharges

Interest income received by a C-REIT should be subject to a 3% Value Added Tax (VAT) without input VAT credit (i.e., a simplified VAT mechanism). Income could be considered as interest for VAT purposes if the relevant investment bears strong debt-like characteristics (e.g., the investment is principal guaranteed). Therefore, whether the infrastructure ABS and related returns are debt-like would need to be considered.

A few surcharges may be collected along with the VAT, including 1) national and local education surcharges, which are 5% of the VAT payable, and 2) city construction tax, which is 1%, 5% or 7% of the VAT payable, depending on the location of the VAT payer.

The VAT and associated surcharges will be paid in the name of the Fund Manager but are generally charged to the fund assets and decrease the distribution capacity.

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3.2 Transition regulations

Conversion into REIC status
There are no special tax rules for conversion. However, there is preferential tax treatment for certain asset and share transfers in the preparation stage and during the process of establishing a C-REIT.

The C-REIT is established in the form of a contractual-type public fund investing in an infrastructure ABS. There is no special tax rule for the direct conversion of a company to C-REIT status. However, preferential Enterprise Income Tax treatment for certain asset and share transfers is provided for the original holders of the infrastructure project (i.e., strategic investors as defined in Section 2.3) in the preparation stage and during the process of establishing a C-REIT.

The strategic investors can transfer the infrastructure asset to an infrastructure project company in exchange for equity in that infrastructure project company at cost for income tax purposes by adopting a special re-organisation tax treatment. The strategic investors should then receive a deferral of income tax liabilities due on any gains realised in relation to the disposal of the shares in the infrastructure project company to the infrastructure ABS.

Once funds have been raised from investors via subscription for units in the C-REIT, the ABS Manager issues securities in the infrastructure ABS to the C-REIT. At this point, any deferred income tax becomes payable by the strategic investors (noting that this is only on the portion of the underlying asset that ultimately transfers from strategic investors to other investors).

For completeness, if the strategic investors transfer their units to the C-REIT in the future, they will pay further deferred income tax at the time of this transfer.

3.3 Registration duties

Registration duties
Not applicable

4 Tax treatment at the unitholder's level

4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Withholding tax
Distributions tax-exempt	Distributions tax-exempt	Not applicable

Corporate unitholder

A corporate unitholder is exempt from EIT for any public securities investment fund distribution. It is still unknown whether such an exemption will be extended to distributions from a C-REIT. The distribution should generally be subject to 25% EIT if no exemption or other tax reliefs are available.

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The VAT treatment for income derived from holding C-REIT units remains uncertain. Technically, if the investment in a C-REIT bears strong debt-like characteristics (e.g., the investment is principal guaranteed), there is a risk that the relevant income is treated as interest and is subject to 6% VAT.

Any gains derived by corporate unitholders from the disposal of C-REIT units are generally subject to 25% EIT and 6% VAT, as well as certain nominal surcharges (e.g., education surcharges, city construction tax and certain local surcharges).

Individual unitholder

An individual unitholder is exempt from IIT for any distribution from a public securities investment fund and for any gains derived from the disposal of the fund units. It is still unknown whether such an exemption will be extended to distributions from a C-REIT and gains derived from the disposal of C-REIT units. If no exemption or other tax reliefs are available, such income may be subject to 20% IIT.

The VAT treatment for income derived from holding C-REIT units remains uncertain. Technically, if the investment in a C-REIT bears strong debt-like characteristics (e.g., the investment is principal guaranteed), there is a risk that the relevant income is treated as interest and is subject to 3% VAT (i.e., a simplified VAT mechanism).

Any gains derived by individual unitholders from the disposal of C-REIT units are exempt from VAT.

Withholding tax

For domestic corporate unitholders, there is currently no withholding tax in relation to distributions and gains from the disposal of C-REIT units. A withholding mechanism might be introduced for domestic individual unitholders if no IIT exemption is granted.

4.2 Foreign unitholder

Foreign investors who are Qualified Foreign Institutional Investors (QFII) and RMB Qualified Foreign Institutional Investors (RQFII) may invest in a C-REIT. Furthermore, although various income tax and VAT exemptions have been granted to foreign investors investing in Chinese securities markets, it has not yet been clarified whether such exemptions are to be extended to the investment income derived by foreign investors in a C-REIT. If no such exemptions are granted, a foreign investor could be subject to 10% EIT for its Chinese source income (provided that the investor does not have a permanent establishment in China under an applicable treaty) and 6% VAT for its interest income (may include income derived from holding the C-REIT units where the investment in the C-REIT bears strong debt-like characteristics) and any gains from disposals of C-REIT units.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Subject to EIT	Subject to EIT and potentially VAT	Subject to IIT and potentially VAT

Foreign REIT

If a foreign REIT invests in Chinese real estate, the Chinese source income will be subject to 10% EIT (assuming no permanent establishment in China under an applicable treaty), subject to preferential treaty rates. If an SPV holds Chinese real estate and has a permanent establishment in China under an applicable treaty, 25% EIT should apply to the relevant income of the SPV.

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Corporate unitholder

Income or capital gains received by a Chinese corporate unitholder from a foreign REIT should generally be subject to 25% EIT (noting that a foreign tax credit is generally available). There may be a 6% VAT applicable if any relevant income is considered as interest for VAT purposes or as a capital gain from the disposal of financial products for VAT purposes.

Individual unitholder

Income or capital gains received by a Chinese individual unitholder from a foreign REIT should generally be subject to 20% IIT (noting that a foreign tax credit is generally available). There may be a 3% VAT applicable if any relevant income is considered as interest for VAT purposes.

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Hong Kong

HK REIT

A comparison of the
major REIT regimes
around the world.

2023

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1 General introduction

	Enacted year	Citation	REIT type
HK – REIT	2003	Code on Real Estate Investment Trusts	Trust type

The Code on Real Estate Investment Trusts (Code on REITs) was first introduced in July 2003 and revised in June 2005, June 2010, April 2013, July 2014, December 2020 and August 2022. REITs in Hong Kong are structured as trusts. They have to comply with the Code on REITs issued by the Securities and Futures Commission (SFC) for authorisation.

There are currently ten REITs with a total market capitalisation of approximately EUR 17,697 billion as of 10 July, 2014, (to be supplied by Consilla Capital).

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index**	Sector Mkt Cap (EUR m)	% of Global REIT Index
Hong Kong	9	5	18.463,93	1,22%

Top REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Link Real Estate Investment Trust	12.993,66	-28,98%	6%	1,05%
Champion REIT	1.989,95	-16,60%	7%	0,05%
Fortune Real Estate Investment Trust	1.317,34	-10,80%	8%	0,07%
Sunlight Real Estate Investment Trust	568,71	-18,80%	8%	0,03%
Prosperity REIT	311,66	-24,08%	9%	0.02%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

*** The number considers only those REITs covered by the REIT regime in Hong Kong and owning properties mainly in the same country.*

2 Requirements

2.1 Formalities/procedure

Key requirements
- To be authorised by the SFC of Hong Kong - Appointment of a trustee - Appointment of a management company

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REITs have to be in the legal form of a trust and governed by the Code on REITs. They also need to be authorised by the SFC of Hong Kong.

One trustee that is functionally independent of the management company of the REIT and acceptable to the SFC must be appointed but may be part of the same corporate group if certain requirements are met. The REITs listed in Hong Kong have all appointed independent trustees.

Furthermore, a management company acceptable to the SFC must be appointed. An independent property appraiser has to also be appointed. Annual valuation of the REIT's assets must take place. In the case of a transaction (not defined in the Code on REITs but generally understood to refer to significant transactions such as an acquisition or disposal of property etc.), the management company shall, where necessary or required by the Code, engage a financial adviser.

The management company may choose to perform all its required functions under the Code on REITs or delegate or contract out to one or more outside entities one or more of these functions.

Certain transactions with connected parties, such as the management company, the trustee, a significant unitholder of 10% or more, the property valuer or transactions between trusts that the same management company manages, are subject to approval by the unitholders.

2.2 Legal form /minimum initial capital

Legal form	Minimum share capital
Unit trust	No

Legal form

REITs have to be in the legal form of a trust. A REIT may hold real estate directly or indirectly through special purpose vehicles that the REIT legally and beneficially owns.

Minimum initial capital

No formal minimum capital requirements exist in the Code on REITs.

2.3 Unit holder requirements/listing requirements

Unit holder requirements	Listing mandatory
No requirements	Yes

Unitholder requirements

All REITs in Hong Kong are in the form of a trust, and investors are the unitholders of the trust. No specific unitholder conditions must be fulfilled for REITs to be authorised in Hong Kong. Also, there are no restrictions on foreign unitholders.

Listing requirements

All REITs in Hong Kong have to be listed on the Stock Exchange of Hong Kong Limited ('SEHK') within a period acceptable to the SFC. The REITs in Hong Kong are subject to the listing rules of SEHK.

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2.4 Asset levels/activity test

Restrictions on activities/investments
- Must primarily invest in real estate - Must hold the real estate (other than a Non-qualified Minority-owned Property) for at least two years unless it has clearly communicated to its holders the rationale for disposal prior to this minimum holding period and its holders have given their consent to such sale by way of a special resolution at a general meeting. - Prohibited from investing in vacant land, with exceptions, or engaging in property development and related activities, with exception - Must not acquire any asset that involves the assumption of any unlimited liability - May invest in real estate located in Hong Kong or overseas

REITs must invest primarily in real estate that generates recurring rental income. The REIT may not acquire unoccupied and non-income producing, or in the course of substantial development, redevelopment or refurbishment real estate in excess of 25% of the gross asset value of the REIT at any time.

A REIT must hold its real estate (other than a Non-qualified Minority-owned Property) for a period of at least two years unless consent is obtained from its unitholders by way of a special resolution at a general meeting.

A REIT is permitted to establish and own special purpose vehicle companies (SPVs) to hold its real estate investments. Under the Code on REITs, SPVs must be legally and beneficially owned by the REIT, and the REIT must have majority ownership and control of the SPVs. SPVs may be used for other purposes incidental to a REIT's investments subject to prior consultation with the SFC. These may include, for example, the engagement of employees in the case of a hotel REIT or providing services incidental to managing the REIT and its assets in the case of an internally managed REIT.Generally, no more than two layers of SPVs are allowed unless specifically approved by the SFC. Where the REIT invests in hotels, recreation parks or serviced apartments, such investments shall be held by SPVs or joint venture entities.

REITs are prohibited from investing in vacant land unless the management company has demonstrated that such investment is part -and- parcel of permitted property development (see below).

In engaging or participating in property development activities (refurbishment, retro-fittings and renovation excepted), the aggregate investments in all property developments undertaken, together with the aggregate contract value of the uncompleted units of real estate acquired, shall not exceed 10% of the gross asset value of the REIT. This cap may be increased to not more than 25% of the gross asset value of the REIT provided that it is permissible under its constitutive documents and there is clear disclosure in the offering document.

A REIT must not acquire any asset that involves the assumption of any liability that is unlimited.

If a REIT indicates a particular type of real estate in its name, it must invest at least 70% of its non-cash assets in such type of real estate.

There is no limitation to the holding of units in a REIT in Hong Kong.

REITs may invest in foreign assets.

2.5 Leverage

Leverage
Limitation to 50% of total gross asset value

The gearing ratio limit is 50% of the total gross asset value of the REIT.

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Profit distribution obligations

Operative income	Capital gains	Timing
90% of the audited annual net income after tax	Specified in the trust	Annually

Operative income

A REIT shall distribute not less than 90% of its audited annual net income after tax in the form of dividends to its unitholders each year.

Capital gains

Whether any capital gains on disposal of real estate could be distributed is generally specified in the trust deed when a REIT is launched for sale to the public.

2.6 Sanctions

Penalties/loss of status rules
- De-listing - Loss of authorisation by the SFC

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
- REIT is exempt from profits tax - REIT may be subject to property tax - SPV is subject to profits tax - Dividends from SPV are tax-exempt - Foreign sourced income is tax-exempt	N/A	N/A

Current income

A REIT is exempt from Hong Kong profits tax under the Inland Revenue Ordinance of Hong Kong. However, where the REIT holds real estate in Hong Kong directly and derives rental income thereon, such rental income will be subject to Hong Kong property tax at the prevailing rate of 15%.

Where the REIT holds real estate in Hong Kong indirectly via SPVs, such SPVs will be subject to profits tax at the prevailing rate of 16.5% in respect of the profits derived from the real estate. Such SPVs would generally be exempt from property tax.

Under the two-tier profits tax rate system, which is effective from the year of assessment 2018/19, the first HKD 2 million of assessable profits of an SPV will be taxed at 8.25%. The remaining assessable profits will be subject to the original rate of 16.5%.

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Income derived from real estate outside Hong Kong and capital gains is generally exempt from property tax and profits tax.

Dividends paid by an SPV to another SPV are generally exempt from profits tax.

Proposed legislative changes

Please note that there is a proposal to refine Hong Kong's foreign-sourced income exemption ("FSIE") regime for foreign-sourced disposal gains to be effected from January 2024. Under the proposed refinements, subject to certain conditions, SPVs that receive gains on disposal of immovable properties situated outside Hong Kong can continue to treat such gains as non-taxable.

Capital gains

Hong Kong does not have a separate capital gain tax, but gains from the disposal of investment (including real properties) may be subject to Hong Kong profits tax if the gains are trading in nature and Hong Kong sourced.

Withholding tax

There is no withholding tax on interest, dividends or distributions from a REIT in Hong Kong.

Hong Kong has a territorial tax system and does not tax foreign-sourced income. There is, therefore, no question of any entitlement to a refund of a tax credit for foreign taxes withheld on the foreign-sourced income of a REIT.

Transfer pricing

The Inland Revenue (Amendment) (No. 6) Ordinance 2018 ('the Amendment Ordinance') was gazetted on 13 July 2018. The main objectives are to codify the transfer pricing principles, implement certain measures under the Base Erosion and Profit Shifting (BEPS) package and align the provisions in the Inland Revenue Ordinance (Cap. 112) with international tax requirements.

The key elements of the Amendment Ordinance are enhancements to double taxation relief provisions, transfer pricing rules and related provisions, TP documentation requirements relating to the master file, local file and country-by-country report, amendments to preferential regimes, including an extension of tax concession to domestic transactions and prescription of thresholds for substantial activities requirements.

Automatic Exchange of Financial Account Information ('AEOI')

The Inland Revenue (Amendment) (No. 2) Ordinance 2019 was gazetted on 1 March 2019. The legislative framework of AEOI under the Inland Revenue Ordinance (Cap. 112) was refined with effect from 1 January 2020, to better align the relevant provisions with the requirements promulgated by the Organisation for Economic Co-operation and Development ('OECD').

Other taxes

There is no special tax treatment applicable to REITs in Hong Kong.

Accounting rules

REITs in Hong Kong are required to comply with the local GAAP, which is in line with IFRS.

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3.2 Transition regulations

Conversion into REIT status
N/A

There are no specific tax privileges and concessions when converting into REIT status.

3.3 Registration duties

Registration duties
Stamp duties

The transfer of Hong Kong real estate or shares of Hong Kong incorporated SPVs would be subject to stamp duty in Hong Kong. Stamp duty on the sale of immovable property in Hong Kong is charged at rates that vary with the amount or value of the consideration. For non-residential property with effect from 11am on 22 February 2023, the maximum rate of 4.25% applies where the transfer consideration or value of the real estate is above HKD 21,739,120. For residential property, unless specifically exempted or provided; otherwise, a flat rate at 15% applies to the consideration or value of the residential property, whichever is the higher.

Where shares in a Hong Kong company are transferred, Hong Kong Stamp Duty at the rate of 0.26% applies to the greater of the transfer consideration or the value of the shares.

Hong Kong Stamp Duty also applies to a lease of real estate in Hong Kong, generally at a rate of 0.25% to 1% of the average yearly rent, depending on the term of the lease.

Hong Kong introduced a Special Stamp Duty (SDD) with effect from 20 November 2010. Unless specifically exempted, any residential property acquired on or after 20 November 2010, either by an individual or a company (regardless of where it is incorporated) and resold or transferred within a specified period of time after the acquisition, would be subject to SDD. The SDD payable is calculated by reference to the stated consideration or the market value, whichever is higher, at the following regressive rates for the different holding periods by the vendor or transferor before the disposal. The SDD rates were revised for any residential property acquired on or after 27 October 2012. All parties to a contract are liable to the SSD.

Period within which the residential property is resold or transferred after its acquisition	**SSD Rates** (for residential property acquired on or after October 27, 2012)
6 months or less	20%
More than 6 months but for 12 months or less	15%
More than 12 months but for 36 months or less	10%

Hong Kong introduced a Buyer's Stamp Duty (BSD) with effect from 27 October 2012. Unless specially exempted, a purchaser (any individual without Hong Kong permanent residence or any corporation, irrespective of its place of incorporation) would be liable to BSD for the transfer of residential property on or after 27 October 2012. BSD is charged at 15% on the greater of the sales consideration or the market value.

4 Tax treatment at the unitholder level

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4.1 Domestic unit holder

Corporate unitholder	Individual unitholder	Withholding tax
Tax-exempt	Tax-exempt	N/A

Corporate unitholder

While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether individual or non-individual unitholders receive them.

Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if such gains are capital gains. A unitholder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of the units in Hong Kong.

Individual unitholder

While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether individual or non-individual unitholders receive them.

Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if such gains are capital gains. A unitholder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of units in Hong Kong.

Withholding tax

There is no withholding tax in Hong Kong on the distribution of profits.

Stamp duty

Hong Kong stamp duty is chargeable regarding of the transfer of the REIT units at 0.26% of the transfer consideration, payable by the transferor and transferee at 0.13% each. In addition, a fixed duty of HKD 5 is currently payable on any instrument of transfer of units.

4.2 Foreign unit holder

Corporate unitholder	Individual unitholder	Withholding tax
Tax-exempt	Tax-exempt	N/A

Corporate unitholder

While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether individual or non-individual unitholders receive them.

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Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if the foreign unitholder is not carrying on any trade, profession or business in Hong Kong, or such gains are capital gains. A unitholder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of units in Hong Kong.

In addition, certain transactions undertaken by genuine foreign funds are exempt from Hong Kong tax.

Individual unitholder

While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether individual or non-individual unitholders receive them.

Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if the foreign unitholder is not carrying on any trade, profession or business in Hong Kong, or such gains are capital gains. A unitholder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of units in Hong Kong.

In addition, certain transactions undertaken by genuine foreign funds are exempt from Hong Kong tax.

Withholding tax

There is no withholding tax in Hong Kong on the distribution of profits.

Stamp duty

Hong Kong stamp duty is chargeable regarding of the transfer of the REIT units at 0.26% of the transfer consideration, payable by the transferor and transferee at 0.13% each. In addition, a fixed duty of HKD 5 is currently payable on any instrument of transfer of units.

5 Tax treatment of the foreign REIT and its domestic unitholder

Foreign REIT	Corporate unitholder	Individual unitholder
Local tax rules apply	No taxation	No taxation

Foreign REIT

Local tax rules apply. Rental income derived from properties in Hong Kong is subject to either Hong Kong profits tax or property tax.

Corporate unitholder

No Hong Kong tax if no business consisting of the acquisition and disposal of investment in REITs is carried on in Hong Kong.

Individual unitholder

No Hong Kong tax if no business consisting of the acquisition and disposal of investment in REITs is carried on in Hong Kong.

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REIT

A comparison of the
major REIT regimes
around the world.

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1 General introduction

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Enacted year	Citation	REIT type	REIT market
September 26, 2014	Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 ('REIT Regulations') dated 26 September 2014 –modifications/ amendments are made from time to time via a press release, notifications and circulars	Trust	- There are three REITs listed on the Indian stock exchanges - The Embassy Office Parks REIT, jointly owned by Blackstone Group LP and Bengaluru-based developer Embassy Property Developments Private Limited and Bain Capital, is the first Indian REIT listed on the Indian stock exchange in 2019. - Comprising a portfolio featuring eight office parks and four city-centre office buildings. During the financial year 2021-22, the REIT distributed a total of INR 20,626 million (~USD 266 million[1]) to its unitholders, giving a total return of up to 53% since listing in 2019[2] - India's second REIT, Mindspace Business Parks REIT listed on the Indian stock exchange on August 7, 2020 - The initial public offer raised INR 4.5 billion (~USD 58 million) and was subscribed 13 times - Mindspace Business Parks REIT is jointly owned by K Raheja Corp and Plantinum Illumination Trust (an Investment Vehicle of Abu Dhabi Investment Authority Group), comprising five integrated business parks and five quality independent offices - The REIT's distribution results for Q4 of FY 2021-22 offered an annualised yield of 6.7% on the issue price at a distribution of INR 10,941 million (~USD 140.99 million) to its unitholders[3] - Brookfield India REIT, which was listed in February 2021, became the third REIT to be listed on the bourses in India. The INR 38 billion (~USD 489.69 million) public issue was subscribed to almost eight times. Comprising a portfolio of five large campus-style office parks, it is India's only instituitionally management REIT. During the financial year 2021-22, the REIT distributed a total of INR 6856.57 million[4] (~USD 88.36 million) to its unitholders. - The total market capitalisation of the 3 REITs as of 20 May 2022[5] is ~INR 606.51 billion (~USD 7.82 billion) - The Indian REIT market continues to attract global investors. In the years to come, the REIT market could also see a modification in the asset mix to include data centres, warehouses, industrial parks and retail assets, over and above the traditional office space REITs.

1 Exchange rate of USD 1 = INR 81.70 as of April 27, 2023, retrieved from www.xe.com/currencyconverter/convert/?Amount=1&From=USD&To=INR is used for converting INR to USD throughout the document.

2 Source: Annual report for 2022 published by Embassy Office Parks REIT

3 Source: Quarterly Results (Q4) for 2022 published by Mindspace REIT - www.mindspacereit.com

4 Source: Audited financials for 2022 published by Brookfield India REIT on https://www.brookfieldindiareit.in/

5 Source: www.nseindia.com

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Post enactment of the REIT Regulations, the regulators partnered with relevant stakeholders in the country, including government bodies, investors and real estate developers and have brought about many changes in the Indian REIT Regulations to bring them in line with globally recognised norms, especially with respect to distribution policies, capital requirements, etc. The Reserve Bank of India, through a series of amendments in its regulatory policy, enabled foreign investments under the automatic route in REITs. The pass-through status for REITs was provided under the taxation regime for REITs right from the beginning. However, to make the pass-through status effective, keeping in mind the practical considerations put forward by the stakeholders, further amendments were made to the tax law. Such consistent impetus by the Government to bring REITs to life has resulted in the launch of three successful REIT listings in India.

Although several foreign REITs have been investing in Indian assets over the last few years, encouraging response and a good listing of the recent REITs listing in India opens doors for many real estate enterprises with a substantially large portfolio of rent-yielding properties to set up their own Indian REIT. In addition, the performance shown by Indian REITs has also boosted Investors' confidence in attracting global investors. The ability to raise resources through monetisation of rent-yielding properties at relatively attractive costs is a re-rating trigger for the REIT- issuing real estate companies and boosts investor sentiment towards the entire sector.

Sector summary*

Listing Country	Number of Listed REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
India	5	3	8.866,45	0,23%

Top REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Embassy Office Parks REIT	3.088,92	-23,15%	7%	0,16%
Mindspace Business Parks REIT	2.048,03	-13,81%	6%	0,03%
Brookfield India Real Estate Trust	1.000,68	-19,39%	6%	0,04%

** Market cap rebased in EUR and are correct as at June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
A REIT should be registered with SEBI and be constituted as a trust with its trust deed having the main objective of undertaking the activity of the REIT in accordance with the REIT Regulations. REIT should have a sponsor, manager and trustee

a. Sponsor to a REIT

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Conditions for eligibility of a sponsor are as under:

- no maximum limit on the number of sponsors; the concept of 'sponsor group' incorporated to leverage the capabilities of other group entities in terms of eligibility criteria for being a sponsor;
- a consolidated net worth of at least INR 1000 million (~USD 12.24 million), with each sponsor's net worth being at least INR 200 million (~USD 2.45 million);
- the sponsor or its associates to have not less than five years of real estate development or real estate fund management experience; and
- track record of at least two completed projects for a developer sponsor.

Key rights and responsibilities – sponsor(s) and sponsor groups:

- Setting up a REIT and appointing a trustee;
- Transferring or undertaking to transfer assets, rights and interest in the Holding company ('Holding company')/Special Purpose Vehicle ('SPV') to the REIT before allotment of units to applicants;
- Minimum post-initial public offer ('IPO') holding of sponsor and sponsor group to be at least 15%:
  - Three-year lock-in period for 15% of post-IPO holding; and
  - One-year lock-in period for balance post-IPO holding.

Conditions for de-classification of the status of sponsor:

- Where a REIT has been listed on a stock exchange for a period of three years, upon application, the status of the sponsor can be declassified, provided:
  - Units held by such a sponsor and its associates taken together does not exceed 10% of the outstanding units of the REIT;
  - The manager of the REIT is not controlled by such sponsor or its associates;
  - The sponsor or its associates are not fugitive economic offenders; and
  - Approval of the unitholders (where the number of votes cast in favour is more than the number of votes cast against).

b. Manager to a REIT

Conditions for eligibility of a manager of a REIT (being a company, limited liability partnership ('LLP') or a body corporate) are as under:

- A minimum net worth of INR 100 million (~USD 1.22 million);
- A manager or its associates should have a minimum experience of five years in fund management, advisory or property management in the Real Estate sector or in Real Estate development;
- A manager to have at least two key personnel having a minimum of five years of experience in fund management advisory or property management in the real estate sector or real estate development; and
- The manager has more than half of its directors/governing board as independent and not directors/managers of the manager of another REIT.

Key rights and responsibilities – manager:

- Making the investment decisions with respect to the underlying assets of the REIT, including any further investment or divestment of the assets;
- Ensuring that a REIT's, Holding company's and SPV's assets have proper legal, binding and marketable titles and agreements;

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- Identifying and recommending investment opportunities;
- Complying with the conditions and strategy mandated for the investment;
- Appointing other service providers in consultation with a trustee;
- Undertaking lease and property management (directly or through agents);
- Ensuring that a REIT's assets are adequately insured;
- Addressing unitholders' grievances and distribution-related issues;
- Ensuring annual audit of a REIT's accounts by an auditor;
- Overseeing developmental activities;
- Providing activity and performance reports on a REIT every three months to its board or governing board;
- Ensuring adequate disclosure and timely submission of documents to the concerned stock exchange;
- Maintaining records pertaining to activities of a REIT for a minimum period of seven years; and
- Additional obligations cast on the manager, including the chief financial officer, chief executive officer, and board of directors of the manager, to comply with the specific regulations under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 , in relation to REIT listing is appended in Annexure

c. Trustee to a REIT

Conditions for Eligibility of Trustee:

- Registered with SEBI and not an associate of the sponsor (s) or manager.

Key rights and responsibilities – Trustee:

- Appointing a manager and executing his or her agreement;
- Overseeing the manager's activities and operations and obtaining compliance certificates on a quarterly basis;
- Reviewing related party transactions;
- Ensure that the activity of the REIT is being operated in accordance with the provisions of the trust deed, the prescribed regulations and the offer document;
- Obtaining unitholders' approval on specified matters; and
- Shall not invest in units of the REIT in which it is designated as the trustee.

2.2 Legal form and minimum initial capital

Legal form	Minimum asset size
Trust	INR 5,000 million (~USD 61.20 million)

2.3 Unitholder requirements and listing requirements

Mandatory listing of units of REIT within three years from the date of registration with SEBI. In case of failure to list within three years, it shall surrender its certificate of registration to the SEBI and cease to operate as a REIT.

Slabs for minimum public float have been prescribed as under:

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If post-issue capital is:	Minimum public float required
< INR 16,000 million	25% of the post-issue capital or INR 2,500 million (~USD 30.60 million), whichever is higher
INR 16,000 million ≤ INR 40,000 million	Minimum INR 4,000 million (~USD 48.96 million)
≥ INR 40,000 million	Minimum 10% of the post-issue capital

However, the public float shall be increased to a minimum of 25% of the post-issue capital (where lower pursuant to the above slabs) within three years from the date of listing.

A minimum trading lot of one unit and minimum subscription in the INR 10,000 – 15,000 range.

The minimum number of subscribers to the initial public offer should be 200 at the time of the public offer (other than sponsors, its related parties and associates of the REIT).

Maximum subscription from any investor other than the sponsor(s), its related parties and its associates shall not be more than 25% of the total unit capital.

No person(s) other than the sponsor(s), its related parties and its associates shall acquire units of REIT exceeding 25% of the value of outstanding REIT units unless approval from 75% of the unitholders by value is obtained.

Units held by sponsors/promotors for a period of one year or more may be offered to the public for sale:

- Holding period of equity shares, compulsorily convertible securities (from the date fully paid up), and interest in the Holding company and/or SPV (against which units of Trust were received) to be considered in the calculation of above one year; and
- Above convertibles to be converted to equity shares prior to filing the offer document.

Units held by persons other than the sponsor prior to the listing are to be held for a period of a minimum of one year post-listing.

Foreign investments in REITs regulated by SEBI are permissible under the automatic route per the exchange control regulations.

The concept of a strategic investor was defined in December 2017 and further amended in June 2020:

- A strategic investor is an Infrastructure Finance Company registered as a Non-Banking Financial Institution (NBFC), Scheduled Commercial Bank, Multilateral and/or Bilateral Development Financial Institution, systemically important NBFC, Foreign Portfolio Investors (FPIs), an insurance company registered with the Insurance Regulatory and Development Authority of India and a mutual fund who can invest jointly or severally minimum 5% or maximum 25% of total offer size by REIT;
- The lock-in period of 180 days from the date of listing of a public issue;
- The Draft Offer Document is to mention the details of the strategic investor;
- The unit price for a strategic investor should be greater than or equal to the public issue price. If the strategic investor price is less than the public issue price, the strategic investor is to make an additional investment. If the strategic investor price is higher than the public issue price, no refund will be issued to the strategic investor; and
- If a public issue fails due to a minimum subscription, the strategic subscription agreement will be terminated.

2.4 Asset levels/activity test

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Restrictions on activities/investments
- Investment permitted in: (1) Real estate assets in India (other than vacant land, agricultural land, etc.) (2) Securities of SPVs holding permissible real estate assets in India - Investment through a Holding company is also permitted, subject to conditions

At least 80% of the value of a REIT is to be in completed and rent/income-generating real estate with a lock-in period of three years from the purchase date.

A maximum of 20% of the total value of REITs can be from:

- Under-construction properties with a lock-in period of three years after completion and completed but non-rent generating properties with a lock-in period of three years from the date of purchase;
- Unlisted equity shares of companies deriving at least 75% of their operating income from real estate activities (subject to lock-in as mentioned above being satisfied where investment in under-construction property or completed but non-rent generating property is made through unlisted equity shares);
- The listed or unlisted debt of real estate companies (other than investment in debt of Holding company/SPV);
- Mortgage-backed securities;
- Equity shares of listed companies in India, generating at least 75% of their income from real estate activities;
- Government securities;
- Unutilised floor space index ('FSI') and transferable development rights ('TDR') with respect to existing investments; or
- Cash or money market instruments.

Additional conditions:

- A direct holding of real estate assets in India or through an SPV or a two-level structure through a Holding company;
- Investment through a Holding company should be subject to the following requirements:
  - An ultimate holding interest of the REIT in SPVs to be at least 26%;
  - Other shareholders/partners of the Holding company/SPV should not restrict the REIT, Holding company or SPV from complying with the REIT regulations, and an agreement has been entered into with such shareholders/partners to that effect;
  - The manager, in consultation with the trustee, shall appoint at least such number of nominees on the board of a Holding company and/or SPV which are in proportion to the holding interest of the REIT/Holding company in the Holding company/SPV; and
  - In every meeting of a Holding company and/or SPV, the voting of the REIT shall be exercised.

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- Investment is not permitted in vacant land, mortgages or agricultural land (with certain exceptions);
- Not less than 51% of the consolidated revenue of the REIT, Holding company and SPV to be from rental, leasing and letting out of assets or incidental revenue;
- Investment in other REITs or lending (except lending to Holding company/SPV) is not permitted; investment in debt securities is not considered lending;
- The unitholder's approval is required for the disposal of a REIT's assets or interest in the SPV if it exceeds 10% of the value of the assets in a financial year; and
- Co-investment is permitted, subject to conditions.

2.5 Leverage

Leverage
- Up to 25% of the asset size, with no specific conditions - From 25% up to 49%, credit rating and unitholders approval required

Aggregate consolidated net borrowings (i.e. net of cash and cash equivalents, including investments in overnight mutual funds having maturity of one day) and deferred payments not to exceed 49% of the value of the REIT assets. If such borrowings exceed 25% of the value of the REIT assets:

- Credit rating is to be obtained from a credit rating agency registered with SEBI; and
- Approval of the unitholders (where the number of votes cast in favour is more than the number of votes cast against).

2.6 Profit distribution obligations

Dividend	Timing
Not less than 90% of net distributable cash flows	At least once every six months

Where distributions are not made within fifteen days of the declaration, the manager shall be liable to pay interest as prescribed.

A minimum of 90% of the net distributable cash flow of a REIT is to be distributed to unitholders.

A minimum net distributable cash flows to be distributed by a Holding company to a REIT (subject to provisions of the Companies Act, 2013, and Limited Liability Partnership Act, 2008):

- 100% of cash flows received from SPVs; and
- 90% of the balance.

An SPV is to distribute a minimum of 90% of its net distributable cash flows to a REIT/ Holding company.

A REIT is to distribute at least 90% of the sale proceeds arising from the sale of property or equity shares/ interest in a Holding company/ SPV unless reinvestment is proposed within a period of one year.

Distribution is to be undertaken at least once every six months in a financial year. Any amount remaining unclaimed or unpaid out of the distributions declared by a REIT is to be transferred to the 'Investor Protection and Education Fund' constituted in the manner specified.

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The REITs may take guidance from the following indicative framework for defining and calculating the net distributable cash flows at the Holdco/SPV and at the REIT level:

(I.) Calculation of net distributable cash flows at the SPV level:

Description	Amount
Profit after tax as per the statement of profit and loss/income and expenditure (standalone) (A)	xx
Add: Depreciation and amortisation as per the statement of profit and loss/income and expenditure	xx
Add/less: Loss/gain on sale of real estate assets	xx
Add: Proceeds from the sale of real estate assets adjusted for: - related debts settled or due to be settled from sale proceeds - directly attributable transaction costs - proceeds reinvested or planned to be reinvested as per para 18 (7) (a) of the REIT regulations	xx
Add: Proceeds from the sale of real estate assets not distributed pursuant to an earlier plan to reinvest, if such proceeds are not intended to be invested subsequently	xx
Add/less: Any other item of non-cash expense/non-cash income (net of actual cash flows for these items), if deemed necessary by the manager. For example, any decrease/increase in the carrying amount of an asset or of a liability recognised in the statement of profit and loss/income and expenditure on the measurement of the asset or the liability at fair value, interest cost as per effective interest rate method, deferred tax, lease rents recognised on a straight-line basis, etc.	xx
Less: Repayment of external debt (principal)/redeemable preference shares/debentures, etc., if deemed necessary by the manager	xx
Total Adjustments (B)	xx
Net Distributable Cash Flows (C)=(A+B)	**xx**

(II.) Calculation of net distributable cash flows at the consolidated REIT level:

Description	Amount
Profit after tax as per the statement of profit and loss/income and expenditure (consolidated) (A)	xx
Add: Depreciation and amortisation as per the statement of profit and loss/income and expenditure (consolidated)	xx
Add/less: Loss/gain recognised on the sale of Real estate assets or equity shares or interest in Holdco/SPV	xx

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Description	Amount
Add: Proceeds from the sale of real estate assets or equity shares or interest in Holdco/SPV adjusted for the following: - related debts settled or due to be settled from sale proceeds - directly attributable transaction costs - proceeds reinvested or planned to be reinvested as per para 18(7)(a) of the REIT regulations	xx
Add: Proceeds from the sale of real estate assets or equity shares or interest in Holdco/ SPV not distributed pursuant to an earlier plan to reinvest if such proceeds are not intended to be invested subsequently.	xx
Add/less: Any other item of non-cash expense/non-cash income (net of actual cash flows for these items), if deemed necessary by the manager. For example, any decrease/increase in the carrying amount of an asset or of a liability recognised in the statement of profit and loss/income and expenditure on the measurement of the asset or the liability at fair value, interest cost as per effective interest rate method, deferred tax, lease rents recognised on a straight-line basis, etc.	xx
Less: Repayment of external debt (principal)/redeemable preference shares/debentures, etc., if deemed necessary by the manager	xx
Total Adjustments (B)	xx
Net Distributable Cash Flows (C)=(A+B)	**xx**

2.7 Sanctions

Penalties/loss of status rules
In the case of any default by REIT or parties to the REIT or any other person involved in the activity of the REIT, the same is dealt with in the manner provided in SEBI (Intermediaries) Regulations, 2008

2.8 Related party transactions

Permission granted subject to the following:

- The arm's-length requirement being met;
- Specified disclosures being made to unitholders and the stock exchange;
- Valuation reports or fairness opinions obtained from independent valuer(s) in the case of specified transactions (for instance, buying and selling of assets);
- The unitholder's approval is required for the following transactions:
  - The acquisition or sale of investments from or to related parties (whether directly or through the Holding company or SPV) exceeding 10% of the total value of the REIT; and
  - Borrowings from related parties in a financial year exceeding 10% of total consolidated borrowings of the REIT, Holding company and SPV(s).

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2.9 Valuation

Complete valuation of a REIT (in the prescribed format) to be undertaken at least once every financial year.

The valuer must have a minimum experience of five years in real estate valuation.

The valuer must not be an associate of the sponsor, manager or trustee.

Valuation the manager receives must be submitted to the designated stock exchange and unitholders within fifteen days of receiving such valuation reports.

Any issue of units to the public and any other issue of units as may be specified by SEBI, full valuation of all REIT assets to be undertaken (a summary of the report to be included in the offer document and the report should not be more than six months old at the time of offer). This shall not apply where full valuation has been undertaken not more than six months prior to such issue, and no material changes have occurred thereafter.

Half-yearly valuation of REIT assets to be conducted for the half-year ending September 30.

Complete valuation to be undertaken for purchase or sale of property; unitholders' approval needed if:

- the acquisition price is more than 110% of the valuation; and
- the sale price is less than 90% of such valuation.

A two-year cooling-off period for the valuer after every four consecutive years of valuation being done of the same property.

The valuer's remuneration must not be linked to the value of the asset.

2.10 Governance aspects

Unitholders' meetings must be convened at least once every year within 120 days from the end of the financial year, with the gap between two meetings not exceeding 15 months.

Generally, a resolution is considered passed if unitholders casting votes in favour are more than those casting votes against it.

For resolutions pertaining to certain specified matters (for instance, delisting), the resolution is considered as passed if votes cast in favour are at least 1.5 times the votes cast against.

Approval of 75% (in value) of unitholders not connected to the transaction required for a change in sponsor, induction of a sponsor or a change in control of the sponsor.

An annual report is to be provided to unitholders within three months from the end of the financial year; a half-yearly report to be given within 45 days from September 30.

Price-sensitive information, as well as that having a bearing on operations or the performance of a REIT, must be disclosed to the stock exchange.

2.11 Other aspects

Multiple classes of REIT units are not permitted.

No schemes are to be launched. However, subordinate units carrying inferior rights may be issued to sponsor(s) and their associates.

Parity is to be maintained between unitholders (no preferential voting or other rights among unitholders).

3 Tax treatment at the level of the REIT

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3.1 Income tax

Capital gains from the sale of securities of SPV	Dividend income from SPV	Interest income from SPV	Rental income from property held directly by REIT	Any other income
The income of REIT is taxable at the applicable rates	The income of REIT should be exempt	The income of REIT is not taxable	The income of REIT is not taxable	30%

Capital gains from the sale of securities of SPVs:

- Listed equity shares[1]
  - Long-term capital gains[2] above INR 0.1 million are taxable at 10%.
  - Short-term capital gains[3] are taxable at 15%.
- Other securities
  - Long-term capital gains are[4] taxable at 20% (with indexation[5]).
  - Short-term capital gains are[6] taxable at 30%.

Dividend income from an SPV:

Dividend income received by the REIT from the SPV continues to be exempt in the hands of the REIT. Accordingly, the dividends distributed by the SPV to a REIT should not be subject to withholding tax.

Interest income from SPV:

Interest income received by the REIT from the SPV should be exempt from the hands of the REIT. In the recent amendment brought in by the Union Budget (with effect from 1 April, 2023), the interest income received by REIT from SPV should not be subject to withholding tax. However, the REIT is required to withhold tax at the rate of 5% on the distribution of such income to a foreign unitholder and at the rate of 10% on the distribution of such income to a domestic unitholder.

Rental income from property held directly by REIT:

Rental income received by the REIT should be exempt in the hands of the REIT. Tenants are not liable to withhold taxes on rental income paid to REIT on the property held directly by the REIT. However, the REIT

1 Subject to payment of Securities Transaction Tax ('STT') on the transaction of acquisition (unless specifically excluded) as well as on sale of the shares of the SPV

2 If held for more than 12 months

3 If held for up to 12 months

4 If held for more than 24 months and in case of other securities if held for more than 36 months

5 Indexation is not applicable on sale of debt securities

6 If held for up to 24 months and in case of other securities if held up to 36 months

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would be required to withhold tax at the rate of 10% on the distribution of such income to a domestic unitholder and, in the case of the distribution of such income to a non-resident unitholder, the withholding shall be at the rates in force.

Other income of the REIT

Any other income, including income from the assets held directly by the REIT, should be taxable at the Maximum Marginal Rate, i.e., 30% plus applicable surcharge and cess.

3.2 Registration duties

Registration duties
Stamp duty and registration costs on real estate range between 5% and 15%

Stamp duty on the issue and transfer of shares are as follows:

Particulars	Stamp Duty
Issuance of shares (physical and electronic form)	0.005%
Transfer of shares on a non-delivery basis	0.003%
Transfer of shares on a delivery basis	0.015%

There are no specific exemptions available to REITs.

Stamp duty is levied at the time of registration of the purchase transaction. Rates for stamp duty vary between 5% and 15% on real estate transactions, depending upon the state in which the instrument for transfer is executed. Stamp duty is levied on the sale price or value of the asset as per circle rates, whichever is higher.

Registration of documents recording the transfer of real estate assets in the name of the purchaser attracts a registration fee. A registration fee is a state levy and varies across states in India.

The following fee structure is applicable to the REIT under the REIT Regulations:

Fees	REIT
Application fees	INR 0.1 million
Registration fees	INR 1 million
Issue filing fees	0.1% in the case of the initial and follow-on offer and 0.05% in the case of the rights issue

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4 Tax treatment at the unitholder level

Income tax on units received in exchange of shares of the SPV

Units received in exchange for shares of the SPV should not be taxable in the hands of the unitholder at the time of such exchange. However, at the time of disposal of such units by the unitholder, the unitholder would be liable to pay the applicable capital gains tax (the preferential capital gains regime, explained below under the heading 'Income tax on the sale of units by the unitholder', would be applicable for such units held by the unitholder).

The cost of acquisition of the shares of the SPV should be considered to be the cost of acquisition for the purposes of computing the capital gains in the hands of the unitholder. The period of holding of the units should be computed from the date of acquisition of the shares of the SPV.

Income tax on units received in exchange of assets (other than shares of the SPV)

Units received in exchange for assets or securities (other than shares of the SPV) shall be taxable at the time of swap. Long-term capital gains[7] on the swap of assets shall be taxable at the rate of 20% (10% in the case of a foreign company), and short-term capital gains shall be taxable at the rate of 30% and 40% in the case of a foreign company.

Income tax on the sale of units by the unitholder

Long-term capital gains[8] more than INR 0.1[9] million on the sale of units of a REIT by the unitholder should be taxable at the rate of 10% in the hands of the unitholder, subject to payment of Securities Transaction Tax ('STT').

Short-term capital gains[10] on the sale of units of a REIT by the unitholder should be chargeable to tax at the rate of 15% plus applicable surcharge and health and education cess) subject to payment of STT.

STT at the rate of 0.1% should be leviable on the transaction value of the sale. Separately, STT at 0.2% should be leviable in the case of the sale of unlisted units of REIT by a unitholder which was acquired by way of swapping of shares of an SPV.

Minimum Alternative Tax ('MAT') at the rate of 15% shall be payable on profits arising (as per books of account) from the sale of units by resident companies not opting for the concessional tax regime16) and non-resident companies. In the case of Sponsors, a separate computation mechanism is prescribed for the calculation of MAT.

Income tax on dividends received from the REIT

Dividends distributed by the REIT shall be exempt in the hands of the unitholders, subject to the condition that the SPV distributing such dividend to the REIT has not opted for a lower corporate tax regime (i.e., the 22% tax rate exclusive of surcharge and cess). Furthermore, no taxes are required to be withheld by the REITs on the distribution of such dividends.

However, the said exemption would not be available in the hands of the unitholders in case the SPV distributing dividends to the REIT has opted for the lower corporate tax regime, and dividends would be taxable at the rates applicable to the investor under the relevant Tax Treaty or the domestic tax laws, whichever is beneficial.

7 If held for more than 36 months (other than immovable property)/ 24 months in case of immovable property

8 If held for more than 36 months

9 Calculated on an aggregate basis on transfer of equity shares, units of equity-oriented funds and units of other business trusts in a financial year.

10 If held for up to 36 months

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Further, the REIT, while making distributions to unitholders, would be required to withhold taxes at the rate of 10% plus applicable surcharge and cess. The withholding tax rate shall be 10%, irrespective of a lower rate under the relevant tax treaty.

Further, the Government has now brought the units of REITs under the ambit of dividend stripping[11] and bonus stripping[12] provisions.

Income tax on distributions received from the REIT

Income received by the investors as distributions from the REIT, which is already taxed at REIT level, is exempt in the hands of the investors. The distributions received from the REIT, which are attributable to the interest income accrued to/received by the REIT and rental income received from the tenants with respect to the property held directly by the REIT, are as follows:

- Interest income should be chargeable to income tax in the hands of the unitholder being resident at the applicable rates. Taxes withheld by the REIT, as discussed above, should be available as credit. Interest income received by a non-resident unitholder should be taxable at the rate of 5%.
- Rental income should be chargeable to income tax in the hands of the unitholder at the rates applicable to such unitholder (a non-resident unitholder may be allowed to take treaty benefits if available on such income). Taxes withheld by the REIT, as discussed above, should be available as credit.

Any sum received by the unit holder of a REIT which is not in nature of interest, dividend or rental income and is not chargeable to tax in the hands of REIT will be taxable in the hands of the unitholders as other income. The taxable amount is to be computed based on a specified formula which effectively taxes such sum only to the extent it exceeds the original issue price of the units.

The cost of acquisition to the unitholder shall stand reduced to the extent the distributions are not taxable as above.

5 Tax Treatment in the hands of the sponsor

As regards the sponsor, the swap of shares in an SPV for units in a REIT is a transaction exempt from tax. However, at the time of disposal of such units by the unitholder, the unitholder would be liable to pay the applicable capital gains tax. The cost of acquisition of the shares of SPV should be considered to be the cost of acquisition for the purpose of computing the capital gains in the hands of the unitholder. The period of holding of the units should be computed from the date of acquisition of the shares of SPV.

However, where units are received in exchange for assets other than shares in an SPV, the transaction should be chargeable to tax. Where the exchanged assets are held for more than thirty-six months (more than twenty-four months in case of immovable property), the rate of tax is generally 20% (plus applicable surcharge and health and education cess), and held for up to thirty-six months (up to twenty-four months in case of immovable property), the rate of tax is generally 30% (lower rate of 25% may be applicable subject to fulfilment of specified criteria)[13] (plus applicable surcharge and health and education cess).

11 Dividend stripping - Where any person purchases any specified securities within a period of 3 months prior to the record date and such person (i) sells or transfers such securities within a period of 3 months after such record date, or (ii) such security within a period of 9 months after such record date, and (iii) the dividend or income on such securities or unit received or receivable by such person is exempt, then, any loss arising to such person on account of such purchase and sale of securities or unit, to the extent such loss does not exceed the amount of such dividend or income received or receivable, will be ignored for the purposes of computing its income chargeable to tax.

12 Bonus stripping - Where any person purchases any specified securities within a period of 3 months prior to the record date and such person is allotted additional bonus securities on the basis of holding of the aforesaid securities on the record date, and if such person sells or transfers all or any of the original securities within a period of 9 months after the record date while continuing to hold all or any of the additional securities, then any loss arising on account of such purchase and sale of all or any of the securities will be ignored for the purpose of computing its income chargeable to tax,. Further, the loss so ignored would be deemed to be the cost of acquisition of such additional securities as are held by it on the date of sale or transfer of original units.

13 For FY 2022-23, where the total turnover or the gross receipt of a domestic company in FY 2021-22 does not exceed INR 4,000 million, lower tax rate of 25% shall apply.

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MAT at the rate of 15% (plus applicable surcharge and health and education cess), if the sponsor is a corporate entity, would be applicable if not opting for a concessional tax regime. A separate computation mechanism is prescribed for the calculation of such MAT, which is payable only on the disposal of REIT units.

