

Worldwide Real Estate Investment Trust (REIT) Regimes

Compare and contrast

This booklet will keep you up to speed and allow you to compare the various global REIT regimes

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Introduction

Uwe Stoschek

Global Real Estate Tax Leader

PwC (Germany)

Tel: +49 30 2636-5286

uwe.stoschek@pwc.com

During the past years Real Estate Investment Trusts (REITs) have had a strong come-back from the financial crisis and showed an impressive upswing. The REIT regimes responded to the ever changing market environment and are continuously evolving. In the low interest rate environment that followed they have produced attractive returns to their investors.

PwC has a global team of real estate tax and legal professionals who have conceived this booklet to keep you up to speed and allow you to compare the various regimes. As you will notice, it is a high level comparison of key attributes of selected REIT regimes. Since the last update of the publication some amendments have been made to REIT regulations in most of the described countries.

The REIT contacts listed within each country section publish regularly in other publications as well and they will be delighted to assist you with any further requests on the local REIT model. Otherwise, please do not hesitate to contact me or your usual PwC contact directly.

Joshua Cardwell

PwC (Australia)

Tel: +61 2 8266-0532

josh.cardwell@pwc.com

Christian Holle

PwC (Australia)

Tel: +61 2 8266-5697

christian.holle@pwc.com

The Australian REIT market has a history dating back to 1971, when the first REIT was listed on the Australian Stock Exchange (ASX). The Australian REIT market is now very large, well established and sophisticated with approximately 70% of Australian investment grade properties securitised. As at June 2019, there were more than 50 listed REITs on the ASX with a market capitalisation approaching AUD 1170bn.

Legal form

There are no specific REIT rules in Australia. Australian REITs can be sector specific (e.g. industrial, office, etc.) or diversified funds. In 1998, the Managed Investment Scheme (MIS) rules were introduced into the Corporations Law. The MIS rules govern investment vehicles in Australia, including REITs. The rules deal with regulatory issues such as licensing and board composition for the manager rather than specific tests that must be satisfied to qualify as a REIT.

From an income tax perspective, most REITs are classified as Managed Investment Trusts (MITs). A MIT is a trust that satisfies certain ownership, management and activity requirements. From 1 July 2016, certain MITs have been able to apply the Attribution MIT (AMIT) tax regime. Where a trust elects into the AMIT regime, the trust may not be subject to certain restrictions that would otherwise apply to MITs.

The majority of listed REITs are now in the form of stapled entities, which involves two or more entities being contractually bound together. Stapled entities cannot be traded separately, though the entities retain their separate legal character and continue to be treated separately for income tax purposes. Therefore, REITs are commonly employing these stapled structures with the 'taxable' side of the staple undertaking non-investment activities and the 'flow-through' side of the staple investing in real estate. While the use of stapled structures by REITs has been prominent, the tax landscape for these structures has recently been changed and some stapled structures may produce income which even if derived by a MIT or AMIT will be subject to a higher tax rate of 30% rather than 15%. Whilst not limited to any asset class, it is expected the impact will be most notable for investment in the residential and agricultural land sectors.

The majority of unlisted REITs tend to be standalone MITs or AMITs.

Capital requirements

There are no capital requirements for a REIT (if listed, however, it must meet ASX requirements). There are, however, capital requirements for the manager.

Listing requirements

There are no listing requirements. A REIT can be listed or unlisted.

Restrictions on investors

There are no investment restrictions on investors. However in order to qualify as a MIT, a foreign individual must not hold a 10% or greater interest in the REIT (directly or indirectly).

Asset/income/activity tests

Public unit trusts investing in land must do so for the purpose, or primarily for the purpose, of deriving rental income ('eligible investment business'). Public unit trusts that carry on a trading business such as developing land for sale, will not receive flow through treatment. Eligible investment business includes other passive, investment-type activities such as loans, portfolio share investment, derivatives, etc.

Restrictions on foreign assets

There are no restrictions on foreign assets. Distribution requirements Undistributed income or gains may be taxed at the highest marginal tax rate (currently 49%). However, to mitigate this it is standard practice to distribute 100% of the taxable income of the REIT.

Withholding tax on distributions

- Domestic: None
- Foreign: 30% or generally reduced amount of 15% if investing in a MIT or AMIT via certain countries. A further reduction to 10% may apply in respect of certain newly constructed 'green buildings'.
- Treaty access: Yes, depending upon exact treaty wording. Limitations can arise if treaty requires beneficial ownership (due to trust legal form). Note that REIT distributions are not dividends and not covered under dividend articles.

Tax treatment at the investor level resident investors

Resident unitholders are liable to pay tax on the full amount of their share of the taxable income (including capital gains) of a REIT in the year in which they are presently entitled to the income of the REIT. This applies, irrespective of whether the actual distribution of the income from the REIT is paid in a subsequent year.

Distributions from the REIT retain their character and therefore the tax treatment of the various components may differ. For example a distribution from a REIT may include both foreign sourced income and gains (e.g. from properties located overseas) and Australian sourced income and gains. Distributions from an Australian REIT may also include a tax deferred component, capital gains tax (CGT) concession component, a capital gain component and a foreign tax credit component.

Tax deferred amounts are generally attributable to returns of capital, building allowances, depreciation allowances and other tax timing differences. It is the practice of the commissioner of taxation to treat tax deferred amounts as not assessable when received, unless and until the total tax deferred amounts received by a unitholder exceed the unitholder's cost base of the REIT units. For CGT purposes, tax deferred amounts received reduce the unitholder's cost base of the REIT units and therefore affect the unitholder's capital gain/loss on disposal of those units. Where a capital asset that is owned by the Australian REIT for at least 12 months is disposed of, the trust may claim a 50% CGT discount on the capital gain realised upon disposal of that asset. The CGT concession component of a distribution by the REIT will represent the CGT discount claimed by the trust in respect of asset disposals. The CGT concession component is not assessable when received by unitholders (and no CGT cost base adjustment is required).

The capital gain component of a REIT distribution must be included in the unitholder's net capital gain calculation.

Unitholders may be entitled to a foreign tax credit for foreign taxes paid by a REIT. The credit is applied against the Australian tax payable on foreign sourced income.

The disposal of REIT units will have CGT implications.

Non-resident investors

Non-resident unitholders are subject to Australian tax on their share of the REITs taxable income that is attributable to Australian sources (adding back the benefit of the CGT discount concession). Foreign sourced income can flow through an Australian REIT to a non-resident unitholder, tax-free. Distributions to non-residents of Australian sourced taxable income are subject to withholding tax (refer above). The disposal of REIT units can have CGT implications for foreign investors owning 10% or more of the REIT units (including indirectly).

Transition to REIT/Tax privileges

Not applicable.

Grégory Jurion

PwC (Belgium)

Tel: +32 2 710-9355

gregory.jurion@pwc.com

The Belgian regulated real estate company (the “RREC”) regime (in French, *société immobilière réglementée*, or *SIR* and in Dutch, *gereguleerde vastgoedvennootschap*, or *GVV*) is governed by the Belgian law of 12 May 2014 on RREC (the “RREC Law”) and the Royal Decree of 13 July 2014 on RREC (the “RREC Royal Decree”). The RREC benefits from an ad hoc REIT status in Belgium, which has been established alongside the status of real estate investment company with fixed capital (in French, *société d’investissement à capital fixe immobilière*, or *SICAFI* and in Dutch, *vastgoedbeleggingsvennootschap met vast kapitaal* or *vastgoedbevak*) established by the former Belgian law of 4 December 1990, which has been repealed and replaced by the Belgian law of 19 April 2014 on alternative investment funds and their managers (the “AIFM Law”) and for which the regulatory framework has been set out by successive Royal Decrees.

RRECs are commercial-operational companies with the purpose of putting real estate at the disposal of others. This commercial purpose distinguishes them from SICAFIs, which are alternative investment funds subject to the AIFM Law (which implements Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers in Belgium). The regulated status of a RREC is optional. When a company adopts the RREC status, it will be subject to the prudential supervision of the Belgian regulator, the Financial Services and Markets Authority (the “FSMA”) and to various restrictions in terms of leverage, risk diversification and distribution requirements.