Note: All tax rates quoted in this document are exclusive of a surcharge as may be applicable and health and education cess. All the tax rates mentioned in the document would have to be increased by an applicable surcharge for the financial year 2023-2024, as tabulated below:

Particulars	Surcharge rate (%)
Domestic companies (not opting for lower tax regime)	
Total income exceeding INR 10 million but not exceeding INR 100 million	7%
Total income exceeding INR 100 million	12%
Domestic companies opting for lower tax rate	10%
Foreign companies:	
Total income exceeding INR 10 million but not exceeding INR 100 million	2%
Total income exceeding INR 100 million	5%
Other assessees (i.e. Individual/Association of persons/Body of individual):	
Total income exceeding INR 5 million but not exceeding INR 10 million	10%
Total income exceeding INR 10 million but not exceeding INR 20 million	15%
Total income exceeding INR 20 million but not exceeding INR 50 million	25%
Total income exceeding INR 50 million	37%*

*If the taxpayer opts for a new tax regime (referred to as the default tax regime), the surcharge rate shall be restricted to 25%.

The total tax and surcharge are to be further increased by a health and education cess of 4%.

6 Exchange Control Regulations

Foreign investment permitted in REIT

Persons resident outside India, including Registered Foreign Portfolio Investor (RFPI) and Non-resident Indian (NRI), are permitted to invest in units of REIT. RFPIs have recently been permitted to invest in debt securities issued by REITs, subject to the terms and conditions specified in this regard.

Sale/transfer/pledge of units in REIT

Such investments can be transferred or sold in any manner or redeemed as per SEBI regulations/RBI directions. Further, these units could be pledged by the non-resident unitholder to secure credit facilities.

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Are investments by REIT treated as foreign investment?

Investments by a REIT shall be regarded as a foreign investment only if either the sponsor or the manager20 is not Indian 'owned and controlled'. If such sponsor or the manager is foreign-owned, such an investment is treated as a foreign investment; they would need to comply with the applicable sectoral caps and other restrictions. For this purpose, ownership and control of companies and LLP are to be determined in accordance with the regulations prescribed.

Procedural conditions

The payment for the units of REIT is to be made by inward remittance through normal banking channels, including by debit to a Non-Resident Rupee ('NRE') or a Foreign Currency Non-Resident ('FCNR') account. REIT will have to report foreign investment in the REIT to RBI in the Single Master Form. In the case of FPI/Foreign Venture Capital Investor (FVCI), payment may be made out of their Special Non-resident Rupee (SNRR) account.

Definition of 'real estate business'

Under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, 'real estate business' has been regarded as a prohibited sector for foreign direct investment.

The definition of 'real estate business' specifically excludes REITs registered and regulated under the existing SEBI regulations from the ambit of 'real estate business'. This potentially enables the REITs to directly buy (and sell) real estate.

REITs investment in IFSC

The Indian Government permitted REITs incorporated in permissible jurisdictions to be listed on stock exchanges operating in International Financial Services Centre ('IFSC') in India.

International Financial Services Centre Authority ('IFSCA') has prescribed the regulatory framework for listing REITs on stock exchanges in IFSC, which is more or less in line with the SEBI regulations, with certain differentiators.

REITs can be set up by any person/entity from India (within or outside the IFSC) or from a foreign jurisdiction, subject to the satisfaction of requirements under the regulations.

Secondary listing of REITs listed in India (outside the IFSC) or in permissible foreign jurisdictions is also permitted. The units of such REITs are to be traded in a currency other than the INR.

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Annexure 1:

Key additional obligations on manager:

- Formulating a vigil mechanism, including a whistle blower policy for directors and employees to report genuine concerns. An independent service provider may be engaged by the manager for providing or operating the vigil mechanism who shall report to the audit committee. The audit committee shall review the functioning of the vigil mechanism;
- Submitting a secretarial compliance report given by a practicing company secretary to the stock exchanges within sixty days from end of financial year; The said report should also be annexed to annual report of REIT;
- Submitting a quarterly compliance report in prescribed format to concerned stock exchange within twenty-one days from the end of each quarter;
- Laying procedures to inform members of board of directors about risk assessment and minimization procedures;
- Complying with obligations with respect to employees including senior management, key managerial personnel, directors and promoters and independent directors;
- Constituting a qualified and independent audit committee in accordance with prescribed regulations;

Key additional obligations on board of directors of manager:

- The board of directors of the manager shall comprise of not less than six directors and have not less than one woman independent director. The quorum for every meeting shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director;
- The board of directors of the manager should meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings;
- Reviewing compliance reports every quarter pertaining to all laws applicable to the REIT as well as steps taken to rectify instances of non-compliances;
- Setting forth the recommendation of the manager in the notice to the unitholders;
- Ensuring that plans are in place for orderly succession for appointment to the board of directors and senior management;
- Laying down code of conduct for all members of board of directors and senior management including duties of independent directors;
- Framing, implementing and monitoring the risk management plan for the manager;
- Constituting nomination and remuneration committee, stakeholders relationship committee, risk management committee in prescribed manner;
- Minimum information as prescribed under the relevant schedule should be placed before the board of directors of the manager;

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Other governance aspects of manager

The compliance officer, chief executive officer and the chief financial officer of manager should provide the compliance certificate to the board of directors of manager stating the following:

a. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

   (i) These statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

   (ii) These statements together present a true and fair view of the affairs of the REIT and are in compliance with existing accounting standards, applicable laws and regulations;

a. There are, to the best of their knowledge and belief, no transactions entered into by the manager on behalf of REIT during the year which are fraudulent, illegal or violative of the entity's code of conduct;

b. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the manager pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies

c. They have indicated to the auditors and the Audit committee:

   (iii) Significant changes in internal control over financial reporting during the year;

   (iv) Significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

   (v) Instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the manager's internal control system over financial reporting of REIT.

EPRA

EUROPEAN PUBLIC REAL ESTATE ASSOCIATION

GLOBAL REIT SURVEY

ASIA - PACIFIC

Indonesia

DIRE

A comparison of the major REIT regimes around the world.

2023

1 General introduction

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Enacted year	Citation	REIT type	REIT market
2007	- Bapepam-LK (Capital Market and Financial Institution Supervisory Agency) Regulation Number IX.M.1 No: Kep-425/BL/2007 dated 18 December 2007 - Financial Service Authority (or Otoritas Jasa Keuangan (OJK) Regulation Number 64/POJK.04/201	Collective Investment Contract – Real Estate Investment Fund (Dana Investasi Real Estat – DIRE)	Five DIREs have been established as of 26 April 2023*

* Based on Indonesia Central Securities Depository (Kustodian Sentral Efek Indonesia) website: https://www.ksei.co.id/services/registered-securities/dire

A DIRE is a Real Estate Investment Fund as mentioned in the Otoritas Jasa Keuangan ('OJK') (Financial Services Authority) Regulation Number 64/POJK.04/2017 concerning Real Estate Investment Funds in the form of Collective Investment Contracts (CIC)[1].

There are two types of DIRE, a Sharia DIRE and a conventional DIRE. A Sharia DIRE is a collective investment scheme in real estate according to Sharia Law. Specific Sharia DIRE guidelines were issued in 2016 based on OJK Regulation Number 30/POJK.04/2016, which state that a Sharia DIRE must have 90% of its income derived from Sharia-compliant activities. If a DIRE does not comply with these guidelines, then it is a conventional DIRE.

Currently, eleven DIREs are registered as of 26 April 2023[2], in Indonesia, where three are listed DIRE on the Indonesia Stock Exchange (IDX) and three are non-listed DIRE with total assets under management amounting to IDR 10,295,721,229,475[3] (approx. USD 693,081,200)[4].

Sector summary**

Listing Country	Number of Listed REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Indonesia	2	1	453,26	0,02%

Top REITs**

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
First Real Estate Investment Trust	363,38	2,78%	10%	0,02%

*** Market cap rebased in EUR and are correct as at June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

1 CIC is a Collective Investment Contract as mentioned in the guidance relating to Article 18 paragraph (1) letter b of Law Number 8 of 1995 concerning the Capital Market.

2 Based on Indonesia Central Securities Depository (Kustodian Sentral Efek Indonesia) website: https://www.ksei.co.id/services/registered-securities/dire

3 Based on OJK website: https://reksadana.ojk.go.id/Home/HomePagePublic.aspx as of June 2022

4 US$ 1 = IDR 14,855 on April 26, 2023

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2 Requirements

2.1 Formalities/procedure

Key requirements
Registration with the OJK or BAPEPAM, LK and Indonesia Stock Exchange

All of the following requirements apply to both conventional and Sharia DIREs.

A DIRE may publicly offer its participation units to public investors. If a DIRE does not list its participation units on the Indonesia Stock Exchange, its investment manager shall buy back participation units that are redeemed by unitholders.

A registration statement for a public offering by a DIRE shall be submitted to the OJK by its investment manager (based on OJK Regulation No. 64/POJK.04/2017).

In cases where a DIRE does not make a public offering, its investment manager shall submit the CIC of the DIRE to OJK no later than ten days following the signing of such CIC by attaching the following documents:

c. any document used in the offering; and

d. any other contract related to the DIRE in the form of a CIC.

The requirements for listing of participation units of a DIRE on the Indonesia Stock Exchange are as follows[5]:

1. Registration Statement submitted to the OJK has become effective;
2. minimum initial value of IDR 50 billion;
3. minimum 50 unitholders; and
4. paying a listing proposal registration fee of IDR10 million.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
CIC	IDR 50 billion (approx. USD 3,365,870.08)[1]

1 US$ 1 = IDR 14,855 on April 26, 2023

The value of assets that will comprise the initial portfolio of the Listed REIT in the form of CIC is at least IDR 50 billion.

A DIRE is a vehicle that is used to pool funds from public investors and then invest in real estate assets, assets related to real estate, and/or cash or cash equivalent.

Assets related to real estate are securities or shares of both listed and non-listed real estate companies.

Real estate constitutes physical land and any buildings established on the concerned land.

5 IDX Fact Book 2019

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A real estate company constitutes a company whose main business activities are in the field of real estate, and over 50% of its income is typically derived from physical real estate assets.

A Special Purpose Company (SPC) is a Limited Company with paid-up capital and at least 99.9% owned by the DIRE. A DIRE can be set up with or without an SPC. However, it is usual that a DIRE does set up an SPC and typically holds its real estate investments via an SPC. The contract should be established in accordance with the rules and regulations promulgated by the OJK.

An investment manager and a custodian bank establish a DIRE. The investment manager and custodian bank of the DIRE shall fulfil their duties in good faith and in the interest of the DIRE.

While based on current regulation, post-December 2017, an investment manager that manages a DIRE shall make sure that[6]:

a. investment portfolios of DIRE can only be in the form of:

1. Tangible real estate assets of at least 80% of the net asset value, and

2. Other assets at a maximum of 20% of the net asset value, namely:

   i. Assets related to real estate (see definition above);

   ii. Financial market instruments; or

   iii. Securities portfolio in the form of:

      a) Securities issued domestically in Indonesian resident companies;

      b) Other financial instruments meeting the definition of the Financial Services Authority as Securities;.or

      c) Cash/cash equivalents.

b. investment in real estate assets can be made:

   1. Directly through the physical purchase of real estate assets, to the extent that:

      i. Real estate assets are in the territory of the Republic of Indonesia; and

      ii. The real estate assets that meet the following requirements:

         a) has generated an income before the real estate assets are transferred to the DIRE; or

         b) real estate assets in the form of real estate in the process of completion of construction that generates an income no later than six months after being transferred to the DIRE; or

   2. Indirectly through the ownership of shares of companies, which are owners, authorities, and controllers of real estate assets, so that DIRE become the company's controlling shareholders. All equity investments must be in Indonesian resident real estate companies.

c. In the case of DIRE investing in real estate assets in the form of real estate assets under construction, investment Managers must:

   1. ensure the total investment value is no more than 10% of the net asset value of the DIRE;

   2. ensure that no income dilution of the DIRE is significant during the construction period in that all invested funds should be from new investment sources and not reinvested income generated from the same asset;

   3. there are no construction issues that can lead to the incomplete construction of real estate by ensuring that all relevant government licences have been obtained prior to construction beginning;

   4. ensuring that the acquisition of real estate in the construction completion process is carried out in

6 OJK Regulation Number 64/POJK.04/2017

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the best interests of the holder of a DIRE; and

5. submit additional information in the prospectus of DIRE relating to an investment in real estate assets in the form of real estate in the process of completion of construction.

d. In managing investment in DIRE, the investment manager must ensure that at least 51% income of DIRE is obtained from investment in real estate assets (typically, the 80% minimum physical real estate holding must produce more than 51% of the net income for the DIRE); and

e. Assets included in the DIRE portfolio have a strong legal foundation and are legitimate and liquid.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
At least 50 shareholders	No

There must be at least 50 holders of participation units in the DIRE after a public offering.

2.4 Asset level/activity test

Restrictions on activities/investments
- Prohibition on engaging in short selling of real estate to realise a profit margin - Prohibition on investing in vacant land or in a property that is still under development; the activity of development shall exclude redecoration, repairs and maintenance, and renovation - Prohibition on lending and/or pledging real estate under its control for the interest of other persons - Prohibition on investing in real estate and or assets related to real estate outside of Indonesia - Prohibition on issuing debt securities - Prohibition on engaging in a short sale (less than two years) - Assets of the DIRE cannot form part of assets owned by the investment manager or custodian bank

DIREs shall only invest in real estate, assets related to real estate in Indonesia, and or cash or cash equivalent.

DIREs are prohibited from investing in vacant land or a propertystill under development. Development activities shall exclude redecoration, repair and maintenance, and renovation.

DIREs are prohibited from lending and/or pledging real estate under its control for the interest of other persons.

The investment manager and custodian bank of the DIRE are prohibited from acting for and on behalf of themselves in buying and selling real estate, assets related to real estate and other assets of the DIRE for which they act.

DIREs are only permitted to borrow funds other than by way of issuing debt securities to aquire real estate. The value of such borrowing must not exceed 45% of the value of the real estate to be acquired.

In the case where an investment manager or custodian bank of a DIRE quit or transfers its duties to another investment manager or custodian bank, the former investment manager or custodian bank is to continue managing the DIRE before a replacement is appointed.

DIREs are prohibited from engaging in a short sale of real estate to realise a profit margin.

DIREs are prohibited from transferring real estate assets that have been owned for less than two years unless:

a. It was clearly stated to the unitholders of the DIRE at the time of making the investment that the intention was to sell the investment within two years; or

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b. More than one-half of all existing participation unitholders of the DIRE have given their approval to make the sale in a general meeting of the unitholders of the DIRE.

DIREs are prohibited from transferring real estate assets for a price that is 90% or lower than the price assessed by an appraiser, and the date of the valuation shall not be more than six months from the date of the asset transfer.

2.5 Leverage

Leverage
Shall not exceed 45% of the market value of the real estate

A DIRE is only permitted to borrow funds other than by way of issuing debt securities for the purpose of acquiring real estate. The value of such borrowing must not exceed 45% of the value of the real estate to be acquired.

2.6 Profit distribution obligations

Operative income	Timing
90% of its distributable income	Annually

A DIRE shall distribute no less than 90% of its net after-tax profit to all unitholders every year.

If a DIRE uses an SPC to hold its investments, the SPC shall distribute all returns from the investment to the DIRE each year.

2.7 Sanctions

Penalties/loss of status rules
Administrative sanction

With no prejudice to criminal provisions in the Capital Market field, the OJK may impose sanctions on any violation of authorities' rule, as well as on any person that causes the violations to occur. With no prejudice to criminal provisions in the Capital Market field, the OJK has the authority to impose administrative sanctions, such as:

a. a written warning;

b. a fine that is the obligation to pay a certain amount of money;

c. restrictions on business activities;

d. suspension of business;

e. revocation of business license;

f. cancellation of approval; and

g. cancellation of registration.

3 Tax treatment at the level of the REIT

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3.1 Corporate tax/withholding tax/value-added tax/duty on the acquisition of land and buildings

Acquisition

Generally, DIREs set up SPCs to acquire real estate assets. As such, the land and/or building seller will transfer its assets to the SPC.

Transfer tax on land and building.

The transfer of the land and buildings will be subject to a 0.5% final tax imposed on the purchase price. This tax will be treated as a tax cost for the seller and cannot be recovered as a tax credit, and is not tax-deductible by the seller.

Final tax means that the tax will be imposed on the transfer value once only at the time of the transaction. Thus, any capital gain or capital loss from the transfer should be excluded from the corporate income tax calculation of the seller.

Transfer of shares

Where there is a transfer of shares in a company with underlying property to an SPC or DIRE, the seller will be subject to tax at the Corporate Income Tax ('CIT') rate of 22% on the capital gain (potentially reduced by any tax losses of the seller), but no final transfer tax should arise.

For publicly listed corporates with a minimum of 40% of the shares held by public investors that also meet certain other criteria, the applicable CIT rate is 3% lower than the regular rate.

In the event that the transferred assets are shares listed on the Indonesian stock exchange, the applicable tax rate is the final tax of 0.1% of the proceeds.

Transfer of bonds

From 30 August 2022, if an SPC or a DIRE purchases bonds issued by a company, any income derived from such bonds will be subject to a 10% final income tax.

Value Added Tax (VAT) on the transfer of land/building

The transfer of land and buildings from a seller to a DIRE is subject to VAT at a rate of 11%. The 11% VAT can be treated as an input VAT by the SPC. To be reclaimed as an input VAT, the SPC must be registered as a VAT-able entrepreneur (PKP). Once the real estate asset is leased, the SPC should impose 11% VAT on the rental of the land and building to its customers.

It is highly likely that the input VAT arising on the acquisition of the land and buildings by the SPC will be much higher than any output VAT on the rental activity, resulting in a VAT overpayment. In this case, the SPC can file a refund request to the Indonesian Tax Office (ITO) or carry forward the overpayment to the following months. A refund request will trigger a tax audit on the SPC, which will take a 12-month period to conclude. However, under the existing tax regulation, the VAT overpayment can be refunded in advance within one month. This is because SPC can be qualified as a low-risk taxpayer.

Please note that under current VAT legislation, registration as a VAT-able company is required if there is a delivery of taxable goods and/or taxable services exceeding IDR 4.8 billion (approx. USD 323,124)9 within a fiscal year. While there is no requirement for a DIRE to provide this level of taxable supplies (i.e. rent), we expect thisto be the case.

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Duty on the acquisition of land and buildings

Acquisition of land and buildings is subject to a duty on acquiring land and buildings (BPHTB) at a maximum of 5%. The BPHTB is charged to the party receiving or obtaining the title to the land and buildings (i.e. the buyer); in this case, the SPC. This duty is applied to the acquisition value or the tax value attributed to the land and buildings, whichever is higher.

Holding period

Rental income received by the SPC from tenants is subject to a 10% final income tax under Article 4(2) of the Income Tax Law, meaning that the rental income should be excluded from the ordinary income of the SPC. As the rental income is excluded from the ordinary income in the corporate income tax calculation, the expenses incurred (maintenance, service charge, investment manager fee etc.) attributable to the income related to the rental of land and buildings shall be treated as non-deductible expenses in the corporate income tax calculation. The non-deductible expense includes the depreciation of land and buildings, amortisation of the duty on the acquisition of land and buildings and any other relevant costs, such as investment management fees, etc.

The SPC will charge the VAT on rents at a rate of 11% to the tenants, which, when received, should be paid to the ITO.

Any payment of management fees to a property manager, investment manager or custodian bank by the SPC or DIRE is subject to 2% Article 23 Withholding Tax (WHT).

In the event that the SPC or DIRE receives a coupon or interest from Indonesian bonds, the interest should be subject to final withholding income tax at 10%.

Under the Indonesian Omnibus Tax Law that is stipulated in Ministry of Finance Regulation Number 18/PMK.03/2021, if SPC or DIRE receives any dividend payment from an Indonesian listed or unlisted company, dividend is exempted from income tax and hence not subject to Article 23 WHT.

Further, any dividend payment from the SPC to the DIRE is tax-exempt; thus, dividend income received by the DIRE from the SPC is not subject to corporate income tax at the level of the DIRE.

Dividends can be exempted as long as they meet the requirements e.g. dividends are distributed based on a general meeting of shareholders or distributed as interim dividends in accordance with the provisions of laws and regulations.

Based on the OJK Regulation, the DIRE is required to distribute a minimum of 90% of its net income after tax to unitholders. There is no more tax on the income distribution received by the unitholders from the DIRE as the income received from the DIRE is exempt from tax under Indonesian Income Tax Law.

Exit taxation

In the event that the DIRE divests its real estate, this transaction would trigger a transfer of land and building that would be subject to 11% VAT, which would be payable by the purchaser to the DIRE, which would then need to be paid to the ITO, and 2.5% final income tax on the gross proceeds (based on Government Regulation No. 34, 2016) in the hands of the SPC or DIRE. BPHTB, at a rate of 5%, will be imposed at the level of the buyer.

3.2 Transition regulations

Conversion into REIT status
Not applicable

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3.3 Registration duties

Registration duties
Not applicable

4 Tax treatment at the shareholder level

4.1 Domestic or Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Distributions tax-exempt	Not subject to taxation	Not applicable

Corporate shareholder

The distribution of income paid by a DIRE to a domestic corporation or a foreign tax resident is typically tax-exempt.

In practice, any transfer of units of the DIRE between unitholders under closed-ended funds is subject to 0.1% income tax on gross sale proceeds in the hands of the selling unitholders. Under an open-ended DIRE, unitholders are required to sell their units to the asset manager, and the gain is exempt from income tax in the hands of the unitholders. The ITO has not yet issued a specific regulation on this particular transfer of units.

Individual shareholder

The distribution of income paid by a DIRE to a domestic individual or foreign individual is tax-exempt.

In practice, any transfer of units between unitholders in closed-ended funds is subject to 0.1% final income tax in the hands of the selling unitholders. The ITO has not yet issued a specific regulation on this transfer of units.

Withholding tax

Not applicable.

5 Tax treatment of foreign REIT and its domestic shareholder

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Foreign REIT	Corporate unitholder	Individual unitholder
Taxed in Indonesia if income is accrued or derived from Indonesia	22%	Up to 35% income tax

Foreign REIT

Income arising within a foreign REIT will only be taxed in Indonesia if it is accrued in or derived from Indonesia, subject to the provisions of the relevant double tax treaties between Indonesia and the jurisdictions in which the foreign REIT is established.

Corporate unitholder

Typically, income received by Indonesian tax resident companies is subject to CIT at a rate of 22%.

For publicly listed corporates with a minimum of 40% of the shares held by public investors that also meet certain other criteria, the applicable CIT rate is 3% lower than the regular rate.

Foreign tax credits can typically be considered in the corporate tax calculation. This analysis may vary depending on the double tax treaty between Indonesia and the jurisdiction of the foreign REIT.

Individual unitholder

Typically, Indonesian tax resident individuals receive income is subject to an individual tax of up to 35%. Foreign tax credits can typically be considered in individual tax calculations. This analysis may vary depending on the double tax treaty between Indonesia and the jurisdiction of the foreign REIT.

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	Enacted year	Citation	REIT type
J-REIT	2000	Investment Trusts and Investment Corporations Law	Trust or corporate type entities (in practice, only corporate type exist)

History

Japan's REIT is known as the Japanese Real Estate Investment Trust ('J-REIT'). It was introduced with the Investment Trusts and Investment Corporations Law amendment in November 2000 (Investment Trust Law or 'ITL'). The ITL provides for two different types of investment vehicles: 'Investment Trusts' and 'Investment Corporations (toshi hojin)'. All J-REITs have been formed so far as Investment Corporations, and therefore, only this type of structure will be discussed below. The ITL adopts an external management structure for J-REITs, whereby the relevant Investment Corporation is prohibited from having employees and must outsource management by entering into contracts with a registered Asset Management Company, Asset Custodian and General Administrator.

kpmg logoUnder the applicable tax law, an Investment Corporation J-REIT is subject to Japanese corporate tax at an effective tax rate of around 35%. However, a J-REIT can deduct dividends distributed to its shareholders from its taxable income if the J-REIT complies with certain requirements under the Japanese Special Taxation Measures Law ('Special Taxation Measures Law'), as discussed further below.

The first two J-REITs were listed on the Tokyo Stock Exchange ('TSE') in September 2001, sponsored by two of Japan's largest real estate companies. The number of listed J-REITs increased, and the J-REIT market expanded significantly until the 2007 global financial crisis. The Tokyo Stock Exchange REIT INDEX ('TSE REIT INDEX') peaked at 2,612.98 on May 1, 2007, and fell to its lowest level at 704.46 on October 1, 2008. [The market recovered thereafter, and as of February 21, 2020, the TSE REIT INDEX was at 2,244.38 points. Although, due to the concerns over the spread of COVID-19, the TSE REIT INDEX fell to 1,145.53 points on March 19, 2020, and as of May 1, 2020, the TSE REIT INDEX was at 1,564.67 points.] [Baker Tokyo: The market index is to be updated by EPRA team.]

In 2018, two new REITs were listed on the TSE. CRE Logistics Fund J-REIT, Inc., Xymax REIT Investment Corporation, Takara Leben Real Estate Investment Corporation and Itochu Advance Logistics Investment Corporation were listed. In 2019, three new REITs – Escon Japan REIT Investment Corporation, SANKEI REAL ESTATE Inc and SOSiLA Logistics REIT Inc – were listed on the TSE. However, in 2020, due to the impact of COVID-19, there was no new REIT listing. In addition, there were two mergers among the listed REITs in 2020.

As a result, 61 J-REITs were listed on the TSE, and the total market capitalisation of J-REITs was around JPY 16.7 trillion as of April 31, 2021. [Baker Tokyo: We input the above data based on data provided by certain organisations popular in the Japanese market].

In 2020, the total amount of assets acquired by all listed J-REITs amounted to JPY [●] billion.

Sector summary*

Listing country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
Japan	60	53	99.772,80	7,20%

Top five REITs*

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Company name	Mkt cap (EUR m)	1 yr return (EUR) %	Div yield %	% of Global REIT Index
Nippon Building Fund Inc	6.105,49	-21,43%	4%	0,44%
Nippon Prologis REIT	5.044,34	-19,38%	2%	0,35%
Nomura Real Estate Master Fund	4.966,75	-7,80%	4%	0,38%
Japan Real Estate Investment Corporation	4.936,24	-17,42%	4%	0,37%
Japan Metropolitan Fund Investment	4.268,24	-14,17%	5%	0,34%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
- Building Lots and Building Transactions Agent Licence - Discretionary Transactions Agent Licence - Registration of the Asset Management Company with the Financial Services Agency - Registration of the J-REIT with the Local Finance Bureau

As stated above, J-REITs are typically Investment Corporations that must be managed by an external registered Asset Management Company. As of September 2007, new comprehensive regulations in the form of the Financial Instruments and Exchange Law ('FIEL') came into effect to regulate financial services. Although the regulations under the ITL continue to apply to J-REITs, the FIEL supersedes a part of the ITL with respect to regulating the Asset Management Company of an Investment Corporation.

Under the FIEL, an Asset Management Company must be registered as an Investment Manager. As such, the FIEL replaced the previous approval process with a new registration process. However, this process is relatively similar to the former approval procedures.

The first step for a sponsor of the J-REIT is establishing an asset management company and acquiring a 'Building Lots and Building Transactions Agent Licence' and a 'Discretionary Transaction Agent Licence' from the Local Municipal Government and the Ministry of Land, Infrastructure, Transport and Tourism ('MLIT'), respectively. After these licences are obtained (or at least the application is formally accepted by the MLIT), the Asset Management Company may apply for registration as an Investment Manager with the FSA. The requirements for the Investment Manager registration include a minimum paid-in-capital/net assets of JPY 50 million and having sufficiently experienced personnel, most notably including a compliance officer and a chief investment officer. Once the registration is completed, the registered Asset Management Company can incorporate a J-REIT as a promoter of the Investment Corporation.

After the J-REIT is set up, it must be registered with the Local Finance Bureau to commence its business as a J-REIT. The J-REIT will be subject to the reporting and inspection requirements of the FSA, Securities and Exchange Surveillance Commission and the Local Finance Bureau.

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2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Corporation (in practice)	JPY 100 million

Legal form

A J-REIT must be established as a domestic Investment Corporation in compliance with the ITL. As previously stated, a J-REIT can either be a 'trust type' or a 'corporate type' under the ITL. When the first J-REITs were formed, the trust type was administratively cumbersome and more expensive to establish. In addition, the corporate governance rules applicable to the corporate type J-REIT were considered more attractive to investors. As a result, as of June 1, 2021, all current publicly listed J-REITs are Investment Corporations.

Minimum share capital

J-REIT shares have only one class with voting rights called investment units. The minimum share capital for a J-REIT required under the ITL is JPY 100 million.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
- No requirements under the Investment Trust Law (ITL) - Special shareholder conditions in order to deduct dividend distribution under the Special Taxation Measures Law	No

Shareholder requirements

There are no shareholder (unitholder) requirements under the ITL. However, for the J-REIT to deduct distributed dividends under the Special Taxation Measures Law, certain specific shareholder (sometimes referred to as common shareholder) conditions must be met.

Listing requirements

A J-REIT is nor required to be listed on a stock exchange under the ITL or the Special Taxation Measures Law. A number of J-REITs are unlisted.

After J-REITs were introduced under the ITL in 2000, the TSE established the infrastructure for J-REITs to be listed on the TSE in March 2001. The listing requirements for J-REITs include the following:

1. The J-REIT under the ITL must be a close-ended fund;

2. At least 70% of the J-REIT's investment assets must be invested in or expected to be invested in real estate assets, including (1) real estate, (2) leasehold rights in real estate, (3) surface rights, (4) easement, and (5) trust beneficiary interests of trusts owning real estate assets; provided that the J-REIT submits prior to approval to its listing certain documents such as copies of the sale and purchase agreements under which the J-REIT would acquire real estate assets;

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3. At least 95% of the J-REIT's total assets must be invested, or expected to be invested, in real estate assets, assets relating to real estate assets (e.g., an interest in tokumei kumiai (TK) partnership or shares in an Investment Corporation, which owns more than 50% of its assets in real estate assets), cash and cash equivalents;

4. Net assets and total assets must exceed JPY 1 billion and JPY 5 billion, respectively; and

5. Minimum free-float requirements (at the time of the initial listing):

   (1) The number of outstanding shares should be 4,000 shares or more;

   (2) The total number of shares held by the 'ten largest J-REIT shareholders' should be 75% or less of the total outstanding shares; and

   (3) The number of shareholders other than the 'ten largest J-REIT shareholders' should be 1,000 or more.

*The TSE listing rules previously required the real estate assets described in item 2 above to be located in Japan. However, such restriction was removed in the amendments to the TSE listing rules as of May 2008. Accordingly, J-REITs are allowed to invest in foreign real estate, either directly or indirectly, through certain special-purpose foreign companies. Regarding the 2013-2014 ITL amendment on investments through special-purpose foreign companies, please refer to paragraph 2.4 below.

2.4 Asset level/activity test

Restrictions on activities/investments
- Merely an asset holding vehicle - Investment primarily in 'Qualified Assets'

Under the ITL, a J-REIT is established for investments 'primarily' in 'Qualified Assets'. In principle, a J-REIT is merely an asset holding vehicle; and is not permitted to have employees and is required to outsource asset management, asset custody and general administrative functions to external professionals.

'Qualified Assets' include (1) securities (including typical securities and trust beneficiary interests), (2) derivatives rights, (3) real estate, (4) leasehold rights in real estate, (5) surface rights, (6) promissory notes, (7) monetary claims, (8) interests in a tokumei kumiai (TK) partnership which is not securities, (9) commodities, (10) certain commodities derivatives, (11) renewable energy generating plants, and (12) public facility operation rights. 'Primarily' is interpreted to mean more than 50% of the total assets.

Renewable energy-generating facilities and rights to operate public facilities were included in 'Qualified Assets' in 2014 to facilitate investments in infrastructure assets. In this connection, the TSE created a new market for listed infrastructure funds in April 2015, and seven infrastructure funds were listed on the new market as of 1 June 2021, all of which are focusing on solar renewable energy generating facilities. Please note that listed infrastructure funds have a listing, tax and other regimes different from J-REITs in certain material respects.

Under the ITL, a J-REIT cannot own more than 50% of the voting shares of another company. However, an amendment to the ITL was enacted in 2013.It became effective in 2014, making this restriction inapplicable where a J-REIT acquires more than 50% of the voting shares in a company located in a foreign jurisdiction whose sole purpose is to acquire, lease and dispose of real estate in that jurisdiction as long as such company pays the J-REIT certain dividends which are distributable to the J-REIT within six months of the end of each fiscal year of the company under the applicable laws or customs of the jurisdiction. This is provided that the laws of the jurisdiction or customs where the real estate is located or other unavoidable circumstances prohibit the J-REIT from conducting such transactions itself. FSA lists the United States, India, Indonesia, the PRC, Vietnam and Malaysia as examples of such jurisdictions. The TSE and the Investment Trust Association also similarly amended their own rules.

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Furthermore, to deduct distributed dividends for tax purposes under the Special Taxation Measures Law (see paragraph 3.1B, points f and g below), there is a restriction (i) on owning an interest in 50% or more of another company and (ii) on owning certain assets, such as renewable energy generating facilities and concessions to operate public facilities, in an amount of 50% or more of the total book value of assets on the J-REIT's balance sheet as of the end of the fiscal period. However, as a result of the amendment to the ITL enacted in 2013, certain foreign companies held by a J-REIT for the limited purposes of acquiring, leasing and disposing of foreign real estate are now excluded from this restriction.

As discussed in paragraph 2.3 above, the listing rules of the TSE also have asset-holding requirements (see paragraph 2.3, points 2 and 3).

2.5 Financing

Financing
J-REITs can issue shares and bonds and obtain loans

Under the ITL, there are three methods for J-REITs to procure funding: (1) issuing shares, (2) issuing bonds (Investment Corporation Bonds), which are permitted only by closed-end type J-REITs, and (3) loans from financial institutions. As J-REITs' framework is primarily intended to enable equity investors to invest in real estate through them, issuing shares is the fundamental funding method and issuing bonds and loans supplement, particularly by improving capital efficiency through leverage.

To diversify the funding methods and capital policy of J-REITs, the ITL amendment introduced frameworks such as 'Rights offering' and 'Repurchase of its own shares' in 2013.

The rights offering is a capital funding method whereby (i) a J-REIT issues share acquisition rights to existing shareholders for no consideration and (ii) the shareholders subscribe to and purchase such shares in the J-REIT by exercising their rights. The advantages of a rights offering include the following:

- J-REIT is able to raise capital without diluting existing shareholders' ownership; and
- it can be a relatively feasible funding option under severe economic conditions (e.g., unavailability of sufficient credit from financial institutions).

Repurchase by a J-REIT of its own shares was generally prohibited under the original ITL. The amendment to the ITL removed such restriction on the repurchase from shareholders of publicly traded shares of J-REITs that primarily invest in real estate and certain other assets subject to the J-REIT's Articles of Incorporation permitting such repurchase:

- Share repurchasing is considered an effective measure for enhancing J-REIT's financial base by improving capital efficiency, among other things.
- In 2017, Invesco Office J-REIT Inc was the first J-REIT to conduct such a share repurchase.

2.6 Leverage

Leverage
- No gearing (LTV) limit under applicable law - May only obtain loans from Qualified Institutional Investors

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Under the ITL, there is no restriction concerning borrowings or gearing ratio. Typically, the J-REIT provides in its financial policy disclosed in the annual securities report a limitation on the gearing ratio (LTV ratio) of approximately 55% to 60% of the ratio of the total assets.

To qualify to deduct distributed dividends under the Special Taxation Measures Law, J-REITs may not obtain loans from lenders that are not Institutional Investors. The Institutional Investors for this purpose generally include securities companies, banks, insurance companies, pension funds, etc. However, the scope of such 'Institutional Investors' under the Special Taxation Measures Law is narrower than as provided under the FIEL.

2.7 Profit distribution obligations

Ordinary income	Capital gains	Timing
Greater than 90% of 'distributable profits' under the Special Taxation Measures Law	Same as ordinary income	In relation to the same taxable period

Under the Special Taxation Measures Law, for a J-REIT to be permitted to deduct distributed dividends, a number of conditions must be satisfied. One such condition is that a J-REIT must distribute to its investors of more than 90% of its distributable profits during the same applicable tax period, which is an amount based on accounting profits with certain adjustments. Capital gains are not distinguished from ordinary income for the purpose of satisfying this requirement. Although there is no minimum distribution requirement under the ITL, the ITL requires that distribution only be made based on the approval of its audited financial statements for the relevant fiscal period approved at a Directors' meeting. The fiscal period of a J-REIT is generally six months (or sometimes one year), and the taxable period of a J-REIT is usually its fiscal period. The shorter fiscal year allows the J-REIT to make distributions more often than once a year.

2.8 Sanctions

Penalties/loss of status rules
- Regulatory actions - Prohibition on deduction of dividend distributions

In principle, a J-REIT is created under the ITL and is required to register with the Local Finance Bureau to operate its business as a J-REIT. If a J-REIT does not comply with the ITL, a J-REIT may ultimately be required to terminate its J-REIT activities. All activities of a J-REIT are subject to regulatory scrutiny, and any deviation may result in regulatory actions, including an order to improve its conduct or the withdrawal of its registration.

Even if the listing requirements or the dividend deduction requirements are not met, the J-REIT registration may not be revoked. However, a J-REIT properly operating under the ITL should comply with all listing requirements of the TSE (see paragraph 2.3) to continue being listed and comply with all dividend deduction requirements under the Special Taxation Measures Law to deduct its distributed dividends for each relevant taxable period.

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3 Tax treatment at the level of the REIT

3.1 Company tax/withholding tax

Current income	Capital gains	Withholding tax
- Corporate tax at an effective rate of approximately 31% - 35% - Dividends are deductible from taxable income under certain conditions	- Not distinguished from ordinary income	- Varies depending on the specific circumstances of the shareholder

Ordinary income

Japanese companies are subject to corporate income taxes at an effective rate of approximately 31% to 35%. Rental income, business income and capital gains are not distinguished from ordinary income for Japanese corporate tax purposes and are taxed aggregately at the effective tax rates discussed above.

Under the Special Taxation Measures Law, however, a J-REIT is allowed to deduct distributed dividends from its taxable income if all of the following requirements are met. Any remaining taxable income after the deduction of distributed dividends will be subject to regular Japanese corporate taxes.

The requirements for deducting dividend distributions are as follows[1]:

A. Requirements for an eligible J-REIT:

a. The J-REIT must be registered under Article 187 of the ITL;

b. Either of the following conditions must be met:

i. here must be a public offering of the J-REIT shares with a total issue price of JPY 100 million or more at the time the J-REIT is established; or

ii. The outstanding shares must be owned by at least 50 shareholders or exclusively by Qualified Institutional Investors at the end of the relevant fiscal period.

c. The Articles of Incorporation provide that more than 50% of the shares must be offered domestically (this requirement is calculated on an aggregated basis for all issuances, including past issuances); and

d. The J-REIT must have a fiscal period of one year or less.

B. Requirements relating to the applicable fiscal year:

a. The J-REIT must not engage in any business other than asset management, open any place of business other than its head office or hire any employees;

b. The asset management function must be outsourced to a qualified asset manager as defined in Article 198(1) of the ITL;

c. The custody function for the assets owned by the J-REIT must be outsourced to a qualified custodian as defined in Article 208(1) of the ITL;

d. None of the shareholders or its affiliates must collectively hold more than 50% of the outstanding shares or voting rights at the end of the relevant fiscal period;

e. More than 90% of its ‘distributable profits’ as defined in the Special Taxation Measures Law must be distributed in the same fiscal period (in determining whether this requirement is met, certain

1 Article 67-15, the Special Taxation Measurement Law

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distributions in excess of retained earnings may be treated as dividends. Further, adjustments to the calculation basis can be made in the changes (increases or decreases) to the reserve for temporary differences arising between tax and accounting treatments as well as for the reserve for negative net asset item adjustments (e.g., deferred hedging losses); these adjustments should help meet this distribution requirement due to differences between the tax and accounting treatments of income or expenses);

f. The J-REIT must not hold 50% or more of the equity of another company (including another J-REIT), except for certain foreign companies held for the limited purpose of acquiring, leasing and disposing of foreign real estate;

g. As of the end of the fiscal period, the value of certain assets as specified under the Enforcement Order of the ITA, such as real estate and related trust certificates, except certain renewable energy generating facilities and concessions to operate public facilities, is in excess of 50% of the book value of total assets on the J-REIT's balance sheet; and

h. The J-REIT must not have loans from parties other than 'Institutional Investors', as defined in the Special Taxation Measures Law.

Accounting rules

A J-REIT must comply with Japanese accounting rules (J-GAAP) and, as a general principle, can only make dividend distributions from profits calculated based on J-GAAP. However, in certain circumstances, a J-REIT may be permitted to make a distribution in excess of profits in accordance with special provisions of the ITL.

Neither US GAAP nor IFRS is allowed for a J-REIT. A J-REIT's financial statements are only prepared on a single-entity basis since it generally cannot own subsidiaries.

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties (and other key taxes)

Registration duties (and other key taxes)
- Real property acquisition tax (favourable rate can be applied) - Registration tax (favourable rate can be applied) - Consumption tax - Fixed asset tax and city planning tax

Real property acquisition tax and registration tax are levied on an acquisition of real estate. Such taxes can be reduced under special treatment applicable to J-REITs that can satisfy certain requirements.

The sale of a building is subject to Japanese consumption tax, but the sale of land is not. Additionally, leasing of real estate for commercial purposes is subject to consumption tax, but leasing of residential real estate is not.

Fixed asset tax is levied based upon the government-assessed values of the land and buildings owned on January 1 each year. City planning tax may similarly be levied depending on location. Separately identified depreciable fixtures within a building would also be subject to fixed asset tax.

4 Tax treatment at the shareholder level

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The tax treatments in the domestic and foreign shareholders sections below relate to listed J-REITs.

4.1 Domestic shareholders

	Company shareholders	Individual shareholders	Withholding tax
Dividends	- Included in taxable income subject to the standard effective corporate tax rate - Dividend received deduction (DRD) are not applicable - Credit should ordinarily be available for withholding tax on the dividends against the corporate tax liability, with any excess refunded	- In principle, subject to inclusion in taxable income subject to progressive income tax rates; however, taxpayers typically elect to be taxed separately only through withholding tax	- Company shareholder - 15.315% withholding tax (to 2037, and 15% thereafter) - Individual shareholder - 20.315% withholding tax (to 2037, and 20% thereafter)
Capital gains from share disposition	- Included in taxable income subject to the standard effective corporate tax rate	- Subject to taxation separately from other income, to which progressive income tax rates apply at 20.315% until 2037 (and 20% thereafter)	N/A

Company shareholders

Dividends

For company shareholders, dividends from a listed J-REIT are subject to Japanese withholding tax at a tax rate of 15.315% (until 2037, when the rate becomes 15%). Dividend income is aggregated with other income and is subject to tax at the normal effective corporate tax rate of approximately 31% to 35%. The withholding tax can typically be credited against corporate income tax liability, with any excess amount refunded. Unlike dividends from ordinary Japanese companies, dividends from a J-REIT do not qualify for the dividend received deduction since they are tax-deductible at the J-REIT level.

Capital gains

Capital gains are not distinguished from ordinary income and are subject to corporate tax at the normal effective corporate tax rate. There is no withholding tax on capital gains arising from the disposition of J-REIT shares.

Individual shareholders

Dividends

Although the basic principle is that dividends from a listed J-REIT must be reported in a tax return and aggregated with other types of taxable income, most taxpayers choose to have the dividends taxed separately from ordinary income and have the standard progressive tax rates replaced by the withholding tax as the final tax liability, as described below.

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For individual shareholders, dividends from a listed J-REIT are subject to Japanese withholding tax at a rate of 20.315% (until 2037, when the rate becomes 20%). Individual shareholders can elect to have the dividends taxed separately from ordinary income, typically with the final tax liability being the withholding tax. However, individual shareholders owning 3% or more of the total outstanding shares of a J-REIT as of the record date are taxed on the dividends on the standard progressive tax rates together with other income and the withholding tax rate for such taxpayers, which is generally creditable against the final income tax liability, should be 20.42% (until 2037, and 20% thereafter).

Capital gains

Capital gains from a disposition of listed J-REIT shares through a Japanese securities company are subject to individual income tax separately from ordinary income. The standard rate of 20.315% will apply (until 2037, when the tax rate becomes 20%). This tax is usually paid by filing a tax return, with certain exceptions for qualified securities account holders, who pay the tax through withholdings from the qualified account.

Withholding tax

For company shareholders, dividends from a listed J-REIT are subject to withholding tax at the rate of 15.315% (until 2037, when the rate becomes 15%). The withholding tax can typically be credited against the corporate income tax liability, with any excess amount refunded.

For individual shareholders, dividends from a listed J-REIT are subject to withholding tax at the rate of 20.315% (until 2037, when the rate becomes 20%). However, individual shareholders owning 3% or more of the total outstanding shares of a J-REIT as of the record date are subject to withholding tax at 20.42% until 2037 and 20% thereafter.

4.2 Foreign shareholders

This section relates to shareholders who do not have a permanent establishment (PE) in Japan and are not tax residents in Japan. Foreign shareholders with a Japan PE would generally be taxed similarly, as discussed in the Domestic shareholder section above.

	Individual shareholder	Withholding tax	
Dividends	- Withholding tax is the final levy for foreign company shareholders	- Withholding tax is the final levy for foreign individual shareholders	Company shareholder - 15.315% withholding tax (to 2037, and 15% thereafter) - Tax treaties may provide some tax relief Individual shareholder - 15.315% withholding tax (to 2037, and 15% thereafter) - Tax treaties may provide some tax relief
Capital gains from share disposition	- Taxed in limited cases only for foreign company shareholders - Subject to national corporation taxes at a rate of approximately 24% (see detail below) - Tax treaties may provide some tax relief	- Taxed only in limited cases for foreign individual shareholders - Taxed at 15.315% (until 2037, and 15% thereafter). - Tax treaties may provide some tax relief	- N/A

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Company shareholders

Dividends

For foreign company shareholders without a PE in Japan, dividends from a listed J-REIT are subject to a withholding tax at a tax rate of 15.315% (until 2037 when the rate becomes 15%) as the final tax liability. Such shareholders are not subject to Japanese corporate income tax on dividend income. Tax treaties may provide some tax relief.

Capital gains

Israel_cover pict_klCapital gains arising from a disposition of J-REIT shares are not subject to withholding tax. A J-REIT is treated as a Japanese Real Property Holding Corporation ('JRPHC') if at least 50% of its total assets consist of real estate located in Japan, which is typically expected to be the case with a J-REIT. Foreign company shareholders without a PE in Japan are only subject to Japanese corporate tax on the capital gains arising from the disposition of shares of a J-REIT that is a JRPHC if on the day immediately preceding the first day of the fiscal year during which the disposition takes place the disposing shareholder, together with its affiliates (including a partnership in which the shareholder is a partner) owned more than a certain percentage of the total outstanding shares of the J-REIT. The threshold percentage for listed J-REIT shares is 5%. If taxes, the disposing shareholder, if taxed, must file a corporate tax return and the tax rateis 25.5896% (approximately 26%).

Tax treaties may provide some tax relief.

Individual shareholders

Dividends

For foreign individual shareholders without a PE in Japan, dividends from a listed J-REIT are subject to a withholding tax at the rate of 15.315% as the final tax liability (until 2037, when the rate becomes 15%). However, such shareholders who own 3% or more of the total outstanding shares of a listed J-REIT are subject to a 20.42% withholding tax as the final tax liability (until 2037 and 20% thereafter). Tax treaties may provide some tax relief.

Capital gains

Foreign individual shareholders without a PE in Japan are subject to tax on capital gains arising from a disposition of J-REIT shares only in limited circumstances, similar to foreign company shareholders (see above). Relevant gains should be subject to individual income tax at the rate of 15.315% (until 2037 and 15% thereafter) and would necessitate the filing of a related income tax return.

Tax treaties may provide some tax relief.

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Malaysia

UNIT TRUST

A comparison of the
major REIT regimes
around the world.

2023

1 General introduction

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	Enacted year	Citation	REIT type
Unit trust	The Securities Commission (SC) issued 'Property Trust Funds' guidelines in 2002, which were superseded by the issuance of REIT guidelines in January 2005. Further updates were issued by way of guidance notes issued in 2005, 2006 and 2007. All of the above were further superseded by the revised guidelines on REITs issued by the SC on 21 August 2008, with subsequent amendments made in 2012. In 2018, the SC issued a new set of guidelines for listed REITs and the existing guidelines on REITs were revised and made applicable to unlisted REITs. The new 2018 guidelines now incorporate the requirements relating to Islamic REITs. Further, the 2018 guidelines were revised on 18 June 2019 and on 28 November 2022. With effect from 28 November 2022, any proposal in relation to the listing and quotation of units of a Malaysian Islamic REIT on the Main Market of Bursa Securities, and conversion to an Islamic REIT must also comply with the Guidelines on Islamic Capital Market Products and Services.	- Capital Markets and Services Act, 2007 (CMSA) - SC Guidelines on REITs of 2012 - Malaysia Income Tax Act, 1967 (MITA) - SC Guidelines for Islamic REITs of 2005 - SC Guidelines on REITs of 2018 - SC Guidelines on Listed REITs of 2018 - SC Guidelines on Listed REITs of 2019 - SC Guidelines on Listed REITs of 2022 - Guidelines on Islamic Capital Market Products and Services	Trust type

The Real Estate Investment Trust is a part of Malaysian law. Specific REIT guidelines have been issued, and REIT-specific tax provisions have been introduced. The REIT guidelines were amended in 2005, 2006, 2007, 2008, 2011, 2012, 2018, 2019 and 2022.