Currently, there are 17 public RRECs and ten institutional RRECs registered with the FSMA (1 August 2019). The Belgian RRECs represent a market capitalisation of approximately EUR 12 bn. Although the legal framework of the SICAFI regime remains in place next to the Belgian RREC regime, all existing SICAFIs have been converted in RRECs and there are no longer any active SICAFIs on the Belgian market.

In addition to the two above existing regimes, Belgium has introduced a new regime for real estate investments late 2016: the specialised real estate investment fund (in French, *fonds d’investissement immobilier spécialisé* and in Dutch, *gespecialiseerd vastgoedbeleggingsfonds*), commonly named FIIS. This optional regime is governed by the Royal Decree of 9 November 2016 on FIIS, as published in the Belgian Official State Gazette on 18 November 2016. It entered into force on 28 November 2016 and is exclusively reserved for professional and institutional investors. The regulatory requirements for the FIIS are less stringent than for the SICAFI or the RREC. A FIIS for instance has no legal obligation for public emission and stock quotation and benefits from flexible requirements (no limits on leverage and no diversification requirements). It furthermore has a similar tax regime as the Belgian SICAFI and RREC.

RRECs are subject to the standard corporate income tax rate at 29.58% (25% as from 1 January 2020), be it on a very limited lump-sum basis.

Over the past few years, the RREC regime has been discussed and reviewed at legislative and political level. In this respect, a law amending the RREC Law has been adopted by the Belgian Federal Parliament on 22 October 2017. The changes relate to, amongst other things (i) the extension of the permitted RREC activities to the infrastructure sector, (ii) the abolition of the current obligation for public RRECs to have sole or joint control of the companies in which they hold shares (new minimum participation conditions are however introduced), (iii) the possibility for individuals to hold securities issued by an institutional RREC under certain conditions and (iv) new rules on the maximum debt ratio. In addition, a RREC with a social purpose has been introduced. Further to these changes, a royal decree amending the RREC Royal Decree has been

adopted on 23 April 2018. Consequently, the amended RREC regime has entered into force on 17 May 2018. The RREC Law has also been amended by the law of 2 May 2019 containing various financial provisions in order to permit RRECs to raise capital in cash through the technique called Accelerated BookBuild. This technique allows the raise of capital in cash without having to allocate a preferential subscription right or irreducible allocation right to existing shareholders. Thus, this amendment allows an easier and faster access for a RREC to invest in the capital markets.

Legal form

Only public limited liability companies (“sociétés anonymes”/“naamloze vennootschappen”) are eligible for the RREC status. They are corporate bodies and have a separate legal personality according to Belgian company law.

Capital requirements

In principle, a RREC must have a fully paid-up share capital of at least EUR 1.2m. However, to obtain authorisation in practice, the required share capital for a public RREC is much higher (e.g. for the listing on the Euronext stock exchange).

Furthermore, the RREC must prepare a financial plan for the first three financial years after its registration, containing among others prospective balance sheets and profit and loss accounts as well as a minimum investment budget to meet its strategy during the first three years.

Moreover, a public RREC's debts on a statutory and a consolidated level cannot exceed 65% of its assets and the relating financial charge cannot be higher than 80% of total operational and financial income.

Listing requirements

The promoters of the public RREC, i.e. the persons who control the RREC, have to permanently ensure that at least 30% of the shares in the public RREC are held by the public.

In addition, the regular market rules of Euronext Brussels should be met by a public RREC, so that a sufficient number of shares would be available to the public.

Restrictions on investors

For public RRECs, there are no restrictions as to the type of investors or their country of residence.

For institutional RRECs, only professional or institutional investors (“investisseurs éligibles”/“in aanmerking komende beleggers”) or natural persons investing at least EUR 100,000 can own shares or instruments issued by institutional RRECs. Before the recent RREC regime reform, an institutional RREC needed to be exclusively or jointly controlled by a public RREC. Further to the recent RREC regime reform, more than 25% of the share capital of an institutional RREC have to be held by a public RREC.

Asset/income/activity tests

In principle, the exclusive purpose of a RREC is making real estate assets available for its users, either directly or via a participation in a company. This is however broadly defined and includes among others: real estate properties and rights in rem (excl. asset of forestry, agriculture and mining nature), shares with voting rights issued by affiliated real estate companies, etc.

To ensure a relatively safe investment environment, in principle a maximum of 20% of the public RREC's consolidated assets can be invested in one or more real estate assets which can be considered to constitute a single risk for the public RREC. This risk diversification requirement does not apply to properties subject to long-term commitments of a Member State of the European Economic

Area. Under certain circumstances (for a maximum of two years or in case it would be of the interest of the shareholders or in case it is justified considering the specific nature or size of the investment), the FSMA can allow the public RREC to deviate from this rule, subject to further conditions (such as a maximum consolidated indebtedness of 33%).

Investments in other assets which are not considered to be real estate are allowed to a limited extent (as to the duration and the amount of such investment) and provided that such business is authorised by the articles of association of the public RREC.

Some activities are, however, not allowed. Neither a RREC nor its subsidiaries may act as a mere property developer, i.e. its activity (excluding occasional transactions) may not consist in constructing buildings itself or having them constructed in view of selling them prior, after or within a period of five years after construction.

Furthermore, a RREC may not grant loans to or provide guarantees to companies other than its subsidiaries (third-party companies).

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

A minimum of 80% of the corrected net result of a public RREC and an institutional RREC, reduced by the amounts corresponding to the net decrease of their debts during the financial year, must be distributed to its shareholders by means of dividends.

Tax treatment at REIT level

RRECs are Belgian tax resident companies and are subject to the standard corporate income tax at a rate of 29.58% (25% as from 1 January 2020). The taxable basis however is limited to non-deductible expenses (other than reductions in the value of shares and capital losses realised on shares) and the abnormal or benevolent benefits received. Furthermore, a RREC is also subject to the secret commission tax which is due on certain fees that are not correctly reported to the tax authorities at a rate of 51 to 102%. The capital gains and the recurring income from the real estate property are hence tax-exempt.

RRECs are subject to an annual tax on their net asset value. The tax rate is 0.0925% for public RRECs and 0.01% for institutional RRECs.

The withholding tax on Belgian dividends received by a RREC is no longer creditable (nor refundable).

The RREC can however benefit from a withholding tax exemption on the dividends received from a Belgian company, provided that the RREC has a participation of at least 10% in the share capital of the distributing company for an uninterrupted period of at least one year (or in case of commitment to keep such minimum participation during at least one year).

Withholding tax on distributions

In principle, dividends distributed by RRECs are subject to 30% withholding tax.

A reduced withholding tax rate of 15% on dividends distributed is however applicable as from 1 January 2017 for dividends distributed by RRECs investing at least 60% of their assets in health care property.

A withholding tax exemption is available for dividends paid out of income stemming from foreign real estate held by RECCs. Furthermore, a withholding tax exemption is available for dividends distributed to non-resident pension funds subject to certain conditions. Furthermore, since 1 July 2016, a withholding tax exemption in principle applies on dividends distributed by a RREC to non-resident investors (i.e., any foreign private person or legal entity who do not use their shares to carry out a professional activity in Belgium). This exemption applies to the extent that the dividends distributed do not stem from Belgian-source income, i.e., dividends distributed by Belgian companies or real estate located in Belgium. To this end, a breakdown should be provided by the RREC in order to determine to which extent the withholding tax exemption should apply.

For dividends distributed by a RREC to a Belgian tax resident company, an exemption of withholding tax would be available, provided that the Belgian company has a participation of at least 10% in the share capital of the distributing company for an uninterrupted period of at least one year (or in case of commitment to keep such minimum participation during at least one year).

Tax treatment at the investor level

Resident investors

Private individuals and legal entities

In principle, the Belgian withholding tax, if any, on the dividends received by private individuals or by legal entities is the final tax so that no dividend income should be declared.

Capital gains realised by Belgian resident individuals on shares that are not held for business purposes are in principle tax-exempt, unless the transfer of the shares cannot be regarded as falling within the scope of the normal management of one's private estate. If the transfer of the shares cannot be regarded as falling within the scope of the normal management of one's private estate, any capital gain will be taxable at 33% (to be increased by municipal taxes).

Also, the capital gain realised upon the transfer of shares will be taxable at 16.5% (to be increased by municipal taxes) if the following cumulative conditions are met: (i) the transferor owned, at any time during the five years preceding the transfer, alone or with close family members, more than 25% of the shares of the Belgian company of which the shares are sold; (ii) the transfer is for a consideration; and (iii) the transfer is made to a company or an association that does not have its registered seat or principal place of business in a country located within the EEA.