Malaysian Islamic REIT:

The Islamic REIT is a collective investment scheme in real estate by which the unitholders conduct permissible activities according to Shariah Law. Specific Islamic REIT guidelines were issued in 2005, and thereafter, the new 2018 guidelines on REITs incorporated the requirements relating to Islamic REITs. With effect from November 28, 2022, any proposal in relation to the listing and quotation of units of a Malaysian Islamic REIT on the Main Market of Bursa Securities, and conversion to an Islamic REIT must also comply with the Guidelines on Islamic Capital Market Products and Services.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Malaysia	19	2	8.111,10	0.09%

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Top REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Sunway Real Estate Investment Trust	1,107.46	14.47%	2.97%	0.05%
Axis Real Estate Investment Trust	625,68	-9,16%	5%	0,04%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
- Registered trust - Trustees must be approved by the SC - Management company - Real estate held by the trust must be managed by a qualified property manager - Appoint a Sharia committee or a Sharia advisor (for Islamic REITs only)

In Malaysia, the establishment and registration of a trust require the approval of the SC. A trustee must be appointed for a REIT, and the appointment of the trustee must also be approved by the SC. Furthermore, the trustee must also be registered with the SC.

The trust must be managed and administered by a management company approved by the SC. The management company (except where the management company is licensed by the SC) must be a subsidiary of (a) a company involved in the financial services industry in Malaysia, (b) a property development company, (c) a property investment holding company or (d) any other institution that the SC may permit.

Foreigners can hold up to 70% of the equity of the management company. At least 30% of the equity of the management company must be held by local (i.e., Malaysian resident) shareholders. As in previous years, the management company must maintain a minimum shareholders' reserve of MYR 1 million (approximately USD 0.23 million, based on an exchange rate of MYR 4.4192 to USD 1 in April 2023) at all times.

Real estate held by the REIT must be managed by a qualified property manager who has been approved by the trustees.

Malaysian Islamic REIT:

The same requirements as above and, additionally, a Shariah committee or a Shariah adviser must be appointed to ensure that any property acquired by an Islamic REIT is Shariah-compatible.

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2.2 Legal form/minimum initial capital

Legal form	Minimum share capital
Unit trust	MYR 100 million (approximately USD 23 million, based on an exchange rate of MYR 4.4192 to USD 1 in April 2023)

Legal form

A REIT takes the form of a unit trust fund. It must be registered in Malaysia and approved by the SC.

Minimum initial capital

The minimum fund size is MYR 100 million (approximately USD 23 million, based on an exchange rate of MYR 4.4192 to USD 1 in April 2023).

If any trustee member of the REIT is a tax resident in Malaysia in the basis period for a tax year, the REIT will be a tax-resident person for Double Taxation Treaty purposes. There is uncertainty as to whether a distribution from a REIT would fall under the dividend article, business profit article or the other income article. Pending the amendment to the existing Double Taxation Treaty to be in line with OECD's proposal on REIT's distribution, the REIT's distribution is likely to be categorised as 'other income' unless the non-resident recipient can demonstrate otherwise (e.g., business profits).

2.3 Unitholder requirements/listing requirements

Unitholder requirements	Listing mandatory
No requirements	No

Unitholder requirements

There are no requirements.

There is no restriction on foreign unitholders in the REIT, but foreigners cannot hold more than 70% of the equity in the REIT's management company.

Listing requirements

A REIT can be either listed or unlisted. A REIT seeking to list its units must comply with the listing requirements, as detailed in Chapter 4 of the Bursa Malaysia Securities Berhad (LR) and Chapter 12 of the 2018 REIT guidelines for listed REITs (last revised in November 2022). These requirements include the following:

- The initial size of a REIT proposing a primary listing on the Main Market of Bursa Securities must be at least MYR 500 million;
- The applicant must have at least 25% of the total number of units for which listing is sought in the hands of a minimum number of 1,000 public unitholders holding not less than 100 units each;
- For the purpose of calculating the required minimum public holding, holdings by the management company, its directors and any person connected with such a management company or directors shall be disregarded;

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- The applicant must ensure that at least two directors or one-third (or the nearest number) of the board of directors of the applicant, whichever is higher, are independent directors; and
- The management company of the REIT is subject to the SC's approval, and a prospectus of the public offering is to be issued and registered with the SC. Subsequently, an application is to be made with Bursa (the Malaysian Stock Exchange) for a listing of and quotation for the units.

2.4 Asset levels/activity test

Restrictions on activities/investments
- Restriction applies to the level of investments - Additional restrictions for Islamic REITs

Non-Listed REIT

A non-listed REIT may only invest in the following:

(a) real estate;

(b) single-purpose companies (an unlisted company whose principal assets comprise real estate);

(c) real estate-related assets;

(d) non-real estate-related assets; and

(e) cash, deposits and money market instruments.

At least 50% of the non-listed REIT's total asset value must be invested in real estate and/or single-purpose companies investing in real estate at all times.

A non-listed REIT's investment in non-real estate-related assets and/or cash, deposits and money market instruments must not exceed 25% of a REIT's total asset value.

A non-listed REIT is not permitted to conduct the following activities:

(a) advancing of loans, financing facilities or any other credit facility;

(b) property development; and

(c) acquisition of vacant land.

Listed REIT

A listed REIT may only invest in the following:

(a) real estate;

(b) non-real estate-related assets; and

(c) cash, deposits and money market instruments.

At least 75% of a listed REIT's total asset value must be invested in real estate that generates recurrent rental income at all times.

A listed REIT is not permitted to conduct the following activities:

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(a) advancing of loans or any other credit facility; and

(b) acquisition of vacant land (except for the purpose of property development activities).

All REITs may invest in real estate-related assets and non-real estate-related assets, and these assets may consist of foreign investments traded in or under the rules of a foreign market (a market where the regulatory authority is a member of the International Organisation of Securities Commissions (IOSCO)).

Malaysian Islamic REIT:

Further restrictions apply to the Islamic REIT. Islamic REITs are permitted to acquire real estate for the purpose of various activities. However, the fund manager must ensure that the rental income from non-permissible activities under Shariah Law is less than 20% of the total turnover of the Islamic REIT.

Further, an Islamic REIT must reduce the percentage of the Shariah Non-Compliant Rental from less than the 20% Threshold to less than 5% of the Islamic REIT's total turnover (the 5% Threshold) by the end of the 10th financial year post-listing.

The Islamic REIT cannot accept new projects which are composed of fully non-permissible activities or purchase existing projects which are composed of non-permissible activities.

Non-qualifying/permissible rental activities are financial services that are based on riba (interest). Such activities include gambling/gaming, the manufacture or sales of non-halal products or related products, conventional insurance, entertainment activities that are non-permissible according to the Shariah, the manufacture or sale of tobacco-based products or related products, stock brokerage or share trading in Shariah non-compatible securities and other activities deemed non-compliant according to Sharia.

2.5 Leverage

Leverage
Borrowing may not exceed 50% of the total asset value

The basic rule is that the total borrowings may not exceed 50% of the total asset value of the fund unless authorised by the unitholders by way of an ordinary resolution.

A Malaysian REIT can only borrow from institutions that are licensed (or deemed to be licensed) under the Financial Services Act 2013 and Islamic Financial Services Act 2013. It can also issue debentures.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of the total income	N/A	Annually

Operative income

Malaysian REITs are not required to make any minimum distribution of income, but REITs will only benefit from a tax exemption provided at least 90% of their total income for the year of assessment is distributed to their investors. Effective the year of assessment 2017, such exemption only applies to REITs that are listed on Bursa Malaysia.

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There is no requirement in the MITA for capital gains to be distributed every year. The 90% threshold applies to the total income of the REIT. Total income refers to the income of a REIT that would ordinarily be chargeable to tax. It should be noted that there is no capital gains tax in Malaysia, except for real property gains tax (RPGT) for the disposal of real properties and shares in real property companies. With effect from January 1, 2019, the RPGT rates for disposals by a REIT are between 10% and 30% depending on the length of the holding period of the real properties or shares in real property companies as follows:

Date of disposal	RPGT rates
Within three years from the date of acquisition	30%
In the 4th year	20%
In the 5th year	15%
In the 6th year and subsequent years	10%

2.7 Sanctions

Penalties/loss of status rules
Various sanctions possible, including revocation of approval

Where a person breaches the provisions of the CMSA or fails to comply with, observe, enforce or give effect to any written notice, guidelines issued or conditions imposed by the SC, the SC may take one or more of the following actions:

- Direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notices, conditions and guidelines;
- Impose a penalty in proportion to the severity or gravity of the breach but in any event not exceeding MYR 1 million (approx. USD 0.23 million, based on an exchange rate of MYR 4.4192 to USD 1 in April 2023);
- Reprimand the person in breach;
- Require the person in breach to take such steps as the SC may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach; or
- Any other actions in accordance with the CMSA.

3 Tax treatment at the level of REIT

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3.1 Corporate tax/services tax/WHT

Current income	Capital gains	Withholding tax (WHT)	Sales tax & service tax (SST)
Tax-exempt if 90% of the total income is distributed	Not taxable except for RPGT for disposal of real properties and shares in real property companies	- Creditable for taxable income - Not refundable for non-taxable income	Income from the leasing of real properties and disposal of real properties is not subject to service tax. Income from leasing and disposal of real properties are not subject to sales tax.

Current income

REITs listed on Bursa Malaysia will not be taxed on their income, provided that at least 90% of their total income for the year of assessment is distributed to their unitholders. For Malaysian WHT purposes, it is a requirement for the REIT to withhold a portion of the distribution at the applicable rate (see below) and distribute the net amount to the unitholder. If the REIT is subject to income taxes on its total income, the amount distributed is taxable in the hands of unitholders as if it was received gross. However, the investors are eligible to claim tax credits.

A corporate tax deduction on start-up expenses incurred during REIT establishment (e.g., consultancy, legal and valuation fees) is available.

With effect from the 2008 year of assessment1, a company disposing of an industrial building (on which capital allowances have been claimed previously) to REITs will not be subject to balancing adjustments, while REITs would continue to claim capital allowances on such buildings based on the residual expenditure of the building in the tax returns of the seller. With effect from the 2013 year of assessment, these rules will only be applicable to a company that holds greater than 50% of the residual profits (i.e., profits after tax depreciation) of the REITs available for distribution or greater than 50% of any residual assets (assets after depreciation) of the REITs available for distribution on a winding up.

Capital gains

With effect from 1 January 2019, gains from the disposal of real properties and shares in real property companies by a REIT are subject to RPGT between 10% and 30%, depending on the holding period of the real properties or shares in real property companies as follows:

Date of disposal	RPGT rates
Within three years from the date of acquisition	30%
In the fourth year	20%
In the fifth year	15%
In the sixth year and subsequent years	10%

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Tax suffered at source on dividend income

Malaysia does not levy dividend withholding taxes.

With effect from 1 January 2014, all companies are on the single-tier tax system. Under this system, the tax paid on the profits of a company is a final tax and dividends distributed by a company into which the REIT invests (usually a minority interest) are exempt in the hands of the REIT.

If an overseas jurisdiction levies a withholding tax, the REIT will not be able to obtain credit for such tax if the income is exempt in Malaysia. If, however, the income is taxable, it may be possible for the REIT to claim a credit in respect of the foreign tax suffered.

Accounting rules

The financial statement of a REIT shall be prepared in accordance with applicable approved accounting standards (FRS), applicable statutory requirements, the deed and any regulatory requirements.

Indirect taxes

Malaysia has a sales tax and a service tax (collectively "SST"), which both took effect on 1 September 2018.

Sales tax is imposed on taxable goods manufactured in Malaysia or imported into Malaysia. The rate of sales tax varies based on the 10-digit Harmonised System ("HS") tariff code of the taxable good manufactured or imported. Sales tax does not apply to the income of or distribution from REITs as it does not involve the manufacture or import of goods.

Service tax is charged and levied on any taxable service provided by a registered person in carrying on his business or any imported taxable service. From 1 January 2020, service tax also applies to the provision of digital services by foreign service providers to Malaysian customers. The rate of service tax is 6%.

The list of taxable persons and taxable services is specifically prescribed in the First Schedule of the Service Tax Regulations 2018 (the Regulations).

Leasing of real properties and disposal of real properties and shares in real property companies by a REIT are not taxable services prescribed in the Regulations. Accordingly, these activities are not subject to service tax.

However, where the REIT charges any advertising services, the services are prescribed taxable services and will be subject to service tax at the rate of 6%.

3.2 Transition regulations

Conversion to REIT status
N/A

3.3 Registration duties

Registration duties
Stamp duty exemption

There is a stamp duty exemption on the transfer of properties to an approved REIT. Other than stamp duty, there are currently no other duties/taxes imposed on the transfer of properties in Malaysia to a REIT.

SST does not apply to the transfer of properties.

4 Tax treatment at the unitholder level

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4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Withholding tax	Service tax
- Income not taxed at REIT level: 15%/ 17%/ 24% income tax on distributions; no tax credits are available - Income taxed at REIT level: 15%/ 17%/ 24% income tax on distributions; however, tax credits are available - No capital gains tax	- Income not taxed at REIT level: 15%/ 17%/ 24% income tax on distributions; no tax credits are available - Income taxed at REIT level: 15%/ 17%/ 24% income tax on distributions; however, tax credits are available - No capital gains tax	- No withholding tax levied on distributions to Malaysian resident corporate unitholders - Withholding tax applies to Malaysian resident individual unitholders at 10% if the income was not previously taxed at the REIT level	Distributions received from a REIT are not subject to service tax. NB: Sales tax – N/A

Corporate unitholder

Distribution from income on which the REIT is exempt from tax:

Income distributed from the REIT will be taxed at the prevailing corporate tax rate of 24%. A preferential tax rate of 17% on the first MYR 600,000 of chargeable income will apply if the corporate unitholder is a 'Small and Medium Enterprise' (SME) for the purposes of the MITA. Finance Budget 2023 has proposed that with effect from the year of assessment 2023, a corporate unitholder which is a SME is eligible for reduced preferential tax rates as follows:

With effect from the year of assessment 2009, the definition of an SME has been re-defined as a company resident in Malaysia that has paid-up ordinary share capital of MYR 2.5 million or less at the beginning of the basis period of a year of assessment provided:

Chargeable income	Tax rate
First RM 150,000	15%
RM 150,001 to RM600,000	17%
RM 600,001 and above	24%

(i) Not more than 50% of the paid-up ordinary share capital of the corporate unitholder is directly or indirectly owned by a non-SME;

(ii) The corporate unitholder does not own directly or indirectly more than 50% of the paid-up ordinary share capital of a non-SME; and

(iii) Not more than 50% of the paid-up ordinary share capital of the corporate unitholder is owned by a company that also owns more than 50% of the ordinary share capital of a non-SME.

With effect from the year of assessment 2020, there is an additional condition for SMEs, being that the company's gross income from its source or sources consisting of businesses shall not be more than MYR 50 million in that year of assessment.

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Finance Budget 2023 proposes that with effect from the year of assessment 2024, the above preferential tax rate shall not apply to a company if more than 20% of its paid-up capital (calculated based on ordinary shares at the beginning of the period for a year of assessment) is directly or indirectly owned by one or more companies incorporated outside Malaysia or individuals who are non-Malaysian citizens.

No tax credit is available to the unitholder where the distribution of income from the REIT is exempt from tax.

Distribution from income on which the REIT has been taxed (i.e., where the relevant conditions have not been met):

The amount distributed from the REIT will be grossed up to take into account the tax already paid at the REIT level, and the corporate unitholder will be taxed on the gross distribution at the prevailing corporate tax rate of 24%. However, such distributions carry a tax credit in respect of tax chargeable to the REIT in relation to the distributed income, which is available to be offset against the income tax chargeable to the corporate unitholder on the grossed-up amount of the distributed income.

Capital gains tax

There is no capital gains tax in Malaysia, except for RPGT for disposals of real properties or shares in real property companies. Disposal of REIT units, however, will not be subject to RPGT.

Individual unitholder

Distribution from income on which the REIT is exempt from tax:

Distributions made by a REIT to individual unitholders are subject to a final withholding tax of 10% (this rate applies to the period from 1 January 2016, to 31 December 2025). Individual unitholders who receive the net amount distributed need not account for any further income tax liability.

Distribution from income on which the REIT has been taxed:

The amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the individual unitholder will be taxed on the gross distribution at progressive tax rates ranging from 0% to 30% (prevailing rates with effect from year of assessment 2020).

Such distributions carry a tax credit, which will be available to offset the tax chargeable on the individual unitholder.

Capital gains tax

There is no capital gains tax in Malaysia, except for RPGT for disposals of real properties or shares in real property companies. Disposal of REIT units, however, will not be subject to RPGT.

Withholding tax

A REIT does not need to withhold tax when making distributions to a resident company; such companies would need to declare the REIT distributions as taxable income, and the income will be taxed at the prevailing corporate tax rate of 24%.

For resident individuals, a 10% withholding tax is applicable if the amount distributed was tax-exempt at the REIT level.

Effective 30 December 2017, a person can apply for a refund with respect to the withholding tax on income distributed by the REIT if such a person is exempt from tax.

With effect from the year of assessment 2021, the withholding tax deducted from income distributed on which the REIT is exempt from tax would be a final tax.

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Indirect taxes

The investor/unitholder is entitled to receive distributions from their investment in the REIT. The distribution income is not subject to service tax.

The issue, holding and redemption of units under a trust fund and the transfer of ownership of securities are not subject to service tax. Provision of brokerage services relating to financial services (except brokerage of publicly listed shares of companies on Bursa Malaysia) is subject to service tax at 6%.

4.2 Foreign unitholder

Corporate unitholder	Individual unitholder	Withholding tax	Service tax
- Withholding tax at 24% effective from 1 January 2016 - Withholding tax at 10% for institutional investors from 1 January 2016, to 31 December 2025, if a distribution from income on which the REIT is exempt from tax	Withholding tax at 10% from 1 January 2016, to 31 December 2025, if a distribution from income on which the REIT is exempt from tax	No specific relief available	Distributions received from a REIT are not subject to service tax NB: Sales tax – N/A

Corporate unitholder

Distribution from income on which the REIT is exempt from tax:
Distributions to non-resident companies are subject to a withholding tax of 24% from 1 January 2016, onwards.

Distributions to non-resident institutional unitholders are subject to a final withholding tax of 10% (this rate applies to the period from 1 January 2016, to 31 December 2025).

Distribution from income on which the REIT has been taxed:

Non-resident companies: A non-resident company would only be required to file a tax return in Malaysia if the company has a taxable presence/permanent establishment (as defined under the relevant double tax treaty) in Malaysia. Where the non-resident company is obligated to file a Malaysian tax return, the amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident company will be taxed on the gross distribution at the prevailing corporate tax rate of 24%, with a tax credit given on the underlying tax of the REIT.

If the non-resident company has no obligation to file a Malaysian tax return (i.e., there is no permanent establishment/taxable presence), the non-resident company will receive any distributions net of the tax suffered by the REIT. The non-resident company will also not be entitled to the tax credit from the income distributed from the REIT.

No withholding tax would be imposed on the non-resident company on income from the REIT that has been taxed previously.

Non-resident institutional unitholders:

An institutional investor is defined as a pension fund, collective investment scheme or other such persons approved by the Minister. A non-resident institutional unitholder would only be required to file a tax return in Malaysia if the unitholder has a taxable presence/permanent establishment (as defined under the relevant double tax treaty) in Malaysia. Where the non-resident institutional unitholder is required to file a Malaysian tax return, the amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident institutional unitholder will be taxed on the gross distribution at the appropriate tax rate, with a tax credit given on the underlying tax of the REIT.

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If the non-resident institutional unitholder has no obligation to file a Malaysian tax return, the non-resident institutional unitholders will receive any distributions net of the 24% corporate tax. The non-resident will also not be entitled to the tax credit from the income distributed from the REIT.

No withholding tax would be imposed on the non-resident institutional unitholder on income from the REIT that has been taxed previously.

Individual unitholder

Distribution from income on which the REIT is exempt from tax:

Distributions to non-resident individuals are subject to a final withholding tax of 10% (this rate applies to the period from 1 January 2016, to 31 December 2025).

Distribution from income on which the REIT has been taxed:

The amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident individual unitholder will be taxed on the gross distribution at 30% (prevailing rate from the year of assessment 2020 onwards) if their tax returns are filed in Malaysia. Where the non-resident individual does not file a tax return, he will not be entitled to the tax credit from the income distributed from the REIT.

Withholding tax

If withholding tax is levied, such tax will be a final tax for Malaysian purposes. As such, unitholders receiving the net amount distributed need not account for any further income tax liability in Malaysia.

Effective 30 December 2017, a person can apply for a refund with respect to the WHT on income distributed by the REIT if such a person is exempt from tax.

No specific relief is available under tax treaties. However, depending on the practice of the receiving country, treaty protection may be sought under general unilateral double-taxation elimination rules.

Indirect Taxes

The issue, holding and redemption of units under a trust fund and the transfer of ownership of securities are not subject to service tax. Provision of brokerage services relating to financial services (except brokerage of publicly listed shares of companies on Bursa Malaysia) is subject to service tax at 6%.

5 Tax treatment of the foreign REIT and its domestic unitholder

Foreign REIT	Corporate unitholder	Individual unitholder	Service tax
Taxation subject to Double Tax Treaty	**Domestic:** Tax-exempt (prior to 1 January 2022) 3% (for distributions received from 1 January 2022, to 30 June 2022) 17%/ 24% (for distributions received after 30 June 2022) 15%/ 17%/ 24% (for distributions received in year of assessment 2023 onwards) **Foreign:** Tax-exempt	**Domestic:** Tax-exempt (up to December 31, 2026) **Foreign:** Tax-exempt	Distribution received from a foreign REIT is not subject to service tax. NB: Sales tax – N/A

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Foreign REIT

The income of the foreign REIT will only be taxed in Malaysia if it is accrued in or derived from Malaysia, subject to the provisions of the relevant double tax treaties between Malaysia and the jurisdictions in which the foreign REIT is established.

Corporate unitholder

Distributions received from foreign REITs would be regarded as foreign-sourced income and exempt from Malaysian tax pursuant to Paragraph 28, Schedule 6 of the Malaysian Income Tax Act, 1967, unless the recipient is a resident company carrying on the business of banking, insurance, or sea or air transport.

However, with effect from 1 January 2022, the above exemption is no longer applicable for corporate unitholders who are tax resident in Malaysia. The gross foreign distributions received by a corporate unitholder from the period 1 January 2022, to 30 June 2022, would be subject to tax at 3%, and foreign distributions received post 30 June 2022, would be subject to corporate tax at the prevailing rate of 24%/ preferential rate of 17%. As per the proposal in the Finance Budget 2023, with effect from the year of assessment 2023, the preferential rate is expected to be 15%/ 17%.

Individual unitholder

Distributions received from foreign REITs would be regarded as foreign-sourced income and exempt from Malaysian tax pursuant to Paragraph 28, Schedule 6 of the Malaysian Income Tax Act, 1967. With effect from 1 January 2022, foreign-sourced income would only be qualified for the exemption provided the income has been subjected to tax in the country of origin (the exemption for foreign-sourced income is applicable up to 31 December 2026).

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New Zealand

UNIT TRUST and PIE

A comparison of the
major REIT regimes
around the world.

2023

1 General introduction

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	Enacted year	Citation	REIT type
Unit trust Portfolio Investment Entity ('PIE')	2007	- The Trustee Act 1956 - Companies Act 1993 - Income Tax Act 2007 - Financial Markets Conduct Act 2013	- Unit Trust - Corporate entity

New Zealand does not have a specific REIT regime. However, New Zealand has a number of real estate funds which would be REITs from a foreign perspective. New Zealand, real estate investment funds, are typically unit trusts or companies and include both funds listed on the New Zealand stock exchange as well as unlisted funds.

From an income tax perspective, most New Zealand real estate investment funds operate as Portfolio Investment Entities (PIE) under New Zealand's PIE regime. The primary aim of the PIE regime is to provide income tax treatment for investors investing through collective investment vehicles, which is similar to the treatment that would apply if they invested directly.

In the case of New Zealand investors on either of the top two income tax rates (33% and 39%), investing in PIE provides a better tax outcome on income derived as the top tax rate for income derived from a PIE is capped at New Zealand corporate tax rate of 28%.

Additionally, given that New Zealand does not have a comprehensive capital gains tax, the PIE regime allows PIE entities to distribute capital gains to investors without resulting in an additional New Zealand tax liability for investors. Non-PIE companies and unit trusts are only able to distribute capital gains to investors without effectively recharacterising them as a taxable distribution on liquidation.

Sector summary*

Listing country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
New Zealand	6	5	4.312,40	0,30%

Top REITs*

Company name	Mkt cap (EUR m)	1 yr return (EUR) %	Div yield	% of Global REIT Index
Goodman Property Trust	1.749,35	8,16%	3%	0,11%
Vital Healthcare Property Trust	866,43	-14,13%	5%	0,05%
Kiwi Property Group	802,88	-5,28%	7%	0,06%
Argosy Property	530,16	-9,49%	6%	0,04%
Stride Property Group	427,30	-14,96%	6%	0,03%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

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2 Requirements

2.1 Formalities/procedure

Key requirements
- Registration of the trust or incorporation of the company with the Registrar of Companies - Issue of a registered prospectus - Elect into the PIE regime

Offering to the public

Issuers of investments to the public have a number of obligations in New Zealand.

Where units in a unit trust are offered to the public, the Financial Markets Conduct Act 2013 requires registration of the trust deed with the Registrar of Companies and the issue of a registered investment statement and prospectus. The trust must have a corporate manager, which deals with investors and manages the trust's investments, and a trustee, who must not be under the same control as the manager. The trustee and manager may also be subject to Financial Markets Authority oversight and may need to register and comply with other legislation affecting financial advisers and service providers. Similar requirements apply to the issue of shares in a company to the public.

PIE regime

New Zealand investment funds which intend to become PIEs must elect to become a PIE with New Zealand Inland Revenue. To be eligible to become a PIE, an entity must meet the various statutory criteria as to investors' rights to investment proceeds, the number and type of investors, the extent of each investor's interests, and the types of investment and income.

2.2 Legal form/minimum initial capital

Legal form	Minimum share capital
- Unit trust or company	No

Legal form

Real estate investment funds are typically unit trusts or companies.

To be eligible for the PIE regime, the investment vehicles must be aNew Zealand resident company or unit trusts superannuation funds (superannuation schemes registered with the Government Actuary under the Financial Markets Conduct Act 2013 or under the KiwiSaver legislation), group investment funds (established under the Public Trustee or Trustee Companies legislation) or certain life insurance funds.

An entity will not be eligible to be a PIE if it is a New Zealand resident under New Zealand's domestic income tax legislation but is regarded as not being a New Zealand resident under the provisions of a double tax treaty.

Minimum share capital

There is no minimum or maximum limitation on the amount of capital for a company, unit trust or PIE.

2.3 Unitholder requirements/listing requirements

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Shareholder requirements	Listing mandatory
- Listed PIEs must be listed on a recognised stock exchange - Unlisted PIEs must have a minimum of 20 investors (although in some instances, there are exclusions to this; the PIE has investors that are themselves widely-held or government entities) - No investor can hold more than a 20% interest in a PIE (although, in some instances, there are exclusions to this; the PIE has investors that are themselves widely-held or government entities - No restrictions for unit trusts or companies which are not PIEs	No

No restrictions apply for unit trusts or companies that are not PIEs.

Unitholder requirements for PIEs - Minimum number of investors

Entities which are listed on a recognised exchange must only have one investor class of which each investor is a member. In addition, each investor's interest must be a share traded on the exchange.

Unlisted entities entity must include 20 or more non-associated persons as investors (or, where the entity has investor classes, each class must include 20 or more investors).

There are, however, certain exceptions to this requirement, which include where an investor class of the entity includes at least one investor that falls within a prescribed list of entities which includes a PIE, an entity with the qualities for PIE status and a foreign PIE equivalent, as well as other certain superannuation funds, insurers and government vehicles.

Unitholder requirements for PIEs - Maximum investor interest

It is a requirement that an investor (together with any associated persons, if both the investor and the associated person hold an interest of 5% or more) cannot hold more than 20% of the total investor interests in the entity. Similar exceptions apply to this requirement as apply to the minimum number of investor requirements, whereby certain investors that fall within a prescribed list of entities are able to hold more than a 20% interest in a PIE without resulting in a breach of the rules.

Listing requirements

The New Zealand Stock Exchange Listing requirements apply if shares or units are to be traded on the stock exchange.

Under the PIE regime, an unlisted entity which intends to list and has 100 or more investors (and meets certain other requirements with regards to listing) may elect to become a listed PIE, at which point it has two years from the date of the election to become listed before it will lose its PIE status (although the Commissioner of Inland Revenue may grant an extension to the two-year time limit).

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2.4 Asset level/activity test

Restrictions on activities/investments
- The assets of a PIE must be at least 90% qualifying investment type, and the PIEs income must be at least 90% qualifying income - PIEs cannot hold more than a 20% interest in another entity except whether that entity is a PIE (or an entity that qualifies as a PIE), land investment company or foreign PIE equivalent - No limitations if not PIEs

No limits apply to the activities or investments of unit trusts or companies that are not PIEs.

To be eligible for the PIE status, an entity must continue to meet both the investment type and income sources criteria. As New Zealand's PIE regime applies to real estate investment and other types of investment funds, the allowable and income types allowable under the PIE regime also include other types of investments and income unrelated to real estate investments.

At least 90% of the value of a PIE's assets must be one or more of the following:

- Land;
- Financial arrangements (such as debts and debt-type instruments);
- Excepted financial arrangements (such as shares and units in unit trusts); or
- Rights or options over the above types of assets.

At least 90% of the income derived by a PIE must be derived from the above types of property and must consist of any one or more of the following:

- Rent (from non-associated parties);
- Property disposal proceeds;
- Dividends (or equivalent payments under certain share-lending arrangements);
- Financial arrangement accrual income (including interest and related premiums and foreign exchange variations);
- Income under the 'foreign investment fund' (FIF) rules;
- Allocated PIE income; or
- Distributions from superannuation funds

A PIE is, however, restricted from having more than 20% interest in an entity that is not

- PIE;
- a foreign PIE equivalent investment vehicle;
- an entity that meets the PIE criteria but has not elected PIE status; or
- a land investment company.

The 20% rule also does not apply where the total market value of all investments where the 20% cap is exceeded is not more than 10% of the market value of the total investments of the PIE.

A 'land investment company' is a company that is not itself a PIE but meets the income source PIE requirement and, on 80% or more of the days in a tax year, 90% or more of the property held (by value) by that company consists of land or shares in a land investment company.

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Where a listed company or unit trust is a PIE, it must apply the maximum imputation (franking) credits available to all distributions.

If an entity has previously ceased being a PIE, it cannot elect to be a PIE again until at least five years have passed.

2.5 Leverage

Leverage
No specific restriction

- There are generally no restrictions on debt levels for entities investing in real property other than:
- The need for arm's length terms where any related party debt is provided; and
- Possible thin capitalisation limitations for interest (and related foreign exchange) deductions if a single overseas person (together with associates), non-resident owning body, or majority foreign settled trust holds (directly or indirectly) or controls at least 50% of the New Zealand company or unit trust (for these purposes, the 'safe harbour' New Zealand group debt percentage is 60%)[1].

There are also possible thin capitalisation limitations for interest (and related foreign exchange) deductions for New Zealand resident entities that hold (directly or indirectly) or control an income interest of at least 10% in a 'controlled foreign company' (which may include a foreign unit trust). These thin capitalisation limitations extend to New Zealand residents with income interests of at least 10% in certain 'foreign investment funds' (foreign companies or unit trusts) that are subject to the active income or Australian exemptions from the attribution of their income.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
No requirement	No requirement	No requirement

There are no regulatory requirements with regard to the distribution of income or capital gains from New Zealand investment funds; accordingly, the distribution policy can be determined at the individual fund level.

Investors in unlisted PIEs are subject to tax on the income derived by the PIE at their prescribed investor rate (up to 28%). The PIE is responsible for paying the corresponding income tax on behalf of each investor, and this income tax liability arises regardless of whether the income is distributed to investors (as such, no further income tax arises on distribution to investors).

2.7 Sanctions

Penalties/loss of status rules
If an entity breaches one of the PIE eligibility requirements and does not remedy the breach within the allowable timeframe), the entity will lose its PIE status. After losing its PIE status, an entity cannot re-enter the regime for a period of 5 years.

1 Recently enacted legislation extends the scope of the thin capitalisation rules from April 1, 2015 and also the calculation of the thin capitalisation percentage from July 1, 2018.

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An entity must ensure that it continues to satisfy each of the PIE eligibility requirements on an ongoing basis, including the income and investment types, maximum shareholdings in investments and investor requirements quarterly.

A breach of the residence, entity type, rights to investment proceeds or adjustments for PIE tax-paid requirements will result in an immediate loss of PIE status.

A breach of any other requirements will result in a loss of PIE status if the breach is not remedied by the end of the following quarter and is significant and within the control of the entity. If an entity loses its PIE status, it will not be able to requalify as a PIE for another five years.

If an entity loses PIE status, it will be subject to tax under the ordinary tax regime for companies (and unit trusts):

- Distributions to New Zealand resident individual investors would revert to being fully taxable at their marginal tax rates; and
- Capital gains derived by the entity will be unable to be distributed without resulting in additional tax liability (except on liquidation)
- The income tax treatment of its disposals of certain Australasian shares would generally become taxable again;
- Income would initially be taxed at the company or unit trust level and rate (for unlisted PIEs); and
- Distributions could be subject to withholding tax.

3 Tax treatment at the level of the unit trust

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Listed PIEs are subject to the standard corporate tax rate (28%) Unlisted PIEs pay tax on behalf of their investors at the investors' Prescribed Investor Rate (PIR) of rates up to 28% Non-PIE companies and unit trust PIEs are subject to income tax at the corporate income tax rate of 28%.	New Zealand does not have a comprehensive capital gains tax; therefore, capital gains are not specifically taxable at the fund level (this applies to both PIE and non-PIE entities). Certain land sale gains can be subject to income tax.	No withholding tax applies on distributions to New Zealand residents from PIEs. Distributions from non-PIE entities are generally subject to a resident withholding tax of 33%, reduced by the amount of imputation (franking) credits attached. NRWT generally applies to distributions made by listed PIEs and non-PIE companies and unit trusts. The applicable rates vary depending on specific circumstances relating to the dividend.

Current income

Companies and Unit trusts (which are treated as companies for New Zealand income tax purposes) are subject to income tax on their net income at the standard corporate rate (28%) and, if solely tax resident in New Zealand, are subject to the imputation (franking) regime, whereby they can pass the benefit of income tax paid to investors by attaching imputation credits to distributions.

Listed PIEs are subject to income tax on the same basis as non-PIE entities (i.e., subject to corporate tax at 28%).

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Unlisted PIEs pay tax on taxable income on behalf of their investors at their investor's PIR (being either 28%, 17.5%, 10.5% or 0%). For investors who have notified the correct tax rate to the PIE, the tax paid by the PIE on their behalf will be a final tax and represents a favourable tax treatment for New Zealand resident individual investors with a marginal personal tax rate of 33% or 39%. The PIE regime, as it applies to unlisted funds, is also intended to remove effective 'over taxation' for individuals investing through companies or unit trusts where their marginal personal tax rate is less than the current corporate or unit trust tax rate of 28%. Unlisted PIEs do not maintain an imputation credit account.

For New Zealand income tax purposes, companies, unit trusts and PIEs generally recognise rental or other business income on an accrual basis and dividends on a cash basis. Income (and expenditure) relating to debt instruments and other debt-type financial arrangements are subject to specific rules which generally require recognition on an accrual basis and treat all related gains (whether of an income or capital nature) as taxable, although not all losses on such financial arrangements may be deductible.

Previously no tax depreciation could be claimed on most buildings from the beginning of taxpayers' 2011-2012 income years. Building depreciation has been reinstated on commercial buildings from the 2020/21 income year, effective 1 January 2020. Tax depreciation can be claimed on commercial building 'fit-out' items. Residential property is generally not depreciable (including residential building fit-out).

Specific rules apply to expenses incurred in relation to residential rental property. Entities may claim deductions up to the amount of income earned from those rental properties, including any taxable income derived from the sale of that property. Excess deductions must be carried forward to future income years and cannot be offset against other income of the entity.

From 1 October 2021, rules will apply to limit the amount of interest expense that can be deducted in relation to residential rental properties. However, given the Government's focus on increasing the housing stock, interest on debt relating to developing new residential properties and relating to the acquisition or holding of 'new builds' will continue to be deductible. Interest incurred in relation to residential development will qualify for the development exemption up until the Code Compliance Certificate (CCC) is issued, at which point it will qualify for the new building exemption.

- The new build exemption will apply for a period of 20 years from the time the property's CCC is issued. The exemption is available to the initial purchaser and any other purchaser during this time.
- A specific Build to Rent (BTR) exemption has recently been enacted, which will provide an exemption from the interest limitation rules in perpetuity for BTR developments if certain conditions are satisfied, which include the following:
- The development must include at least 20 dwellings which are available to rent to tenants.
- Tenants must be offered leases of at least ten years (although, they do not need to accept a ten year lease term)
- Every tenancy must include a personalisation policy. Although, further detail has not been provided as to what this policy would look like in practice.
- Importantly, the BTR exemption states that once a dwelling is complete, the BTR must apply to the dwelling from completion. If it does not, the dwelling will not be able to qualify for the BTR exemption at any point in the future.

New Zealand resident entities may generally claim credits against their New Zealand income tax liabilities for foreign income taxes paid on foreign-sourced income up to the amount of New Zealand income tax payable on the particular income. Excess foreign tax credits cannot be refunded or carried forward or back to any other income year. Unlisted PIEs may utilise foreign tax credits in determining the tax payable at the PIE level on income allocated to investors. Investors in such PIEs may be able to utilise foreign tax credits allocated to them if they are directly taxable on their allocated PIE income (see section 4).

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Capital gains

New Zealand does not have a comprehensive capital gains tax regime. Accordingly, as a general rule, gains derived from the disposal of capital assets should be treated as a non-taxable capital gain (similarly, any loss will be non-deductible).

There are, however, certain rules that apply specifically to real property, which, if applicable, recharacterise what would otherwise be a non-taxable capital gain into taxable income. For example, the disposal of real property may be taxable in certain situations where subdivisions or other developments are carried out or where zoning or resource management matters arising since acquisition contributes to profit, or where the vendor was associated with entities carrying on business as land dealers, developers or builders at the time the land was acquired. The 'associated persons' rules are required to be tested at the time the properties are acquired. The New Zealand-associated persons rules are wide-reaching and cover entities in the group worldwide.

In addition, disposals of residential property within ten years of purchase are taxable. This period is reduced to five years if the property is considered a 'new build'.

The circumstances when the disposal of personal property interests, such as shares or units in unit trusts, will be taxable are more narrow and generally only apply if the holder is a trader or dealer in such types of property, if the holder has acquired the specific shares or units for the dominant purpose of disposal, or if acquisition and disposal of the shares or units is part of carrying on or carrying out a profit-making undertaking or scheme. In all other instances, the disposal of personal property would give rise to a non-taxable capital gain.

The same treatment applies to PIEs, both listed and unlisted and non-PIE entities.

Withholding tax

No Resident Withholding Tax ('RWT') is payable on distributions to New Zealand residents from PIEs (both listed and unlisted).

Distributions from New Zealand companies or unit trusts to New Zealand resident investors are generally subject to a 33% withholding tax. This is reduced to the extent imputation (franking) credits are attached (i.e., if the distribution is fully imputed at 28%, only an additional 5% RWT applies). However, a company paying a dividend to another company may choose not to deduct RWT if the dividend is fully imputed.

No Non-Resident Withholding Tax ('NRWT') is payable on distributions from unlisted PIEs.

NRWT is payable on dividends (including distributions from unit trusts) for both listed PIEs and non-PIE companies and unit trusts. The domestic rate of NRWT on fully-imputed (franked) dividends is 15% (and a 30% rate applies to the extent that the dividend is not fully-imputed (franked). However, this rate may be reduced under an applicable double tax treaty.

Distributions made by listed PIEs are only subject to NRWT to the extent the distribution is fully imputed (franked). As such, the NRWT rate applicable to dividends paid by listed PIEs will be limited to 15%.

Under New Zealand's Foreign Investor Tax Credit (FITC) regime, the cost of NRWT for the foreign investor can be offset through the payment of an additional supplementary dividend by the entity, making the distribution equal to the NRWT cost on the dividend. This arises under New Zealand's Foreign Investor Tax Credit regime.

In addition, a 0% NRWT rate applies to fully imputed (franked) cash dividends paid to non-residents who hold voting interests of at least 10% or who hold lesser interests, but a tax treaty reduces the applicable NRWT rate below 15%.

NRWT may be at a zero rate if fully imputed (franked) non-cash dividends, such as certain bonus issues (if allowed by the terms of the trust deed), are made.

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Non-resident investors need to consider their ability to claim foreign tax credits in their home jurisdiction for NRWT deducted, particularly where a New Zealand company or unit trust pays supplementary dividends to non-residents under the FITC regime.

Any actual distributions to non-resident investors by listed PIEs are intended to be subject to NRWT only to the extent that imputation (franking) or similar credits are attached.

Where PIEs receive dividends from other New Zealand companies or unit trusts, credits for resident withholding tax are deducted, and imputation credits may be utilised in determining the tax payable at the PIE level or, in certain circumstances relating to unlisted PIEs, may be allocated to investors or rebated to the PIE.

For dividends received by foreign entities from New Zealand companies or unit trusts, please refer to the comments in section 4.2.

For dividends received by New Zealand resident companies or unit trusts from foreign REITs, please refer to the comments under the 'Corporate shareholders' heading in section 5.

Other taxes

The Goods and Services Tax (GST) treatment of investment trusts and related costs needs to be considered and managed. This tax is a VAT. GST may apply to transfers or other supplies of goods (which may include land) and services in New Zealand at the standard rate of 15%, although sales of tenanted commercial properties may be zero-rated in certain circumstances, and supplies of domestic dwellings may be exempt from GST.

Certain supplies between GST-registered parties that consist wholly or partly of land are generally zero-rated for GST purposes if the recipients are acquiring the land for use in making GST-taxable supplies. In such circumstances, the recipients (rather than the suppliers) will generally be liable to account for any GST at the standard 15% rate if it turns out that the supplies should not have been zero-rated and the error is identified after the settlement.

Initial GST input tax claims must generally be based on the proportion of a taxpayer's estimated GST-taxable use compared with GST-exempt or other use rather than on the previous principal purpose basis. The initial GST claim is subject to annual adjustments determined based on the actual level of GST-taxable use of the property. Depending on when the property was purchased, a final adjustment may be required at the time the mixed-use property is disposed of.

GST issues should be considered before any structures are established or land transactions are entered into in order to ensure that they can be managed appropriately.

Accounting rules

Companies and unit trusts that offer units to the public are generally subject to the accounting requirements of the Financial Reporting Act 1993 and are generally required to apply New Zealand International Financial Reporting Standards (New Zealand IFRS).

Tax residence and double tax treaties

Companies, unit trusts and PIEs that are New Zealand tax residents under domestic law will generally be regarded as New Zealand residents under New Zealand's double tax treaties. The ability of non-resident REITs to invoke and apply New Zealand's double tax treaties in respect of any New Zealand-sourced income may depend on their legal structure, their tax status in their home jurisdictions and the wording of particular treaties.

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3.2 Transition regulations

Conversion to PIE status
Deemed disposal and re-acquisition of certain Australasian share investments at market value immediately before the PIE election is effective

A PIE will be taxable at the general corporate/unit trust rate of 28% on taxable gains arising from the deemed disposal of certain Australasian share investments at market value immediately before its election to become a PIE is effective. The PIE may spread the resulting tax liability evenly over three years and will not be liable for provisional tax penalties or tax interest charges in respect of that liability.

A non-PIE entity converting to an unlisted PIE will be required to file an income tax return for the period prior to becoming a PIE. In addition, any net loss arising prior to becoming a PIE may be required to be spread over a period of three years rather than claimed upfront.

3.3 Registration duties

Registration duties
None

No stamp duties, transfer taxes or other levies apply on the acquisition of land in New Zealand or where an entity elects to become a PIE.

4 Tax treatment at the unitholder level

4.1 Domestic unitholder

Corporate shareholder	Individual shareholder	Withholding tax
- Distributions of companies and unit trusts are taxed at the corporate income tax rate (28%) - Unlisted PIE: attributed PIE income taxed at 28% (not taxed at PIE level) - Distributions from a listed PIE are only taxable if they are fully credited (so no further income tax liability) - Disposals are not taxable unless units are held in a revenue account - Taxable disposals are taxed at the investors' marginal income tax rate	- Distributions of companies and unit trusts are taxed at the investor marginal income tax rate - Unlisted PIE: attributed PIE income is taxed at investors' PIE (10.5%, 17.5% or 28%) with tax payable by the PIE. This is a Finaltax with no tax on distributions - Distributions from listed PIEs are not taxable unless New Zealand resident individual or trustee taxpayers elect to treat them as taxable - Disposals are not taxable unless units are held on a revenue account - Taxable disposals are taxed at the investor's marginal income tax rate	A credit will be available to the investor for any tax withheld on distributions (from non-PIEs) No withholding on distributions to domestic investors from PIEs

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General

Distributions from non-PIE companies and unit trusts are generally treated as taxable dividends for New Zealand income tax purposes, with no distinction between distributions representing current income and distributions representing capital gains.

Corporate investors are required to include the gross dividend (i.e., cash dividend plus imputation credits) in their income tax return; however, a credit will be available for any imputation credits attached to the distribution. Accordingly, for a fully imputed dividend, no further income tax will be payable as the imputation credits attached at 28% will equal the income tax liability on the dividends. However, if the dividend is not fully-imputed, there will be an additional income tax to pay on the dividend at 28% on the unimputed portion. Accordingly, for any capital gains distributed, this effectively results in the capital gain being subject to tax.

On liquidation of non-PIE entities, certain distributions of realised and unrealised capital gains to resident corporate unitholders may be excluded from dividends.

In certain circumstances, amounts distributed by non-PIE entities as returns of share or unit capital or on buybacks of shares or units may be excluded from treatment as dividends and thus be free of New Zealand income tax.

Corporate unitholder

Distributions received from a listed PIE by corporate investors are taxable income and must be included in the investor's tax return only to the extent that the distributions are fully imputed (franked). To the extent the distribution is unimputed (which may be the case if untaxed capital gains are being distributed), it will be excluded the income of the corporate investor and, therefore, not subject to further income tax.

A New Zealand resident corporate investor in an unlisted PIE would have a 0% Prescribed Investor Rate (PIR). Accordingly, these investors will be required to include their allocated PIE income in their own returns and account for tax themselves at 28%.

Corporate PIE investors may offset taxable PIE income allocations or distributions against tax losses from other sources.

Distributions received from companies and unit trusts that are not PIEs are taxable income.

Disposals of units held in companies and unit trusts (including PIEs) by New Zealand resident corporates will give rise to non-taxable unless they constitute 'revenue account property'. Shares or units may be 'revenue account property' if the holder is a trader or dealer in such types of property, if the holder has acquired the specific shares or units for the dominant purpose of disposal, or if the acquisition and disposal of the shares or units is part of carrying on or carrying out a profit-making undertaking or scheme. Any gains which are taxable on this basis are taxed at the standard corporate rate (28%).

Individual unitholder

The comments above in relation to distributions by non-PIE entities to corporate unitholders apply equally to individual unitholders. As individual income tax rates vary, there may be additional income tax to pay on the dividends for individuals on the top personal tax rate (39%). Individuals on the lower personal tax rate may be entitled to a refund of the RWT credit or imputation credits attached.

Dividends or distributions received from a listed PIE will be treated as excluded income of an individual investor or trustee who is a New Zealand resident (and therefore, does not need to be included in their income tax return) unless they choose to include the dividend in a tax return to claim imputation credits. This would generally only be applicable for investors who are on a marginal tax rate of less than 28%.

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A New Zealand resident individual investor in an unlisted PIE would be subject to income tax at their PIR on their share of the PIEs taxable income (attributed income). This income tax liability is payable by the PIE. Provided that the investor has elected the correct PIR, no further income tax will arise in relation to the attributed income.

Withholding tax

As noted above, any RWT withheld on distributions to the individual investor will be available as a refundable credit in their income tax return.