Capital gains realised by individuals on the sale of shares held for business purposes are normally taxed at the general progressive income tax rate.

However, in specific cases, a separate tax rate of 16.5% (to be increased by municipal taxes) can be applied.

Corporate investors

Since a RREC, although subject to corporate income tax, benefits from a regime that deviates from the common rules, the dividend distributed by a RREC cannot benefit from the participation exemption and will in principle be taxable at 29.58% (25% as from 1 January 2020).

However, in case the dividends (i) stem from real estate located in a EU state other than Belgium or with whom Belgium has concluded a double tax treaty including an exchange of information clause and (ii) have been subject to the Belgian (non-resident) corporate income tax or a similar non-Belgian tax (which does not deviate from a normal income tax regime), the participation exemption can be applied.

Also, the participation exemption can be applied provided the by-laws of the RREC state that annually at least 80% of the net revenue will be distributed to the shareholders to the extent that the income stems from dividends meeting the taxation condition or from capital gains that qualify for the participation exemption.

As a RREC does not meet the so-called subject-to-tax condition, the capital gains realised on the disposal of the shares would in principle be fully taxable.

Non-resident investors

Private individuals, legal entities and corporate investors

As mentioned above, dividends distributed by RRECs are in principle subject to 30% withholding tax (see section 'withholding tax on distributions').

Based on article 4 of the OECD Model Tax Treaty, a RREC should be eligible for treaty protection as it can be considered to be a resident for tax treaty purposes. After all, a RREC is subject to corporate income tax in Belgium, albeit the taxable basis is significantly reduced (notional tax basis). Note however that treaty access should be determined on a case- by-case basis.

Transition to REIT/Tax privileges

When an existing company obtains RREC status, it is deemed to be liquidated for tax purposes (so-called 'exit tax'). In case of transformation into a RREC, a contribution in a RREC or a merger, split or partial split involving a RREC, the unrealised capital gains and the hidden reserves are not taxed at the standard corporate income tax rate of 29.58% (25% as from 1 January 2020), but at 12.75% (15% as from 1 January 2020). The reduced rate is not applicable for capital gains triggered by a sale of real estate to a RREC in the hands of the corporate transferors. The conversion of a SICAFI into a RREC does not trigger exit tax.

The contributions in cash or in kind (e.g. real estate) made to a RREC benefit from an exemption from proportional registration duties. Only the fixed duty of EUR 50 will be due.

Alvaro Taiar

PwC (Brazil)

Tel: +55 11 3674-3833

alvaro.taiar@pwc.com

The Real Estate Investment Funds in Brazil (BR-REITs) are regulated by Law 8.668/1993. The Law was published on 25 June 1993 and has been amended a couple times since.

BR-REITs are investment funds regulated by Law 8.668/1993. Additionally, as investment funds, BR-REITs are also subject to regulation by the Brazilian Securities Exchange Commission (Comissão de Valores Mobiliários, or CVM) act 472/2008.

BR-REITs are incorporated under the form of a condominium and in accordance with CVM regulation can invest in real estate properties, (rural, commercial or residential) securities related to any real estate asset or receivables, including other real estate fund and companies investing into real estate.

In the past years Brazil has experienced a large development and increase of investments in the Real Estate market. This resulted into a significant increase in investments into BR-REITs as well.

Although political and economic crises is not resolved, some improvements in the economy are allowing reduction in inflation and interest rate, what has turned a number of investors to search for real estate assets opportunities.

As of April 2019 there were FIIs in operation in Brazil, with approximately BRL 97 billion in net assets, representing 2% of the equity in Brazilian Funds industry. FIIs portfolios can be compared to Equity REITs – consisting basically on real estate assets (some financial investments are allowed to grant liquidity to the Fund).

Legal form

BR-REITs can only be established under the form of a condominium. As a result, BR-REITs does not have legal personality, although it may it is entitled to assume certain rights and obligations.

Capital requirements

There are no minimal capital requirements for incorporating a BR-REIT. Capital of the fund as well as the underwriting procedure and deadlines must be established in the fund bylaws.