No RWT will apply to distributions from PIEs.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- A 28% tax rate on unlisted PIE income (with tax payable by PIE) - No NRWT on distributions from unlisted PIEs - NRWT may apply at rates up to 15% on imputed (franked) portion of a dividend from listed PIEs - Disposals are not taxable unless units are held on a revenue account	- A 28% tax rate on unlisted PIE income (with tax payable by PIE) - No NRWT on distributions from unlisted PIEs - NRWT may apply at rates up to 15% on imputed (franked) portion of a dividend from listed PIEs - Disposals are not taxable unless units are held on a revenue account - Taxable disposals are taxed at normal individual income tax rates	- See unitholder comments (and comments in section 3)

Corporate unitholder

Distributions from New Zealand companies and unit trusts to non-resident corporate investors are generally treated as dividends for New Zealand income tax purposes and subject to non-resident withholding tax (NRWT) at rates up to 30%, regardless of whether the distributions represent current income or capital gains. As discussed above in Section 3, 'Withholding Tax', NRWT applies to both PIE and non-PIE distributions. NRWT is considered a final tax, and therefore, no further New Zealand income tax will apply in relation to the distributions for foreign investors.

On liquidation, certain distributions of realised and unrealised capital gains to non-resident corporate holders may be excluded from being dividends (and, therefore, not subject to NRWT) unless they hold or can acquire or control at least 50% of the company or unit trust.

In certain circumstances, amounts distributed as returns of share or unit capital or on buybacks of shares or units may be excluded from treatment as dividends (and, therefore, not subject to NRWT) and may thus be free of New Zealand income tax for all non-resident corporate holders.

Where an unlisted company or unit trust is eligible for and elects to be a PIE, as noted above, non-resident investors will have a 28% tax rate applied by such PIEs to their allocated income. Actual distributions by unlisted PIEs will not generally be taxed further.

A non-New Zealand resident corporate investor in an unlisted PIE would have a 28% PIR. This income tax liability is payable by the PIE. No NRWT applies on distributions from unlisted PIEs.

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As noted above, distributions by New Zealand-listed PIEs to non-resident corporate investors are only subject to NRWT to the extent imputation or foreign dividend payment credits are attached. In the FITC regime, the cost of any NRWT can be offset through the payment of an additional supplementary dividend to the non-resident.

As described above, disposals of units held in New Zealand companies, unit trusts or PIEs by non-resident corporate holders are not taxable unless they constitute 'revenue account property'. Any New Zealand-sourced gains which are taxable on this basis are taxed at the standard corporate rate (28%).

However, an applicable double tax treaty may provide relief from New Zealand income tax. Investments in companies or unit trusts holding real property interests may be treated as real property interests themselves under some of New Zealand's double tax treaties.

Income tax exemptions for overseas venture capital investors on the sale of units do not apply where the underlying New Zealand investments involve owning or developing real property.

Individual unitholder

The treatment set out above for corporate investors also applies to individual investors.

Withholding tax

The investor may be entitled to a credit for any NRWT withheld in their home jurisdiction.

5 Tax treatment of the foreign REIT and its domestic unitholder

Foreign REITs	Corporate unit holder	Individual unit holder
- 28% corporate tax - Treaty relief might apply - Generally, no capital gains applicable on disposals	May be taxable under CFC or FIF regime	May be taxable under CFC or FIF regime

Foreign REITs

Foreign REITs investing in New Zealand real estate will be subject to income tax on New Zealand-sourced rentals or business income under New Zealand domestic law at the corporate income tax rate of 28%, subject to any limitation by an applicable double tax treaty. A deduction will be available for costs incurred deriving this rental income, including depreciation (although this is limited in the case of the residential property), management fees and interest (subject to certain limitations, including thin capitalisation and restrictions for residential property).

As New Zealand does not have a comprehensive capital gains tax, any profit derived from a disposal of a property held on a capital account will not be subject to tax in New Zealand. However, as noted above in Section 3 'Capital Gains', there may be instances where proceeds derived from the disposal are effectively recharacterised as taxable income rather than a capital gain and will therefore be subject to New Zealand income tax.

Subject to any double tax treaty limitations, New Zealand-sourced dividends (other than those paid by PIEs), interest or royalties paid to non-residents are generally subject to non-resident withholding tax at the basic rates of 30% for dividends (reduced to 15% to the extent imputed (franked), to 0% if the dividend is a fully imputed non-cash dividend or a fully imputed cash dividend paid to non-residents with at least 10% voting interest or to those with lesser interests if a tax treaty reduces their New Zealand tax rate below 15%), 15% for interest (a minimum tax unless the parties are not associated) and royalties (a minimum tax).

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Overseas Investment Office consent may be required for overseas investors in New Zealand for the purchase of land or other assets. Overseas companies carrying on business in New Zealand are required to register with the New Zealand Companies Office and must comply with annual return filing and financial statement and audit requirements. These may vary based on the size of the company's operations overseas and in New Zealand.

Where units in a unit trust are offered to the public:

- The Financial Markets Conduct Act 2013 regulates structural matters and requires (i) a management company to manage the investments and issue units and (ii) a trustee company (which is not controlled by the same persons who control the management company) to hold legal title to the assets;
- Specific legislation regulates the offering of units to the public, prospectus and related requirements;
- The Financial Reporting Act 1993 regulates accounting and audit requirements; and
- The New Zealand Stock Exchange Listing requirements apply if units are to be traded on the stock exchange.

The trustee and manager may also be subject to Financial Markets Authority oversight and may need to register and comply with other legislation affecting financial advisers and service providers.

Corporate unitholder

Depending on the extent of New Zealand ownership of a non-resident REIT that is a company or unit trust, New Zealand corporate holders may be taxable on attributed income under New Zealand's controlled foreign company (CFC) or foreign investment fund (FIF) regimes.

New Zealand resident corporate unitholders are generally exempt from New Zealand income tax on distributions received from non-resident companies or unit trusts if they hold at least 10% income interests and the distributions do not relate to fixed-rate foreign equity and are not deductible (directly or indirectly) outside New Zealand, apart from certain Australian investments. Investments in non-resident companies or unit trusts of greater than 10% may potentially be taxable under the FIF or CFC regimes depending on the underlying activity of the non-resident company. Fixed-rate foreign equity and deductible foreign distributions are taxable on receipt or crediting. If the income interests held by a New Zealand resident corporate are less than 10%, distributions will be taxable on receipt or crediting if the interests fall within certain FIF regime exemptions.

Individual unit holder

If the non-resident REIT falls within New Zealand's definition of a company or unit trust for tax purposes, individual New Zealand resident holders would generally be taxable on any distributions at their marginal personal tax rates, regardless of the source of the REIT's income.

Depending on the extent of New Zealand ownership of the non-resident REIT, individual New Zealand holders may be taxable on attributed income under New Zealand's CFC or FIF regimes. Where the individual is taxable in respect of the investment under the FIF regime, the treatment of distributions and any foreign withholding tax will depend on the particular method applied to calculate the FIF income.

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REIT

2023

A comparison of the major REIT regimes around the world.

1 General introduction

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	Enacted year	Citation	REIT type	REIT market
Pakistan REITs	New regulations enacted through SRO 2067(I)/2022 dated November 28, 2022	- Pakistan – Companies Act, 2017 (Repealed Companies Ordinance, 1984) - Real Estate Investment Trust Regulations, 2022	- Developmental REIT - Rental REIT - Hybrid REIT - Investment-based REIT	- As per the report published by the SECP on August 11, 2023, fifteen Real - Estate Investment Trust Management Companies have been operating in the market with total assets of PKR 276.64 billion as of June 30, 2023.

The real estate investment trust management services are carried out by Non-Banking Finance Companies (NBFC). NBFCs, including Real Estate Investment Trusts (REITs), are regulated directly by the Securities and Exchange Commission of Pakistan (SECP) under Part VIII A of the Co Ord, now Companies Act, 2017, which adopts section 282A to 282N mutatis mutandis from the Co Ord, as mentioned in section 509 of the Companies Act, 2017 for the promotion of the real estate sector.

As a consequence of the notification read with sub-section (2) of section 282B of the Co Ord, the SECP had promulgated the Real Estate Investment Trust Regulations 2008 (Regulations 2008) vide SRO 94(I)/2008 dated 31 January 2008. In 2015, the SECP has introduced a new regulatory framework, thus repealing the 2008 Regulations and replacing it by notifying Real Estate Investment Trust Regulations 2015 to vide SRO 328(I)/2015 dated 16 April 2015 (Regulations) for the regulation of REIT Management Companies (RMC); and registration and regulation of Real Estate Investment Trust schemes (REIT scheme) and matters connected thereto. These regulations issued on 16 April 2015, subsequently be amended to vide notification SRO 1473 (I)/2018 dated 4 December 2018. Recently, the SECP introduced Real Estate Investment Trust Regulations, 2022 vide SRO 2067(I)/2022 dated 28 November 2022, with the aim of revamping the REIT framework. The salient features of the said regulations are:

- The level of paid-up capital requirement of REIT Management Companies (RMC) has been maintained at PKR 50 million;
- Under the new regulations, the trend has been shifted from an ‘Approval based regime’ to a ‘Reporting based regime’;
- The minimum stake of the RMC or through an arrangement with strategic investors in a REIT scheme has been maintained at 25%, and each strategic investor shall hold not less than 5% in a REIT scheme;
- In addition to already introduced three types of REIT schemes, a new category ‘Investment-based REIT Scheme’ has been introduced;
- Commission approval is required only if the trust deed deviates from the standard format, otherwise no approval is required;
- Requirement of application to the SECP for registration of the REIT scheme has been replaced with the filing of relevant information/documents to the SECP at least 10 working days before issuance of units to accredited investors;
- No application for the SECP’s approval is required for offering documents and issuance of units to the public. Only compliance with the requirements of relevant public offering regime and Listing Regulations is sufficient;

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- Listing of all REIT schemes is mandatory within a maximum period of three (3) years from the date of Transfer of Real Estate or financial close whichever is later.
- No intimation for appointment of valuer is required. Discretion in respect of valuer has been given to the RMC.
- Liberty has been given to the valuer to decide valuation mythology.
- Real estate can be transferred to the Trustees within the period of 120 days after financial close, whereas the same can be extended up to a maximum of 360 days subject to the intimation of same to the SECP, the Trustee, general public (in case of Listed REIT) and Unit Holders.
- No approval of SECP is required for delegation of any function of the REIT scheme or appointment of SPV. Any amendment shall be approved by the Trustees and unit holders.
- The issue of transfer of ongoing developmental project to the REIT structure has been addressed in these regulations.
- Categories of investors have been amended down to two i.e., accredited investors and general public.

1.2 Types of REIT structure

REIT Schemes can be executed as:

1. Direct Investment Structure' where the REIT Scheme directly invests in the REIT Project; or
2. Special Purpose Vehicle (SPV) Structure' where the REIT Scheme, invests in the SPV Company, for execution/undertaking of the REIT Project or investment in REIT Project, subject to certain prescribed conditions. Such SPV Company is used as a conduit by a REIT Scheme for investment in a REIT Project, subject to certain limitations and prescribed requirements.

Sector summary*

Listing country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
Pakistan	2	0	103,71	0.00%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
- License application to the SECP - Incorporation of NBFC - Appointment of a trustee & property valuer in accordance with the regulations

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The following is the graphical summary of events for the incorporation of an NBFC leading to the establishment of an RMC and the registration of a REIT scheme.

Obtaining permission to form an NBFC	For the purposes of seeking permission to form NBFC, application is required to be filed with the Specialised Companies Division (SECP) along with the following documents: • Form I of NBFC Rules 2003 along with all relevant supporting documents; • Fee as per Schedule III of REIT Regulations 2015; and • Compliance to Fit and Proper Criteria of REIT Regulations 2015, along with all relevant supporting documents.
Permission granted by the SECP	Incorporation of NBFC as a public limited company at the Company Registration Office (CRO) as per the precribed procedures, forms and fees.
Upon receipt of license granted by the CRO	Application to the CRO for granting of a licence to carry out REIT management services, being an NBFC along with the following: • Form II of NBFC Rules 2003 along with all relevant supporting documents; and • Fee as per Schedule III of REIT Regulations 2015.
Licence granted by the SECP	The SECP grants the licensc to establish a REIT Management Company (RMC).

2.2 The RMC

Subsequent to obtaining a license, a REIT Management Company is incorporated as a public limited company under the Companies Act, 2017 (repealed Co Ord).

NBFC/RMC must commence its business within one year from the date of issuance of the license – as is specified in sub-rule (3) of rule 6 of the NBFC (Establishment and Regulations) Rules 2003.

The RMC must maintain adequate financial, technical, procedural, organisational, human resources, internal control, and compliance procedures and prepare accounts in conformity with the International Accounting Standards (IAS).

The RMC shall make a public offering of at least 25% of units of the REITs scheme.

The promoters of an RMC must have at least 25% of the paid-up share capital, should not withdraw their investment without prior approval of the SECP, and must be kept unencumbered.

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2.3 Conditions applicable to the RMC

The conditions applicable to an RMC, inter alia, are:

- The minimum paid-up capital at the time of applying for a license as an NBFC should be at least PKR 50 million, and submit evidence that it has equity of at least PKR 50 million;
- Promoters, proposed directors and Key Executives satisfy the prescribed fit and proper criteria;
- The RMC shall comply with the following conditions for the launch of a REIT Scheme:

(i) (iREIT Project shall be within the territorial limits of the Islamic Republic of Pakistan;

(ii) Appoint a Trustee for the REIT Scheme as per the provisions of these Regulations;

(iii) Appoint Shariah Advisor, in case of a shariah-compliant REIT Scheme and shall obtain a shariah-compliance certificate as per the requirements of the Companies Act, 2017;

(iv) Execute a Trust Deed as per the standard format provided in Schedule-I of these Regulations and shall obtain the consent of the Trustee

Provided that in case of any material deviation from the standard format of the Trust Deed, the RMC shall obtain approval of the SECP;

(v) Register the Trust Deed with the relevant authorities under the applicable Trust Law;

(vi) Appoint a Valuer and other intermediaries, if required for the launch of the REIT Scheme;

(vii) Obtain a valuation of the Real Estate by the appointed Valuer at the time of acquisition;

(viii) Share the copy of the Information Memorandum, Concession Agreement, where required, feasibility report, and Valuation Report with the Accredited Investor before issuance of Units and fundraising;

(ix) Issue Units against cash except those issued in lieu of Real Estate or shares of SPV as applicable;

(x) Submit a report containing the relevant information to the SECP and the Trustee within 15 days of issuance of units to the accredited investors;

(xi) Keep subscription money received from investors in an account in the name of the Trustee;

(xii) REIT Scheme involving moveable assets and where interest in land is other than freehold and leasehold, having lease period of less than 10 years, shall be executed through SPV structure; and

(xiii) Transfer the Real Estate or shares of SPV in the name of the Trustee on behalf of the REIT Scheme as per Regulation

2.4 Registration of REIT scheme

For the purpose of registration of REIT scheme, RMC shall submit the following information/documents to the SECP at least 10 working days before the issuance of units to the accredited investors:

a. Copy of registered Trust deed;
b. Copy of bank challan evidencing fee as specified in Schedule - III;
c. Number of units to be issued;
d. Copy of information memorandum containing the minimum contents as per Schedule-IVA;
e. Copy of valuation report containing the minimum contents as per Schedule VI;
f. Copy of SPV agreement, if any;
g. Latest audited balance sheet and profit and loss statement of the RMC;

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h. Undertaking on a non-judicial stamp that RMC is compliant with these regulations, the REIT scheme is lawful and all information shared with the SECP are accurate.

An RMC can convert one REIT Scheme into another REIT Scheme subject to the approval of the Unit Holders through Special Resolution.

Provided that in the case of Developmental REIT, conversion shall only be allowed after the complete development of the project stated in the Information Memorandum and/or Offering Document/ Prospectus.

2.5 Legal form: REIT scheme

The REIT scheme is a closed-end trust, and the Trustees whereof should not be connected persons, associated companies, or associated undertakings of the RMC.

All REIT assets are to be held by the Trustee on behalf of the unitholders. All real estate and other assets of the REIT scheme should be acquired in the name of the trustee. A Trustee and property valuer must be appointed with the prior approval of the SECP for every REIT scheme. The real estate management company shall appoint a property valuer with the consent of the trustees.

A trustee of a REIT scheme may be a scheduled bank, development financial institution having a long-term rating of 'AA-' by a credit rating agency, a subsidiary of a scheduled bank, a foreign bank, a central depository company or any other person as the SECP may notify from time-to-time.

Trust deeds should be in accordance with Schedule I of the regulations and provide for the time and modality of the extinguishment of the REIT scheme and the manner in which proportionate shares of the sale proceeds shall be transferred to its unitholders.

2.6 Applicable fees

2.6.1 Fees for permission to form RMC and Licensing fee

Sr#	Particulars	Amount (Rs.)
1	Application for permission to form an RMC	250,000
2	Application for license to undertake or carry out REIT Management Services	1,000,000
3	Application for renewal of license to carry out an activity or function	Nil

2.6.2 Fee relating to launch of REIT scheme:

Sr#	Particulars	Amount (Rs.)
1	Launch of a REIT scheme	500,000

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2.6.3 Annual monitoring fee

Annual Monitoring Fee to be paid annually to the SECP for the life of the REIT Scheme are as under:

	Annual Monitoring Fee not exceeding
Development REIT scheme	0.20% of the average fund size per annum*
Rental REIT scheme	0.10% of the average fund size per annum*
Investment-based REIT Scheme	0.10% of the average fund size per annum*
Hybrid REIT scheme	0.15% of the average fund size per annum*

** The annual monitoring fee shall be capped at Pakistani Rupees 25 million per annum except in the first year.*

2.6.4 Trustee fee

A Trustee shall be entitled to an annual fee as mutually agreed between the Trustee and the RMC.

2.6.5 Management fee payable to RMC

An RMC shall be entitled to a management fee which shall be clearly stated in the Information Memorandum and/or Offering Document/Prospectus along with the basis and quantum of fee to be charged to a REIT scheme.

2.6.6 Management fee payable to RMC

The Valuer shall be paid a predetermined amount of fee as determined at the time of his appointment and such fee shall not be contingent upon the value of the Real Estate as determined by the Valuer.

2.7 Unitholder requirements/listing requirements

Unitholder requirements	Listing mandatory
None	Yes

Listing requirements

A REIT Scheme shall be listed subject to the issuance or sale of Units to the public, through an Offering Document/Prospectus, as approved by the SECP, within a maximum period of three (3) years from the date of Transfer of Real Estate or financial close whichever is later.

- An RMC shall disclose all material information in the Offering Document/Prospectus as specified in Schedule IV of these Regulations.
- A REIT Scheme shall comply with relevant public offering regime and listing regulations for the issuance of Units to the public and listing of Units:

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- Provided that the relevant securities exchange and the SECP shall evaluate the listing and public offering application in compliance with the public offering regime and can approve/decline the listing.
- An RMC shall hold or arrange through Strategic Investor(s), a minimum of twenty-five (25) percent Units of the initial size of the REIT Fund (equity only), till revocation of the fund or listing of the REIT Scheme, whichever is earlier and the same shall be kept in an account marked as blocked and shall not be sold, transferred or encumbered.

2.8 Asset level/activity test

Restrictions on activities/investments
- Investments should only be made in real estate - Restriction on transferring ownership of controlling shares, merger, and take-over - Restriction on obtaining management of another REIT scheme - Investment in vacant land for development purposes is allowed - Restriction on investing in unlisted securities and commodities

Restriction on activities

A REIT Management Company that manages the assets of a trust shall only invest in Real Estate/REIT project/shares of SPV; however; it may invest any surplus funds in government debt securities or keep such funds as a deposit with scheduled I banks having not less than 'AA (double-A)' long-term rating with a stable outlook or invest in money market fund.

A REIT Management Company is not allowed to acquire management of another REIT scheme without prior approval from the SECP. Similarly, it is not allowed to transfer ownership of controlling shares, merge with, acquire, or take over any other company unless it has received prior approval from the SECP. Moreover, REIT funds or REIT assets shall not be used directly or indirectly for lending or making an advance not connected to objects or furtherance of the REIT scheme and other such activities.

2.9 Leverage

Leverage
- RMC shall not solicit, arrange, or obtain any borrowing before registration of the Trust Deed, except Borrowing that has already been obtained against the Real Estate. - An RMC shall clearly state the policy for Borrowing in the Information Memorandum and/or the Offering Document/Prospectus (as applicable). - An RMC may arrange Borrowing with the approval of its board of directors and consent of the Trustee or the board of directors of the SPV, as the case may be or in case of Public Private Partnership as per the Concession Agreement. - An RMC shall utilise the Borrowing in the interest of the REIT Scheme and the Unit Holders, for the purpose of supporting the core real estate operation: - Provided that liquidity generated from Borrowing owing to minor timing gaps between drawdowns and utilizations may be temporarily placed with a bank having a long-term rating of AA or above or invested in a money market fund or Government Debt Securities.

2.10 Profit distribution

In order to avail tax exemption, discussed below, REIT Management Companies conventionally distribute not less than 90% of the profits arising out of the REIT scheme to the unitholders as a dividend in each financial year.

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2.11 Sanctions

Upon observing that the REIT Management Company is not pursuing its business according to the laws, rules, and guidelines of the SECP, the SECP may:

Penalties/loss of status rules
- Cancel or suspend the registration of the REIT scheme - Remove the Trustee in the circumstances as stipulated in the Regulations - Remove the valuer in the circumstances as stipulated in the Regulations - Impose a fine

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt (including REIT SPV), if 90% of the net income for a year, reduced by accumulated losses and capital gains, is distributed through means other than bonus shares/unit certificates (Clause 99 Part I 2nd Schedule)	Capital gains to a person on the sale of immovable property or shares of REIT SPV to any type of REIT are exempt up to 30 June 2023 (Clause 99A Part I 2nd Schedule)	- No tax withholding on receipt of dividend income, profit on debt (interest), commission, or capital gains on listed securities (Clause 47B Part IV 2nd Schedule) - Other withholding tax due can be avoided subject to the availability of an exemption certificate, which is provided by the Federal Board of Revenue on a case-by-case basis

Current income

Income of a REIT scheme, including REIT SPV, is exempt from tax subject to distribution of a minimum of 90% of its accounting income of that year, reduced by accumulated losses and capital gains, whether realized or unrealised, among the unitholders/shareholders. For the purposes of determining distribution, at least 90% of accounting income, bonus shares, units or certificates shall not be taken into account.

However, if profit distribution of at least 90%, as stated above, is not made the following taxes would be applicable:

- Tax on income (other than capital gains on disposal of immovable property situated in Pakistan & securities and dividend income) at a corporate rate of 29%, however, in the case of ‘small company’, at 20%;
- Taxation of ‘capital gains’ on the sale of immovable property situated in Pakistan is disputed, especially when the transaction is entered into as a venture in the nature of trade. In such cases, the taxation authorities assess the gains and charge the same to tax under the head ‘income from business’. However, arguments exist that such gains would be taxable under the head ‘capital gains’ at rates ranging from 0% to 15%, subject to holding periods of the open plots, constructed property, or flats;
- Capital gains on sale of prescribed securities ranging from 0% to 15%, subject to holding periods;
- Dividend income taxable at 15%, however, 0% if received by a REIT scheme from REIT SPV; and
- Super tax [ranging from 1% to 10%] if the income exceeds PKR 150 million.

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Minimum tax under section 113 of the IT Ordinance is not applicable to approved REITs.

Capital gains to a person on the sale of immovable property or shares of REIT SPV to any type of REIT were exempt up to 30 June 2023.

Witholding tax

No withholding is required to be made on payments to REIT Companies, including REIT SPVs, on account of any dividend, profit on debt (interest), commission, or capital gains on listed securities. There is an option to obtain an exemption certificate, on the basis of general exemption from tax subject to 90% distribution of profits, to avoid tax withholding from other receipts in the hands of REIT and REIT SPVs, which can be obtained from the tax authorities. A refund of excess tax payment is also possible.

Accounting Rules

No accounting rules have been prescribed.

3.2 Transition regulations

Conversion into REIT status
N/A

No rules have been prescribed.

3.3 Registration fees/stamp duties

The registration charges and stamp duties in the provinces of Sindh and Punjab are as under:

Registration duties		Sindh	Punjab
a)	Registration on purchase by REIT Scheme	Nil	Nil
b)	Registration on sale by REIT Scheme	0.5%	0.5%
c)	Stamp Duty on REIT property purchases	0.5%	0.5%
d)	Stamp Duty on REIT property sales	1%	1%

4 Tax treatment at the unitholder level

4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Withholding tax
- 15% tax on dividends from a REIT scheme – final levy - Tax on capital gains ranges from 0% to 15% – see table below	- 15% tax on dividends from a REIT scheme – final levy - Tax on capital gains ranges from 0% to 15% – see table below	- 15% tax on dividends from a REIT scheme; however, the tax shall be increased by 100% in the case where the recipient does not appear in the ATL - Tax on capital gains ranges from 0% to 15% – see table below

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4.1.1 Capital gain tax for both company and individual unitholder (Domestic)

Holding period (in years)	Tax Year 2023 and onwards	
	Active	Non-active
Less than 1	15%	30%
1 to 2	12.5%	25%
2 to 3	10%	20%
3 to 4	7.5%	15%
4 to 5	5%	10%
5 to 6	2.5%	5%
More than 6	0%	0%

Corporate unitholder

Subject to tax on a dividend received from REIT, 15% tax shall be chargeable and withheld. Tax withholding on capital gains on redemption of securities ranges from 0% to 15% (see above table) and will be the final discharge of tax liability.

Individual unitholder

Subject to tax on a dividend received from REIT, 15% tax shall be chargeable and withheld. Tax withholding on capital gains on redemption of securities ranges from 0% to 15% (see above table) and will be the final discharge of tax liability.

Withholding tax

The registered REIT company would be required to withhold tax on dividends at the rate of 15% to the individual and corporate unitholder. Tax withholding on capital gains on redemption of securities will be the final discharge of tax liability. A REIT scheme shall deduct capital gains tax on redemption of securities at 10% in the case of Individual or AOP and 25% in the case of company.

4.2 Foreign unitholder

Corporate unitholder	Individual unitholder	Withholding tax
- 15% tax on dividends from a REIT scheme – final levy - Tax on capital gains ranges from 0% to 15% – see table below	- 15% tax on dividends from a REIT scheme – final levy - Tax on capital gains ranges from 0% to 15% – see table below	- 15% tax on dividends from a REIT scheme; however, the tax shall be increased by 100% in the case where the recipient does not appear in the ATL - Tax on capital gains ranges from 0% to 15% – see table below - Tax treaty relief is available under various tax treaties Pakistan has with other countries

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4.2.1 Capital gain tax for both company and individual unitholder (foreign)

Holding period (in years)	Tax Year 2023 and onwards	
	Active	Non-active
Less than 1	15%	30%
1 to 2	12.5%	25%
2 to 3	10%	20%
3 to 4	7.5%	15%
4 to 5	5%	10%
5 to 6	2.5%	5%
More than 6	0%	0%

Corporate unitholder

Subject to tax on a dividend received from REIT, 15% tax shall be chargeable and withheld. Tax withholding on capital gains on redemption of securities ranges from 0% to 15% (see above table) and will be the final discharge of tax liability.

Individual unitholder

Subject to tax on a dividend received from REIT, 15% tax shall be chargeable and withheld. Tax withholding on capital gains on redemption of securities ranges from 0% to 15% (see above table) and will be the final discharge of tax liability.

Withholding tax

The registered REIT company would be required to withhold tax on dividends at the rate of 15% to the individual and corporate unitholder. Tax withheld on capital gains on redemption of securities will be the final discharge of tax liability. A REIT scheme shall deduct capital gains tax on redemption of securities at 10% in the case of Individual or AOP and 25% in the case of company.Tax treaty relief is not possible if the Pakistan tax rate is already lower.

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REIT

A comparison of the
major REIT regimes
around the world.

2023

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1 General introduction

Enacted year	Citation	REIT type	REIT market
2009	Republic Act 9856	Corporate type	2 REITs established as of May 2022

The Real Estate Investment Trust (REIT) Act of 2009, otherwise known as Republic Act 9856, was enacted on 17 December, 2009. The REIT Act is a synthesis of Senate Bill No. 2639 and House Bill No. 6379, which were approved by the Senate and the House of Representatives on 29 September, 2009, and 30 September, 2009, respectively.

The REIT Act became effective on 9 February, 2010. On 13 May, 2010, the Securities and Exchange Commission (SEC) approved the Implementing Rules and Regulations (IRR) in relation to the REIT Act.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap	% of Global REIT Index
Philippines	8	2	EUR 3.978,01	0,05%

Top REITs*

Company name	Mkt cap (EUR m)	1 yr return (EUR) %	Div yield	% of Global REIT Index
Areit	1.014,71	0,51%	6%	0,03%
MREIT	611,35	-2,18%	7%	0,02%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
Registration with the Securities and Exchange Commission (SEC)

The shares of the REIT must be registered with the Securities and Exchange Commission (SEC) and listed in accordance with the rules of the Stock Exchange.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Stock corporation	PHP 300 million (approx. USD 5.35m)

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A REIT shall be set up as a stock corporation, i.e., as a Real Estate Investment Company (REIC). The stock corporation should be established in accordance with the Corporation Code of the Philippines and the rules and regulations brought into effect by the Securities and Exchange Commission of the Philippines, or organised under the laws of a foreign country, principally for the purpose of owning income-generating real estate assets and real estate securities.

The majority of the board of directors must be residents of the Philippines. At least two directors (or 33.3% of the total number of directors in the case that the REIT has more than six directors) on the board of directors of a REIT shall be independent directors.

A REIT established under Philippine laws is deemed to be a tax resident in the Philippines and will be able to benefit from any Double Taxation Treaties that the Philippines may have in place.

A REIT formed under the laws of a foreign country will likewise be deemed a Filipino tax resident if it is engaged in trade or business within the Philippines. Under Philippine law, approved activities include, among others, participation in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; any other act or acts that imply a continuity of commercial dealings or arrangements; and contemplate to the extent that the performance of acts or works, or the exercise of some of the functions associated in the pursuit of commercial gain of the purpose and object of the business organisation. If the above criteria are met, then the foreign REIT will be able to benefit from Double Taxation Treaties that the Philippines may have in place.

A REIT must have a minimum paid-up capital of PHP 300 million (approximately USD 5.35 million, based on an exchange rate of PHP 56.08 to USD 1 in June 2023). To prevent companies from using REITs merely to convert ownership in existing infrastructure to liquid assets, there is an existing proposal to restrict payment of existing debts being made out of paid-up capital (i.e., these debts must be paid out of income generated by the business), thereby preventing companies from deleveraging by using REITs to pay off existing debts.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
At least 1,000 shareholders with at least 50 shares each (who, in aggregate own at least 1/3 of the outstanding capital stock of the REIT)	Yes

A REIT must be listed per the rules and regulations of a Stock Exchange and regulated as a public company. To qualify as a public company, the REIT must, upon and after listing, have at least 1,000 shareholders, each owning at least 50 shares of a class of shares and who, in the aggregate, own at least one-third of the outstanding capital stock of the REIT.

Compliance with the minimum public ownership requirement must be duly certified by the Public Registrar upon listing, on the date of any dividend declaration, on the date of any corporate action requiring shareholder approval and at other relevant times as may be required by the SEC.

In order for a REIT to be allowed to own land located in the Philippines, it must comply with foreign ownership limitations imposed under Philippine law; that is: such ownership is restricted to persons or entities considered Filipino citizens (individuals) or Philippine nationals (which stretches to include Filipino citizens, domestic partnerships or associations wholly owned by Filipino citizens and corporations organised under the laws of the Philippines of which at least 60% of the share capital is owned by Filipino citizens). For land ownership purposes, a corporation shall be deemed as a Philippine national if 60% of its share capital and vote entitlement are owned by Filipino citizens.

2.4 Asset level/activity test

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Restrictions on activities/investments
- In the case of investment in income-generating real estate outside the Philippines, the investment shall not exceed 40% of the deposited property - Investment in income-generating real estate located in the Philippines shall in no case be less than 35% of the deposited property - Must not undertake property development - May hold real estate through unlisted special purpose vehicle (SPV)

A REIT may only invest in the following:

n. Real estate, whether freehold or leasehold, in or outside the Philippines. A REIT can invest in income-generating real estate outside the Philippines to the extent that this investment does not exceed 40% of the REIT's Deposited Property and that special permission is obtained from the SEC. An investment in real estate may be by way of direct ownership or a shareholding in an unlisted special purpose vehicle (SPV) incorporated to hold or own real estate. In no case shall income-generating real estate located in the Philippines be less than 35% of the REIT's Deposited Property;

o. Real estate-related assets, wherever the issuers, assets, or securities are incorporated, located, issued, or traded;

p. Forms of indebtedness, the servicing and repayment of which are fully guaranteed by the Republic of the Philippines, such as, but not limited to, treasury bills, fixed-rate treasury notes, retail treasury bonds (denominated either in PHP or in foreign currency) and foreign currency linked notes;

q. Bonds and other forms of indebtedness issued by the government of any foreign country with which the Philippines maintains diplomatic relations, with a credit rating obtained from a reputable credit rating agency acceptable to the SEC that is at least two notches higher than that of the Republic of the Philippines bonds;

r. Bonds and other forms of indebtedness issued by supranationals;

s. Corporate bonds of non-property privately-owned domestic corporations duly registered with the Commission with a current credit rating of at least 'A' by an accredited Philippine rating agency;

t. Corporate bonds of a foreign non-property corporation registered in another country provided that the said bonds are duly registered with the Commission, and the foreign country grants reciprocal rights to Filipinos;

u. Commercial papers duly registered with the Commission with a current investment grade credit rating based on the rating scale of an accredited Philippine rating agency at the time of investment;

v. Equities of a non-property company listed on a local or foreign stock exchange, provided that these stocks are issued by financially stable companies, actively traded, possess a good track record of growth and have declared dividends for the past three years;

d. Cash and cash equivalents;

e. Collective investment schemes duly registered with the SEC or organised pursuant to the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); provided, however, that:

(i) The collective investment schemes must have a track record of performance at par with or above the median performance of pooled funds in the same category as appearing in the prescribed weekly publication of the Net Asset Value Per Unit of the collective investment scheme's units; and

(ii) New collective investment schemes may be allowed, provided that their fund manager has at least a three-year track record in managing pooled funds.

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f. Offshore mutual funds with ratings acceptable to the SEC; and

g. Synthetic Investment Products provided that:

(i) Synthetic Investment Products shall not constitute more than 5% of the investible funds of the REIT;

(ii) The REIT shall avail of such Synthetic Investment Products solely for the purpose of hedging risk exposures of the existing investments of the REIT;

(iii) The Synthetic Investment Products shall be accounted for in accordance with the Philippines Financial Reporting Standards (PFRS);

(iv) The Synthetic Investment Products shall be issued by authorised banks or non-bank financial institutions in accordance with the rules and regulations of the BSP and/or the SEC; and

(v) The use of Synthetic Investment Products shall be disclosed in the REIT Plan and under special authority from the SEC.

Republic Act 9856 likewise provides that:

a. At least 75% of the Deposited Property of the REIT must be invested in, or consist of, income-generating real estate, no less than 35% of which should be located in the Philippines and no more than 40% located outside the Philippines;

b. A REIT must not undertake property development activities, whether on its own, in a joint venture with others, or by investing in unlisted property development companies, unless:

(i) It intends to hold the developed property for at least three years upon completion 'in fee simple';

(ii) The purchase agreement of the property is made subject to the completion of the building with proper insurance for construction risks;

(iii) The development/construction of real state shall be carried out on commercial terms that are no less favourable to the REIT than an arm's length transaction between independent parties; and

(iv) The prospects for the real estate upon completion can be reasonably expected to be favourable (note that there is no specific guidance to elaborate on this condition).

c. The total contract value of property development activities undertaken and investments in uncompleted property developments should not exceed 10% of the Deposited Property;

d. Not more than 15% of investable funds of the REIT may be invested in anyone issuer's securities or any one managed fund, except with respect to government securities where the limit is 25%;

e. A REIT may invest not more than 5% of its investable funds in certain financial products, such as but not limited to credit default swaps, credit-linked notes, collateralised debt obligations, total return swaps, credit spread options, and credit default options, and only upon special authority from the SEC; and

f. A REIT may invest in local or foreign assets, subject to the terms of its constitutional documents and specific provisions of the SEC's implementing rules. Where an investment in foreign real estate assets is made, the REIT should ensure compliance with the applicable laws and requirements in that foreign country.

2.5 Leverage

Leverage
Shall not exceed 35% of the market value of deposited property

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A REIT's total borrowings and deferred payments shall not exceed 35% of the market value of its deposited property provided. However, a REIT which has publicly disclosed its investment-grade credit rating by a duly accredited or internationally recognised rating agency may increase its total borrowings and deferred tax payments from the cap of 35%to a cap of 70% of the market value of its Deposited Property. Note that it is necessary to undergo a full valuation of the REIT's assets using an SEC-accredited independent appraisal company at least once a year. No valuer shall value the same REIT for more than three consecutive years.

Subject to a curing period of three years, the REIT may, however, re-engage the services of the property valuer. The Valuation Report, including the standards of asset valuation and valuation methodology, shall be disclosed in the Annual Report of the REIT.

There is currently no distinction between domestic and cross-border situations for leverage purposes.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of its distributable income	Capital gains from domestic corporations' stock sale are not included in distributable income since they have already been subjected to final tax. Other types of capital gains are included in Distributable Income if they have been realised and have not been reinvested by the REIT within one year from the date of sale	Annually

Operative income

A REIT must distribute annually as dividends at least 90% of its distributable income to its shareholders not later than the last day of the fifth month following the close of the fiscal year of the REIT.

'Distributable income' is defined as 'net income' as adjusted for unrealised gains and losses/expenses, impairment losses and other items in accordance with internationally accepted accounting standards. Distributable income excludes proceeds from the sale of the REIT's assets that are reinvested by the REIT within one year of the date of the sale.

Capital gains

To the extent that the gains are realised, they are included in distributable income as determined by the SEC. This is not the case if the REIT reinvests the gain on the sale of REIT assets within one year of the date of sale.

Unrealised gains are not included in the distributable income. Also, capital gains realised from the disposal of shares in domestic corporations are not included in distributable income since they have already been subjected to final tax (see section 3.1).

There is currently no distinction between domestic and cross-border profit distribution requirements.

2.7 Sanctions

Penalties/loss of status rules
- Revocation of tax incentives - Liability for surcharges and penalties under the Tax Code and the REIT Act

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Delisting of REITs:

a. If the REIT is delisted from the local exchange, whether voluntarily or involuntarily, for failure to comply with the provisions of the REIT Act or rules of the Stock Exchange, its tax incentives shall be ipso facto revoked and withdrawn as of the date the delisting becomes final, and the decision is no longer able to be appealed by the REIT;

b. Any tax incentives that the REIT may have availed of after the delisting shall immediately be refunded to the government, together with the applicable interest and surcharges under the Tax Code and a fine of between PHP 200,000 and PHP 5 million; and

c. If the delisting is highly prejudicial to the interest of the investing public, the REIT and/or responsible persons shall refund its investors at the time of delisting the value of their shares.

Revocation of registration of REITs:

a. If the SEC discovers that the REIT was established so as to seek the benefits of the REIT Act without a true intention to carry out its provisions and/or adhere to the rules of the REIT Act, the SEC shall revoke or cancel the registration of the shares of the REIT; and

b. The REIT shall retrospectively pay the applicable taxes to a non-REIT, plus interests and surcharges prescribed under the Tax Code.

3 Tax treatment at the level of REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Only non-distributed current income is subject to taxation	Transfer of shares in a domestic corporation subject to either a 15% tax on the net capital gains (unlisted shares) or 0.6% of the gross sales price (listed shares)	Foreign withholding tax-deductible or creditable Local withholding tax creditable

Current income

The taxable net income of a REIT refers to the pertinent items of 'gross income' as defined in the Tax Code minus the following deductions:

a. those deductions enumerated in the Tax Code; and

b. the dividends distributed by a REIT out of its distributable income as of the end of the taxable year.

The taxable net income is subject to regular corporate income tax (RCIT) at the rate of 30% beginning 1 January, 2009. A REIT shall not be subject to the minimum corporate income tax (MCIT).

Capital gains

Only retained capital gains that have been realised and that have not been subjected to final tax (see below) are included in the gross income of a REIT, which, after the allowable deductions (see above), are subject to the RCIT.

A REIT shall be subject to capital gains tax (CGT) at the rate of 15% upon the net capital gains realised from the disposal (by the REIT) of shares of a domestic corporation if such domestic corporation is not listed on the local stock exchange; or, even if listed, if the transfer takes place through trades outside the local stock exchange.

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Withholding tax

Any foreign withholding tax may be utilised as either a deduction from gross income or a tax credit (subject to the applicable limitations). Local income payments to a REIT shall be subject to a lower creditable withholding tax of 1%.

Other taxes

The gross sale of properties and services (e.g., rental receipts) of a REIT will be subject to value-added tax (VAT) at the rate of 12% ('Output VAT'), the amount of which is passed on to the buyers/lessees of the REIT. The REIT can claim, as a credit against its Output VAT, the amount of the VAT passed on to it by its local suppliers of goods and services ('Input VAT'). The REIT's VAT Payable is the excess of its Output VAT over its Input VAT. A REIT shall not be considered a dealer in securities and shall not be subject to VAT on its sale, exchange or transfer of securities as part of its real estate-related business.

A REIT will be subject to the stock transaction tax (STT) on its transfers of shares of stock listed and traded at the local stock exchange at the rate of 0.6% of the gross selling price or the gross value in money of the shares of stock. If the REIT transfers the listed shares outside the stock exchange, then it will be subject to capital gains tax at the rate of 15% upon the net capital gains.

The sale or transfer of any property to REITs, which includes the sale or transfer of security over the asset, shall be subject to 50% of the applicable documentary stamp tax (DST) imposed under the Tax Code.

Any sale, barter, exchange, or other disposition of listed shares in the REIT by its investors does not give rise to a DST at the level of the REIT.

A REIT will be subject to local business tax at the rates provided in the Revenue Code of the province/city/municipality where the principal office of the REIT is located.

A REIT will be subject to a local transfer tax on its transfers or real property at the rate provided in the Revenue Code of the province/city/municipality where the real property is located.

Accounting rules

The Philippines has adopted International Financial Reporting Standards.

3.2 Transition regulations

Conversion into REIT status
'Conversion' may be through a transfer of existing REIT-eligible assets to a REIT.

Any gain realised from the transfer of properties to a REIT is not exempt from capital gains tax or regular income tax, although the transferor may opt to structure the sale as a tax-deferred exchange pursuant to the provisions of the Tax Code. A REIT must be a newly incorporated entity. An existing property company is not allowed to merely amend its Articles of Incorporation to achieve REIT status.

3.3 Registration duties

Registration duties
Registration fees, DST, local withholding tax, and local transfer taxes

While the transfer of properties to a REIT will give rise to liability for local transfer taxes, such transfer will no longer be subject to 12% VAT pursuant to Sections 40 (c)(2) and 109 (X) of the Tax Code (as amended by the Tax Reform for Acceleration and Inclusion (TRAIN Law), otherwise known as Republic Act 10963). Registering of the deed of sale with the Register of Deeds requires the payment of registration fees. As discussed above,

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the transfer of properties to a REIT will be subject to 50% of the applicable DST imposed under the Tax Code. Local income payments to a REIT shall be subject to a lower creditable withholding tax of 1%.

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Distributions tax-exempt	Final 10% withholding tax on dividends received	Final withholding tax for individual shareholders

Corporate shareholder

Dividends paid by a REIT to a domestic corporation or a resident foreign corporation are tax-exempt.

Since the REIT's shares are listed on the local stock exchange, the disposal of the REIT shares by a corporate shareholder (i.e., a domestic corporation or a resident foreign corporation) shall be subject to the following taxes:

a. stock transaction tax of 0.6% of the gross selling price or the gross value in money of the shares of stock transferred if the REIT shares are transferred through trades on the stock exchange; or

b. capital gains tax of 15% upon the net capital gains if the REIT shares are transferred outside the stock exchange.

Individual shareholder

The 10% tax on dividends received by a Filipino citizen or a foreigner resident in the Philippines from a REIT is a final tax withheld and remitted to the Bureau of Internal Revenue (BIR) by the REIT.

The tax treatment of the transfer of the REIT shares by a Filipino citizen or a foreign resident in the Philippines is the same as for Corporate shareholders (as set out above).

Dividends received by Filipino investors currently resident overseas from a Philippine REIT are exempt from Philippine income tax for seven years from 11 August 2011, which is the date that the tax-specific IRR was passed, bringing into force the tax provisions of the 2009 REIT Act.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
10%	10%	Tax treaty relief available

Corporate shareholder

Unless a foreign corporation is entitled to claim a preferential withholding tax rate of less than 10% pursuant to an applicable tax treaty, a final withholding tax of 10% on dividends is the lowest rate leviable against foreign corporate shareholders. The default rate under the Tax Code is 25%, reduced to 15% under a tax-sparing provision and 10% under certain tax treaties. It should be noted that there are currently no tax treaties with the Philippines in force that reduce withholding tax to below 10%.

The tax treatment of the disposal of the REIT shares by a foreign corporate shareholder is the same as for a corporate shareholder, as per Section 4.1 above.

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Individual shareholders

A 10% final withholding tax shall be levied on dividends paid by REITs to resident foreign individual shareholders. The default rate under the Tax Code is 20% for non-residents engaged in trade or business in the Philippines and 25% for non-residents not engaged in trade or business in the Philippines. Most tax treaties reduce these rates to 10% or 15%.

The tax treatment of the disposal of the REIT shares by an foreign individual shareholder is the same as for a corporate shareholder as per Section 4.1 above.

Withholding tax

Tax treaty relief is available. The use of preferential treaty rates presupposes the filing of a tax treaty relief application (TTRA) with the International Tax Affairs Division (ITAD) of the BIR.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Subject to taxation, unless there are applicable preferential rates or exemptions under tax treaties	Subject to taxation	Subject to taxation

Foreign REIT

If the Philippine source income of a foreign REIT is not derived from a Philippine REIT, then it will be subject to Philippine tax in the same manner as any non-resident, subject to preferential treaty rates or exemptions applicable to foreign trusts or corporations, depending on how the foreign REIT is organised.

Corporate shareholder

Dividends received by a local corporation from a Foreign REIT are included in its gross income that, after allowable deductions, is subject to the RCIT.

Individual shareholder

Dividends received by a local individual (resident Filipino citizen or a foreigner resident in the Philippines) from a Foreign REIT are included in Gross Income which, after allowable deductions, is subject to regular income tax at the rate applicable to such individual.

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S-REIT

A comparison of the major REIT regimes around the world.

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1 General introduction

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	Enacted year	Citation	REIT type
S-REIT	1999	- Securities and Futures Act - Code on Collective Investment Schemes and its Appendix 6 'Investment: Property Funds' - Income Tax Act	Trust

The REIT regime in Singapore is principally regulated by the Securities and Futures Act 2001, the Code on Collective Investment Schemes (the 'Code') issued by the Monetary Authority of Singapore (MAS), Appendix 6 to the Code and the Income Tax Act 1947.

Appendix 6 applies to a collective investment scheme that invests or proposes to invest primarily in real estate and real estate-related assets ('Property Fund'). The Property Fund may or may not be listed on a securities exchange such as Singapore Exchange.

The first set of regulatory guidelines for the Property Fund was issued by the Monetary Authority of Singapore in May 1999.

The first Singapore REIT was listed on Singapore Exchange in July 2002. As of February 2023, there are 42 REITs and Property Trusts listed on the Singapore Exchange, with a market capitalisation of around SGD 101 billion.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index**	Sector Mkt Cap (EUR m)	% of Global REIT Index
Singapore	33	23	61.165,09	3,24%

Top five S-REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
CapitaLand Integrated Commercial Trust	8.600,62	-8,74%	6%	0,53%
CapitaLand Ascendas REIT	7.744,54	1,63%	8%	0,51%
Mapletree Pan Asia Commercial Trust	5.748,52	-7,71%	6%	0,20%
Mapletree Logistics Trust	5.417,12	0,50%	7%	0,29%
Mapletree Industrial Trust	4.100,98	-10,31%	7%	0,23%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

*** The number considers only those REITs covered by the REIT regime in Singapore and owning properties mainly in the same country.*

2 Requirements

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2.1 Formalities/procedure

Key requirements
- Formal advance ruling and/or tax transparency/exemption application has to be submitted - Listing on Singapore Exchange is necessary to qualify for tax exemption

Singapore REITs (S-REIT) listed on Singapore Exchange are eligible for favourable tax treatment, subject to certain conditions. To be listed on Singapore Exchange, a REIT must comply with the applicable rules, regulations and guidelines set out in the Securities and Futures Act 2001, the Code (including its Appendix 6 on Property Funds) and the Listing Manual of the Singapore Exchange Securities Trading Limited.

Some of the favourable tax treatments are granted on application. In other words, a formal advance ruling and/or tax transparency/exemption application has to be submitted to the Inland Revenue Authority of Singapore (IRAS) and/or the Singapore Ministry of Finance. In recent years, certain application procedures have been simplified.

2.2 Legal form/minimum initial capital

Legal form	Minimum initial capital
Trust	SGD 300 million

Legal form

An S-REIT must be constituted as a trust.

he S-REITs are typically managed externally, although it is not prohibited for an S-REIT to be internally managed.

Minimum initial capital

For listing on Singapore Exchange, a REIT, if it is denominated in Singapore Dollars (SGD), must have a minimum asset size of at least SGD 300 million.

2.3 Unit holders requirements/listing requirements

Unit holder requirements	Listing mandatory
At least 25% of the REIT's capital has to be held by at least 500 public unitholders	In principle, not required but necessary for the various tax concessions

Unitholder requirements

For both Singapore Dollar-denominated REITs and foreign currency-denominated REITs listed on Singapore Exchange, at least 25% of its capital must be held by at least 500 public unitholders.

No distinction is made between resident and non-resident unitholders regarding ownership. There are no restrictions on foreign unitholders.

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Listing requirements

REITs need not be listed, but only a REIT that is listed on Singapore Exchange is eligible for tax concessions. A REIT listed on a foreign exchange will not be eligible for the various tax concessions in Singapore, and therefore appropriate tax planning should be considered.

2.4 Asset level/activity test

Restrictions on activities/investments
- At least 75% of the REIT's deposited property should be invested in income-producing real estate - No property development activities or investment in unlisted property development companies are allowed unless the REIT intends to hold the developed property upon completion - Investments in vacant land and mortgages (except for mortgage-backed securities) and real estate to be built on vacant land that has been approved for development or other uncompleted property developments) are prohibited. - Investments in property development activities and uncompleted property development (local and foreign) must not exceed 10% of its deposited property; this limit can be increased up to 25%, subject to the REIT meeting certain conditions - Investments in permissible investments (except for deposits placed with eligible financial institutions and investments in high-quality money-market instruments or debt securities) must not exceed 5% of its deposited property in any one issuer's securities or any one manager's funds - Should not derive more than 10% of its revenue from sources other than rental payments from tenants of the real estate held by the REIT or interest, dividends, other similar payments from special purpose vehicles (SPV) and other permissible investments of the REIT

Appendix 6 of the Code state that a REIT may invest in the following:

a. Real estate, whether freehold or leasehold, in or outside Singapore;

b. Real estate-related assets;

c. Listed or unlisted debt securities and listed shares of or issued by non-property corporations;

d. Government securities (issued on behalf of the Singapore government or governments of other countries) and securities issued by a supra-national agency or a Singapore statutory board; and

e. Cash and cash-equivalent items.

Collectively, the **"Permissible Investments".**

A REIT is also subject to restrictions on its investment activities, such as:

a. At least 75% of its deposited property should be invested in income-producing real estate;

b. Not undertaking property development activities nor investing in unlisted property development companies unless the REIT intends to hold the developed property upon completion;

c. Not investing in vacant land or mortgages (except for mortgage-backed securities);

d. The total contract value of property development activities and investments in uncompleted property developments should not exceed 10% of the REIT's deposited property (this limit can be increased up to 25%, subject to the REIT meeting certain conditions);

e. Not more than 5% of the REIT's deposited property should be invested in Permissible Investments (c), (d) and (e) listed in the previous paragraph (except for deposits placed with eligible financial institutions and investments in high-quality money-market instruments or debt securities) issued by any one issuer's securities or any one manager's funds; and

f. Not deriving more than 10% of its revenue from sources other than rental payment from the tenants of the real estate held by the REIT or interest, dividends, and other similar payments from SPVs and other permissible investments of the REIT.

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A REIT may invest in real estate by way of direct ownership or a shareholding in an unlisted SPV constituted to hold/own real estate. When investing in real estate as a joint owner, the REIT should make its investment by investing directly in the real estate as a tenant-in-common or by acquiring the shares or interests in an unlisted SPV constituted to hold/own real estate. The SPV can take the form of a company, trust or partnership, etc.

2.5 Leverage

Leverage
Single-tier leverage limit of 45%

The leverage limit for S-REITs after 1 January, 2022, is 45%. However, an S-REIT may increase this limit to 50% only if it has a minimum adjusted interest coverage ratio of 2.5 after taking into account the interest payment obligations arising from the new borrowing.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
At least 90% of the 'specified income'	Not required	- Annually or - Semi-annually or - Quarterly

Operative income

Strictly, there are no legal or regulatory requirements for a REIT to distribute any pre-determined percentage of its income as distributions for a given financial year. However, to enjoy tax transparency treatment, the trustee of the REIT is required to distribute at least 90% of its taxable 'specified income' in the same year in which the income is derived by the trustee and within the first three months after the financial year, and for both the trustee and manager to jointly comply with certain conditions. With effect from 1 April, 2012, REIT distributions may be made to unitholders in the form of units in the REIT, subject to meeting certain conditions.

'Specified income' refers to the following that qualify for tax transparency treatment:

a. Rental income or income from the management or holding of immovable property but excluding gains from the disposal of immovable property;

b. Income that is ancillary to the management or holding of immovable property but excluding gains from the disposal of immovable property;

c. Income that is payable out of rental income or income from the management or holding of immovable property in Singapore, but not out of gains from the disposal of such immovable property;

d. Rental support payment that is based on an open market value basis and is paid to the trustee on or after 29 December, 2016, by:

    i. The seller who sold to the trustee the property or any interest in the owner of the property;
    ii. A person who wholly owns (directly or indirectly) the seller; or
    iii. Any other person approved by the Comptroller of Income Tax; and

e. Distributions from an approved sub-trust of the REIT out of income referred to in (a), (b) and (d) above.

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The REIT may qualify for tax exemption on certain foreign-sourced income that is remitted into Singapore from investment in overseas properties.

Capital gains

Not applicable.

2.7 Sanctions

Penalties/loss of status rules
Loss of tax transparency treatment if REIT is no longer listed on Singapore Exchange

If not less than 90% of a REIT's specified income is distributed in the same year in which the income is derived, then the amount of the specified income that is not distributed will be subject to tax at the corporate tax rate (currently 17%) in the hands of the trustee. If less than 90% of the REIT's specified income is distributed in the same year in which the income is derived, all its specified income will be subject to tax.

3 Tax treatment at the level of REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
'Current income' refers to the eligible rental and property-related income exempt from tax (i.e., specified income that is granted tax transparency treatment)	No tax imposed on gains of a capital nature	No foreign withholding tax refunds in respect of tax-exempted income

Current income

As noted above, for rental and property-related income (e.g. car park and service fees/charges), no tax is imposed at the REIT level if it has been accorded tax transparency treatment. If specified income is not distributed, the consequence noted above will ensue (i.e., specified income that is not distributed will be subject to tax at the corporate tax rate of 17% in the hands of the trustee).

Foreign-sourced dividends and interest income received in respect of underlying rental income from investment in foreign properties may be exempt from Singapore income tax if certain conditions are met.

Capital gains

Singapore does not impose a tax on gains of a capital nature. However, income or revenu gains will be taxed at the prevailing corporate tax rate, currently 17%.

Gains or losses (unless the REIT's activities are such that it can be said to be carrying on a business of dealing in properties) from the sale of property held for long-term investment purposes are likely to be treated as capital gains or losses. Should the IRAS construe the REIT to be in the business of dealing in properties, then the gains would be taxed at the trustee level at the prevailing corporate tax rate, currently 17%. Please note that the assessment of whether a gain is capital or revenue in nature is a matter of fact and is subject to the IRAS agreement.

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Withholding tax

The foreign-sourced income of the S-REIT may qualify for tax exemption under general tax rules. Foreign withholding tax on such income (if exempted from tax) will not be credited or refunded if such income is tax exempted.

Other taxes

See under no. 3.3 below.

Accounting rules

Local GAAP (i.e., Singapore FRS), which closely mirrors IFRS, apply. The income will be determined on an accrual basis.

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
- Stamp duties at applicable rates - Goods and Services Tax may be applicable - No capital duty

The sale or transfer of immovable property located in Singapore is usually subject to Singapore stamp duty of up to 6% (on or after February 15, 2023), depending on the classification of the property. This stamp duty is generally referred to as Buyer’s Stamp Duty (‘BSD’) because the buyer is liable to pay the stamp duty unless otherwise contractually agreed between the buyer and the seller. In addition to BSD, Additional Buyer’s Stamp Duty (‘ABSD’) and Seller’s Stamp Duty (introduced as measures to cool the Singapore property market) may also apply to certain types of immovable properties.

In certain situations, ABSD may be imposed in addition to the BSD that a buyer of residential property has to pay. ABSD for entities (i.e., non-individuals) with no intention to undertake housing development of the subject property acquired is imposed at a flat rate of 65% for transactions occurring on or after 27 April, 2023. ABSD for entities in the business of housing development (i.e. property developers) is imposed at a flat rate of 35% with an additional 5% ABSD (non-remittable) for transactions occurring on or after 16 December, 2021.

SSD is payable by the seller of a property and may apply to the transfer of residential and industrial property located in Singapore. SSD is imposed at 5% to 15% (depending on the duration in which the seller has held the property) for transfers of Singapore industrial properties acquired by the seller on or after 12 January, 2013, within three years of ownership. For transfers of Singapore residential property on and after 11 March, 2017, SSD of between 4% to 12% (depending on when the seller acquired the property and the duration in which the seller held it) generally applies if a property is held by the seller for three years or less. It is important to ensure that the seller has paid any applicable SSD. This is because if the seller is liable but did not pay the SSD, the Agreement between the buyer and the seller for the purchase

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of the property would not be considered duly stamped, even if the buyer paid the BSD and applicable ABSD.

The conveyance, assignment or sale of shares in a Singapore-incorporated company is also subject to Singapore stamp duty of 0.2% of the purchase consideration or market value of the Singapore shares, whichever is higher.

Additional conveyance duties ('ACD') may apply to the buying or selling of shares or other equity interest in property-holding entities ('PHEs') that own primarily residential properties in Singapore directly or indirectly.

Singapore stamp duty is exempted on the transfer of units in S-REITs effected through the scripless settlement system operated by the Central Depository ('CDP').

The transfer of Singapore properties that are subject to the standard rate of 8% Goods and Services Tax ('GST') may qualify as a transfer of a going concern (subject to meeting prescribed conditions) and hence not be subject to GST. Or the S-REIT may avail itself of a concession that allows it to self-account for the Goods and Services Tax otherwise payable on the acquisition. GST will be increased from 8% to 9% with effect from 1 January, 2024.

Under a GST concession, S-REITs that derive primarily dividend income or distributions (which are not taxable supplies for GST purposes) can still claim input tax on business expenses incurred (this concession was extended to 31 December, 2025). The GST concession has been enhanced to include SPVs set up solely to raise funds for the REITs and that do not hold qualifying assets of the REITs, whether directly or indirectly. The enhanced concession will apply to GST on the expenses incurred to set up the SPVs as well as the GST on the business expenses of such SPVs. The amount of input tax claimable will be subject to apportionment rules where applicable.

S-REIT will also need to note that Singapore implemented the reverse charge for business-to-business (B2B) services with effect from 1 January, 2020. Under the reverse charge mechanism, a GST-registered entity will need to perform a reverse charge on 'in-scope' imported services (i.e., self-account for GST on services procured from abroad) where the entity is not able to recover its input tax in full. A non-GST registered entity (including a REIT and its Singapore SPVs) will have to register for GST if the value of 'in-scope' imported services exceeds SGD 1 million in a year and the entity is not able to recover its input tax in full (e.g., the entity is partially exempt).

4 Tax treatment at the unitholder level

4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Withholding tax
- 17% corporate tax on specified income - Distributions out of capital gains and income taxed at the trustee level are generally not taxable - Distributions out of non-income (e.g. operating cash flows) are regarded as a return on capital - Gains on the disposal of units are not taxable if capital in nature	- All distributions and gains from the disposal of units are generally not taxable unless the individual derives the distribution/gains through a partnership in Singapore or is carrying on a trade, business or profession of dealing with securities	- No withholding tax is imposed on distributions to the domestic unitholder

Corporate unitholder

Distributions out of specified income are taxed at the prevailing corporate tax rate of 17%. Distributions made to corporate unitholders out of income previously taxed at the trustee level will be exempt from Singapore tax. However, no tax credit will be available for taxes paid by the REIT.

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If disposal gains are determined to be capital in nature and hence not taxed at the trustee level, the distribution made out of such gains should also not be taxed in the hands of corporate domestic unitholders unless they hold the units in the REIT as trading assets. If the gains are determined to be of an income nature or 'trading gains' and hence taxed at the trustee level, the distribution made out of such post-taxed profits is exempt from tax in the hands of the unitholder.

A return of capital is not taxed but will go towards reducing the cost base of units. For unitholders who hold the units as trading assets, the gains on disposal will be calculated using the reduced cost base.

Singapore does not impose a tax on gains of a capital nature. Gains realised on the sale of the REIT units are not taxable unless the gains are considered to be trading gains or gains or profit of an income nature (e.g. if the unitholder holds the units as trading assets). Corporates that hold units as trading assets are subject to Singapore income tax at the prevailing corporate tax rate, currently 17%.

There is no stamp duty on the sale of units that are listed on the Singapore Exchange.

Individual unitholder

All distributions made by a REIT to unitholders who are individuals (beneficially entitled to these distributions), regardless of their nationality or place of residence, are generally exempt from Singapore income tax (if the distribution is regarded to be arising from investment rather than from trading in securities) unless they are derived through a partnership in Singapore or from the carrying on of a trade, business or profession dealing in securities in Singapore.

If disposal gains derived by the REIT are determined to be capital in nature and hence not taxed at the trustee level, the distribution should also not be taxed in the hands of individual unitholders. If the gains are determined to be of an income nature or 'trading gains' and hence taxed at the trustee level, distributions out of such gains are exempt from tax in the hands of the individual unitholder.

A return of capital is not taxed as such distributions are capital in nature.

Singapore does not impose a tax on gains that are capital in nature. Gains realised on the sale of the units by an individual unitholder are not taxable unless the gains are considered to be trading gains or gains or profits of an income nature. Individuals holding units as trading assets are subject to Singapore income tax at their respective tax rates (ranging from 0% to 24%).

Withholding tax

Distributions to domestic unitholders (e.g. domestic individuals, Singapore-incorporated and tax resident companies) are not subject to withholding tax if certain conditions and procedures are complied with.

One of the conditions requires unitholders to disclose their tax status on a prescribed form provided by the trustee. This will allow the trustee (and as a joint undertaking to IRAS with the REIT manager) to ascertain whether tax has to be deducted on distributions made to certain unitholders. The REIT must pay any applicable tax withheld to the Singapore tax authorities by the 15th of the second month following the date of payment.

4.2 Foreign unitholder

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Corporate unitholder	Individual unitholder	Withholding tax
- Final withholding tax on current income distributions - Withholding tax is not applicable on distributions of tax-exempt income (e.g., qualifying foreign dividends) - Distributions out of capital gains and income taxed at the trustee level are generally not taxable	- Distributions and gains from the disposal of units are generally exempt from tax unless the individual derives the distributions/gains through a partnership in Singapore or from carrying on a trade, business or profession dealing with securities	- Withholding tax rate reduced from 17% to 10% on distributions to non-resident non-individuals during the period from 18 February, 2005, to 31 December, 2025 - No treaty relief is available

Corporate unitholder

Current income distributions are subject to withholding tax at the prevailing corporate tax rate, currently 17%. A reduced rate of 10% applies for distributions made out of specified income during the period from 18 February, 2005, to 31 December, 2025.

Please note that distributions made by a REIT are not dividends. They are trust distributions. In this regard, any reduced dividend withholding tax rates under the double tax agreements which Singapore has concluded with other countries may not apply.

If disposal gains derived by the REIT are determined to be capital in nature and hence not taxed at the trustee level, the distribution out of such gains is also not taxed in the hands of corporate foreign unitholders. If the gains are determined to be 'trading gains' and hence taxed at the trustee level, distributions made from such after-tax gains should be exempt from tax in the hands of the corporate unitholder.

Withholding tax is not applicable on the distribution of specified tax-exempt income (e.g. foreign dividends and interest received in respect of underlying foreign-sourced income from investments in foreign properties that qualify for exemption from Singapore income tax).

Distributions out of the return of capital are not taxed.

Disposal gains are generally not taxable unless the corporate unitholders are considered to be trading or dealing in investments in Singapore (e.g. if the unitholders hold the units as trading assets in a business carried on in Singapore).

Individual unitholder

Current income distributions are generally exempt from tax unless they are derived through a partnership in Singapore or from the carrying on of a trade, business or profession dealing in securities in Singapore.

Withholding tax is not applicable on the distribution of specified tax-exempt income (e.g. foreign dividends and interest received in respect of underlying foreign-sourced income from investments in foreign properties that are exempt from Singapore income tax).

If disposal gains derived by the REIT are determined to be capital in nature and hence not taxed at the trustee level, distributions out of them are also not taxed in the hands of individual foreign unitholders. If the gains are determined to be 'trading gains' and hence taxed at the trustee level, distributions out of them should be exempt from tax in the hands of the individual unitholder.

Distributions out of the return of capital are not taxed.

Generally, disposal gains are not taxable unless they are considered to be trading in nature, for example, if the unitholder is carrying on a trade, business or profession dealing in securities.

5 Tax treatment of the foreign REIT and its domestic unitholder

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Foreign REIT	Corporate unit holder	Individual unit holder
Taxed under normal Singapore tax rules	Tax-exempt	Tax-exempt

Foreign REIT

A foreign REIT will be taxable under normal Singapore tax rules. Therefore, if it invests in Singapore properties, it will not be eligible for tax transparency status and will pay tax on its net rental income in Singapore.

Corporate unitholder

Distributions made by a foreign REIT (only if it is constituted as a trust) out of income derived from a direct holding of Singapore properties which has been assessed to tax as income from a trade or business may be treated as capital in the hands of unitholders. In other words, no further tax should be imposed on the distributions received by Singapore corporate unitholders.

Any gain derived from the sale of units in the foreign REIT will not be subject to tax as long as the gain is not derived from the carrying on of a trade or business in Singapore. The corporate unitholder who trades or deals in the units from the carrying on of a trade, business or profession in Singapore is subject to tax on any gains derived from the disposal of units if the gains are regarded as Singapore-sourced income.

Individual unitholder

Individual unitholders (except where the units are held by the individual through a partnership in Singapore or from the carrying on of a trade, business or profession in Singapore) are not taxed in Singapore on foreign REIT distributions.

Any gain derived from the sale of units in the foreign REIT should not be subject to tax as long as the gain is not derived from the carrying on of a trade or business in Singapore. The individual unitholder who trades or deals in the units from the carrying on of a trade, business or profession in Singapore is subject to tax on any gains derived from the disposal of units if the gains are regarded as Singapore-sourced income.

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A comparison of the
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1 General introduction

	Enacted year	Citation	REIT type
REIC	2001	Real Estate Investment Company Act	Corporate type

The Real Estate Investment Company Act (REICA) was enacted in 2001. It lays the groundwork for Real Estate Investment Trusts ('REITs') in Korea. REICA governs Self-managed REITs (REIC), Entrusted management REITs (or referred to as Commissioned REITs) and Corporate Restructuring REITs (CR-REITs), the three REIT regimes in Korea.

There are twenty-three listed REITs in Korea as of May 2023. The Self-managed REITs are corporate-type REITs.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
South Korea	24	4	5.773,79	0,11%

Top REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
SK REIT	698,68	-12,20%	5%	0,03%
Lotte REIT	617,75	-33,83%	8%	0,03%
ESR Kendall Square REIT	594,40	-28,62%	7%	0,03%
JR Global REIT	588,33	-13,35%	9%	0,03%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
Approval from the Ministry of Land, Infrastructure and Transport

A REIT must obtain a business license from the Ministry of Land, Infrastructure and Transport ('MOLIT').

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2.2 Legal form/minimum share capital

Legal form	Minimum share capital
- Joint-stock company (general REIT, REIC) - Entrusted management REITs and CR-REIT: special purpose company	- Self-managed REITs (REIC): KRW 7 billion - Entrusted management REITs and CR-REITs: KRW 5 billion

Legal form

A REIT can only be established as a stock corporation (called a Chusik Hoesa) under the Korean Commercial Code and REICA.

Entrusted management REITs and CR-REITs are paper companies (special purpose companies). CR-REITs have finite lives, which should be stated in the Articles of Incorporation and should be dissolved when the period elapses.

The seat of a REIT must be established in Korea.

Minimum share capital

Under REICA, KRW 0.5 billion is required as the minimum capital for obtaining a business license in the case of Self-managed REITs and KRW 0.3 billion is required for Entrusted management REITs and CR-REITs (Corporate Restructuring REITs). After this official permission, REIT should increase its equity capital within six months up to the following. The preparation period may be extended if it takes time to implement the methods and procedures set forth in other Acts.

Self-managed REITs (REIC): KRW 7 billion

Entrusted management REITs and CR-REITs (Corporate Restructuring REITs): KRW 5 billion.

2.3 Shareholders requirements/listing requirements

Shareholder requirements	Listing mandatory
- A shareholder shall not own more than 50% of the shares issued by REITs - There are no restrictions on foreign shareholders	Yes

Shareholder requirements

There are shareholding limitations as follows:

1. One shareholder and any related party shall not possess in excess of 50% ('upper limit of possession of stocks per person') of the total stocks issued by a REIT;
2. Where a stockholder and any especially related person (hereinafter referred to as the 'identical person') who possess stocks of a REIT in excess of the upper limit of possession of stocks per person violate paragraph (1), the extent of exercising the voting right shall be limited to the upper limit of possession of stocks per person; and
3. At least 30% of the shares must be offered to the public within two years from official permission (when the amount of investment in a real estate development project accounts for 30% or more of the real estate development company's total asset, the date of permission refers to the day of approval or authorisation for the real estate development project).

However, the upper limit of possession of stock per person does not apply to certain shareholders (such as Korean National Pension Corporation, etc.).

Currently, there are no special restrictions on foreign shareholders.

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Listing requirements

When a REIT becomes qualified to meet the listing standards under the Financial Investment Services and Markets Act, the REIT must list its stocks on the securities market of the Korea Stock Exchange so that its stocks are traded in the securities market of the Korea Stock Exchange.

2.4 Asset level/activity test

Restrictions on activities/investments
- 70% must be invested in real estate - 80% must be invested in real estate, real estate-related securities and cash - Not clear whether there are any restrictions on investment abroad, either directly or indirectly - Asset-management company must have performed in investment or management for three years - Investment in a single property is possible - Investment in residential property is allowed - Investment in subsidiaries is not allowed since REIT cannot acquire more than 10% of voting shares in other companies

As of the end of each quarter, 80% or more of the total assets of a REIT must be real estate, real estate-related securities and cash, and 70% or more of the total assets of a REIT must be real estate (including buildings under construction).

In addition to those requirements, 70% or more of the total assets must be corporate recovery-related real estate in the case of a CR-REIT. Corporate recovery-related real estate includes real property which a company sells to repay its debts to a financial institution, real property that a company sells to implement agreements with a financial institution providing debts to the company and real property which a company sells for corporate recovery under relevant laws.

When calculating the investment rate in the real estate development project, the price of land possessed by a real estate company is included in the total asset but is excluded from the total investment in the development project in the case of newly constructing or reconstructing buildings.

For REITs, the minimum holding period of domestic real estate is one year unless for a certain case of unsold housing, and the minimum holding period for overseas real estate is the period as stipulated under the Articles of Association, respectively. For CR-REITs, there are no restrictions. Also, an asset-management company must have performed in investment or management for three years; if not fulfilled, the authorisation would be cancelled.

A REIT is not allowed to hold more than 10% of voting shares in other companies with an exception, including a merger and an acquisition of a business.

Currently, there is no clear rule on a REIT holding real estate in a foreign jurisdiction;thus, legal advice is required.

2.5 Leverage

Leverage
Maximum debt: equity ratio of 2:1

A REIT can borrow funds or issue bonds which do not exceed two times the equity value. If there is a special resolution by the general stockholders' meeting, a REIT can borrow funds or issue bonds within the scope of the total amount not exceeding ten times the equity value.

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2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% or more of distributable income	Included in operative income	Depends on the Articles of Association

Operative income

A REIT must distribute 90% or more of the distributable income. (A self-managed REIT must distribute 50% or more distributable income until the end of 2021).

There is no difference between domestic and cross-border profit distribution. The timing of the distribution depends on the Articles of Association.

Capital gains

Capital gains are subject to the distribution obligation.

2.7 Sanctions

Penalties/loss of status rules
- Imprisonment - Fine not exceeding KRW 100 million - Revoke the establishment of REIT

If the required asset level is not met, there is imprisonment for up to three years or a maximum fine of KRW 50 million. Also, the Minister of Land, Infrastructure, and Transport, formerly the Minister of Land, Transport, and Maritime Affairs, may revoke the establishment of REIT status if the required profit distribution is not met.

Any deviation from its obligations according to the applicable law results in regulatory action (i.e., penalty, withdrawal of the license, etc.).

Where the identical person possesses stocks in excess of the upper limit of possession of stocks per person, the Minister of Land, Infrastructure, and Transport may order him to dispose of the stocks that are in excess of the upper limit of possession of stocks per person within a six month period.

In the case where the identical person holds stocks in excess of the upper limit of possession of stocks per person after making his investment in kind, the Minister of Land, Infrastructure, and Transport may order him to dispose of his stocks that are in excess of the upper limit of possession of stocks per person during the period from one year to one and a half years from the date on which the stocks are issued after the investment in kind is made.

Where the Minister of Land, Infrastructure, and Transport finds that a REIT fails to list its stocks on the securities market of the Korea Stock Exchange without sound reasons, he or she may order the REIT to be listed or register its stocks within a period of time to be designated by him or her.

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3 Tax treatment at the level of the REIT

3.1 Corporate income tax

Current income	Capital gains	Withholding tax
Income is technically tax-exempt if the 90% distribution requirement met	Income is technically tax-exempt if the 90% distribution requirement is met, but in certain cases, an 11% capital gains surtax	- No withholding tax levied on domestic distribution - Entitled to claim a foreign tax credit with a certain ceiling of the tax credit

Current income

Entrusted management REITs and CR-REITs can claim a dividend paid deduction if 90% of the distributable income is distributed as dividends, and thus technically, the corporate income tax of REIT can be null.

Otherwise (REIC), the company is subject to corporate income tax at a rate of 9% for the first taxable income up to KRW 200 million and 19% for the second taxable income up to KRW 20 billion and 21% for the third taxable income up to KRW 300 billion and 24% for over the KRW 300 billion thresholds. Additionally, 10% of corporate income tax is levied on a local resident as a local income tax.

Capital gains

Under Korean Corporate Income Tax Law, the treatment of capital gains constitutes ordinary income subject to the ordinary corporate income tax rate. There is no tax on capital gains if the 90% distribution obligation is met.

In addition, the capital gains surtax at a rate of 22% or 11% (inclusive of local income tax) could be imposed on the sale of certain tainted assets such as housing or non-business purposes land, respectively. The 22% or 11% capital gains surtax should be imposed additionally also if the 90% distribution obligation is met.

Withholding tax

If a REIT receives a distribution from a domestic company, no withholding tax is levied. The REIT is entitled to claim a foreign tax credit with a certain ceiling of the tax credit.

Other taxes

There are no other taxes levied on corporate income.

Accounting rules

A financial statement single (not consolidated) should be prepared in accordance with Korean GAAP or Korean IFRS.

Transition regulations

Conversion into REIT status
N/A

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3.2 Registration duties

Registration duties
- Acquisition tax - Registration tax

In general, when real estate (except housing) in Korea is purchased by a company or constructed in Korea, a 4.6% or 3.16% acquisition tax is imposed on the purchase price.

On the other hand, the acquisition tax will be levied in accordance with a certain formula respectively if (i) the real estate is newly constructed or is used for a head office in Seoul Metropolitan Area (SMA) or (ii) the real estate acquired by a company that has been registered in SMA for less than five years and is located in the SMA.

Under the certain formula, the heavy tax rates are imposed due to the location in the SMA. However, heavy acquisition tax rates are generally exempted for a REIT established under the REICA (except for additional special rural and fishery development surtax of the 20% of the exempted acquisition tax).

In addition, the capital registration tax is levied at the rate of 0.48% to 1.44% of the total par value amount of paid-in capital.

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Subject to corporate income tax and resident surtax - No difference between current income dividend and capital gains dividend - Capital gains on disposal are subject to the ordinary income tax rate	- A withholding tax of 15.4% final levied if interest and dividend income did not exceed KRW 20 million - Capital gains are tax-exempt if certain thresholds are met	- No withholding tax for a domestic corporation - A final withholding tax on distributions of 15.4% for Korean individual residents

Corporate shareholder

A dividend is subject to corporate income tax. There is no difference between a current income dividend and a capital gains dividend under the Korean tax law.

A return of capital distribution (capital redemption/retirement) may be a deemed dividend: the sum of funds and the value of other assets acquired by a shareholder in return for the retirement of stocks and redemption of capital in excess of the acquisition costs of the capital would be deemed as dividends. The deemed dividend is subject to corporate income tax.

Under Korean Corporate Income Tax Law, the treatment of capital gains constitutes ordinary income subject to the ordinary corporate income tax rate.

Individual shareholder

There is no difference between current income dividends and a capital gains dividends under Korean Law. The withholding tax of 15.4% is a final levy if interest and dividend income does not exceed KRW 20

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million. If the aggregate interest and dividend income exceeds KRW 20 million, the individual is subject to the ordinary individual income tax rates ranging from 6.6% to 49.5%.

A return of capital distribution (capital redemption/retirement) may be a deemed dividend: the sum of funds and the value of other assets acquired by a shareholder in return for the retirement of stocks and redemption of capital in excess of the acquisition costs of the capital would be deemed as dividends. The deemed dividend is subject to withholding tax.

Withholding tax

If the shareholder is a domestic corporation, the dividend paid by a REIT is not subject to withholding tax. If the shareholder is a Korean individual resident, the dividend paid by a REIT is subject to a 15.4% withholding tax.

If the shareholder is a foreign resident or corporation, the dividend paid by a REIT is generally subject to a 22% withholding tax. Such withholding tax could be reduced depending on the applicable tax treaty between Korea and the country where the shareholder is a resident.

In general, withholding tax should be collected when the dividend is paid. The dividend that is declared by a REIT but not paid to its shareholders within three months from the date of declaration of the dividend is deemed to be paid at the end of such a three-month period.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- A withholding tax of 22% - Can be reduced according to a tax treaty	- A withholding tax of 22% - Can be reduced according to a tax treaty	Tax treaty relief is available

Corporate shareholder

A dividend is subject to Korean withholding tax at a rate of 22% and can be reduced according to a tax treaty. There is no difference between a current income dividend and a capital gains dividend.

A return of capital distribution (capital redemption/retirement) may be a deemed dividend: the sum of funds and the value of other assets acquired by a shareholder in return for the retirement of stocks and redemption of capital in excess of the acquisition costs of the capital would be deemed as dividends. The deemed dividend is subject to Korean withholding tax at a rate of 22% and can be reduced according to a tax treaty.

Capital gains realised on the sale of the REIT shares are subject to the Korean withholding tax. The withholding tax rate for residents in non-treaty countries for REIT shares is the lower of 22% of the gain or 11% of the gross proceeds, and the foreign shareholder is required to file a tax return on the capital gains tax at the rate of 22% (the withheld tax is creditable). However, there is an exception. Capital gains earned by a non-resident from the transfer of listed REIT shares through the Korean Stock Exchange or KOSDAQ are tax-exempt if such non-resident, together with its certain related parties, holds or have held less than 25% of the REIT shares at all times during the calendar year of the share transfer and the immediately preceding five calendar years.

Individual shareholder

For a foreign individual, the dividend paid by a REIT is subject to a 22% withholding tax, but the withholding tax can be reduced depending on a tax treaty. There is no difference between a current

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income dividend and a capital gains dividend.

The treatment of a return of capital distribution and capital gains realised on the sale of REIT shares earned by an individual shareholder is not different from a corporate shareholder.

Withholding tax

For a foreign individual or company, the dividend paid by a REIT is subject to a 22% withholding tax, but the withholding tax can be reduced, depending on a tax treaty.

In general, withholding tax should be collected when the dividend is paid, but the dividend declared by a qualified REIT but not paid to its shareholders within three months from the date of declaration of the dividend is deemed to be paid at the end of such three-month period.

5 Treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Tax privileged with its Korean rental income	No specific tax privilege	No specific tax privilege

Foreign REIT

A foreign REIT should report its Korean-sourced rental income to the Korean tax authorities and should pay Korean income tax as if the REIT is a Korean resident (i.e. a Korean permanent establishment of the foreign REIT is created).

Corporate shareholder

A Korean corporate shareholder of a foreign REIT is subject to corporate income tax on the distribution received by the foreign REIT and can claim a foreign tax credit.

Individual shareholder

A Korean corporate shareholder of a foreign REIT is subject to corporate income tax on the distribution received by the foreign REIT and can claim a foreign tax credit.

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REIT

2023

A comparison of the
major REIT regimes
around the world.

1 General introduction

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	Enacted year	Citation	REIT type
Taiwan REIT/REAT	Enacted in 2003 Last amended in 2017	Real Estate Securitisation Act	Trust type

In Taiwan, the Real Estate Securitisation Act (RESA) was enacted in 2003 and was last amended in 2017. The REIT (Real Estate Investment Trust) and REAT (Real Estate Asset Trust) structures are legally regulated by the RESA. The REIT and REAT structures are both in the form of a trust. The distinction is that a REIT will accept funds from investors, which will be invested in specified properties, whereas a REAT will accept properties from a settler and then issue beneficiary certificates representing those properties.

In addition to the trust structure under the current RESA above, the Financial Supervisory Committee of Taiwan proposed the draft amendment to the Securities Investment Trust and Consulting Act on 20 January, 2021, to allow REITs to be operated under the fund structure. The proposed draft amendment intends to allow both trust structure and fund structure so there will be more options in the market. As of 9 June, 2023, the proposed draft amendment is under deliberation by the Taiwan Legislative Yuan and has not been passed yet.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Taiwan	7	0	2.938,36	0.00%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedure

Key requirements
The trustee shall submit certain documents to the competent authority (the Financial Supervisory Commission) for approval or effective registration.

According to Article 6 of the RESA, to publicly offer or privately place REIT Beneficial Securities, the trustee shall submit the following documents to the competent authority for approval or effective registration:

- REIT plan;
- REIT trust agreement;
- Comparison table of the REIT trust agreement against the model of a standard trust agreement published by the industry association;
- A prospectus or investment memorandum;
- Documentation evidencing that the operating and managerial personnel of the REIT Fund is in

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compliance with the regulations prescribed by the competent authority;

- Name list, documentation of qualifications, and appointment agreement of the Trust Supervisor, if any;
- Minutes of the resolution adopted by the trustee's board of directors for the public offer or private placement of REIT Beneficial Securities;
- Explanations regarding the method of managing and disposing of the trust property: Where a real estate management institution is appointed to manage or dispose of trust property, the appointment agreement or other documentary proof is needed;
- Case examination tables filled out by the trustee and reviewed by a CPA or lawyer;
- The legal opinion of a lawyer; and
- Other documentation as required by the competent authority.

For trustee companies purely engaged in the business of a real estate investment trust or a real estate asset trust, the competent authority may prescribe rules for the minimum issued capital, shareholders' structure, qualifications of the person responsible for the company, the expertise and experience of the company's management, and its business activities.

2.2 Legal form/minimum initial capital

	Legal form	Minimum initial capital for trustee
REIT/ REAT	Trust Asset held by the trustee	Depending on the scope of business engaged by the trustee (ranging from TWD 300 million to TWD 2 billion)

Legal form

REITs and REATs are established as trusts and are administered by a trustee. The term 'trustee' refers to an institution that may manage and dispose of the trust property and publicly offer or privately place Beneficial Securities of the REIT/REAT and is limited to the trust enterprises defined in the Trust Enterprise Act. In practice to date, trustees have been local banks or branch offices of foreign banks in Taiwan.

According to the Trust Enterprise Act, except for banks approved by the competent authority to conduct a trust business, a trust enterprise may only be a company limited by shares. The trustee of a REIT or REAT must also meet the following criteria:

- Be engaged in the trust business pursuant to the Trust Enterprise Act;
- Be established for at least three years; and
- Have a credit rating no less than the rating requirement prescribed by the competent authority.

A trust company shall be a public company, which means that it is regulated under the Securities and Exchange Act as well as the Company Act, and the shares to such trust company are publicly offered.

Minimum initial capital

To apply to establish a trust company, the minimum paid-in capital ranges from TWD 300 million to TWD 2 billion, depending on the scope of business engaged by the trustee. The capital contributions must be made in cash only. The minimum paid-in capital required for a trust company engaging only in real estate investment trust (REIT) business under the RESA is TWD 1 billion; the minimum paid-in capital for a trust company engaging only in real estate asset trust ('REAT') business is TWD 300 million, and the minimum paid-in capital for a trust company engaging in both REIT and REAT business is TWD 1 billion.

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2.3 Certificate holder requirements/listing requirements

Unitholder requirements	Listing mandatory
- With regard to a public offering, certificates shall be held by at least 50 persons for at least 335 days during a fiscal year; and any five certificate holders shall not own more than half of the total value of the certificates issued - With regard to a private placement, the investors should be banks, finance bills enterprises, trust enterprises, insurance enterprises, securities enterprises, other juristic persons or institutions approved by the competent authority; or a natural person, juristic person or fund that meets the requirements as prescribed by the competent authority; and the total investors of the natural person, juristic person and the fund above shall not exceed 35 persons in number	No

Unitholder requirements

With regard to a publicly-offered REIT or REAT, certificates shall be held by at least 50 persons for at least 335 days during a fiscal year; it is not required for the 50 persons to be the original holders of certificates. Any five certificate holders shall not own more than half of the total value of the certificates issued – except for independent professional investors.

With regard to a privately-placed REIT or REAT, the investors should be banks, finance bills enterprises, trust enterprises, insurance enterprises, securities enterprises, other juristic persons or institutions approved by the competent authority, or a natural person, juristic person or fund that meet the requirements as prescribed by the competent authority. The total investors of the natural person, juristic person and the fund above shall not exceed 35 persons.

According to Article 6 of the Standards for the Establishment of Trust Enterprises (SETE), the same person or same related parties, respectively may not hold shares in the same trust company in an amount exceeding 25% of the total number of shares issued. The term 'same person' means the same natural person or the same juristic person; the term 'same related parties' includes the person, his/her spouse, blood relatives within the second degree, and enterprises of which the person or his/her spouse is a responsible person (i.e. Chairman, General Manager or another person in accordance with Taiwan Company Law); and the juristic person controls or is controlled by or is under common control with the juristic person shareholder. .

Listing requirements

According to Article 3 of the SETE, the trustee company shall be a public company.

The beneficial securities originally privately placed are now allowed the opportunity to be listed on the Taiwan Stock Exchange or Taipei Exchange. After three years from the delivery date of such beneficial securities, under the conditions that the real estate or related rights of real estate invested in has a stable income, the trustee may apply for listing on the Taiwan Stock Exchange or Taipei Exchange with sufficient credit enhancement methods.

The beneficial securities issued by the trustee can be publicly offered or privately placed.

2.4 Asset level/activity test

Restrictions on activities/investments
Investment in real estate, related rights of real estate, securities of real estate, as well as other investment objects approved by the competent authority

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According to Article 17 of the RESA, the investment or utilisation of REIT funds shall be limited to the following objects:

- existing real estate with stable income or real estate to be developed (including the foreign real estate Existing real estate with stable income or real estate to be developed (including the foreign real estate held via a foreign special purpose vehicle wholly owned by the REIT trustee and solely for the purpose of investment in foreign real estate);
- Related rights of real estate with stable income or of real estate to be developed. Such 'rights' refer to the superficies and other rights approved by the competent authority;
- Securities relating to real estate;
- Permitted utilisation as prescribed in Article 18 of the RESA; or
- Other investment or utilisation objects approved by the competent authority.

The total investment amount of the real estate to be developed and the related rights of real estate shall not be greater than 15% of the net worth of the publicly-offered REIT or 40% of the net worth of the privately-placed REIT with an exemption that for the investment of a privately-placed REIT in public construction, the said ratio could be up to 100%.

The total investment amount in foreign REITs, together with other beneficial certificates issued pursuant to RESA and Financial Asset Securitisation Act, shall not be greater than 25% of the net worth of the REIT.

The total investment amount in a single foreign REIT shall not be greater than 5% of the net worth of the REIT.

The total investment amount in foreign real estate, together with foreign REITs, shall be less than 50% of the net worth of the REIT.

The total investment amount of cash (including bank deposits), government bonds, and items 1 to 3 above shall not be lower than 75% of the net worth of the REIT.

The total investment amount in the securities set forth under the Securities and Exchange Act shall not be greater than 40% of its offering limit and TWD 600 million, provided that the investment in item 3 above is not restricted.

The total investment in the short-term commercial paper of any company shall not be greater than 10% of the net worth of the REIT as of the investment date.

The total amount of bank deposits, bank guarantees, bank acceptances or short-term commercial papers with any one financial institution shall not be greater than 20% of the net worth of the REIT or 10% of the net worth of the financial institution as at the investment date.

The total investment in certificates or asset-backed securities issued or delivered by trustee institutions or special purpose companies shall not be greater than 20% of the net worth of the REIT as of the investment date.

According to Article 18 of the RESA, the utilisation of idle funds of the REIT funds shall be limited to the following objects:

- Bank deposits;
- Purchase of government bonds or financial bonds;
- Purchase of treasury bills or negotiable certificates of time deposit;
- Purchase of commercial paper with a credit rating above a certain level or guaranteed or accepted by banks with a rating above the level stipulated by the competent authority; or
- Purchase of other financial products approved by the competent authority.

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2.5 Leverage

Leverage
50%

The trustee may borrow money with the trust property serving as collateral pursuant to the terms of the REIT Fund contract; however, the purpose of the borrowed money is limited to the needs of real estate operations and the distribution of profits, interests or other proceeds.

The trustee may grant real estate mortgage rights or other security interests over the trust property acquired with the borrowed money.

To ensure the financial health of the REIT funds, the competent authority may prescribe an upper limit of the ratio regarding borrowings by the trustee. When the borrowings exceed the upper limit of the ratio, the trustee shall make adjustments to the level of borrowing within the time prescribed by the competent authority. Currently, the upper limit is 50% of the net worth of the REIT, depending upon its credit rating.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
Pursuant to the REIT contract	Pursuant to the REIT contract	Within six months after the closing of the fiscal year

According to Article 28 of the RESA, the proceeds derived from the REIT investment shall be distributed pursuant to the scheme provided in the REIT contract within six months after the closing of the fiscal year.

2.7 Sanctions

Penalties/loss of status rules
Transfer REIT/REAT to another trustee

According to Article 55 of the RESA, if the trustee is not in compliance with the related law and regulations, the competent authority may appoint a new trustee for the REIT or REAT.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt	Tax-exempt	Refundable if the tax withheld exceeds the payable amount

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Current Income

The trustee is considered a pass-through entity in terms of tax. Therefore, the income generated from the operation of the REIT funds is not subject to corporate income tax at the trustee level.

Capital gains

The trustee is considered a pass-through entity in terms of tax. Therefore, capital gains generated by the operation of the REIT funds are not subject to corporate income tax at the trustee level. However, the Land Value Increment Tax, applicable to the increase in the sale value over the purchase value of land, will be paid by the REIT upon the sale of the real estate.

Withholding tax

According to Article 89-1 of the Income Tax Act, withholding tax on the revenue arising from the trust property shall be withheld at source in the name of the trustee at the prescribed rate under the Income Tax Act. The withholding rate applied depends on the category of income. Generally, the interest income of the REIT will be subject to a 10% withholding rate. Rental revenues received by the trustee will not be subject to withholding if the GUIs (Government Uniform Invoice) issued by the trustee or the tenants are individuals. Withholding tax withheld may be recovered by the trustee from the tax authority if the tax withheld exceeds the payable amount.

Other taxes

The trustee is the taxpayer of land value tax imposed on the registered owner of the property under Article 3-1 of the Land Tax Act.

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
- There are registration fees for the formation of the trustee - There is no tax/fee/duty imposed on the issuance of the beneficial securities

No duty is imposed on the issue of beneficial securities.

4 Tax treatment at the unitholder's level

4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Withholding tax
- The distribution shall be consolidated into gross corporate income since 1 January, 2010. - Capital gains are corporate tax-exempt but subject to an alternative minimum tax	- The withholding tax is the final levy on distributions - Capital gains are tax-exempt	A final withholding tax of 10%

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Corporate unit holder

The distributed amount shall be the beneficiary's interest income.

Capital gains from the sale of beneficiary certificates are exempt from corporate income tax; however, such gains will be subject to the alternative minimum tax (AMT). Taiwan companies or foreign companies having permanent establishments entitling them to tax-exempt capital gains or entitling them to claim tax holidays or other tax incentives in Taiwan must calculate AMT income by using taxable income calculated in accordance with the regular income tax system, plus the add-back of certain tax-exempted income. Taiwan companies are required to compare their regular income tax against their AMT income tax and pay whichever is higher. The AMT rate for companies is currently at 12%, with an exemption if AMT income does not exceed TWD 0.5 million.

Individual unit holder

The distributed amount shall be the beneficiary's interest income.

Capital gains from the sale of beneficiary certificates are exempt from individual income tax.

Withholding tax

Distributions to domestic individual unitholders will be subject to a 10% withholding tax, which is the final tax for domestic individual unitholders of REITs (the distributions received by the unitholders are not included in the unitholders' personal income tax returns). The 10% withholding tax is not creditable against the unitholder's individual tax payable resulting from other sources of income. Distributions to domestic corporate unitholders will be consolidated into the gross corporate income of the domestic corporate unitholders.

4.2 Foreign unitholder

Corporate unitholder	Individual unitholder	Withholding tax
A final withholding tax of 15%	A final withholding tax of 15%	No tax treaty relief available

Corporate unitholder/individual unitholder

Capital gains from the sale of beneficiary certificates by foreign unitholders are exempt from income tax.

Withholding tax

The distribution to foreign corporate unitholders or foreign individual unitholders will be subject to a 15% withholding tax, which is the final tax for the foreign unitholders unless otherwise provided by available tax treaties with specific jurisdictions.

5 Tax treatment of the foreign REIT and its domestic unitholder

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Foreign REIT	Corporate unitholder	Individual unitholder
- Investment income is subject to withholding tax - Capital gains are tax-free	Corporate income tax	Needs further clarification

The tax implications for a foreign REIT and its domestic unitholders are unclear under the current tax regulations. The following analysis is for reference purposes only.

Foreign REIT

The tax implications will depend on the nature of the investment income. Except for the preferential rate provided under applicable tax treaties, investment income (including interest and dividends from approved investments) will be subject to a 20% withholding rate. The capital gains attributable to Taiwan securities investments (including government bonds, corporate bonds and shares) are tax-exempt.

Corporate unitholder

For Taiwan-incorporated profit-seeking enterprises, corporate income is assessed on a worldwide basis. Thus, Taiwanese companies shall include income distributed by foreign REITs for their income tax purposes. Foreign tax relief is applicable under Article 3 of the Taiwan Income Tax Act.

Individual unitholder

Individual income tax is imposed only on Taiwan-sourced income. An individual's overseas investment income shall be subject to AMT since 1 January, 2010. However, based on our oral consultation on a no-name basis with the Ministry of Finance, the income (both the dividends and the profit from selling the position held) received from a foreign REIT investing in Taiwan assets would be considered an individual unitholder's non-Taiwan sourced income.

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PFPO and REIT

A comparison of the
major REIT regimes
around the world.

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1 General introduction

	Enacted year	Citation	REIT type
PFPO	1992	Securities and Exchange Act BE 2535	Fund type
REIT	2007	- Trusts for Transactions in the Capital Market Act BE 2550 - Securities and Exchange Act BE 2535	Trust type

The Type I Property Fund, the property fund for public offering (PFPO), is the first type of real property mutual fund and is listed on the Stock Exchange of Thailand (SET).

The PFPO is established for the purpose of raising funds from the public to invest in income-producing real property (office buildings, service apartments, industrial factories, etc.).

In late 2012, the Office of Securities and Exchange Commission of Thailand (SEC) announced a new type of property trust fund called a Real Estate Investment Trust (REIT), trying to supplant the PFPO.

A REIT is established to provide a modernised vehicle that differs in many respects from the PFPO to offer more flexibility and impose less restriction. While the PFPO is a juristic structure, a REIT is a trust fund structure whereby the ownership of the property is held by a trustee. A REIT has more advantages than a PFPO. For example, a REIT can invest in real estate located overseas and can borrow up to 60% of total assets if rated as investment grade.

The law regulating the PFPO and REIT is the Securities and Exchange Act BE 2535. It was enacted in 1992.

However, a REIT is additionally governed by the Trusts for Transactions in the Capital Market Act BE 2550.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Thailand	61	0	10.895,93	0.00%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 Formalities/procedures

PFPO

Key requirements
- PFPO can only be established and managed by an Asset Management Company (AMC) through a Public Offering. - AMC must be licensed by the Thailand Ministry of Finance

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The Type I Property Fund can only be established and managed by an Asset Management Company (AMC) through a Public Offering (PO). Based on the SEC's policy, no new PFPO can be set up from January 1, 2014. Additionally, the existing PFPOs are not allowed to extend their size thereafter.

The AMC must be licensed by the Thailand Ministry of Finance and regulated by SEC.

While the AMC is responsible for setting up and managing the fund, there is a fund supervisor ensuring that the AMC will operate the fund in accordance with the scheme. Also, an expert property service provider is occasionally appointed by AMC to carry on the day-to-day operation of the property.

REIT

Key requirements
- A REIT can be established and managed by REIT Manager (RM), which can be AMC or the qualified company through a PO - A trustee is responsible for monitoring the activities of the RM

A REIT can be established by the trust settlor by giving a Trust Certificate (TC) to the beneficial owner. The trust settlor can be the same person as the RM, who can be an AMC or a company qualified through a PO.

To be the RM, the AMC or qualified company must be the company with expertise in real estate investment and management.

Based on the trust concept, the RM is a responsible person for setting up and managing the REIT. The trustee, who has the legal right over the properties in terms of ownership, is significantly responsible for monitoring the activities of the RM in order to ensure that the RM will operate the REIT in accordance with the scheme and receive profits from properties and distribute them to beneficial owners.

The trustee must be completely independent of the RM, hold a trustee's license authorised by SEC and have registered and paid-up capital from THB 100 million or more.

2.2 Legal form/minimum initial capital

PFPO & REIT

Legal form	Minimum share capital
- PFPO: Mutual Fund - REIT: Trust	THB 500 million

Legal form

The PFPO is a mutual fund under Thai law; however, a REIT is a trust under the Trust Act.

Minimum initial capital

A capital of a minimum THB 500 million is required.

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2.3 Unit holder requirements/listing requirements

PFPO & REIT

Shareholder requirements	Listing mandatory
- At least 250 unitholders are required for an IPO - At least 35 unitholders are required after SET listing[1] - No more than 33.33% of unitholders can be related persons[2] - No more than 49% of unitholders can be foreign investors; in the case of the property fund directly owning (i) land or (ii) a condominium, more than 49% of the total area, including the area owned by other existing foreign owners[3]	Yes

1 No. 77 (1) of the SEC's Regulation No. SorNor. 25/2552 effective from August 16, 2009, onwards.

2 SEC's Regulation No. SorNor. 26/2552 effective from August 16, 2009, onwards.

3 SEC's Regulation No. SorNor. 53/2552 dated October 29, 2009, effective from November 16, 2009, onwards.

Unitholder requirements

The minimum number of unitholders is 250 unitholders for an IPO and 35 unitholders after listing in the SET.

Former property owners and related persons, i.e., three layers above and below (of at least 10% shareholding at each layer) the institutional investors, shall not acquire more than one-third of the total units sold.

The small lot first practice is in place for unit allocation. This practice means the fund units will be allocated to those subscribed in small lots first before being allocated to those subscribed in 'big' lots.

Listing requirements

Listing at the SET is mandatory.

REIT

Unitholder requirements	Listing mandatory
- At least 250 unitholders are required for an IPO, and at least 20% of the units must be sold to public investors - At least 35 unitholders are required after the SET listing - At least 15% of the units should be held by public investors in each tranche - No more than 50% of unitholders can be related persons[1] - Foreign investor limit must comply with the laws related to the real estate invested in by the REIT	Yes

1 SEC's Regulation No. TorJor. 49/2555 dated November 21, 2012 effective from January 1, 2013 onwards.

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Unitholder requirements

The minimum number of unitholders is 250 for an IPO and 35 after listing in the SET.

Former property owners and related persons shall not acquire more than 50% of the total units sold of each tranche (if any).

No specific percentage for the foreign investment in REIT is provided under the SEC rules. However, if the REIT invests in more than one project, the percentage of foreign investment in the REIT is capped at the lowest percentage allowed by the related laws for foreign ownership among the projects.

Free float

At least 15 % of the unit must be held by public investors in each tranche.

Listing requirements

Listing at the SET is mandatory.

2.4 Asset levels/activity test

PFPO

Restrictions on activities/investments
- 75% of the net asset value invested in property - Property must be at least 80% complete - Property must be located in Thailand - The PFPO cannot purchase real property in dispute - Property insurance is required - AMC must conduct feasibility studies before investment decisions are made - AMC must appoint a property appraiser; property prices are based on appraisals - Property is re-evaluation every two years

No less than 75% of the net asset value must be invested in property. The fund may only invest in completed property or property that is at least 80% complete. Also, the PFPO may only invest in property which is located in Thailand. Real property in dispute is not allowed to be purchased or leased. Additionally, property insurance is required.

The fund can generate capital gain income of at most 25% of the total income.

The AMC is required to conduct feasibility studies for investment decision-making. Acquisition and disposal prices must be based on an appraisal price. To purchase or dispose of property, the AMC must appoint a property appraiser approved by the SET to appraise the property and disclose the results to investors. Properties must be revalued every two years.

A PFPO may invest in subsidiaries.

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REIT

Restrictions on activities/investments
- 75% of the net asset value invested in real estate ready to generate income - Investment in any type of real estate is permissible, except the real estate involving illegal or immoral business - Overseas real estate is allowed to invest - No more than 10% of the total assets are allowed to invest in the real estate under construction - Indirect investment through at least 99% of the REIT's own subsidiary may be madeProperty re-evaluation every two years*

*SEC's Regulation No. SorRor. 26/2555 dated November 21, 2012, effective from January 1, 2013, onwards.

No less than 75% of the net asset value must be invested in real estate ready to generate income.

No restriction on the type of real estate investment is imposed while investment overseas is allowed. However, real estate involving illegal or immoral business is not allowed.

The fund may invest in a project under construction (greenfield project) up to 10% of the net asset value.

The RM is required to conduct feasibility studies and due diligence for investment decision-making[1]. Acquisition and disposal prices must be based on an appraisal price. Properties must be revalued every two years.

From April 16, 2016, indirect investment through at least 99%[2] of the REIT's own subsidiary may be made, providing that REIT subsidiary must also comply with REIT investment regulations.

2.5 Leverage

PFPO

Leverage
Borrowing is allowed under the specified conditions not more than 10% of its total assets

The PFPO is allowed to borrow not more than 10% of its total assets. However, AMC is required to specify the borrowing in the PFPO Management Project and Prospectus and to comply with the specified conditions of the SEC[3].

REIT

Leverage
Borrowing is allowed not more than 35% of its total assets and extended to 60% of its total assets if rated as investment grade

1 SEC's Regulation No. SorChor. 29/2555 dated November 21, 2012 effective from January 1, 2013 onwards.
2 SEC's Regulation No. TorJor. 49/2555 dated November 21, 2012, amened on February 20, 2019.
3 SEC's Regulation No. KorNor. 11/2552 dated July 20, 2009, effective from August 16, 2009, onwards.

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A REIT may apply for a loan facility up to 35% of its total assets, and the limit will be shifted up to 60% of its total assets if rated as investment grade.

2.6 Profit distribution obligations

PFPO & REIT

Operative income	Capital gains	Timing
90% of the net profit	90% of the net profit	Within 90 days of the end of each accounting period

Operative income

At least 75% of the total income of the fund must be generated from rental income. At least 90% of the net profit must be distributed to unitholders within 90 days after the end of each annual accounting period[4].

Capital gains

Also, at least 90% of capital gains are to be distributed. As a maximum, 10% of the net profit can be retained by the fund without being distributed to the unitholders.

2.7 Sanctions

PFPO & REIT

Penalties/loss of status rules
Units may be delisted as listed securities if they fail to the unitholder requirements

3 Tax treatment at the level of the REIT

REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Not subject to income tax	Tax-exempt	N/A

4 SEC's Regulation No. SorRor. 26/2555 dated November 21, 2012 effective from January 01, 2013 onwards.

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Current income

A REIT is not subject to income tax.

Capital gains

A REIT is not subject to income tax

Withholding tax

A REIT is not subject to withholding tax.

Other taxes

A REIT should be subject to VAT on service income, sale of goods and movable properties. Likewise, income from the disposal of immovable properties is subject to Specific Business Tax (SBT). A REIT is also subject to Stamp Duty.

The REIT has to pay a once-off registration fee of 1% on the amount of rental fee of immovable properties (only if the lease period is more than three years); and a 2% transfer fee of the official appraised price for the income on disposal of immovable properties. The official appraised price refers to the value of the immovable properties (according to their type and location) assessed by the Land Department.

According to the current Land and Building Tax Act BE 2562, owners of land or buildings are required to pay land and building tax at different rates depending on how the property is used; e.g., a ceiling rate of 1.2% lavies on the appraised value of land or properties (as determined by the government) used for commercial purposes. Thus, the trustee of REIT, who has the legal right over the properties in terms of ownership, is obligated to pay such tax to the local administrative authority.

Accounting rules

A REIT is to observe the Thai Generally Accepted Accounting Principles.

PFPO

3.2 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
- Not subject to income tax - From May 24, 2017, PFPO is subject to VAT, SBT and SD	Tax-exempt	N/A

Current income

PFPO is not subject to income tax.

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Capital gains

Capital gains are not taxed at the level of PFPO

Withholding tax

On distributions to a PFPO, no withholding tax is levied.

Other taxes

From May 24, 2017, a PFPO is subject to VAT, SBT and SD[5].

The PFPO is to pay a once-off registration fee of 1% on the amount of rental fee of immovable properties (only if the lease period is more than three years); and a 2% transfer fee of the official appraised price for the income on disposal of immovable properties. The official appraised price refers to the value of the immovable properties (according to their type and location) assessed by the Land Department. The 2% transfer fee is reduced to 0.01% for the transfer of immovable properties to the property fund[6].

Similar to the trustee of REIT, if the PFPO is an owner of land or buildings, it will be required to pay land and building tax at different rates, depending on how the property is used.

Accounting rules

The PFPO is to observe the Thai Generally Accepted Accounting Principles.

3.3 Transition regulations

Conversion into REIT status
- No direct conversion to REIT status is allowed - Income incurred from the conversion shall be subject to taxes - PFPO shall be subject to VAT, SBT and SD for the value of the tax base, income and execution of the instrument, respectively, incurred from the conversion

No direct conversion to REIT status is allowed. However, a PFPO can perform a conversion by selling its assets to REIT.

The real estate assets must be sold by an existing entity to REIT at market value.

Unitholders shall be subject to the Income Tax (Personal Income Tax or Corporate income tax) on income incurred from the conversion made from January 1, 2018, onwards.

PFPO shall be subject to VAT, SBT and SD for the value of the tax base, income and execution of the instrument, respectively incurred from conversion or creation of real rights or any property rights according to the conversion made from January 1, 2018, onwards.

5 Royal Decree issued under the Revenue Code governing exemption from Value Added Tax (No. 608) B.E. 2559 dated May 24, 2016; Royal Decree issued under the Revenue Code governing designation of business exempt from Specific Business Tax (No. 609) B.E. 2559 dated May 24, 2016; and Royal Decree issued under the Revenue Code governing exemption from Revenue Taxes (No. 610) B.E. 2559 dated May 24, 2016.

6 Ministerial Regulation No. 47 (B.E.2541) Issued Under the Land Code B.E.2497

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3.4 Registration duties

Registration duties
A reduced transfer fee of 0.01%

In the case of selling immovable property, there will be a 2% transfer fee levied on the appraised value of the property. However, if the property is sold to a property fund, such fee can be reduced to 0.01%, capped at THB 100,000. In practice, the responsibility of this property transfer fee would depend on the negotiation between the seller and the buyer, and if the negotiation is finalised, the clause regarding this property transfer fee should be stipulated in the sale and purchase agreement.

In the case of leasing an immovable property, there will be a 1% registration fee levied on the total rental income if the lease period is more than three years.

4 Tax treatment at the unitholder level

REIT

4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Withholding tax
- Profit distribution from a REIT must be included in the company's income and subject to CIT at the rate of 20% - The same tax implications on profit distribution are applied to capital gains (CIT 20%)	- Income tax of 5-35%. - If the unitholder allows the REIT to deduct 10% withholding tax, this withholding tax is the final levy - A resident individual TC holder will be exempt from tax on the gain from the sale of trust units as the TC is traded in the SET	- A 10% withholding tax on distributions to an individual unitholder - A 10% withholding tax levied on distributions to a corporate unitholder

Corporate unit holder

The profit distribution from a REIT to a corporate unitholder will be included in the company's income and subject to CIT at the rate of 20%[7].

Similar to the profit distribution, 20% income tax is levied on capital gains.

Individual unitholder

Individual unitholders are to pay 5-35% income taxes on profit distribution. If the unitholder allows the trustee to deduct 10% withholding tax upon payment, the withholding tax is the final levy.

Withholding tax

If the individual unitholder allows the trustee to deduct 10% withholding tax upon payment, the withholding tax is the final levy. Otherwise, individual tax rates are applicable.

A 10% withholding tax is levied on a corporation's TC holder.

7 Corporate income tax rate currently reduced to 20% permanently which beginning on or after January 1, 2016.

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4.2 Foreign unitholder

Corporate unitholder	Individual unitholder
- A 10% withholding tax on profit distribution from REIT - A 15% withholding tax on capital gains	- A 10% withholding tax on profit distribution from REIT - A non-resident individual TC holder will be exempt from tax on the gain from the sale of trust units as the TC is traded in the SET

Corporate unitholder

The profit distributed from a REIT will be regarded as income under 40(4) (b) of the Thai Revenue Code. Hence, the TC holder that is a foreign company receiving the profit distributed from the REIT will be subject to WHT at the rate of 10%.

In the case of a TC holder being a foreign company, the gain received by the TC holder from selling the trust unit will be subject to withholding tax at the rate of 15% in Thailand.

Individual unitholder

An individual TC holder, both resident and non-resident, should be subject to withholding tax on profit distributed from a REIT at the rate of 10%.

An individual TC holder, both resident and non-resident, will be exempt from tax on the gain from the sale of the trust unit as the TC is traded in the SET.

PFPO

4.3 Domestic unitholder

Corporate unit holder	Individual unit holder	Withholding tax
- Generally, distributions are 50% (unlisted company) or 100% (listed company) tax-exempt - A 20% income tax on capital gains	- An income tax of 5-35% - If the unitholder allows the fund to deduct 10% withholding tax, this withholding tax is the final levy - Capital gains are tax-exempt	- A 10% or 0% withholding tax on distributions to an individual unitholder - No withholding tax levied on distributions to a corporate unitholder

Corporate unitholder

Corporate unitholders may receive a 50% or a 100% exemption on income taxes on profit distribution. A corporate unitholder is 100% exempt if it is a listed company in the SET and 50% exempt if it is a non-listed company and the company holds units in the fund at least three months before and after the distribution of the share of profit. Otherwise, normal corporate tax rules apply.

A 20% income tax is levied on capital gains[8].

8 Corporate income tax rate currently reduced to 20% permanently which beginning on or after January 1, 2016.

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Individual unitholder

Individual unitholders are to pay income taxes of 5-35% on profit distribution. If the unitholder allows the fund to deduct 10% withholding tax upon payment, the withholding tax is the final levy.

Individuals are exempt from income tax on capital gains made from the disposal of the fund units.

Withholding tax

If the individual unitholder allows the fund to deduct a 10% withholding tax upon payment, the withholding tax is the final levy. Otherwise, individual rates are applicable. Capital gains made by an individual are exempt from withholding tax. Withholding tax is not applicable to corporations.

4.4 Foreign unitholder

Corporate unitholder	Individual unitholder	Withholding tax
N/A	N/A	N/A

Corporate unitholder

No Thai taxes are imposed on foreign corporate unitholders on income or on capital gains. The income is viewed by the Revenue Department as commercial income under Section 40(8) of the Revenue Code and is not subject to withholding tax when it is paid to a beneficiary overseas. There is no specific exemption, but foreign companies are outside the Thai tax regime.

Individual unitholder

No Thai taxes are imposed on foreign individual unitholders on income or on capital gains. The income is viewed by the Revenue Department as commercial income under Section 40(8) of the Revenue Code and is not subject to withholding tax when it is paid to a beneficiary overseas. There is no specific exemption, but foreign individuals are outside the Thai tax regime.

Withholding tax

No withholding taxes are imposed on overseas investors.

5 Tax treatment of the foreign REIT and its foreign unitholder

Foreign REIT	Corporate unit holder	Individual unit holder
Same as other foreign companies	N/A	N/A

Foreign REIT

The Thai tax treatment of a foreign REIT will be the same as that of another foreign individual or company, provided that it is considered a non-resident entity as supported by the certificate of residency issued by the relevant foreign tax authority.

Corporate unitholder

Given that it is a foreign unitholder of a foreign REIT, no Thai tax would be applicable to any type of income paid from a foreign REIT to its foreign unitholders.

Individual unitholder

Given that it is a foreign unitholder of a foreign REIT, no Thai tax would be applicable to any type of income paid from a foreign REIT to its foreign unitholders.

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A comparison of the major REIT regimes around the world.

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1 General introduction

	Enacted year	Citation	REIT type
Vietnam Real Estate Investment Trust	2021	1) Law on Securities No.54/2019/QH14 dated November 26, 2019 2) Decree No.155/2020/ND-CP dated December 31, 2020, providing guidance on the implementation of some articles of the Law on Securities 3) Circular No.98/2020/TT-BTC dated November 16, 2020, providing guidance on the operation and management of securities investment funds	Corporate type or closed-end fund

The regulations on V-REIT were first introduced in Vietnam in 2010 under Law 62/2010/QH12 on Securities, which came into force on 1 July, 2011. This has been abolished by Law 54/2019/QH14 on Securities, which came into force on 1 January, 2021, and provides the current regulations on V-REIT[1].

2 Requirements

2.1 Formalities/procedures

Key requirements
- V-REIT: Approval of the initial public offering (IPO) from the State Securities Commission (SSC) is required.

V-REIT

Two legal forms are permitted for a V-REIT being (i) a public closed-end fund and (ii) a public real estate investment company.

Public closed-end fund

A public fund can be established by a licensed fund management company if the following requirements are satisfied:

a) There are at least 100 investors, not including professional investors, on the fund certificates.

b) The total value of the fund certificates sold is at least VND 50 billion.

Approval from the SSC is required before an IPO, and the fundraising must be completed within 90 days thereof.

Public real estate investment company.

A public real estate investment company can be registered as a joint-stock company with the SSC if it meets the required conditions, most notably the following:

a) Actual contributed charter capital must be at least VND 50 billion

b) All assets must be in the custody of a supervisory bank

c) Must have at least 100 shareholders that are not professional securities investors

1 As of now, there is only one REIT active in Vietnam, Techcom Capital REIT (TCREIT).

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2.2 Legal form/minimum share capital

Legal form	Minimum share capital
- Public real estate investment company - Closed-end fund	VND 50 billion

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
Have at least 100 shareholders that are not professional securities investors.	Yes

Shareholder requirements

A V-REIT must have at least 100 shareholders that are not professional securities investors; failure to meet this condition shall lead to a delisting.

Professional securities investors are generally defined as investors that have adequate financial capacity or securities qualifications (e.g., commercial banks, foreign branch banks, finance companies, insurers, securities companies, fund management companies, and any company that contributed charter capital that exceeds VND 100 billion and any individual whose taxable income in the latest tax year is at least VND 1 billion).

Listing requirements

A V-REIT can only be established in the form of a public real estate investment company or a public closed-end fund (being a public fund). Its publicly offered fund certificates/shares must be listed on the Stock Exchange after the end of public offerings.

2.4 Asset levels/activity test

Restrictions on activities/investments
- At least 65% of the V-REIT's net asset value must be invested in real estate in Vietnam that is leased or operated for stable earnings and securities issued by real estate enterprises - Not more than 35% of the V-REIT's net asset value may be invested in certain regulated assets

The structure of the investment portfolio of a V-REIT must meet the following requirements:

- At least 65% of its net asset value must be invested in (i) real estate in Vietnam, which is leased or operated for stable earnings; (ii) securities issued by real estate enterprises that derive at least 65% of their revenue from ownership and trade in real estate (RE enterprises) according to their latest annual financial statements. If the REIT only invests in RE enterprises, it must invest in securities of at least three issuers.

- Other than investments in RE enterprises, not more than 35% of its net asset value may be invested in money market instruments; Government debt instruments; Government-backed bonds and municipal bonds; listed shares; shares registered for trading; bonds listed on a Stock Exchange; public fund certificates; unlisted shares of issuers that are operating under the law of Vietnam; shares of joint-stock companies or stakes of limited liability companies; or rights arising in connection with securities held by

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the fund. Investment in these assets must comply with the following limits:

- The investment must not exceed 10% of the total outstanding securities of an issuer or the total outstanding fund certificates of a public fund managed by another fund management company, except for Government debt instruments.
- The investment in regulated assets (including money market instruments; Government debt instruments; Government-backed bonds and municipal bonds of an issuer, or fund certificates of a public fund managed by another fund management company, except Government debt instruments) must be 5% or less of the REIT's total asset value.
- The investment in securities issued by companies in the same group (parent-subsidiary relationship), companies holding more than 35% of each other's shares, or subsidiaries of the same parent company) must account for 10% or less of the REIT's total asset value.
- The investment in public fund certificates or shares of public securities investment companies must be 10% or less of the REIT's total asset value.
- The investment in regulated assets (including unlisted shares of issuers operating under the law of Vietnam, shares of joint-stock companies and stakes in limited liability companies) must be 5% or less of the REIT's total asset value.

- The REIT shall not invest in its fund certificates.

- A REIT's borrowing, lending, repo transactions, margin trading and short sales are subject to certain restrictions.

2.5 Leverage

Leverage
The net asset value of a V-REIT must not be less than VND 30 billion. No other specific leverage rules apply.

V-REITs need to ensure that, after a profit distribution, they are able to fully settle their debts and other liabilities when due and that their net asset value shall not be lower than VND 50 billion.

Within three working days from the date on which a V-REIT's net asset value decreases to less than VND 30 billion, the fund management company must notify the SSC and propose remedial actions. A V-REIT will be dissolved if its net asset value falls under VND 10 billion for six consecutive months.

A fund management company must not lend money to fund the activities of a V-REIT, except for short-term loans prescribed by banking laws to cover the V-REIT's necessary costs or pay for the transaction of fund certificates with investors. The total short-term loans of a V-REIT must not exceed 5% of its net asset value at any time, and the loan term shall not exceed 30 days.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
The V-REIT must distribute at least 90% of its net income of the year, provided that the net asset value after the distribution is at least VND 50 billion.	No Capital Gain Tax (CGT) is applicable.	In accordance with the V-REIT's charter

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Operative income

V-REITs can distribute their profits in cash or by fund certificates. V-REITs must distribute at least 90% of their realized profits of the year to their investors.

The profit distribution of a V-REIT needs to comply with the following rules:

- Profits distributed to investors are those derived from the profits that the V-REIT earned in the period or accumulated profits after the V-REIT has fulfilled its tax and other financial obligations.
- The rate of profits distributed must conform with the V-REIT's profit distribution policy specified in its charter and approved by the General Meeting of Investors.
- The V-REIT needs to ensure that after profit distribution, it is able to fully settle its debts and other liabilities when due and that its net asset value is not less than VND 50 billion.
- If the V-REIT distributes profits by issuing fund certificates, its equity sourced from undistributed after-tax profits according to the latest audited financial statements must be sufficient to cover such distribution.

Capital gains

No CGT will be imposed on a V-REIT's distributed and undistributed profits.

2.7 Sanctions

Penalties/loss of status rules
- Several penalties may apply depending on the specific violation - Mandatory delisting or loss of REIT status

Different types of violations will be subject to different administrative penalties, capped at VND 3 billion per offence. Other sanctions may also be applied, such as mandatory delisting/dissolution of the fund.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
Generally, current income other than dividends received from invested securities is taxable income.	Taxable	Withholding tax will be imposed on various overseas payments

Current income

A V-REIT's income from dividends (both cash dividends and dividends distributed in the form of shares) received from its invested securities is tax-exempt. If dividends are distributed in the form of shares, upon transfer of such shares, the V-REIT will be subject to income tax at the rate of 20% on any taxable net gains arising on the transfer of such shares, determined as the gross sale proceeds less the par value of the shares sold less transfer related expenses.

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A V-REIT's income derived from its business activities (other than dividends received from its invested securities) is taxable income for Vietnam tax purposes.

V-REITs that are public real estate investment companies must file and pay taxes directly to the tax authorities. With respect to V-REITs established in the form of a closed-end fund, the fund management companies will file and pay tax on behalf of the V-REITs.

Capital gains

There is no separate capital gain tax. Capital gains will be included in the annual current income.

Withholding tax

Withholding tax will be imposed on various overseas payments, e.g., service fees and interest payments.

Other taxes

Value added tax

- Transfer of houses/buildings: subject to VAT at 10%
- Transfer of land use right: not subject to VAT
- Rental income: subject to VAT at 10%.

Accounting rules

Income is determined based on Vietnam GAAP.

The total net asset value of a V-REIT is determined as its total asset value less its total liabilities. The total asset value of a V-REIT is determined according to the market value or fair value of its assets (if the market value is not available). The total liabilities of a V-REIT are debts or payment obligations incurred by the V-REIT.

The financial statements of a V-REIT must be audited.

3.2 Transition regulations/exit tax

Conversion to REIT status
There are no rules on conversion to REIT status in Vietnam.

There are no rules on conversion to REIT status in Vietnam.

3.3 Registration duties

Registration duties
Stamp duty

Stamp duty is applicable to certain assets (land, building, vehicles) that are subject to ownership registration.

The stamp duty is calculated based on the regulated rate multiplied by the dutiable price. The duty rate for land and buildings is 0.5%. The total stamp duty payable is capped at VND 500 million per asset/

registration (approximately USD 22,000). The dutiable price for land and houses is promulgated by the provincial People Committee from time to time.

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4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholders	Individual shareholders	Withholding tax
- Dividends received from a V-REIT are tax-exempt. - The disposal of shares in a V-REIT is subject to CGT at 20% on the net taxable gains as part of the annual income.	- Dividends received from a V-REIT are subject to Personal Income Tax (PIT) at 5%. - The disposal of shares in a V-REIT is subject to PIT at 0.1% on the gross sale proceeds.	Not applicable

Corporate shareholders

Dividend payment

Dividends from after-tax profits received from investments in V-REITs are tax-exempt.

Capital gains

There is no separate capital gain tax. Capital gains will be included in the annual income of the corporate shareholders (the standard tax rate is 20%).

Individual shareholders

Dividend payment

Dividends received from investments in V-REITs are subject to PIT at 5%.

Capital gains

Individuals who dispose of V-REIT shares are subject to PIT at 0.1% on gross sale proceeds.

4.2 Foreign shareholders

Corporate unitholder	Individual unitholder	Withholding tax
- Dividends received from a V-REIT are tax-exempt. - The disposal of V-REIT shares is subject to 0.1% income tax on the gross sale proceeds.	- Dividends received from a V-REIT are subject to PIT at 5%. - The disposal of shares in a V-REIT is subject to PIT at 0.1% on the gross sale proceeds.	Not applicable

Corporate shareholders

Dividends from after-tax profits received from investments in V-REITs are tax-exempt.

The disposal of V-REIT shares shall be subject to tax at 0.1% on the sale proceeds. Most Vietnamese tax treaties do not protect investors from Vietnamese income tax, as they generally give Vietnam the right to tax income tax from the disposition of shares in a real estate company.

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Individual shareholders

Dividends received from investments in V-REITs are subject to PIT at 5%.

Disposals of V-REIT shares are subject to PIT at 0.1% on the gross sale proceeds. As with corporate shareholders, most Vietnamese tax treaties do not protect investors from Vietnamese income tax as they generally give Vietnam the right to tax income tax from the disposition of shares in a real estate company.

5 Tax treatment of the foreign REIT and its foreign shareholders

Foreign REIT	Corporate shareholders	Individual shareholders
Fully-taxable	- Dividends received from a foreign REIT are regular taxable income; a credit of foreign tax paid may be available - Capital gains are taxable income subject to the standard tax rate of 20%	Dividends received from a foreign REIT are subject to PIT at 5% - Disposal of listed shares in a foreign REIT is subject to PIT at 0.1% on gross sale proceeds; there is no clear guidance on taxing the disposal of non-listed shares

Corporate shareholders

Corporate shareholders need to include any dividends received from foreign REITs into their taxable income for Vietnam corporate income tax purposes. Such dividends need to be grossed up for any withholding tax or underlying foreign income tax paid on the profits distributed and should be subject to the standard rate of 20%.

Foreign withholding taxes levied on distributions will generally be credited in Vietnam, subject to having appropriate supporting documents. The foreign tax credit shall be capped at the lower of (i) the actual foreign tax paid and (ii) the amount of tax that would be payable based on Vietnam's corporate tax regulations (i.e., at the standard rate of 20%).

Corporate shareholders must also include any income from the disposal of shares in a foreign REIT into their taxable income for Vietnam corporate income tax purposes. Such income is subject to the standard rate of 20%.

Individual shareholders

Dividends distributed from a foreign REIT are subject to PIT at 5%.

The disposal of listed shares in a foreign REIT is subject to PIT at 0.1% on gross sale proceeds. There is no clear guidance on taxing individual shareholders' income derived from the disposal of non-listed shares in a foreign REIT.

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AFRICA & MIDDLE EAST

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EPRA
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GLOBAL
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REIT

A comparison of the
major REIT regimes
around the world.

2023

1 General introduction/history/REIT type

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	Enacted year	Citation	REIT type	REIT market
REIT	2006 – 2010 – 2018	FSA Investment Trust and REITS Rules Instrument 2006 DIFC Companies Law (currently DIFC Law No. 5 of 2018) DIFC Investment Companies Regulations 2018 DIFC Collective Investment Law (DIFC Law No. 2 of 2010, as amended) DIFC Investment Trust Law (DIFC Law No. 5 of 2006, as amended) Collective Investment Rules Module (CIR) of the DFSA Rulebook Islamic Finance Rules (IFR) Module to the DFSA Rulebook DIFC Law Regulating Islamic Financial Business (DIFC Law No.13 of 2004, as amended)	It can be either established as an Investment Company (i.e., corporate vehicle) or as an Investment Trust	Very few publicly listed REITs, although there are some non-public REITs. No DIFC REITs have been established using an Investment Trust vehicle.

The REIT was introduced into the Dubai International Financial Centre (DIFC) under the Dubai Financial Services Authority (DFSA) Investment Trust and REITS Rules Instrument 2006, issued in August 2006 (which amended the Collective Investment Rules Module (CIR) of the DFSA Rulebook). The DFSA Investment Trust and REITS Rules Instrument 2006 introduced the concept of using an ‘Investment Trust’ (established under the DIFC Investment Trust Law – DIFC Law No. 5 of 2006, which has subsequently been amended several times) for purposes of establishing a REIT. However, it was possible before this instrument’s enactment (and continues to be the preferred choice) to establish a REIT in the form of an ‘Investment Company’, established under the DIFC Companies Law (currently DIFC Law No. 5 of 2018). All DIFC REITs to date have been established through the Investment Company form as opposed to the Investment Trust vehicle. The concept of a Shariah-compliant REIT was subsequently introduced into the DIFC following the inception of the Islamic Finance Rules (IFR) Module to the DFSA Rulebook in March 2010, supported by the DIFC Law Regulating Islamic Financial Business (DIFC Law No.13 of 2004, as amended). The central DIFC legislation that governs funds generally and which provides much of the DFSA’s CIR Module’s authority is the DIFC Collective Investment Law (DIFC Law No. 2 of 2010, as amended), as well as, more generally, the DIFC Regulatory Law (DIFC Law No. 1 of 2004, as amended).

Following an announcement in May 2018, the DFSA and the DIFC Authority jointly issued (1) the DIFC’s Investment Company Regulations and (2) the Protected Cell Company (PCC) Regulations in November 2018 as part of the DIFC’s development of its legal infrastructure with regards to funds generally. Collectively, this has enriched the legal infrastructure supporting REITs within the DIFC.

As of June 7, 2019, there are two publicly listed REITs on NASDAQ Dubai – one of two ‘Authorised Market Institutions’ in the DIFC.

In partnership with France’s Eiffel Management Limited, Dubai Islamic Bank launched the first Islamic REIT in Dubai in December 2010. The venture, by the name of Emirates REIT, was listed on NASDAQ Dubai on April 8, 2014, and raised USD 201 million through the IPO process.

Emirates REIT is set up as a close-ended Investment Company (CEIC) in accordance with DIFC Law and DFSA regulation. Emirates REIT also includes a Shariah Supervisory Board to advise on Shariah-related matters to ensure the trust is operated in accordance with Shariah principles.

Emirates NBD REIT was formed by Emirates NBD Asset Management Limited and listed on the Dubai NASDAQ on March 23, 2017. It raised USD 105 million through the IPO process. The Emirates NBD REIT is

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a closed-ended DIFC Investment Company and was established to invest in Shariah-compliant real estate focused in the UAE.

Other than these two REITs, there are a number of DIFC REITs that are not listed on NASDAQ Dubai:

- GII Islamic REIT – established by Gulf Islamic Investments Limited as a DIFC-domiciled Qualified Investor Fund (QIF) in December 2017;
- Manrre REIT – established by Dalma Capital Management Limited as a DIFC-domiciled Exempt Fund in March 2018; and
- Sustainable REIT 1 – established by Sphere Capital Limited as a QIF in December 2017.

A DIFC-domiciled REIT can be managed by either a DIFC-domiciled and DFSA-regulated Fund Manager or by a Fund Manager based elsewhere who obtains status as an External Fund Manager from the DFSA.

NASDAQ Dubai's Admission and Disclosure Standards (ADS) and Business Rules (BRs) also govern REITs listed on NASDAQ Dubai listings.

Other REIT regimes in the UAE

Please note that in addition to the legal and regulatory framework in the DIFC, which is a Financial Free Zone in the United Arab Emirates (UAE), there are two other REIT frameworks in the UAE:

(a) that of the Abu Dhabi Global Market (ADGM) governed by ADGM Law and regulations issued by ADGM's independent financial services regulator – the ADGM Financial Services Regulatory Authority (FSRA) – which is the only other Financial Free Zone in the UAE and is a common law-based system; and

(b) that of the rest of the UAE outside the DIFC and ADGM (i.e., 'onshore' UAE), governed by the UAE's federal-level capital markets and securities sector regulator, the UAE Securities and Commodities Authority (SCA).

This summary does not cover the regime in either the ADGM or 'onshore' UAE.

2 Requirements

2.1 Formalities/procedure

Key requirements
- Required to use a closed-ended legal structure for the investment vehicle (open-ended structures for property funds generally, REITs or otherwise, are only allowed if the fund is an Exempt Fund of a QIF, i.e., not a Public Fund) - For a domestic (i.e., DIFC-domiciled) property fund that intends to be public, the Fund Manager may only use either an Investment Company or Investment Trust as the investment vehicle of the fund; it must ensure that it is listed and traded on a DIFC Authorised Market Institution (AMI – at present, the only suitable AMI for a REIT is NASDAQ Dubai), or an exchange in a DFSA 'Recognised Jurisdiction' within three years from the date on which the units of the fund are first offered to the public; and must ensure that the constitution of the fund includes provisions that address the issuance, redemption and private placement of units. - If an Exempt Fund of a QIF intends to be listed on an AMI or exchange located in a DFSA' Recognised Jurisdiction', the corporate vehicle (whilst still being an Investment Company) must be registered as a 'Public Company'; must list within three years of registration; and whilst its listing is pending, must comply with all the requirements of a Public Fund other than the requirements for independent oversight and a Public Fund prospectus. - Technical rules do exist for self-custody, which addresses the need for adequate systems and controls to ensure the effective management and protection of the real estate. - There is the requirement for an Investment Committee of three experts independent of the Fund Manager mandated to review investment opportunities. This is only a requirement for REITs established as an Investment Company and does not apply to REITs established as an Investment Trust.

Key requirements to establish a REIT should be confirmed with counsel to ensure the current formalities and procedure.

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2.2 Legal form/minimum initial capital

Legal form	Minimum initial capital
Public Fund	No – but (a) unitholders include Retail Clients; or (b) has, or intends to have, more than 100 unitholders; or (c) some or all of its units are offered to investors by way of a public offer and have no minimum subscription amount.
Exempt Fund	No – but (a) only includes Professional Clients; (b) has 100 or fewer unitholders; and (c) units are offered to persons only by way of a Private Placement (although it is possible for an Exempt Fund to be listed) and a minimum subscription of USD 50,000.
Qualified Investor Fund (QIF)	No – but (a) only includes Professional Clients; (b) has 50 or fewer unitholders; and (c) units are offered to persons only by way of a Private Placement (although it is possible for a QIF to be listed), and a minimum subscription of USD 500,000.

Legal form

A DIFC REIT, whether in the form of a Public Fund, Exempt Fund or QIF, is constituted as an Investment Trust or an Investment Company (the same requirements as other DIFC-domiciled property funds).

Minimum initial capital

No minimum initial capital requirements existing, but minimum capital requirements do exist for Fund Managers who manage DIFC REITs.

2.3 Unitholder requirements/listing requirements

Unitholder requirements	Listing mandatory
Detailed information is to be confirmed on a case-by-case basis. If a DIFC REIT is either an Exempt Fund or a QIF, unitholders must fall under the DFSA's definition of a 'Professional Client'.	No

Unitholder requirements

Unitholder requirements should be confirmed with the DFSA at the time of listing.

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2.4 Asset level/activity test

Restrictions on activities/investments
- REITs with any foreign share ownership are restricted to investing in designated freehold areas in 'onshore' Dubai, i.e., Dubai other than the DIFC, or the rest of 'onshore' UAE as the non-designated areas allow only UAE and GCC nationals and companies owned entirely by them to own assets in those areas. - REITs are primarily aimed at investments in income-generating real properties. - REITs are permitted to develop real estate; the total contract value of the property under development being considered must not exceed 30% of the net assets value of the Fund Property of the REIT. As a Property Fund, any investment made by a REIT in respect of the property under development, whether on its own or in a joint venture, is undertaken only where the REIT intends to hold the developed property upon completion. Property development activities do not include refurbishment, retrofitting and renovation. - REITs must distribute to unitholders at least 80% of their audited annual net income. - The persons providing oversight functions in respect of the fund must determine if any: (i) revaluation surplus credited to income, or (ii) gains on disposal of real property shall form part of the net income for distribution to unitholders. - REITs can only invest up to 40% of their total assets in cash and government securities while the remaining balance of the fund is to be invested in real property, property-related assets (which need to be either listed and traded, or failing which, approved by the fund's Investment Committee and must represent good marketable title in the underlying real estate – i.e., 50% control), or units in another property fund. There is a six-month grace period with regard to this requirement, but this is subject to the fund's prospectus. - REITs may hold real property via an SPV (Special Purpose Vehicle – referred to in DIFC Law and DFSA regulation as a 'Special Purpose Company' or 'SPC') and should receive the total income generated by the SPV. - REITs should own and control a minimum 50% shareholder stake if entering into a joint property ownership arrangement. - REITs' ownership of property outside Dubai is subject to the ownership restrictions of each Emirate and country where the REIT is investing. - Islamic REITs are required to have in place a Shariah Supervisory Board, and all investment decisions should be made in a Shariah-compliant manner (both in terms of financing and in terms of underlying investments).

As mentioned above, there are separate REIT regimes in the Abu Dhabi Global Market and 'onshore' in the UAE. This summary does not deal with either of those regimes.

2.5 Leverage

Leverage
Limited to 65% of the gross asset value of the fund (which in the case of Islamic REIT must only be from borrowings that are Shariah-compliant)

In the DIFC, an operator of a REIT may borrow either directly or through SPVs up to 65% of the gross asset value of the fund.

On 3 May 2015, the DFSA published a modification notice to Emirates REIT permitting the Fund Manager, in respect of the fund, to borrow directly or through its SPV up to 50% of the total gross asset value of the fund. The modification also specified a Fund Manager of an Islamic REIT, in respect of the fund, may borrow either directly or through its SPV up to 50% of the total gross asset value of the fund, and such borrowings are Shariah-compliant. The modification was published without conditions and is effective until further notice. However, this modification was provided to Emirates REIT on a bilateral basis and did not constitute the regulatory position for all REITs. The DFSA has the authority to grant conditional waivers with regard to its regulatory requirements upon application, and such waivers are required to be made public.

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2.6 Profit distribution obligations

Operative income	Capital gains	Timing
80% of annual net income	Included in net income	Annually

Operative income

REITs in the DIFC are required to distribute an amount not less than 80% of audited annual net income to the unitholders.

Capital gains

Capital gains are included in the annual net income of the REIT. For-profit distribution purposes, the inclusion of capital gains is at the sole discretion of the overseeing body of the fund.

2.7 Sanctions

Penalties/loss of status rules
If at any time during the operation of the DIFC REIT, the requirements regarding its operations are not met, the Fund Manager and, if appointed, the Trustee must immediately notify the DFSA and the exchange of the failure to meet the requirements in these Rules and what measures have been or will be taken to remedy the breach. Depending on the breach and like all financial services regulators, the DFSA has several enforcement-related tools, including, but not limited to, financial penalties, loss of status, disgorgement of profits, etc.

Sanctions-related concerns must be subject to future detailed analysis.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
N/A	N/A	N/A

Current income

REITs are not subject to tax if they are closed-ended investment companies domiciled in the DIFC. Article 14 of DIFC's establishing law, Emirate of Dubai Law No. 9 of 2004 in Respect of the Dubai International Financial Centre, exempts all DIFC-domiciled entities, including DIFC-domiciled Funds, from any corporate tax, effective for 50 years commencing from 13 September 2004.

In 2022, the United Arab Emirates announced a corporate income tax of 9% on profits of companies generated from their activities in the UAE, even if established in the Financial Free Zones. This should impact the two listed REITs mentioned herein. The corporate income tax law has not yet been published to accurately assess how it will impact REITs.

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Capital gains

Not taxable as specified above.

Withholding tax

N/A.

Accounting rules

A Fund Manager must, in respect of a Fund, prepare and maintain all financial statements in accordance with the International Financial Reporting Standards (IFRS) or USGAAP as supplemented by the Statement of Recommended Practice (SORP). The standards and principles of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) are applicable for Shariah-compliant REITs.

VAT

VAT was introduced in 2018, and it may be payable on rental income and services provided to the REIT, depending on the asset class. A detailed analysis would be required based on the asset class of the REIT.

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
- Land Registration Fees - Real Estate Transfer Fees - Fund Registration and Establishment Fees

No stamp duty or transfer tax is levied on the acquisition of freehold property in Dubai. However, there are land registration fees and transfer fees between 1% to 6% paid by the property developer and purchaser, depending on the property type and location. The regulations provide that each party incurs 50% of the expense, but the parties are contractually able to agree otherwise.

The real estate registration fee for a real estate purchase of property ‘onshore’ in Dubai is 4% of the purchase price (and may vary for other Emirates), applied to the value of the relevant immovable property.

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4 Tax treatment at the unitholder level

4.1 Domestic unitholder

Corporate unitholder	Individual unitholder	Withholding tax
N/A	N/A	N/A

Corporate unitholder

No taxation for domestic corporate unitholders. No taxes apply to the unitholders, including dividend tax, capital gains tax, stamp duty or other tax.

Individual unitholder

No taxation for domestic individual unitholders.

Withholding tax

The DIFC and the UAE do not levy withholding taxes.

4.2 Foreign unitholder

Corporate unitholder	Individual unitholder	Withholding Tax
Detailed information not yet available	N/A	N/A

Corporate unitholder

Taxation for foreign corporate unitholder requirements would need to be the subject of future analysis with regard to the nature of business of foreign corporate unitholders (subject to the comments in Part 3 above).

Individual unitholder

No taxation for foreign individual unitholders.

Withholding tax

The DIFC or 'onshore' UAE does not levy withholding taxes.

5 Tax treatment of the foreign REIT and its domestic unitholder

Foreign REIT	Corporate unitholder	Individual unitholder
Detailed information is not yet available	Detailed information is not yet available	Detailed information is not yet available

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Foreign REIT

Taxation for a foreign REIT on income from the DIFC or 'onshore' UAE would need to be the subject of future analysis with respect to the applicability of double tax treaties between the UAE and the foreign REIT's country of residence.

Corporate shareholder

Taxation for domestic corporate unitholders from the income of a foreign REIT would need to be the subject of future analysis with respect to the applicability of double tax treaties between the UAE and the foreign REIT's country of residence.

Individual shareholder

Taxation for domestic individual unitholders from the income of a foreign REIT would need to be the subject of future analysis with respect to the applicability of double tax treaties between the UAE and the foreign REIT's country of residence.

Please note: no reliance should be placed on the information above, it is not financial nor legal advice.

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REIT

A comparison of the
major REIT regimes
around the world.

2023

1 General introduction

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	Enacted year	Citation	REIT type
REIT	2006	Sections 64A2–64A11 of the Israeli Tax Ordinance ('ITO')	Corporate type

The REIT (Real Estate Investment Trust) regime was introduced into the Israeli tax legislation in 2006. The Israeli REIT is a 'flow-through' regime. As a result, each of the REIT investors is taxed on the distributed REIT incomes.

The REIT is governed by Sections 64A2–64A11 of the Israeli Tax Ordinance, which determines a detailed settlement about the essence of the REIT, its way of operations and tax implications on the REIT's shareholders.

In this model, certain shareholders are exempt from tax on the income from the REIT. The exempted shareholders include:

1) Retirement fund or a public institution – provided that in respect of the income of the public institution from the sale of land, an exemption of half the tax shall be granted. For the purposes of this paragraph, a 'retirement fund' and a 'public institution', as defined in Section 9(2) of the Israeli Tax Ordinance; and

2) A resident of a treaty country managing a retirement age savings plan or long-term savings plan similar to a fund and any pension fund that is a resident of a treaty country, or managed by a resident of a treaty country provided that profits received from retirement savings plan are exempt from tax in that resident country.

Other corporations that invest in the REIT are subject to corporate tax rates (23% in 2023). Individuals are subject to the individual marginal tax rate of up to 47% at the highest tax bracket in 2023. In addition, individuals whose total chargeable income exceeds NIS 698,280 (in 2023) are subject to an additional 3% tax rate on the part of their chargeable income.

Sector summary*

Listing country	Number of Listed REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
Israel	6	0	1.940,35	0.00%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

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2 Requirements

2.1 Formalities/procedure

Key requirements
- Special purpose company is required - Incorporated in Israel; controlled and managed from Israel - The company's shares are listed for trading on a stock exchange in Israel within 24 months from the date of its incorporation; however, the company's shares can be listed for trading on a stock exchange in Israel within 36 months if the company's valuable assets which are real estate for residential rental purposes or income-yielding real estates for residential rental purposes are not less than 30% of the entire assets of the company, at a period of 24 months and 48 months from the date of its incorporation - Certain assets' value/ratios should be maintained - Certain limitations on the company's shareholders' holdings ratio should be maintained

The REIT regime applies to a new company that is established for this purpose or a company that commits to become a REIT.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
A public company traded on the Tel Aviv Stock Exchange (TASE)	No

Legal form

A REIT must be a public company listed for trade on the Israeli stock exchange (TASE). It must be a tax resident of Israel. The REIT Subsidiaries can reside outside Israel, but the value of income-yielding real estate assets in Israel and the value of the real estate for residential rental purposes assets located in Israel should be no less than 75% of the value of all the company's income-yielding real estate assets and real estate for residential rental purposes assets.

The company must meet these requirements on the testing dates, June 30 and December 31 of each year since its date of incorporation.

The REIT must submit an annual tax return which includes an accountant certificate that the company has met all the requirements of a REIT as mentioned above and hereinafter.

Minimum share capital

No minimum share capital is required.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
The REIT's shareholders' means of control should not exceed the limitations described hereinafter	Yes

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Shareholder requirements

Within three years from the date when the company was listed for trading on an Israeli stock exchange, the total ownership of the company's means of control, whether held directly or indirectly, cannot exceed 70% by five shareholders or less.

Within five years from the date the company was listed for trading on an Israeli stock exchange, the ownership of the company's means of control, whether held directly or indirectly, must not exceed 50% by five shareholders or less.

In addition, as of the sixth year from the date the company was listed for trading on a stock exchange in Israel, no single shareholder will hold more than 30% of the company's means of control, and as of the ninth year from the date the company was listed for trading on a stock exchange in Israel, no single shareholder will hold more than 20% of the company's means of control.

The limitations on the company's shareholders apply to direct or indirect holdings (a shareholder and his relative, as defined in Section 88 of the ITO, are considered to be one shareholder). In addition, members of a benefit fund, persons insured by an insurance company in respect of its insured persons' investment, and unitholders in a joint investment trust fund will be considered shareholders in the fund.

'Means of control' is defined as one of the following: the right to profit, the right to appoint a director or general manager of the company or similar function, voting rights, the rights to liquidation proceeds or the power to order or instruct someone who holds any of the rights listed above to act on his behalf.

Listing requirements

The company must be listed for trade in the TASE within a period of 24 months or 36 months from the date of incorporation under the provisions described above. The REIT may also be listed for trade abroad (dually).

2.4 Asset levels

Restrictions on activities/investments
- - 95% or more of the value of the REIT's assets must consist of income-yielding real estate assets, real estate for residential rental purposes assets and liquid assets (cash, deposit, securities, bond, etc.) - - 75% or more of the value of the REIT's assets must consist of the following: (1) income-yielding real estate assets (2) money received from the first issue of the REIT's securities, which were listed for trading in the TASE, during the two years following the day of issue (3) money received from an additional issue of the REIT's securities, which were listed for trading in the TASE, during one year following the day of issue (4) consideration from the sale of real estate – during one year following the day of sale - The value of the REIT's assets mentioned exceeds NIS 200 million - The value of income-yielding real estate assets and the value of Israeli real estate for residential rental purposes assets located in Israel should be no less than 75% of the value of all the company's income-yielding real estate assets and real estate for residential rental purposes assets

A REIT must fulfil all the restrictions stated below:

- 95% or more of the value of the REIT's assets must consist of income-yielding real estate assets, real estate for residential rental purposes assets and liquid assets (cash, deposit, securities, bond, etc.);
- The value of income-yielding real estate assets and the value of Israeli real estate for residential rental purposes located in Israel should be no less than 75% of the value of all the company's income-yielding

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real estate assets and real estate for residential rental purposes. real estate assets and real estate for residential rental purposes.

The company must meet these requirements on the testing dates, June 30 and December 31 of each year, since the date of its incorporation.

75% or more of the value of the REIT's assets must consist of the following:

(1) income-yielding real estate assets;

(2) money received from the first issue of the REIT's securities that were listed for trading on the TASE during the two years following the day of issue;

(3) money received from an additional issue of the REIT's securities that were listed for trading on the TASE during one year following the day of issue; and

(4) consideration from the sale of real estate during one year following the day of sale.

The value of the REIT's assets mentioned exceeds NIS 200 million.

The company must meet these requirements on the testing dates, June 30 and December 31 of each year after the date of the REIT's listing for trading on the TASE.

'Income-yielding real estate' is defined as real estate that generates income from rent and additional activities, as long as at least 70% of the real estate is developed according to a plan that applies to them and the real estate is not considered inventory in the fund's books.

Holding of real estate association by REIT does not affect REIT's requirements, while the real estate association invests in assets according to the REIT's requirements. In addition, the real estate income will be subject to tax as part of the REIT's income.

2.5 Leverage

Leverage
The REIT's debt should not exceed the ratio of the REIT's total assets as described.

The REIT's obligations (other than equity) do not exceed 60% of the income-yielding real estate assets value in addition to 80% of the value of the real estate for residential rental purposes assets or income-yielding real estate for residential rental purposes assets and in addition to 20% of the value of other assets it holds.

The company must meet these requirements on the testing dates, June 30 and December 31, each year after the REIT's listing for trading on the TASE.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
At least 90% of its chargeable income	100% of its capital gain from the sale of income-yielding real estate	- Distribution of the chargeable income (other than real estate appreciation or profits from the sale of income yielding real estate), in addition to exempt income and less non-deductible expenses, must take place no later than April 30 of the following year the income was produced or accrued - Distribution of the capital gain must take place during a period of 12 months from the date of the sale of income yielding real estate

Operative income

The REIT is obliged to distribute at least 90% of its chargeable income, excluding capital gains and non-deductible expenses and exempted income, calculated based on generally accepted accounting principles.

The REIT may choose to distribute an additional amount equal to the depreciation expenses.

Capital gains

The REIT is obliged to distribute 100% of its capital gain from the sale of income-yielding real estate.

Timing

Distribution of the chargeable income must take place no later than April 30 of the following year the income was produced or accrued since the date of the REIT's incorporation.

Distribution of the capital gain must occur in 12 months from the date of the sale of the income-yielding real estate since the date of the REIT's incorporation.

2.7 Sanctions

Penalties/loss of status rules
Loss of tax privilege

The REIT will be taxed similarly to an ordinary company from the date on which the requirements are no longer met. However, if the company fails to meet the requirements on a testing date in any given year since the date of the REIT's registration for trading on the TASE, but within a period of up to three months, successfully meets the requirements and continues to do so for a consecutive year, the company will be considered a REIT throughout the entire period. In the case that the company fails to meet the requirements for a consecutive year after the period of three months, as mentioned above, the company will cease to be a REIT from the first date it failed to meet the requirements.

REIT that does not meet the requirements or chooses to discontinue its REIT status will be taxed as an ordinary company from the date of its election or 90 days from the date of its application to the Israeli Tax Authority, according to the latest, or from the date that requirements are no longer met.

Any decision to discontinue REIT status by choice requires the approval of the company's general meeting. Controlling shareholders or people with a personal interest in the approval shall not be included in the count of voters.

If the company has begun a liquidation process, it shall cease to be considered a REIT.

3 Tax treatment at the level of the REIT

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3.1 Corporate tax /withholding tax

Current income	Capital gains	Withholding tax
- No taxation of distributed chargeable income - Undistributed exceptional income is subject to a 60% tax rate. Distributed exceptional income is subject to a 70% tax rate - Undistributed chargeable income from the sale of real estate held for a period of fewer than four years will be subject to corporate tax rates or individual marginal tax rates - Chargeable income, as well as capital gain derived from real estate for residential rental purposes assets not held for a short period, will be subject to a 20% tax rate - Income paid to the shareholders that exceed the chargeable income and is beyond the value of depreciation expenses will be subject to the capital gain tax rate - Other chargeable income will be subject to the provisions of any applicable law (in general, corporate tax rate).	- Distributed capital gains are exempted from tax - Undistributed capital gains will be subject to a corporate tax rate or individual marginal tax rates	- Upon distribution to the shareholders, a banking corporation or a member of TASE will withhold tax at the following rates: - Capital gains: 25%/30% for individuals, the corporate tax rate for companies; however, regarding individuals, chargeable income from the sale of real estate held for a period of fewer than four years will be withheld at the individual marginal tax rates - Chargeable income or capital gains derived from real estate for residential rental purposes assets not held for a short period will be subject to a 20% tax rate - Exceptional income is subject to withholding tax at a rate of 70% - Other chargeable income is subject to the regular corporate tax rate or individual marginal tax rates

Current income

The REIT is a ‘flow-through’ regime. However, the REIT is subject to taxes on undistributed income.

A 70% tax rate applies to ‘exceptional income’ upon distribution.

‘Exceptional income’ is defined as:

(1) income from the sale of inventory (real estate or otherwise);

(2) income other than the following to the extent that such income exceeds 5% of the total income of the fund in that tax year:

(a) income from income-yielding real estate assets, income from real estate for residential rental purposes assets and income from the sale of construction rights related to the income-yielding real estate;

(b) income from publicly traded securities, state bonds and deposits; and

(c) inflation income that is considered as business profits.

Exceptional income, which is not considered to be a chargeable income by the shareholders, is subject to a 60% tax rate.

The distribution of the exceptional income in later years will be considered a dividend distribution and subject to a 25%/30% withholding tax rate. No credit will be granted to the shareholders for REIT taxation.

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Capital gains

Distributed capital gains are not subject to taxation. The REIT must distribute 100% of its capital gain income. Distribution of capital gain must occur in 12 months from the date of sale of the real estate.

Foreign taxes

Foreign taxes paid by the REIT will be deducted from the foreign chargeable income that was subject to foreign taxes. However, no foreign tax credit will be granted to the REIT orthe REIT's shareholders.

VAT

A Sale of real estate for residential rental purposes by a REIT, as long as it was used for residential rental purposes for at least five years and the income derived from it was not considered 'Exceptional income', will not be subject to VAT.

Accounting rules

There are no special accounting rules for a REIT. A REIT listed for trade in the TASE must follow the IFRS rules, like any other listed company.

Losses

The shareholders are not allowed to offset losses of the REIT from their income.

A loss to a shareholder in the sale of the REIT's shares may be offset as stated in Section 92 of the Israeli Tax Ordinance or against the chargeable income of the shareholder that the REIT transferred to him in that year, except for the exceptional income that the REIT transferred to him in that year.

3.2 Transition regulations

Conversion into REIT status
According to the rules mentioned in section 2

3.3 Registration duties

Registration duties
Under certain conditions, reduced real estate purchase tax

Under certain conditions for a transfer of income-yielding real estate or real estate for residential rental purposes by a REIT in exchange for share allocation, the REIT will pay a reduced purchase tax of 0.5% of the real estate value. The reduced purchase tax rate also applies to a company that commits to becoming a REIT according to the requirements abovementioned in Section 2.

If certain conditions are not met, the company will pay the full purchase tax rate (in 2023, 6%); the reduced purchase tax of 0.5% also applies to the REIT's income-yielding real estate or real estate acquired for residential rental purposes.

4 Tax treatment at the shareholder level

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4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- The corporate tax rate is 23% in 2023 - The corporate capital gains tax rate is 23% in 2023	- The individual maximum marginal tax rate is 47% in 2023 - The individual capital gains tax rate is 25%/30%	As mentioned above

Corporate shareholder

The income derived from the REIT is subject to corporate tax. The corporate tax rate in 2023 is 23%.

Individual shareholder

The individual's income derived from the REIT is subject to the individual's marginal tax rate. The maximum individual tax rate in 2023 is 47%. Individuals with a total chargeable income that exceeds NIS 698,280 (in 2023) are subject to an additional 3% tax rate on the part of their chargeable income.

Withholding tax

Upon distributions, the REIT must withhold tax that the shareholders would have paid had their investment been directly in the real estate. The individual or corporate tax rates are based on ordinary income. For example, based on the corporate tax rate, the withholding tax would be 23% on corporate capital gains or ordinary business income.

The withholding tax is not a final assessment; the shareholder must submit an annual tax return reflecting his actual chargeable income (including losses). Credit will be granted for the withholding tax charged by the REIT.

Distribution of exceptional income will be subject to a 70% withholding tax. Distribution of the exceptional income that was not distributed in the year in which it was generated in later years will be considered as dividend distribution and will be subject to a 25%/30% withholding tax rate.

4.2 Foreign shareholders

Corporate shareholder	Individual shareholder	Withholding tax
- Withholding tax subject to tax rates applicable for Israeli companies - 'Exceptional income' that is distributed is subject to a 70% tax rate	- Withholding tax subject to tax rates applicable for Israeli individuals - 'Exceptional income' that is distributed is subject to a 70% tax rate.	- Final withholding tax - Treaty relief is available to distributions of 'exceptional income' in later years

Corporate shareholder

Distributions of current income and capital gains are subject to a withholding tax at the corporate tax rates applicable to Israeli investors. Treaty country resident pension funds and mutual funds are exempt from withholding tax, excluding exceptional income, to the extent that the profits are exempt in their country of residence.

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Individual shareholder

Distributions of current income and capital gains are subject to a withholding tax at the individual income tax rates applicable to Israeli investors.

Withholding tax

Treaty relief may be granted for the distribution of exceptional income in later years, which is considered a dividend distribution.

5 Tax treatment of the foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
- Taxation under standard Israeli tax rules	- Taxation at the corporate tax rate of 23% in 2023 if the REIT is a 'flow-through' entity - A dividend is subject to a 25% tax rate if the REIT is not a 'flow-through' entity	- Taxed at 47% in 2023 if the REIT is a flow-through entity - Dividend income will be subject to a 25%/30% tax if the REIT is not a 'flow-through' entity

Foreign REIT

A foreign REIT will be taxable under normal Israeli tax rules based on its legal character (corporation, fund, partnership, etc.).

Corporate shareholders

A corporate shareholder in a foreign REIT, which derived chargeable income from foreign sources, is subject to the corporate income tax rate of 23% in 2023 as long as the REIT is considered a 'flow-through' entity for Israeli tax purposes (regardless of its election under foreign country rules).

Dividend income is subject to a 25%/30% tax rate. A tax credit is allowed if the foreign REIT is not a 'flow-through' entity.

Individual shareholder

An individual shareholder in a foreign REIT, which derives chargeable income from foreign sources, is subject to individual income tax at the maximum rate of 47% in 2023 as long as the REIT is considered a 'flow-through' entity.

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REIT

A comparison of the
major REIT regimes
around the world.

2023

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1 General introduction/history/REIT type

	Enacted year	Citation	REIT type
D-REIT I-REIT Islamic REIT	2013	- Capital Markets Act (Chapter 485A of the Laws of Kenya) - Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2013	Collective Investment Scheme

Real Estate Investment Trusts (REITs) are regulated investment vehicles that enable persons to collectively contribute money or money's worth as consideration for the acquisition of rights or interests in a trust that is divided into units with the intention of earning profits or income from real estate as beneficiaries of the trust.

In Kenya, REITs are regulated under the Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2013 (the Regulations). The Regulations recognise three types of REITs:

- Development and construction REITs (D-REITs);
- Income REITs (I-REITs); and
- Islamic REITs.

Sector summary*

Listing country	Number of Listed REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
KENYA	1	0	7,13	0.00%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

The STANLIB Fahari I-REIT and the Local Authorities Pension Trust (LAPTRUST) I-REIT are the only listed REITs on the Nairobi Securities Exchange (NSE), making Kenya the fourth African country to list a REIT after South Africa, Nigeria and Ghana. The LAPTRUST I-REIT, in particular, heralds a new development in Kenya's REIT market, as it is the first I-REIT by a pension fund at the NSE. LAPTRUST is Kenya's oldest pension scheme, with the Capital Markets Authority (CMA) announcing on 2 November 2022 its approval of a listing by introduction on the NSE's Main Investment Market, Restricted Sub-Segment.

In February 2021, Acorn Holdings Limited launched the Acorn Student Accommodation Development REIT (ASA D-REIT) and the Acorn Student Accommodation Income REIT (ASA I-REIT) quoted on the NSE's over-the-counter platform.

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2 Requirements

2.1 Formalities/procedure

Key requirements
Approval by the Capital Markets Authority (the CMA) of the trustee, REIT Manager, scheme and offering memorandum

In the case of an unrestricted offer, an offeror is required to publish a prospectus by making it available to the public, free of charge, at an address in Kenya, from the time that the securities are first offered until the end of the period during which the offer remains open. Similarly, in the case of a restricted offer, an issuer is required to prepare an offering memorandum and make it available to prospective investors.

Key to note is that where a prospectus or offering memorandum includes a statement purporting to be made by an expert, such a person ought to be independent and objective, i.e., the expert is not or has not been engaged or interested in the formation or promotion of the REIT.

For the listing of both D-REIT and I-REIT securities, the issuer ought to appoint a transaction adviser whose obligation is to ensure that the offer or listing of the REIT securities is carried out in accordance with the Regulations and the Capital Markets Act.

2.2 Legal form/minimum initial capital

REITs take the form of collective investment schemes that involve the acquisition of real estate assets by a trustee in accordance with the provisions of a trust deed. The trustee then issues units in the scheme to the investors listed as beneficiaries. The scheme is managed by a REIT Manager who ensures the effective and efficient management of the assets under the REIT.

Entity	Minimum share capital
Trustee	KES 100 million
REIT Manager	KES 10 million

2.3 Unitholder/listing requirements

Unitholder requirements

A promoter of an I-REIT who sells or transfers any real estate or proposes to transfer or sell any real estate to the trustee of the I-REIT within a period of one year of the establishment of the I–REIT is required to maintain an investment in the I-REIT of at least 20% of the net asset value as at the date of the initial offer of REIT securities in the IREIT for the first year from the latter of the close of the offer or, if the issue is to be listed, from the date of the first listing of the REIT securities and the date of transfer of the real estate to the I-REIT.

During this lock-in period, the REIT securities held by the promoter ought not to be sold or transferred except where the transfer is as a result of the death or insolvency of the promoter.

After the first year of the close or listing, the promoter may reduce its holding to a minimum of 10% and up to 0% after the second year.

Where a D-REIT converts to an I-REIT, such a restriction does not apply where the promoter of the D-REIT has already adhered to the requirement to maintain an investment of at least 10% of the net asset value for two years from the close of the initial offer/date of first listing.

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Listing requirements:

A minimum of 25% of the total REIT securities in the trust by value are required to be free float, provided that this requirement does not apply where additional REIT securities are issued to the promoter, REIT manager or a person connected with either one of them for the funding of an unscheduled cost overrun subject to certain conditions.

An offer/issuance of securities in a D-REIT can only be made as a restricted offer to professional investors[1] and at a minimum subscription or offer parcels of KES 5 million. However, an offer or an issue of securities in an I-REIT can be made as a restricted offer to professional investors in accordance with an offering memorandum or as an unrestricted offer in accordance with a prospectus.

Where I-REIT securities are offered as a restricted offer, such an offer is made in minimum subscription/offer parcels of KES 5 million and may only be transferred to a party to whom they could have been issued or offered.

While both I-REITs and D-REITs are required to have a minimum of 7 investors, the minimum value of the initial assets of a REIT in a D-REIT ought to be KES 100 million, while that of a REIT in an I-REIT ought to be KES 300 million.

Where REIT securities in a D-REIT are listed, they should only be listed on a market segment on a Securities Exchange approved by the Authority, which limits trading to a restricted minimum parcel size of KES 5 million. Investors who may trade on such market segment of the Securities Exchange are those to whom an offer of the D-REIT securities could have been made, i.e., professional investors.

Conversely, where an issue or an offer of REIT securities in an I-REIT is made as an unrestricted offer, it ought to be listed on a market segment of a securities exchange approved by the CMA, although if such an offer of securities in an I-REIT is made as a restricted offer, if listed, ought to only be listed on a market segment of a securities exchange authorised by the CMA which limits trading to a restricted minimum parcel size of KES 5 million.

In the case of Islamic REITs, in addition to meeting the requirements set out above, the trustee is required to appoint a Shariah adviser to assess the compliance status of the REIT scheme. Additionally, the trustee and the REIT manager ensure that the Shariah adviser establishes and updates from time to time Shariah guidelines for the assistance of the trustee and the REIT manager and conducts Shariah-compliant assessments.

2.4 Asset level/activity test

D-REITs are limited to:

- The acquisition of eligible real estate, investment in eligible investments and the undertaking of real estate development and construction projects;
- Marketing and sale of real estate; and
- Retention and management of the real estate assets of the trust with the objective of earning income from the assets and undertaking of incidental or connected activities and activities related to the assets of the trust.

I-REITs are limited to:

- The acquisition, for long-term investment, of income-generating eligible real estate and eligible investments, including housing, commercial and other real estate;

1 The Regulations define a 'professional investor' as:
any person licensed under the Capital Markets Act;
an authorised scheme or collective investment scheme;
a bank or subsidiary of a bank, insurance company, cooperative, statutory fund, pension or retirement fund; or
a person including a company, partnership, association or a trustee on behalf of a trust which, either alone, or with any associates on a joint account subscribes for REIT securities with an issue price equal to at least KES 5 million.

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- Marketing and sale of real estate assets; and
- Retention and management of the real estate assets of the trust with the objective of earning income from the assets and undertaking incidental and connected activities and activities related to the assets of the trust.

2.5 Leverage

For D-REITs, the borrowings entered into by a trustee on behalf of a D-REIT or by an investee company shall not exceed 60% of the total asset value at the time the liability is incurred. However, the trustee may obtain the approval of the REIT securities holders to enter into a financing arrangement for up to 75% of the total asset value for a temporary purpose for a term not exceeding six months.

2.6 Profit distribution obligations

The REIT manager only recommends, and the trustee may only make distributions to REIT securities holders from realised gains, realised income or cash held in the fund that is surplus to the investment requirements of the trust.

I-REITs are required to distribute at least 80% of their net income to their investors on an annual basis.

Any realised capital gains may be retained and invested in income-producing real estate for both I-REITs and D-REITs. However, any realised capital gains that have not been invested within a period of two years from the date of realisation ought to be distributed to the investors within two months of the second year of such realisation.

3 Impact of COVID-19 on real estate in Kenya

The real estate market in Kenya and, indirectly, REITs have been negatively impacted by the COVID-19 pandemic largely due to the decline in the economic health of their tenants and their ability to make payments on the properties they occupy. Some of the effects that the pandemic has caused include:

- The retail sector has been impacted due to reduced foot traffic to the malls and social spaces due to the government social-distancing measures. Supermarkets, hospitals, offices and other essential service providers located within the malls are expected to continue operations; however, restaurants and other non-essential service providers are expected to continue to operate on a need basis;
- There has generally been a decline in the ability of tenants to continue to pay rent on time or pay rent at all, hesitation to renew leases during this period and possible renegotiation of better lease terms by tenants in the event of non-renewal. Landlords have had to restructure leases and consider some leniency in tenant payment terms;
- Offices are expected to uphold in the medium term, given that most employers have embraced flexible working arrangements for most of their employees; although most still hold their office spaces in the short run, many could consider downsizing while fully embracing the new work arrangements;
- Construction companies have significantly reduced construction activities due to supply chain disruptions, especially where raw materials are sourced from China; and
- On the capital markets front, and similar to other listed companies, listed REITs, listed construction and allied companies and listed investment companies with significant real estate as part of their portfolios are witnessing a decline in the value of listed units.[2]

2 REITS Association of Kenya Newsletter, 5th Edition, August 2020

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Tax treatment at the level of REIT

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax (WHT)
Exempt	Exempt	Exempt

Current income

The current income of a REIT registered by the Commissioner of the Kenya Revenue Authority is not subject to corporate income tax. In this respect, a REIT is not entitled to a tax credit for foreign income tax paid.

Capital gains

Capital gains realised by a REIT registered by the Commissioner of the Kenya Revenue Authority are not subject to capital gains tax.

Withholding tax

The Income Tax Act (ITA) stipulates that all distributions of income and all payments for the redemption of units or sale of shares received by unitholders shall be deemed to have been already tax paid, i.e., that WHT should apply at the point of collection of interest/dividend as opposed to the point of distribution to unitholders. This interpretation, however, gives rise to practical challenges, given that the person paying the interest/dividends to a REIT may not be aware of the tax status of the unitholders.

In response to this, the KRA issued a public notice on taxation of REITs stipulating that payments to a REIT should not be subjected to WHT. However, REITs should withhold tax on distributions to unitholders. The withholding tax rates on distributions are 5% for resident unitholders and 15% for non-resident unitholders. We note that Kenya has Double Taxation Agreements ("DTA") in force with various countries, and where DTAs exist, the rate in the DTA prevails. This notwithstanding, it is noteworthy that the ITA has a unilateral Limitation of Benefits (LOB) provision which provides that for a treaty benefit to apply, more than 50% of the underlying ownership of the resident of the other State should be held by a person(s) (individual or corporate) who is (are) resident in the other contracting state; or non-resident person should be listed in a stock exchange in the other contracting state.

3.2 Other taxes and fees

The transfer of assets and other transactions related to the transfer of assets into REITs and asset-backed securities are exempt from Value Added Tax (VAT). The supplies made by a REIT, such as the sale or lease of commercial properties, are however, subject to VAT at the standard rate of 16%.

From a capital gains tax perspective, unless the transferor is exempt from tax, a capital gain realised from the transfer of assets to a REIT is subject to capital gains tax at the rate of 15%.

The transfer of assets into a REIT is subject to stamp duty either at the rate of 2% or 4%, depending on the location of the property. We note that previously, the transfer of assets into a REIT was exempt from stamp duty in respect of instruments executed before 31 December 2022.

3.3 Accounting rules

The rules provided under IFRS apply.

4 Tax treatment at the unitholder level

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4.1 Domestic unitholder

Corporate/individual unit-holder	WHT
- WHT should apply at the resident rates of 5% and 15% on distributions and interest, respectively, received by an individual unitholder unless the unitholder is an exempt person under the First Schedule to the ITA - WHT should apply at the resident rates of 5% and 15% on distributions and interest, respectively, received by a corporate unitholder unless the unitholder is an exempt person under the First Schedule to the ITA	For both corporate and individual unitholders, the WHT credits cannot be utilised by the unitholders to offset their income tax obligations, given that the WHT paid is a final tax.

Distributions

Distributions received by a corporate or individual unitholder are subject to WHT at the resident rate of 5%, which is a final tax.

Interest

Interest received by a corporate or individual unitholder is subject to WHT at the resident rate of 15%, which is a final tax. This is because all distributions of income and all payments for the redemption of units or sale of shares received by unit holders or shareholders shall be deemed to have been already tax paid.

4.2 Foreign unitholder

Corporate unitholder	WHT
WHT should apply at the non-resident rates of 15% on distributions and/or interest received by the unitholder	WHT credits may be available for utilisation by the unitholder depending on the domestic laws of the country of residence of the unitholder

Distributions and interest

Distributions or interest received by a corporate or individual unitholder are subject to WHT at the non-resident rate of 15%, which is a final tax.

5 Tax treatment of the foreign REIT and its domestic unitholder

Foreign REIT	Corporate unitholder	Individual unitholder
Taxed under normal Kenyan rules using the source basis of taxation	A foreign REIT distribution to a Kenyan unitholder is likely to be treated as a normal dividend from the non-resident company (will depend on the structure of foreign REIT)	A foreign REIT distribution to a Kenyan unitholder is likely to be treated as a normal dividend from the non-resident company (will depend on the structure of the foreign REIT)

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Foreign REIT

A foreign REIT will be taxable under normal Kenyan rules using the source basis of taxation. Thus, the foreign REIT will be taxable in Kenya on income accrued in or derived from Kenya.

Domestic corporate unitholder

A foreign REIT distribution to a Kenyan corporate unitholder is likely to be treated as a normal dividend from the non-resident company (will depend on the structure of the foreign REIT). Foreign dividends are exempt from tax in Kenya.

Interest income received by a domestic corporate unitholder from a foreign REIT will be subject to corporate income tax in Kenya at 30%, with any foreign WHT being allowed as a taxable deduction against the corporate income tax liability. However, where Kenya has a double tax treaty in force with the country of residence of the foreign REIT and where limitation of treaty benefits rules permit, any foreign WHT credit incurred by the corporate unitholder may be utilised against the corporate income tax liability.

Individual unitholder

A foreign REIT distribution to a Kenyan individual unitholder is likely to be treated as a normal dividend from the non-resident company (will depend on the structure of the foreign REIT). Foreign dividends are exempt from tax in Kenya.

Interest income received by a domestic individual unitholder from a foreign REIT will be subject to income tax in Kenya at various rates provided under the income tax brackets, with any foreign WHT being allowed as a taxable deduction against the individual's income tax liability. However, where Kenya has a double tax treaty in force with the country of residence of the foreign REIT and where limitation of treaty benefits rules permit, any foreign WHT credit incurred by the individual unitholder may be utilised against his/her income tax liability.

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GLOBAL
REIT SURVEY

AFRICA & MIDDLE EAST

Kingdom of Saudi Arabia

REITF

A comparison of the major REIT regimes around the world.

2023

1 General introduction

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	Enacted year	Citation	REIT type
REITF	2016	REITs Instructions (October 2016) and amended REITs Instructions (October 2018)	A closed-ended investment fund regulated by the CMA in KSA

The Board of the Capital Market Authority (CMA) formally introduced REITs to the Kingdom of Saudi Arabia (KSA) when it issued the Instructions for REITs (REITs Instructions) in early 2016. The first REIT was listed on the Saudi Stock Exchange (Tadawul) on November 13, 2016. The REITs instruction defines REITs as real estate investment funds offered to the public and listed on Tadawul, with the main objective of investing in 'developed and constructed real estate properties capable of generating periodic rental income'.

Although tax efficiency has less of an impact on the REITs in the Gulf Cooperation Council (GCC), it offers liquidity and flexibility for investors and real estate companies. REITs provide transparency and diversity to international institutional investors, enabling them to diversify investment and risk. Investors usually seek tradeable assets rather than the illiquid ownership of standalone buildings; investing in a REIT offers transparency and clarity without the challenges of managing the properties directly or through hiring a property management company.

Since the Tadawul launched the Kingdom's first REIT in late 2016, the number of listed REITs has grown to 17, with a combined market capitalisation of SAR 16.6 billion (USD 4.4 billion).

The vast majority of existing REITs in KSA have their investments spread across multiple real estate asset classes, partly due to a constrained pipeline of institutional-grade assets. As the market matures, it is likely that there will be more thematic REITs allowing investors to gain access to specific real estate asset classes that are in line with their risk/ return requirements.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
KSA	18	17	4.115,67	0,23%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

Top REITs*

Company name	Mkt cap (EUR m)	1 yr return (EUR) %	Div yield	% of Global REIT Index
Jadwa REIT Saudi Fund	611,67	16,73%	6%	0,05%
Al Rajhi REIT	385,65	10,90%	8%	0,02%
Riyad REIT	376,37	-9,47%	8%	0,03%
Bonyan REIT Fund	375,76	3,54%	7%	0,01%
Alahli REIT Fund 1	315,86	-6,42%	7%	0,01%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

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2 Requirements

2.1 Formalities/procedure

Key requirements
- Must be structured as a closed-ended fund - Regulated and monitored by the Capital Markets Authority (CMA) - The fund manager may not offer units to the public without making prior arrangements for listing those units on the Exchange in accordance with the listing rules. - All the fund's real estate needs to be owned as per valid deeds - The fund manager must appoint one or more custodians. The custodians must not be affiliated with the fund manager or sub-managers - The fund has to appoint a TAQEEM-accredited valuer, and the fund manager must replace the accredited valuers every five years at most. Any valuer who has served for such a period of time may be re-appointed after a period of one year has elapsed from the date of last contract.

REITs are subject to extensive disclosure requirements compared to other types of real estate investment funds. To facilitate a transparent disclosure regime for prospective investors, a REIT's fund manager must make certain disclosures to unitholders and to the CMA without delay, including:

- Any material developments that are not publicly available and that a prudent investor may consider when making an investment decision. Material developments include developments that would affect the REIT's activities, assets and liabilities, financial position, and unit price;
- Any purchase, sale, mortgage, or lease of real estate assets with a total value that equals or exceeds 10% of the value of the fund's net asset value; according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later
- Any losses equal to or greater than 10% of the fund's net assets; according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later
- Any dispute, including any litigation, arbitration or mediation where the value involved is equal to or greater than 5% of the fund's net assets; according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later
- Any change in the composition of the REIT's board of directors or any of its committees; and
- Any increase or decrease of the REIT's net assets or its gross profit by 10% or more; and the annual audited financial statements of the REIT.

2.2 Legal form/minimum initial capital

Legal form	Minimum share capital
Closed-ended investment fund regulated by the CMA	SAR 500 million (approximately EUR 120 million) with a nominal value of SAR 10 for each unit

Legal form

A REIT in the KSA must be a closed-ended investment fund.

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Share capital

After the CMA amended the REIT Instructions in February 2021 to refine existing legislation, new REITs must now have a capital of at least SAR 500 million (approximately EUR 120 million) with a nominal value of SAR 10 (approximately EUR 2.4) for each unit.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
- For a public listing, a REIT requires at least 200 unitholders from the public who own at least 30% of the total REIT units - A 12-month lock-up period for those unitholders holding 5% or more units of the fund's unit upon establishment - Foreign ownership is restricted to 49% when listed on the Tadawul	Yes – needs to be listed on the Tadawul

Shareholder requirements

REITs consist of units, where each unit represents ownership in the underlying real estate.

Unitholders may exercise all rights attached thereto, including the right to vote and the right to subscribe to in-kind units and/or tradable rights issued as a result of a capital increase.

A REIT's capital may only be increased either through an in-kind contribution or through the issuance of tradable rights in accordance with the guidelines CMA provided for the purposes of implementing the new Companies Law.

The updated REIT regulations introduced a 12-month lock-in period for unitholders with their names listed on the fund's terms and conditions upon establishment, indicating their ownership of 5% or more of the fund's units. This period begins from the start of unit trading in the Saudi stock market, which should contribute to a more stable market price for the unit.

Foreign ownership is restricted to 49% when listed on the Tadawul.

Listing requirements

The fund manager seeking to offer and list REIT units on the Tadawul must submit an application to the CMA. There must be a sufficiently liquid market for the units that are the subject of the application for registration and admission to listing, amongst others, as follows:

- At least 200 unitholders from the public;
- At least 30% of the total REIT units are owned by unitholders from the public;
- The minimum subscription must not exceed 1000 units per unitholder; and
- Public unitholders may only subscribe by way of cash contributions.

The REITs Instructions define public to exclude any unitholder holding units that represent 5% or more of the aggregate units of the REIT, the fund manager or the fund manager's affiliates, or any member of the REIT's board of directors.

In addition to the increased minimum capital requirement for new REITs, assets acquired by the REIT are required to have generated net rental revenues in the last three years.

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2.4 Asset level/activity test

Restrictions on activities/investments
- REITs are allowed to invest up to 25% of asset value outside of Saudi Arabia - Up to 25% of total assets can be invested in property under development - Investment in vacant ('white') lands is prohibited - REITs with foreign owners cannot hold assets in Medina or Makkah

In Saudi Arabia, REITs can invest up to 25% of the fund's total assets value abroad. A REIT may not own a percentage exceeding (20%) of the fund's net asset value that its units were owned.

At least 75% of the fund's total asset value, according to the last audited financial statements, must be invested in constructionally developed real estate qualified to generate periodic rental income. The fund manager is allowed to invest up to a maximum of 25% of the fund's total assets value in:

- real estate development, whether the real estate is owned by the fund manager or not, and
- renovation and redevelopment of real estate;
- real estate repurchase agreements;
- cash and such units of investment funds licensed by the CMA and real estate companies;
- usufruct rights;
- treasury units; and
- debt instruments.

The fund manager is prohibited from investing in vacant, undeveloped (so-called 'white') lands.

REITs with foreign owners cannot hold assets in Medina or Makkah.

2.5 Leverage

Leverage
Limited to 50% of the total value of the assets of the fund

The borrowing of the fund must not exceed 50% of the total value of the assets of the fund according to the last reviewed financial statements, however, in the case of a REIT fund on the parallel market, the borrowing shall not exceed (100%) of the fund's total asset value, according to the last reviewed financial statements.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of the fund's annual net profits	Included in net profits	Annually; distribution dates may be set out in the Terms and Conditions of the REIT

REITs are required to distribute a minimum of 90% of the fund's net profits annually to its unitholders in the form of dividends. Therefore, dividend growth will be a key indicator of long-term success for investors.

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2.7 Sanctions

Penalties/loss of status rules
Under certain circumstances, CMA may consider a trading halt or cancellation of listing.

The CMA may suspend the trading of REIT units at any time or cancel its listing as it deems fit, under certain circumstances set out in the REITs Instructions.

3 Tax treatment at the level of the REIT

3.1 Corporate tax/withholding tax

Current income & Capital gains & Withholding tax
Subject to Zakat at the level of unitholders, the recently introduced regulations are still unclear on the CIT registration of the REITs (see below)

CIT / Zakat rates

CIT: 20%.

Zakat: all elements of the Zakat base (except for net adjusted Zakatable income) should be subject to c. 2.578%, and the net adjusted Zakatable income should be subject to 2.5% Zakat.

CIT / Zakat profile

The taxpayers' shareholders' profiles determine whether the relevant taxpayer is subject to CIT (applied on the share of non-Saudi / non-GCC shareholders), Zakat (applied on the share of Saudi / GCC shareholders) or a combination of both (in case shareholding comprise Saudi / GCC and non-Saudi / non-GCC shareholders).

Current income

Previously, CMA-regulated funds were not registered for tax purposes in KSA, and, as a result, REITs were practically not subject to Zakat and CIT in KSA.

However, the Zakat, Tax and Customs Authority (ZATCA) recently issued (based on a ministerial resolution #29791) new regulations for CMA-regulated funds (which include REITs) that require all funds (save for financing funds) to be registered for Zakat purposes in KSA before the end of the fund's first financial year (or starting 1/1/2023 for funds that are already established before the introduction of this new regulations).

That said, the regulations did not make any reference to CIT registration, and it specifically covered registration for Zakat purposes. Hence, this is still an area of ambiguity, and further clarification should be sought from the ZATCA in this regard, taking into account the potential CIT / Zakat profile of the fund as mentioned above.

Also, ZATCA has clarified that all funds (including REITs) are required to register for VAT in KSA, provided the relevant VAT registration thresholds are met.

The fund manager is responsible for registering the REIT for VAT and Zakat.

Such registration does not require the REITs to become CIT / Zakat payers in their own capacity. Instead,

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Zakat is due/payable at the level of the REITs unitholders.

The REIT should submit an information Zakat return within 60 days after the end of the fund's financial year (alongside the fund financial statements, list of unit holders (when requested), list of related party transactions and any other information requested from the fund manager). Such filing should be done by the fund manager.

Capital gains

Capital gains recognised at the level of the REIT should be subject to Zakat at the level of the unit holders as part of the REIT's income (see below).

Withholding tax

Withholding tax on cross-border payments/distributions is applicable (at rates varying from 5% to 20% depending on the nature of the payment/service provided).

Accounting rules

IFRS Standards are required for all listed companies in Saudi Arabia, which are in accordance with the accounting and auditing standards adopted by the Saudi Organization for Certified Public Accountants (SOCPA).

3.2 Transition regulations

Conversion into REIT status
No stamp duties

Tax for transferor on seeding of property assets into the REIT:

- Gains subject to a 2.5% Zaka t/20% CIT (depending on the tax/Zakat profile of the KSA resident transferor); and
- Generally, 5% Real estate transfer tax (RETT) on the transfer of real estate (as defined by the RETT regulations). Certain exemptions apply in certain cases.

3.3 Other taxes

Registration duties
Not applicable (but see applicable fees below)

VAT

Effective from 1 July 2020, KSA has increased its VAT rate from 5% to 15% on most of its products and services. Generally, VAT in Saudi Arabia is not applied to real estate transfers in the Kingdom, including the transfer of residential property, commercial property and any other developed or undeveloped land, together with any other building or structure on that land (such transfers should generally be subject to RETT). VAT still applies to the lease/rental of commercial real estate.

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Title Deed Fee

Municipality charges (if any) would need to be confirmed.

Stamp Tax

Not applicable.

Property Tax

Currently, there are no municipal or property taxes levied in KSA.

KSA imposes a 2.5% annual charge called 'White Land Tax' on the fair value of undeveloped real estate/'white land' meeting certain conditions). White Land Tax is administered by the Ministry of Housing.

Environmental Tax

Not applicable.

RETT

5% should apply to the transfer of real estate (as defined by the RETT regulations). Certain exemptions apply in certain cases.

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Income and capital gains realised should be subject to Zakat at the level of the unit holders. The recently introduced regulations is still unclear on the CIT registration of the funds		

Current income

As mentioned above, REITs should now be registered for Zakat purposes in KSA and Zakat liability should be paid at the level of the unit holders. The recently issued regulations remain unclear on the position of the CIT registration and payment of CIT liability for the funds.

Capital gains received by resident corporations

Capital gains received would be included as part of the income that is subject to Zakat/tax (depending on the GCC versus non-GCC profile) at the level of the KSA resident corporate entity, subject to the applicability of any domestic exemptions.

Dividends received by resident corporations

Dividend income received would be included as part of the income that is subject to Zakat/tax (depending on the GCC versus non-GCC profile) at the level of the KSA resident corporate entity, subject to the applicability of any domestic exemptions.

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Capital gains received by resident individuals

Currently not enforced on individuals.

Dividends received by resident individuals

Currently not enforced on individuals.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding Tax
Depends on whether the REIT is registered for CIT purposes in KSA		5% withholding tax to other GCC and foreign resident unitholders (unless reduced by an applicable tax treaty)

Capital gains received by non-resident corporations

From a technical perspective, capital gains realised by non-resident corporations on the disposal of REIT units should be subject to capital gains tax (CGT) (an exemption is available for listed REITs).

However, based on current practice (and the ambiguity around registering the REITs for CIT purposes in KSA), CIT on units owned by non-GCC unitholders is not yet enforced - this is subject to further clarification with ZATCA.

The position should be analysed if the REIT was registered for tax purposes in KSA, and the availability of any domestic exemptions and availability of double tax treaty relief should be considered. There is a lack of practical cases to date, given the recent introduction of the CMA funds regulations.

Dividends received by non-resident corporations

5% withholding tax, subject to availability of double tax treaty relief.

Capital gains received by non-resident individuals

Please refer to the comments for non-resident corporations.

The position should be analysed if the REIT was registered for tax purposes in KSA; the availability of any domestic exemptions and double tax treaty relief should be considered.

Dividends received by non-resident individuals

RETT on disposal of REITs by non-resident corporations and individuals

RETT at 5% should be applied on the disposal of units in unlisted REITs by non-resident corporations and individuals (an exemption is available for listed REITs).

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REIS

A comparison of the major REIT regimes around the world.

2023

1 General introduction

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Enacted year	Citation	REIS type
2013	The Securities and Exchange Commission Rules and Regulations, 2013	Corporate
2007	Investment and Securities Act	Corporate
2004	Companies Income Tax Act (CITA) 2004 as amended by the Finance Acts 2019&2020	Corporate type

The Investment and Securities Act (ISA) 2007 (as amended) and the Securities and Exchange Commission Rules 2013 regulate the Real Estate Investment Schemes (REIS) in Nigeria. The Act empowers the Securities and Exchange Commission (SEC) to approve, register and regulate collective investment schemes in Nigeria, including those that are administered as a real estate investment trust.

A REIS is defined to include a company (REICO), trust (REIT) or other such corporate structures approved and regulated by the Securities and Exchange Commission, which is primarily engaged in and invests in income-generating real estate assets or real estate-related assets and is expected to distribute not less than 75% of its income within 12 months of receipt of the income.

By the provision of Rule 509(1) of the SEC Rules, a REIS can wholly acquire and hold legal title to property or choose to hold equitable and beneficial title to such property via a Trust Deed or such other structure as may be acceptable to SEC.

In the REICO structure, investors are allotted shares in the REICO (a body incorporated under the Companies and Allied Matters Act), which entitles the investors to dividends on the shares. The REIT is, however, the popular option amongst participants in the Nigerian market, and this form has been used in structuring the four listed REITs in Nigeria. Unlike the REICO, the REIT is constituted under a trust deed between the fund manager and the trustee and registered with the Securities and Exchange Commission (SEC).

The Finance Act 2019 introduced a major change to the taxation of REIC, effectively making it a tax-transparent vehicle where the obligation to pay tax on dividends and rental income passes from the REIS to the investors, providing a minimum of 75% of dividends and rental income is distributed, and such distributions are made within 12 months from the end of the financial year in which they were earned. Any other income other than dividends or rental income earned by the REIC would be taxed in the REIC.

Major Real Estate Investment Trusts in Nigeria

- UPDC Plc (formerly UACN Property Development Plc)
- UH REAL ESTATE INVESTMENT TRUST (formerly Union Homes Real Estate Investment Trust)
- SFS Real Estate Investment Trust (formerly Skye Shelter Fund)
- Nigeria Real Estate Investment Trust

The first Real Estate Investment Trust in Nigeria was introduced by the Skye Shelter Fund in 2007 with an IPO (initial public offering) of NGN 2 billion (~USD 16 million at the time). In 2008, Union Home Hybrid REITs were similarly created with an IPO of NGN 50 billion (then ~USD 420 million), and UPDC (UACN Property Development Company) REITs were introduced in 2013 with an IPO of NGN 30 billion (historically ~USD 188 million); while the Nigeria Real Estate Investment Trust was introduced by Chapel Hill Denham Management Limited in 2020 with an IPO of NGN 100 billion (~USD 260 million).

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Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap	% of Global REIT Index
Nigeria	2	0	EUR 13,92	0.00%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

Key requirements
- REIS is required to register with the Securities and Exchange Commission (SEC). - All applications for registration are to be filed using the appropriate SEC forms in compliance with SEC rules. - To operate as a REIS, an arrangement must be formed as a corporation, trust or association. - A REIS cannot be a financial institution or an insurance company, and it must be managed by one or more trustees or directors. - It must be either publicly traded on the stock exchange or privately owned. - A minimum of 90 per cent of a REITs' revenue (apart from capital gains) must be derived from rental income and dividend income. - The REIS ownership (which must be proven by transferable shares or by transferable. certificates of beneficial interest) must be held by at least 100 shareholders for at least 335 days of a 365-day calendar year (or equivalent thereof for a short tax year) for the second taxable year and beyond.

To safeguard the REIS, the SEC Rules provide that where a REIS property is held via a Trust Deed or such other structure acceptable to SEC, the REIS shall do the following as safeguards:

- Register a caution indicating interest in the scheme in the relevant land registry where the property is located;
- Affix plaques and other notices on the relevant property indicating the interest in the scheme;
- Deposit the original title documents and other relevant pre-signed documents with the scheme's custodian; and
- Provide such indemnity to the scheme as may be necessary for the circumstance.

2.1 Requirements for the registration of a REIS

1. An application for registration as a trustee shall be filed on form SEC 4A and shall be accompanied by the following:

- A minimum of two sets of completed form SEC 2 by the sponsors;
- A copy of the Memorandum and Articles of Association of the company certified by the Corporate Affairs Commission, which shall, among others, include the power to act as trustees;
- A copy of the Certificate of Incorporation certified by the Corporate Affairs Commission. Where a copy not certified is filed, the applicant shall present the original for sighting by an authorised officer of the Commission;
- A copy of a CAC form containing the particulars of the directors, certified by the Corporate Affairs Commission;

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- The latest copy of audited accounts or statements of affairs for companies in operation for less than one year;
- A fidelity bond representing 10% of the paid-up capital;
- A sworn undertaking to keep proper records and render returns;
- Evidence of minimum paid-up capital of NGN 40 million (~USD 68,000) or any other sum as prescribed by the Commission; and
- Any other document or information required by the Commission from time to time.

2. One of the sponsors shall be a lawyer experienced in the trusteeship function.
3. The Commission shall, within sixty days after the filing of an application and subject to the compliance with all registration requirements pursuant to the Act and these rules and regulations, make known its decision to either grant or, after appropriate notice and opportunity for hearing, deny registration to the trustee, unless the applicant withdraws the applicantion.
4. A notice under sub-rule (3) of the rule shall contain the reasons why the Commission may not register a trustee and shall stipulate the time (not being less than fourteen days from the receipt of the notice) within which representations may be made to the Commission in respect thereof. The notice shall stipulate the time and place of the hearing referred to in sub-rule (3).

2.2 Legal forms/minimum initial capital of REIS in Nigeria

Legal form

In form, there are three types of REIT, as outlined below:

- Equity REIS;
- Mortgage REIS; and
- Hybrid REIS (modelled after mutual funds).

Asset level for each form is discussed under the subtopic ‘Asset Level/Activity Test’.

Minimum initial capital

There are no capital requirements for a REIS. If listed, however, it must meet NSE requirements.

2.3 Listing requirements for REIS

REIS can be listed or unlisted. Listed REITs file with the Securities and Exchange Commission (SEC). Shares of their stock trade on national stock exchanges. Listed REIS must comply with listing requirements as stipulated by the SEC/NSE from time to time.

The listing requirements for the main board of the NSE include the following:

- Pre-tax profit: Standard A on the main board requires a cumulative pre-tax profit from continuing operations of not less than NGN 300 million (~USD 740,000) over the last three years. Standard B requires a cumulative pre-tax profit from operations of not less than NGN 600 million over the last one or two years. Standard C has no requirement for cumulative pre-tax profits.
- Operating track record: Standard A requires a minimum of three years of running records. Standard B

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requires a minimum of a three-year track record of operating fully. Alternatively, evidence of a three-year minimum operating track record of a core investor can be provided.

- Financials: Standard A requires three years' financial statements, with the most recent not being more than nine months old at the time of submission of the listing application. Alternatively, REIS aiming for Standards B and C can provide evidence of a strong technical partner with substantial equity holding and involvement in the REIS, with a minimum of a three-year operating track record and financial statements.
- Annual Listing Fees: A REIS to be listed on the main board of the NSE under Standards A, B or C is required to pay annual listing fees based on the market capitalisation as indicated by the NSE fee schedule (maximum amount is currently NGN 4.2 million (~USD 10,500)).
- Accounting Standard: The basis of financial reporting should be the International Financial Reporting Standards (IFRS).
- Allotment: Securities are to be fully paid up at the time of allotment in line with SEC requirements for a minimum threshold for a successful offer.

2.4 Asset level/activity test

- Equity-based: 70% in real estate or real estate-related assets, a maximum of 10% in liquid assets and 20% in other assets;
- Mortgage-based: 70% in mortgage assets, a maximum of 10% in liquid assets and 20% in other real estate assets;
- Hybrid-based: At least 40% in real estate, at least 40% in mortgage assets and 20% in real estate-related assets and cannot borrow beyond 25% of the shareholder's fund.

2.5 Restriction on foreign assets

REITs, whether open-ended or closed-ended, are permitted to invest a maximum of 25 per cent of their total assets outside Nigeria but within Africa (Rule 539(3) of the SEC Rules 2017, as amended). The assets invested in out-of-Nigeria investment destinations must bear similarities with the definition of real estate assets or real estate SPVs in Nigeria. It is also provided that such out-of-Nigeria investments must be in a country with an investment grade credit rating assigned by an international rating agency.

3 Tax treatment at the level of the REIS

3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
32%	10%	10%/5%

Current income

Generally, a REIS is subject to Companies Income Tax (CIT) at 30% and Tertiary Education Tax (TET) at 2%. Taxable income includes dividends, rent, interest, management fees, realised gains from the sale of investments, etc.

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Dividends and rental income distributed by REIT companies are tax-exempt provided that:

1. such distributions are made within 12 months from the end of the financial year in which they were earned; and
2. a minimum of 75% of dividends and rental income is distributed.

Capital gains tax (CGT)

CGT is applicable on the disposal of chargeable assets at 10%. Roll-over relief is available where proceeds of disposal are used to purchase a new asset of the same class within 12 months before or after the disposal of the old asset.

Stamp Duty

Stamp Duty is payable on chargeable instruments, such as loan contracts, lease agreements etc.

No stamp duty is applicable on the transfer of shares.

2.1 Restrictions on investors

There are no restrictions on investors.

3 Tax treatment at the shareholder level

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends are conditionally taxable - Capital gains tax may apply, while value-added tax is not applicable on the sale of units or securities	- Dividends are conditionally subject to personal income tax - Capital gains tax may apply, while value-added tax is not applicable on the sale of units or securities	Dividends received from REIS are subject to WHT for both corporate and individual

3.1 Corporate shareholder

Dividends

The dividends received by corporations are subject to Corporate Income Tax in the hands of corporate shareholders except where WHT has been deducted and considered as the final tax.

Capital gains and value-added tax

Capital gains tax is applicable in the case of units that are not revenue income for the investor. There is no capital gains tax on shares. VAT is not applicable as real property and shares are VAT exempt.

Withholding tax

WHT is applicable at 10% on the dividends distributed to corporate shareholders.

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3.2 Individual shareholder

Dividends

The dividends received by individuals are subject to personal income tax except where WHT has been deducted and considered as the final tax.

Capital gains and value-added tax

Capital gains tax may apply for units that are not revenue income for the investor. There is no capital gains tax on shares. VAT is not applicable as real property and shares are VAT exempt.

Withholding tax

WHT is applicable at 10% on the dividends distributed to individual shareholders.

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REIT

A comparison of the
major REIT regimes
around the world.

2023

1 General introduction

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	Enacted year	Citation	REIT type
REIT	REITs were introduced into the market in 2013	- Part V of the Collective Investment Schemes Control Act No. 45 of 2002 (the CISA) - Companies Act No. 71 of 2008 (the Companies Act) - Income Tax Act No. 58 of 1962 (the Income Tax Act) - JSE Limited (JSE) Listing Requirements - The Securities Transfer Tax 25 of 2007 (the STT Act)	Legally a company or a portfolio of a collective investment scheme in property[1]; the shares in a REIT must be listed

1 Should qualify as a REIT in line with listing requirements of an exchange, as defined in section 1 of the Financial Markets Act and licensed under section 9 of the Act.The said listing requirements are approved in consultation with the Director-General of the National Treasury and published by the appropriate authority, per section 11 of that Act or by the Financial Sector Conduct Authority.

In the South African context, REITs did not exist until April 1, 2013. However, comparable investment vehicles included Property Unit Trust (PUT) or a Property Loan Stock Company (PLS company)[1]. A PUT holds immovable property and shares in property companies and is managed by a management company. The management company trades participation units in the market as a market maker. A South African PUT is legally regulated by the CISA. The conduit principle (flow-through) applies to distributions made by a PUT, i.e., income flows through to beneficiaries in its original form, and the PUT is exempt from capital gains). The main difference between a PUT and a PLS company is that a PLS company is a company regulated by the Companies Act and is not required to comply with the CISA. Unlike a unitholder in a PUT, an investor in a linked unit in a PLS company holds both equity and debentures. Interest distributions flow through to investors. The interest is deductible by the PLS company whilst it is treated as ordinary revenue in the hands of the investor.

The National Treasury has long debated the introduction of a REIT regime in South Africa. The long-awaited dispensation was introduced through the amendment of the tax legislation and the JSE listing requirements. In light of the introduction of special taxation rules[2] in respect of the taxation of REITs vs. PUTs and PLS companies, the JSE was requested to facilitate the introduction of the REIT structure and regulations. With effect from May 1, 2013, a REIT is regulated by the JSE listing requirements and rules[3].

From this date, PUTs were automatically considered to be REITs (Trust REITs) and listed on the JSE REIT board in accordance with this new dispensation. PLS companies are able to adopt the regulatory framework set out by the JSE to qualify to list on the REIT board of the JSE. The new dispensation does not apply to an unlisted PLS company.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR m)	% of Global REIT Index
South Africa	28	9	8.492,31	0,41%

1 South Africa (2007) The Department of National Treasury. Reforming the Listed Property Investment Sector in South Africa – Discussion paper: 'Introduction', December 3.

2 Section 25BB of the Income Tax Act No. 58 of 1962 (ITA) applicable in respect of years of assessment commencing on or after April 1, 2013.

3 Bulletin 3 of 2013, The JSE Limited Listing Requirements read with section 25BB of the ITA. These rules were introduced to align the legislation with international standards and to streamline the tax treatment of PUTs and PLS.

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Top five REITs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Growthpoint Prop Ltd	1.940,92	-13,42%	11%	0,16%
Redefine Properties	1.125,77	-17,08%	12%	0,09%
Hyprop Investments Ltd	535,76	-16,43%	10%	0,04%
Equites Property Fund	440,62	-38,93%	15%	0,03%
Attacq Limited	308,49	41,10%	9%	0,02%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

2.1 REIT: Formalities/procedure

Key requirements
- Qualify for listing under the JSE rules - Distribute at least 75% of its taxable earnings available for distribution to its investors each year - Earn 75% of its income from rental or from indirect property owned or investment income from indirect property ownership - Owns at least R300 million worth of property - Maintain its debt not more than 60% of its gross asset value - Have a committee to monitor the risk - Not enter into derivative instruments that are not in the ordinary course of business

A REIT is a listed property investment vehicle that is primarily engaged, directly or indirectly, in property activities and is listed on the JSE under the REIT sector. A REIT that is resident for South African income tax purposes qualifies for the REIT tax dispensation. A REIT can be a listed Company REIT or a property portfolio of collective investment. The listing requirements of an exchange are defined in section 1 of the Financial Markets Act and licensed under section 9 of the Act. The said listing requirements are approved in consultation with the Director-General of the National Treasury and published by the appropriate authority, in terms of section 11 of that Act or by the Financial Sector Conduct Authority.

No prescribed management model is enforced regarding how a Company REIT is to be managed internally and externally. Company REITs may have external or internal management and/or property administration function. The company's directors are responsible for ongoing compliance with the JSE listing requirements and the Companies Act.

2.2 Legal form/minimum initial capital

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Legal form

A Company REIT is a company regulated by the Companies Act and is a legal person for the purposes of South African law.

A portfolio of a collective investment scheme in property qualifies as a REIT and is regulated by the CISA.

In the Income Tax Act 58 of 1962, the definition of a REIT was expanded to include a company incorporated under the law of any country other than South Africa (see more detail under the Tax Treatment of REIT).

Minimum initial capital

A Company REIT is required to own at least ZAR 300 million worth of property and must keep its debt not more than 60% of its gross asset value.

2.3 Unitholder requirements/listing requirements

	Unitholder requirements	Listing mandatory
REIT	No requirements	Yes

Unitholder requirements

There are no specific requirements for the unitholders of a REIT.

The sale and acquisition of units in a REIT must comply with the JSE regulatory requirements for securities exchange.

2.4 Asset level/activity test

Rental income includes, *inter alia*, amounts received from:

- Use of immovable property, including penalty or interest in respect of late payment of any such amount;
- Dividends from other REITs;
- Qualifying distributions from a company that is a controlled company;
- Local dividends or foreign dividends from a property company; and
- Exchange gains from foreign exchange contracts arising in respect of an ‘exchange item’ as defined in section 24I of the Income Tax Act relating to a ‘rental income’ of a REIT or a controlled company.

Rental income excludes amounts received from:

- Asset management fees;
- Deal fees;
- Underwriting fees;
- Interest received, excluding interest that forms part of a qualifying distribution; and
- Distributions from non-property companies.

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There are other requirements that need to be met under the Collective Investment Schemes Control Act 2002 and the notices thereto in respect of the assets that may be included in a portfolio of a collective investment scheme in a property. However, as these are not REIT requirements, we have not detailed them here.

A REIT may only invest in property in a foreign country and property shares or participatory interests in a collective investment scheme in property in a foreign country if that foreign country has a foreign currency sovereign rating by a rating agency. The rating and rating agency must be determined by the Registrar. Currently, the requirement is a rating of 'Baa2' or higher by Moody's Investors Service Limited, or 'BBB' or higher by Standard and Poor's, Fitch Ratings Limited or Fitch Southern Africa (Pty) Limited[4]. Where the country has been rated by more than one agency, the lower of the ratings applies.

2.5 Leverage

	Leverage
REIT	Debt financing is limited to 60% of the gross value of the underlying asset value

The debt financing of a Company REIT is limited in terms of the company's memorandum of incorporation and the Companies Act, and a Trust REIT is limited in terms of its Trust Deed and the CISA. Furthermore, the JSE requirements only permit a REIT to be geared up to levels of 60% of the gross value of the underlying assets.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
REIT	75% of its income from rental, property owned or investment income from indirect property ownership	75% of its capital gains	Annually

Operative income/ Capital gains

A REIT is required to distribute at least 75% of its total distributable profits (which includes both operative income and capital gains) to its investors annually. Qualifying distributions by the REIT to unitholders will be treated as deductible expenditures for income tax purposes.

2.7 Sanctions

	Penalties/loss of status rules
REIT	- Non-compliance with the CISA - Non-compliance with the JSE requirements - Non-compliance with the Companies Act

There are specific sanctions for non-compliance with the CISA, the Companies Act and the JSE requirements, which may result in the renunciation of the REIT status and, therefore, loss of the tax benefit under the new dispensation.

5"Foreign Countries in Which Collective Investment Scheme in Securities Or In Property May Invest" published under General Notice 2073 in Government Gazette 25283 of August 1, 2003.

3 Tax treatment at the level of the REIT

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3.1 Corporate tax/withholding tax

Current income	Capital gains	Withholding tax
- Subject to tax on dividend income from financial instruments - Allowed to deduct qualifying distributions made - Undistributed income is subject to a tax rate of 28% (27% for the years of assessment ending on or after March 31, 2023)	A REIT is not subject to Capital Gains Tax, subject to certain conditions	Dividends received by a South African tax resident REIT from another South African tax resident REIT or a South African tax resident-controlled company will not be subject to withholding taxes

General

Section 25BB of the Income Tax Act is the primary taxing section applicable to REITs and controlled companies. The basic paradigm underpinning section 25BB is to treat REITs and controlled companies as flow-through entities by granting a deduction for qualifying distributions made to shareholders. Such distributions are then taxed as normal income in the hands of the shareholder.

To qualify for the specific tax regime, a REIT is required to meet the following requirements:

- It must be a company resident in South Africa;
- Its shares must be listed on an exchange as defined in section 1(1); and
- Its shares must be listed as shares in a REIT as defined in the listing requirements of that exchange, approved in consultation with the Director-General of the National Treasury, and published, after approval of those listing requirements by the Director-General of the National Treasury, by the appropriate authority, as contemplated in section 1 of the Financial Markets Act, in terms of section 11 of that Act or by the Financial Sector Conduct Authority.

A controlled company for section 25BB purposes is a subsidiary of a REIT, as defined in the International Financial Reporting Standard (IFRS).

A property company is a company where at least 20% of the equity shares or linked units are held by a REIT or a controlled company jointly or severally with other relevant companies in the same group of companies. In addition, and with regard to the property company, 80% of the value of the assets is directly or indirectly attributable to immovable property. The concept of a property company is important for the purposes of determining the amounts to be included when calculating the gross income of the REIT and for capital gains tax purposes.

Current income

A REIT will be subject to ordinary tax on rental income received at a rate of 28% (27% for the years of assessment ending on or after 31 March, 2023). A REIT or controlled company may claim a deduction in respect of dividends paid or payable to its shareholders[5], except in the case of a share repurchase. A REIT may also claim a deduction for interest incurred in respect of a debenture forming part of a linked unit[6] in that company. The deduction may be allowed to the extent that rental income received or accrued by

5 The shareholder holds a share or property linked unit in the REIT. Any distributions made by the REIT in relation to the property linked unit including the interest paid in respect of the debenture portion will be deemed to be a dividend (excluding in the case of a share repurchase). The amount will not be subject to interest withholding tax.

6 A property linked unit may be converted to an equity share

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the REIT exceeds 75% of the gross receipts or accruals of the REIT in the year of assessment preceding the year of assessment in respect of which the distribution is paid or payable. The deduction will also be limited to the REIT's taxable income before taking into account any taxable capital gain and the deduction for the amount distributed.

A REIT or a controlled company is precluded from claiming any building tax allowances. However, a wear and tear/depreciation allowance on assets other than immovable property may be claimed by a REIT or a controlled company, assuming that all relevant requirements are met.

Where a REIT or controlled company is the beneficiary of a non-resident (vesting) trust and this trust was liable/subject to tax on income in the country where it was established. The amount of tax proved to be payable (to a government other than South Africa) by the trust, as is attributable to the interest of the REIT or controlled company in that trust, will be allowed as a deduction from the taxable income of the REIT or controlled company. In order for the foreign tax incurred to be deductible, there must be no right to recovery. This deduction is allowed prior to taking into account any deduction of a qualifying distribution.

Similarly, any tax paid by a REIT or controlled company to a government other than South Africa is deductible for income tax purposes if the amount has been proved to be payable and there is no right to recovery (other than the entitlement to carry back losses). This deduction is allowed before taking into account any deduction of a qualifying distribution.

The amount of any donation made by a REIT or controlled company is allowed as a deduction from taxable income. This deduction is limited to 10% of taxable income, after taking into account any assessed loss brought forward from the previous year of assessment, any taxable capital gain, both foreign tax deductions (mentioned above) and before any deduction of a qualifying distribution.

A REIT or controlled company will no longer qualify for the participation exemption contained in section 10B of the Income Tax Act, where that REIT or controlled company gets a full deduction when it on-distributes profits from exempt foreign dividends. Foreign dividends received by a REIT or controlled company are not exempt from normal tax under section 10B(2) but are partially exempt under section 10B(3). A REIT may claim a tax credit/deduction for any foreign taxes suffered provided the requirements in section 6quat of the Income Tax Act are met.

Section 8F of the Income Tax Act deems interest incurred by a company from certain hybrid instruments as dividends in specie and are therefore not deductible.

Section 8F did not use to apply to instruments that constituted linked units in a company when the linked unit was held by a REIT, provided certain requirements were met. However, this exemption was deleted with effect from 1 January, 2021, and section 8F now applies to amounts of interest incurred on or after that date on linked units that constitute hybrid debt instruments that a REIT holds.

Capital gain

A REIT or a controlled company does not pay tax on capital gains arising from the disposal of immovable property, a share/linked unit in a REIT or a share/linked unit in a property company. For the capital gains tax on these disposals (other than immovable property) to be disregarded, it is vital that the company being disposed of is a REIT or property company at the time of the disposal. A REIT or controlled company may have to account for capital gains tax on the disposal of other assets not listed above.

Withholding tax

South Africa imposes withholding taxes on royalties, interest, dividends and payments from the sale of immovable property or an interest in immovable property situated in South Africa by a non-resident seller. It is unlikely that withholding tax on royalties or similar payments could be applicable to a REIT given its principal business purpose.

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Withholding tax on interest payments at a rate of 15% is only applicable to the extent that such payments are made to non-residents and are subject to the application of the relevant Double Tax Agreement. Therefore, interest paid by a REIT to a non-resident may be subject to withholding taxes.

Dividends withholding tax, by contrast, is applicable to both residents and non-residents at a rate of 20%. However, dividends paid to South African resident companies are exempt from the withholding tax.

Securities transfer tax

In terms of the STT Act, securities transfer tax is levied at a rate of 0.25% on the transfer of security issued. Securities transfer tax is not payable on the transfer of security that constitutes a share in a REIT. However, the transfer of security in a controlled company may be subject to securities transfer tax.

3.2 Registration duties

Registration duties
No specific rules

There are no specific registration duties applicable to a REIT. These vehicles will need to comply with general initial set-up requirements for CIS, companies and JSE listing requirements. Annual fees may be required in respect of the specific vehicle, i.e., JSE annual listing fees, etc.

4 Tax treatment at the unitholder level

4.1 REIT: Domestic unitholder

	Corporate unitholder	Individual unitholder	Withholding tax
REIT	- Distributions taxed at 28% - For the years of assessment ending on or after 31 March, 2023, the rate of Corporate Income Tax payable is reduced to 27% - Taxation of capital gains on disposal (if not a dealer) 80% if the gain is included in taxable income, resulting in an effective rate of 22.4% (21.6% for the years of assessment ending on or after 31 March, 2023)	- Distributions are taxed at an individual's marginal tax rate (between 18% and 45%) as if income was directly received; note that Trusts are taxed at a different rate - Taxation of capital gains on disposal (if not a dealer) 40% of the gain is included in taxable income, resulting in an effective rate between 7.2% and 18%	- Dividend withholding tax is applicable to residents at a rate of 20% (see below)

Corporate unitholder

Where a shareholder holds a share or property-linked unit in the REIT, any distributions made by the REIT, including the interest paid in respect of the debenture forming part of a linked unit held in the REIT, will be deemed to be a dividend (excluding in the case of a share repurchase). The property-linked unit can also be converted into an equity share. These dividends will be taxed at 28% and 27% for the years of assessment ending on or after 31 March, 2023.

Capital gains

A shareholder will be subject to capital gains tax at an effective rate of 22.4% (28% x 80%) [21.6% (27% x 80%) for the years of assessment ending on or after 31 March, 2023] on the disposal of a share/unit in a REIT.

Withholding taxes

South Africa imposes withholding taxes on dividends and the sale of immovable property located in South Africa by a non-resident.

Dividend withholding tax is applicable to both residents and non-residents at a rate of 20%. However, dividends paid to South African resident companies are exempt from the withholding tax, provided the relevant administrative requirements are adhered to.

Individual unitholder

Capital gains tax is imposed on 40% of the gains included in taxable income at the individual's marginal tax rate (between 18% and 45%). The resultant tax-effective rate is between 7.2% and 18%. The distributions are exempt from dividend withholding tax and remain taxable as ordinary revenue.

4.2 Foreign unitholder

	Corporate unitholder	Individual unitholder	Withholding tax
REIT	- Distributions are subject to dividend withholding tax at 20% unless reduced by an applicable double tax agreement - Taxation of capital gains on disposal (if not a dealer) 80% of the gain is included in taxable income, resulting in an effective rate of 22.4% (21.6% for the years of assessment ending on or after 31 March, 2023) to the extent that the unitholder holds more than 20% of the shares in the REIT and the REIT is property rich from a South African tax perspective	- Distributions are subject to an individual's tax marginal rate (between 18% and 45%) as if income was directly received; note that Trusts are taxed at a different rate - Taxation of capital gains on disposal (if not a dealer) 40% of the gain is included in taxable income, resulting in an effective rate between 7.2% and 18%, only to the extent that the unitholder holds more than 20% of the shares in the REIT	- Dividend withholding tax at 20%, subject to the application of a double tax agreement - A withholding tax is imposed on non-resident sellers of immovable property (or interests in immovable property) at a rate of 7.5.% for natural persons and 10% for companies

Corporate unitholder

As stated above, where a shareholder holds a property-linked unit in the REIT, any distributions made by the REIT in relation to the property-linked unit, including the interest paid in respect of the debenture portion, will be deemed to be a dividend (excluding in the case of a share repurchase). The property-linked unit can also be converted into an equity share. These dividends will be subject to withholding tax per below.

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Capital gains

Capital gains tax is levied on a right of whatever nature of a person to or in immovable property situated in South Africa. Such interest in immovable property situated in South Africa includes the interest of at least 20% held by a non-resident in the equity shares of a company or any other entity. In addition, 80% or more of the value of the abovementioned company or other entity at the time of disposal of the shares or interest must be attributable directly or indirectly to immovable property situated in South Africa other than immovable property. 80% of the capital gain will be taxed at a rate of 28%, resulting in an effective tax rate of 22.4%. The effective capital gains tax rate will be reduced to 21.6% for the years of assessment ending on or after 31 March, 2023.

Withholding tax

South Africa imposes withholding taxes on royalties, interest, dividends, and the sale of immovable property located in South Africa by a non-resident. It is unlikely that withholding tax on royalties or similar payments could be applicable to a REIT given its principal business purpose.

Dividends and deemed dividends paid by a REIT and received or accrued to a foreign shareholder are subject to dividends withholding tax at a rate of 20%, subject to the application of a relevant Double Tax Agreement. The application of the Double Tax Agreement is subject to the shareholder/ unitholder providing the REIT with certain declarations.

Withholding tax on interest will generally not apply since the distribution made by the REIT is deemed to be a dividend which is subject to dividends withholding tax.

A withholding tax is imposed on non-resident sellers of immovable property (or interests in immovable property) at a rate of 10% for companies. The withholding tax is an advance of the seller's liability for normal tax (income tax or CGT, as the case may be). The seller may request a directive to the Revenue Authority to waive the withholding tax.

Individual unitholder

The taxation is the same as for corporate unitholders, except for the following:

i. Capital gains tax is imposed on 40% of the gains included in taxable income at the individual's marginal tax rate (between 18% and 45%). The resultant tax-effective rate is between 7.2% and 18%; and

ii. The withholding tax on gains is 7.5% for individuals rather than the 10% for companies.

5 Treatment of the foreign REIT and its domestic unitholder

Foreign REIT	Corporate unitholder	Individual unitholder
Subject to tax on income from a source in South Africa or which is attributable to a South African permanent establishment or immovable property	Subject to tax on income from REIT based on South African tax residence status, subject to certain exceptions	Subject to tax on income from REIT based on South African tax residence status, subject to certain exceptions

Foreign REIT

A foreign REIT will generally be subject to tax on income from a source in South Africa.

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Corporate unitholder

A foreign REIT will generally be subject to tax on income from a source in South Africa.

Individual unitholder

A foreign REIT will generally be subject to tax on income from a source in South Africa if not of a capital nature. Profits of a capital nature are subject to tax if attributable to a permanent establishment or immovable property in South Africa

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REIC

A comparison of the
major REIT regimes
around the world.

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1 General introduction

	Enacted year	Citation	REIT type
REIC	1995	- Capital Markets Law no. 6362 ('CML')	Corporate type National Stock Exchange Commission
		- Communiqué on Principles Regarding Real Estate Investment Companies, Serial III No. 48.1 ('Communique')	
	2014	- The Communiqué Revising the Communiqué on Principles of Real Estate Investment Companies, Serial III number 48.1.a ('Communique number 48.1.a')	
	2017	- The Communiqué Revising the Communiqué on Principles of Real Estate Investment Companies Serial III number 48.1.b ('Communique number 48.1.b')	
	2018	- The Communiqué Revising the Communiqué on Principles of Real Estate Investment Companies Serial III number 48.1.c ('Communique number 48.1.c')	
	2019	- The Communiqué Revising the Communiqué on Principles of Real Estate Investment Companies Serial III number 48.1.ç ('Communique number 48.1.ç')	
	2019	- The Communiqué Revising the Communiqué on Principles of Real Estate Investment Companies Serial III number 48.1.d ('Communique number 48.1.d')	
	2020	- The Communiqué Revising the Communiqué on Principles of Real Estate Investment Companies Serial III number 48.1.e ('Communique number 48.1.e')	

The concept of a 'trust' does not exist in Turkey, so REITs are structured as Real Estate Investment Companies (REICs).

REIC is a capital market institution that can invest in real estate, capital market instruments based on real estate, real estate projects and rights based on real estate.

REICs were introduced in 1995 after the completion of the necessary legal arrangements by the Capital Markets Board (CMB). Turkish REICs are corporate income tax-exempt stock companies that must be listed on an organised stock market in Istanbul.

The Turkish real estate market has grown very rapidly and has demonstrated remarkable performance during the past couple of years. In parallel to the increase in demand and high-quality office and retail space, the brand new mortgage system and decreasing interest rates have been the main catalysts for the noteworthy pick-up of the real estate market.

REICs have entered the Turkish real estate market as an advantageous vehicle that offers easy access to the profits of huge real estate portfolios. Thus, REICs have attracted the attention of both local and foreign investors. The listed REICs' total asset value reached a level of approximately EUR 14,004 million as of 31 December, 2022.

From a legal aspect regarding the issues on REICs, the first separate and significant regulation was the Communiqué on Principles of Real Estate Investment Companies Serial III number 48.1 published by the Capital Markets Board of Turkey (CMB) on 28 May, 2013. This communiqué sets forth the general and fundamental principles such as incorporation, legal form, capital, management structure and other requirements on the REICs.

The first amendment, namely Communiqué number 48.1.a, was published by CMB on 23 January, 2014. It consists of provisions that pertain to Infrastructure Real Estate Investment Companies (IREICs) that were published at the beginning of 2009 and that were integrated into the Communiqué 48.1 as a type of REIC. Therefore, REICs are incorporated to manage portfolios composed of infrastructure investment

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and services and other infrastructure-related market instruments under the provisions of Communiqué number 48.1.a can operate as IREIC. Please note that, in accordance with Article 5/1-d(4) of Corporate Income Tax Law (amended on 15.04.2022 and shall be applicable for FY23 income), IREICs cannot benefit from the corporate income tax exemption.

The latest major amendments to the Communique were published in the Official Gazette on 17 January, 2017, as Communiqué number 48.1.b. The provisions in Communique number 48.1.b mainly focus on activities, structure and portfolios of IREICs. In addition to these provisions, there are a number of amendments regarding the management structure of REICs, principles on investments and activities, prohibited activities, and principles on valuation and distributions, which are elaborated in the following sections. Furthermore, an amendment to extend the period of the temporary clause was published on 10 May, 2018.

On 2 January, 2019, Communiqué numbered 48.1.ç was published in the Official Gazette, amending many provisions. One of the major amendments is that portfolio limitations of IREICs are expanded, and new exemptions regarding IREICs that have not yet made an initial public offering or been sold to qualified investors are introduced. Also, obtaining services from portfolio management companies for REICs that have more than 10% of their portfolio invested in money and capital market instruments has been introduced as a requirement. The scope of the purposes enabling a REIC to become a subsidiary of other companies expanded. The provision regarding the determination of real estate appraisal companies has been amended. On 27 September, 2019, Communiqué numbered 48.1.d was published in the Official Gazette, making a small amendment to the activities REICs may perform relating to real estate projects of the government.

On 9 October, 2020, Communiqué numbered 48.1.e was published in the Official Gazette, amending decisions of the board of directors that must be disclosed to the public, investment activities and restrictions on investment activities, prohibited activities, portfolio restrictions, use of expertise value, and public disclosure. Furthermore, the limitation regarding cash profit distribution before the public offering or sale to qualified investors will not be applied to IREICs until the end of 2023.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR m)	% of Global REIT Index
Turkey	37	5	6.858,95	0,07%

Top REICs*

Company name	Mkt Cap (EUR m)	1 yr return (EUR) %	Div Yield	% of Global REIT Index
Emlak Konut Gayrimenkul Yatirim Ortakligi AS	952,58	77,83%	3%	0,04%
Is Gayrimenkul Yatirim Ortak	952,58	-54,13%	0%	0,01%
Ozak Gayrimenkul Yatirim Ortakligi AS	330,75	44,74%	0.00%	0,01%
AKIS Gayrimenkul Yatirimi AS	159,13	12,74%	0%	0,01%
Alarko G.Yat.Ort	138,06	27,89%	3%	0,01%

** All market caps and returns are rebased in EUR and are correct as of June 30, 2023. The Global REIT Index is the FTSE EPRA Nareit Global REITs Index. EPRA, June 2023.*

2 Requirements

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2.1 Formalities/procedure

Key requirements
- Regulated and closely monitored by the Capital Markets Board (CMB) - Statutes must be in accordance with the law and the procedures of the Communiqué - Founders must have no records of legal prosecution due to bankruptcy or other offences - Unless otherwise stated in particular, rules applying to the REICs are also applicable to the IREICs.

According to Article 6 of the Communiqué, REICs may be constituted by way of establishing new joint-stock companies, or existing joint-stock companies can be converted into REICs by amending their articles of association in accordance with the procedures of the Communiqué and CML.

For the purpose of establishing a REIC, the founders are required to apply to the CMB in order to obtain its approval for the establishment with an application for establishment form, the format and procedures of which are determined by the CMB, and the documents specified in this form.

For either the establishment or the conversion of a company into a REIC, CMB approval must be obtained. In order to obtain the approval for the establishment from the CMB, the applicant companies are required to hold the qualifications specified below:

- Prospective REICs have to be established in the form of joint-stock companies with registered capital;
- Prospective REICs have to be established in order to offer the shares representing at least 25% of the issued capital to the public within three months after the establishment and principles determined by the Communiqué;
- The initial capital should not be less than TRY 142 million for the year 2023, and if a company manages a portfolio consisting of exclusive infrastructure investment and services, the initial capital of this company is required to be at least TRY 465 million. CMB is authorised to amend the mentioned amounts indicating initial capital annually;
- If the initial capital is less than TRY 284 million, at least 10% of the shares representing the initial capital should be issued for cash; if the initial capital is TRY 284 million or more, at least TRY 28.4 million of the shares representing the initial capital should be issued for cash and, in the case when a company manages a portfolio consisting of exclusive infrastructure investment and services, at least TRY 46.5 million of the shares representing the initial capital have to be issued for cash. The shares can only be issued in registered or bearer form;
- The phrase ‘Real Estate Investment Company’ must be included in the commercial title;
- Real person founders indirectly and ultimately holding at least 20% or more of the concerned company’s shares and real person founders indirectly holding privileged shares providing management control in the concerned company’s shares must meet the conditions mentioned in the Communiqué; and
- Directors and the members of the board of directors of the company must meet the conditions mentioned in the Communiqué.

The articles of association of the prospective REIC have to be in conformity with the provisions of CML, and the Communiqué and affirmative opinion of the CMB needs to be obtained.

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In order for the approval of the transformation of other companies into REICs, those companies should meet the following requirements:

- Applicant companies are required to be in the registered capital system or should have applied to the CMB for this purpose;
- Applicant companies are required to declare their commitment to the CMB that at least 25% of the issued capital of that company shall be offered to the public within three months after the conversion and principles determined in the Communiqué;
- The present paid-in capital or issued capital and its equity should not be less than TRY 142 million, whereas this amount for IREICs should not be less than TRY 465 million;
- If the present paid-in capital or issued capital is less than TRY 284 million, at least 10% of the shares representing present paid-in capital or issued capital should be issued for cash;
- If the present paid-in capital or issued capital is TRY 284 million or more, at least TRY 28.4 million of the shares representing present paid-in capital or issued capital should be issued for cash;
- An application needs to be filed with the CMB in order to change its commercial title so that the phrase 'Real Estate Investment Company' is included;
- Real person shareholders indirectly and ultimately holding at least 20% or more of the concerned company's shares and real person shareholders indirectly holding privileged shares providing management control in the concerned company's shares must meet the conditions mentioned in the relevant legislation; and
- Directors and the members of the board of directors of the companies must meet the conditions mentioned in the Communiqué.

An application needs to be filed to amend the articles of association to comply with the provisions of the relevant legislation and obtain the affirmative opinion of the CMB.

The CMB evaluates the application in terms of conformity with the provisions of CML and the Communiqué. Upon obtaining the relevant approval from the CMB, an additional application shall be filed with the Ministry of Trade requesting the approval of the amendments in the articles of association in the case of conversion or approval for establishment in the case of the establishment.

Companies to be established shall acquire a legal identity upon registration of the company with the Trade Registry in accordance with the related provisions of the Turkish Commercial Code no 6102 ('Turkish Commercial Code').

Corporations to be converted shall call the shareholders and, if necessary, the preferred stockholders of the company to a meeting in accordance with articles 421 and 454 of the Turkish Commercial Code so that the changes in the articles of association of the concerned company can be approved. With the approval of the amendments and registration with the Trade Registry, the conversion transactions shall be completed.

Further requirements other than those explained above may be imposed by the CMB during the approval process.

2.2 Legal form/minimum share capital

Legal form	Minimum share capital
Joint-stock company	TRY 142 million (for REICs) and TRY 465 million (for IREICs)

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Legal form

The general guidelines of joint-stock companies are regulated by the Turkish Commercial Code. REIC specifics shall be determined by the CML and the Communiqué. The company's name must include 'real estate investment company'.

Share capital

The minimum capital requirement for a REIC is TRY 142 million for the year 2023 and TRY 465 million for IREICs. These amounts may be amended annually by the CMB.

If the initial capital is:

- less than TRY 284 million, at least 10% of the shares; and
- TRY 284 million or more, shares representing at least TRY 28,4 million of the initial capital should be issued for cash, and companies that will exclusively manage a portfolio consisting of infrastructure investment and services have to issue shares representing at least TRY 46.5 million of the initial capital for cash.

2.3 Shareholder requirements/listing requirements

Shareholder requirements	Listing mandatory
Only for company founders	Yes

Shareholder requirements

It is required in the real estate investment companies that:

- Real or legal person founders must not have any payable tax;
- Real or legal person founders must not be bankrupt, go bankrupt, or have any postponement of bankruptcy;
- Real or legal person founders must not have any responsibility for actions that cause cancellation of an enterprise's activity permits by CMB;
- Real or legal person founders must not be condemned;
- Real or legal person founders, or the corporations that they are shareholders of, must not be subject to a liquidation decision;
- Real or legal persons must have obtained the resources needed for a foundation from their own commercial, industrial and other legal activities free from any kind of collusion and must have the financial power to fund the subscribed capital amount*;
- Real or legal persons must have the honesty and the reputation required for the business
- Real or legal persons must not have been convicted of crimes under the Law on Prevention of Financing of Terrorism no. 6415; and
- Real or legal persons must not have been banned from trading pursuant to the investigations of insider trading and manipulation under CML.

**This requirement is not applied in the conversion applications.*

In terms of CMB regulations, there are no restrictions on foreign shareholders.

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Listing requirements

At least 25% of the REIC's shares should be offered to the public. REICs are obligated to apply to CMB for offering share certificates representing 25% of their capital to the public within three months of their establishment or registration of their articles of association's amendment before the trade registry.

2.4 Asset level/activity test

Restrictions on activities/investments
- Only transactions permitted by the Communiqué are allowed - Must primarily deal with portfolio management - The portfolio of a general-purpose REIC is required to be diversified - If a REIC is established to display activity in a specific area or invest in a specific project, 75% of its portfolio must consist of assets mentioned in its title and/or articles of association - Cannot be involved in the construction of real estate - Cannot commercially operate any hotel, hospital, shopping centre, etc. - Cannot provide services by its personnel to individuals or institutions in project development, project control, financial feasibility and follow-up of legal permission except for the projects related or to be related to the portfolio. However, regarding the projects carried out by public institutions or organisations and their subsidiaries, affiliates and companies in which they have privileged shares, the services specified in this paragraph may be provided by partnerships where public institutions and organisations have the management control - Cannot make any expense or commission payment that is not documented or that materially differs from the market value - Cannot sell or purchase real estate for short-term consistently

The portfolio of a general-purpose REIC is required to be diversified based on industry, region and real estate and to be managed with a long-term investment purpose.

In the case a REIC is established with the purpose of operating in certain areas or investing in certain projects, at least 75% of the REIC's portfolio must consist of assets mentioned in its title and/or articles of association.

REICs are required to invest in real estate, rights supported by real estate, real estate projects, participation units of Real Estate Investment Funds, foreign companies or Turkish and foreign SPVs that are wholly-owned subsidiaries of a REIC that is only operating only on real estate with the purpose of maintaining certain real estate, real estate projects or rights supported by real estate at a minimum rate of 51% of their portfolio values. They can invest in a time deposit and demand deposits in TRY or any foreign currency for investment purposes at a maximum rate of 10% of their portfolio values. The rate of vacant lands and registered lands that are in the portfolio for a period of five years that have not been subject to any project development should not exceed 20% of the portfolio value. In addition to these, the minimum 75% rate of the portfolio of the companies which will exclusively manage a portfolio consisting of infrastructure investment and services should consist of these corresponding infrastructure investments and services.

REICs cannot:

- Engage in capital market activities other than portfolio management for its own portfolio limited to the investment areas;
- Be involved in the construction of real estate as a constructor;
- Commercially operate any hotel, hospital, shopping centre, business centre, commercial parks,

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commercial warehouses, residential sites, supermarkets and similar types of real estate, and employ any personnel for this purpose;

- Engage in deposit business, conduct business and operations resulting in deposit collection;
- Engage in commercial, industrial or agricultural activities other than the transactions permitted;
- Grant loans or commit to any debit/credit transaction with their subsidiaries other than wholly-owned subsidiaries that are not related to goods/services the purchase and sale of their participations;
- Make any expense or commission payment which is not documented or which materially differs from the market value; or
- Sell or purchase real estate for the short-term consistently.

REICs can invest in foreign real estate and capital market instruments backed by real estate at a maximum rate of 49% of the portfolio value.

2.5 Leverage

Leverage
Short-term credits are limited to five times the shareholders' equity.

In order to meet the short-term fund demands or costs related to the portfolio, a REIC can obtain credits at a rate of five times its shareholders' equity. In order to calculate the maximum limit of such credits, the obligations of the company arising from financial leasing transactions and non-cash credits shall be taken into account.

A REIC can issue debt instruments within the restrictions of the capital market legislation. As for the issued debt securities, the aforementioned credits shall be deducted from the issue limit calculated according to the capital market legislation.

Companies can issue asset-backed securities based on sales contracts or on the promise to sell real estate from the portfolio.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
REICs determine their own profit distribution politics	Will be regarded within the distributable profit	Annually or quarterly

The CMB sets out specific rules with respect to the timing, procedures and limits of profit distributions. As REICs are public companies, profit distributions of REICs are subject to the general regulations of the CMB regulating the profit distribution of public companies. According to the Communiqués regarding dividend distributions, public companies are free to determine their own profit distribution politics. The distributable profit is calculated in line with both CMB and Turkish Commercial Code ('TCC') regulations.

In order to secure the capital position of the REIC, the lesser of the net distributable profit calculated in line with the statutory accounts or in line with CMB regulations should be distributed.

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The public companies may freely determine their dividend distribution policy under the CMB's new Dividend Distribution Communiqué through their general assemblies. General assemblies should determine their policy on whether to distribute any dividend, the rate and type (i.e., in cash) of the dividend, the time of the dividend payment and whether to pay an advance dividend. The general assembly of the company must determine the time of the dividend payment provided that the distribution payment process is initiated no later than by the end of the relevant financial year of that general assembly meeting.

Moreover, based on the CMB communiqué, public companies may freely decide to:

- Distribute dividends entirely in cash;
- Distribute dividends entirely as shares;
- Distribute dividends partially in cash and partially as shares and keep the remaining as reserves; or
- Keep all the profits as reserves.

However, public companies whose shares are not traded in the exchange have to distribute the dividend fully and in cash. Also, the rate of the dividend for those companies cannot be less than 20% of the net distributable profit calculated under the Communiqué.

REICs are entitled to make advance dividend distributions quarterly. Such advance dividend distributions are subject to CMB regulations as well. Advance dividend distributions can only be realised in cash. Advance dividend distributions shall not exceed half of the net interim profit remaining after subtracting the legal reserves and accumulated losses.

Besides, the advance dividend distribution amount shall not exceed the lower one of the following amounts;

a) Half of the previous year's net profit amount, or

b) The total amount of other distributable sources, except the net profit amount stated in the financials of the corresponding interim period.

In addition to the above-mentioned provisions, a temporary clause concerning profit distribution is stipulated for the IREICs under Communique number 48.1.b and amended by Communique number 48.1.c to extend the period. The period specified in Communiqué number 48.1.c has been extended further with Communiqué number 48.1.e. Article 45 of the Communique regulating prohibition of the cash profit distribution before the public offering of shares or sales to the qualified investors will not be applicable for the IREICs until 31 December, 2023.

2.7 Sanctions

Penalties/loss of status rules
Modification of the articles of association to exclude real estate investment company operations

If REICs do not apply to the CMB by completing the public offering application form and the documents mentioned in this form within the time periods, or if the application is found inappropriate due to the failure to fulfil the necessary conditions, the REIC shall lose the right to operate as a REIC. The CMB will inform the Ministry of Finance, and the company will lose its tax-exempt REIC status.

As the company will lose its REIC and tax-exempt status, unpaid taxes, late payment interest and tax penalties may be levied retrospectively on the REIC from the incorporation date of the company.

In addition to judicial fines, the CMB may impose administrative fines for breaches of the CMB regulations or decisions made by the CMB or take relevant measures or bring the case to court or the public prosecutor's office where relevant.

3 Tax treatment at the level of REIC

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3.1 Corporate tax

Current income	Capital gains	Withholding tax
Tax-exempt	Tax-exempt	Credit/refund may be possible

Current income

Generally, corporations in Turkey are subject to 20% corporate tax (general CIT rate is 23% for 2022. For banks, leasing companies, CMB companies, insurance and reassurance companies and pension companies, the rate is applied as 25% for 2022), which is payable over the fiscal profit after adjusting for deductible/non-deductible items and exemptions. Annual corporate tax is declared and paid in April of the following year (assuming that a normal calendar year is applied).

The determination of the taxable income of REICs is no different from ordinary companies in Turkey. On the other hand, REICs are exempt from corporate tax, and whilst they are obliged to submit an annual corporate tax return in April of the following year, they do not pay any corporate tax.

The dividend income of Turkish resident companies obtained from its taxable Turkish resident subsidiaries is exempt from corporate income tax.

Dividends received from non-taxable subsidiaries are taxable in Turkey. However, dividends received by REICs, in general, are tax-exempt due to REIC exemption status.

The foreign corporate income of REICs is also exempt from corporate tax.

Dividends

A dividend withholding tax rate of 10% is applicable to dividends distributed to individual and foreign corporate shareholders. However, for REICs, the Council of Ministers has determined a withholding tax rate of 0%. Therefore, dividend distributions to individual and non-resident shareholders of REICs create no dividend withholding tax burden.

Capital gains

Capital gains are, in principle, deemed the commercial income of a REIC and are thus regarded as corporate tax-exempt.

Withholding tax

REICs may have income subject to withholding taxes to be taxed at source. A credit/refund may be possible.

Accounting rules

Turkish REICs are required to prepare audited financial statements in accordance with the standards of the CMB, which are very similar to IFRS standards.

There is no separate tax accounting system in Turkey. The provisions of the tax laws are applied to the determination of taxable income by making adjustments to the fiscal profit determined in accordance with the CMB financial standards.

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3.2 Transition regulations

Conversion into REIC status
In principle, no tax privilege

There is no exit tax or any other major tax to be applied upon transformation from a regular company into a REIC.

There is no privileged exit taxation rule for capital gains realised on real estate if sold to a REIC. However, there is a specific limited exemption rule stipulated in the Corporate Income Tax Code and applicable only to resident companies. According to this rule, under certain conditions, 50% of the gains derived from the disposal of real estate may be exempted from corporate taxes. This is not a special rule for real estate disposals to REICs. However, according to the Corporate Tax Code, the earnings that a company engaged in the trading of real estate property or its rental obtained from the sale of such assets are not eligible for the exception.

3.3 Other taxes

Registration duties
- Title deed fee of 4% - Stamp tax exemption - A transfer may be subject to VAT

VAT

Since no specific VAT exemption is applicable for the transactions carried out by REICs, transactions of REICs are subject to value-added tax (VAT). All transactions carried out by REICs, including the purchase and sale of land or any other real estate by a REIC from/to a Turkish resident company, will be subject to 18% (lands are subject to 8% VAT as of April 4, 2022) VAT which is accounted as input VAT.

On the other hand, there are some exemptions to the above-mentioned principle:

- If the seller of the real estate is an individual who is not constantly engaging in real estate trading, the sale of real estate is not subject to VAT;
- Acquisitions of real estate from banks and insurance companies are not subject to VAT but are subject to banking and insurance transaction tax (BITT) at the rate of 5%. Please note that this BITT is taken as a cost; and
- Acquisitions of real estate from companies whose main activity is not real estate trading are exempt from VAT if the seller company has held that real estate for at least two years at the time of sale.

However, the input VAT that has been accumulated can be offset against the output VAT calculated over the sales or rental income of the REIC. Please note that the input VAT that has been accumulated that could not be offset against the output VAT cannot be considered a deductible expense in the determination of the corporate tax base.

The effective VAT rate to be applied on the sale of residential units which are holding their building license as of 1 January 2013, with a net area of less than 150 m2, will be 1%/8%/18% based on certain conditions stated in the corresponding legislation. Furthermore, the VAT rate applied on the sale of 150 m2 of residential units holding their building license from 1 April, 2022, or tendered by public institutions and organisations and their affiliates from 1 April, 2022, will be 1%/8% based on certain conditions stated in the corresponding legislation, and the m2 that exceeds 150 m2 shall be subject to 18% VAT.

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Title Deed Fee

The acquisition of the legal title of Turkish property is subject to a 2% title deed charge over the greater of the sales price or the real estate tax base, which is determined by the related municipality by taking into consideration the fair market value of the real estate. This title deed fee is applicable to both the buyer and the seller separately. Therefore, the total title deed charge burden is 4%. Additional title deed fees may also apply depending on the type of title deed transaction.

Stamp tax

Stamp tax applies to a wide range of documents, including but not limited to agreements, financial statements and payrolls. Stamp tax is levied as a percentage of the monetary value stated on the agreements at rates ranging from 0.189% to 0.948%.

On the other hand, promise-to-sell agreements and agreements signed by REICs regarding the acquisition and the disposal of real estate are exempt from stamp tax. Please note that apart from these agreements, REICs are also subject to all stamp tax liability mentioned above.. Also, the stamp tax rate is 0% on contracts specific to the construction sector, such as flat for land and revenue-sharing contracts.

Agreements that have a monetary value stated on them are separately subject to stamp tax at a general rate of 0.948% (9.48 per thousand) with a ceiling of TRY 10.732.371,80 (approximately EUR 500,500, under the current foreign exchange rate, subject to annual revaluation) for the year 2023.

Lease contracts are also subject to stamp tax. The rate applicable for a lease agreement is 0.189% (1.89 per thousand) with the cap amount mentioned above. In the case the period of the rental contract is longer than a year, the taxable base for the stamp tax is the total rent amount calculated over the full rental income and the total period of the contract.

Property tax

An annual property tax (real estate tax) is levied on the owner of real estate.

Buildings and land owned in Turkey are subject to property tax at the following rates:

- residences: 0.1%;
- other buildings: 0.2%;
- vacant land (allocated for construction purposes): 0.3%; and
- land: 0.1%.

Furthermore, the effective property tax rates double for properties located within the borders of metropolitan areas.

Environmental tax

Annual environmental tax will become due based on a tariff that does not have a material value.

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4 Tax treatment at the shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Dividends and capital gains from share disposal subject to the standard corporate income tax rate	- 50% of a dividend is subject to individual income tax (15% to 40%) - Capital gains are, in principle, tax-exempt	General view: N/A

Capital gains received by resident corporations

The capital gains derived from the sale of REIC shares by resident legal entities are to be included in the corporate income and will be subject to corporate income tax at 20% (23% for 2022). However, there is a special partial exemption method that can be used to minimise the tax burden and is available for 75% of the gains derived from the sale of shares that are held for at least two years, with certain further conditions.

Dividends received by resident corporations

Since REICs are exempt from corporate tax, 'participation exemption' is not applicable for the dividends received from REICs. So, dividends received by corporations in Turkey from REICs are subject to a 20% corporate income tax (23% for 2022). And then, if distributed to non-resident companies or individuals, those distributions are also subject to dividend withholding tax in line with local regulations.

Capital gains received by resident individuals

Since REICs are public companies, capital gains derived from the sale of shares on the Borsa Istanbul by resident individuals will be subject to taxation via withholding tax. The current rate of 0% withholding tax is applicable for the capital gains received by resident individuals, and that tax will be the final tax for those individuals.

Dividends received by resident individuals

Resident individual shareholders of REICs are obliged to declare half of the dividends received from REICs if half of the dividends received exceed the declaration limit (approx. EUR 7,000 for the year 2023). Declared income will be subject to income tax at the progressive rate between 15% and 40%.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
A 0% withholding tax	A 0% withholding tax	A 0% withholding tax

Capital gains received by non-resident corporations

Since REICs are public companies, capital gains derived from the sale of shares on the Borsa Istanbul by non-resident legal entities that do not have a permanent establishment in Turkey will be subject to taxation via withholding tax. The current rate of 0% withholding tax is applicable for the capital gains

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received by non-resident corporations, and that tax will be the final tax for those companies.

Please note that capital gains derived from the sale of non-listed Turkish company shares by non-resident corporations that do not have a permanent establishment in Turkey are to be declared after the application of cost adjustment (adjustment of the original cost with Whole Sale Price Index (WPI) except for the month the shares are disposed of if the total increase in WPI is more than 10%), within 15 days following the sale of shares, through a special corporate tax return and be taxed at the standard corporation tax rate. Additionally, dividend withholding tax will be applied to the net gains. But, since most Double Tax Treaties prohibit Turkey's taxation right on these capital gains depending on the holding period (one year in most cases) of the Turkish company shares, we strongly suggest examining double tax treaties before these transactions.

Dividends received by non-resident corporations

Dividends that are distributed by REIC will be subject to a 0% dividend withholding tax in Turkey. On the other hand, the taxation of dividends in the hands of non-resident corporations depends on the tax treatment of the country of residence.

Capital gains received by non-resident individuals

Since REICs are public companies, capital gains derived from the sale of shares on the Borsa Istanbul (BIST) by non-resident individuals will be subject to taxation via withholding tax. The current rate of 0% withholding tax is applicable for the capital gains received by non-resident individuals, and that tax will be the final tax for those individuals.

Dividends received by non-resident individuals

Since REICs are public companies, capital gains derived from the sale of shares on the Borsa Istanbul (BIST) by non-resident individuals will be subject to taxation via withholding tax. The current rate of 0% withholding tax is applicable for the capital gains received by non-resident individuals, and that tax will be the final tax for those individuals.

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