Fund bylaw may establish that capital contributions must occur in a single event or in different events, as established in an “investment compromise”.

Capital contribution to the BR-REIT can be made either in kind or with real estate assets or rights.

In case of contributions with real estate assets, an evaluation report must be prepared by a specialised company and approved in quotaholders meeting.

BR-REITs requires previous authorisation by the CVM, which is only granted upon subscription of all quotas of the fund or a part of the quotas if such possibility is expressly indicated in bylaws.

Listing requirements

BR-REITs may either be listed or not. If publicly offered, quotas of the fund may only be traded in the stock exchange or in over the counter market.

Restrictions on investors

There are no restrictions on investors. Investors located on tax haven jurisdiction may have a more burdensome taxation in relation to foreign investors located in non tax haven jurisdictions.

Asset/income/activity tests

BR-REITs are entitled to invest in real estate assets, shares or quotas of real estate companies and any property rights/bonds. BR-REITs may also invest into quotas of other BR-REITs/Funds of REITs.

Capital that due to schedule of developments is not invested into the above listed assets must be invested only in financial fixed income/securities and derivatives regarding hedging of its own assets.

Despite the above, part of the capital may be permanently invested into investment fund quotas or fixed assets as to comply with liquidity requirements.

Assets invested by the BR-REITs cannot be subject to constitution of real leases.

Restrictions on foreign assets

While a new rule (CVM Instruction 555/14 entered into force as from 1 October 2015) has been made more flexible for Brazilian funds to invest abroad, BR-REITs are still prohibited to invest into foreign assets.

Distribution requirements

BR-REITs must distribute to its quotaholders at least 95% of its profits each (cash basis) half-year, calculated according to the balance sheet of the results obtained on 30 June and 31 December.

Tax treatment at REIT level

Revenue from real estate activities is tax-exempt in the BR-REITs portfolio, regardless of whether that income is ordinary income or capital gains. The portfolio itself is not taxable including financial income arisen from real estate activity (real estate receivables, real estate funds' shares and other fixed income real estate bonds).

If BR-REITs carry investments into variable income, taxation will occur as per general rules applicable to Brazilian legal entities. Taxes withheld as indicated above may be offset from amounts withheld from beneficiaries when of the payment of earnings.

Additionally, if the BR-REIT invest in a real estate which has as developer, builder or partner a quotaholder or the BR-REIT which holds solely or with related parties more than 25% of the BR-REIT quotas or it will be taxed as a corporation for income tax purposes and, as such, income will be subject to taxation.

Acquisition of real estate assets and rights are typically subject to taxation by property transfer tax. Rate varies according to the municipality and asset/ right but typically range from 2% to 4%.

Property tax is also applicable depending on the municipality of the real estate. Although property tax may reach a maximum of 15% rates will typically range from 1% to 4%.

Withholding tax on local distributions

Earnings distributed by a BR-REIT to investors are subject to 15% to 20% withholding tax upon distribution of earnings as detailed below.

Tax treatment at the investor level

Resident investors

Individual investors

Earnings distributed by the BR-REIT to individuals are subject to taxation at 20% WHT. No further payment of taxes is required by the individual.

Individuals may be exempt from this taxation provided certain conditions are met: (i) units negotiated in the stock market; (ii) at least fifty unitholders; (iii) interest lower than 10% in the BR- REIT.

Brazil

Corporate investors

While WHT rules applicable are the same as the ones applicable to individual (20% on gains), no exemption is provided. Additionally, earnings and capital gains should be incorporated into the Corporate Income Tax calculation basis and potentially on other taxes, which would lead to a corporate taxation at 34%. Additionally, transactional taxes on gross proceeds will levy at 4.65% rate.

Non-resident investors

A withholding tax of 15% is levied on the amounts distributed to non-tax haven. In case of tax haven, a 20% rate will apply.

Non-tax haven investor selling its REIT quotas would tax its capital gains at 15% and if sale occurs in the stock exchange, a 0% rate can be achieved on capital gains.

Transition to REIT/Tax privileges

Not applicable.

Ekaterina Aleksova
PwC (Bulgaria)
Tel: +359 2 9355-118
ekaterina.aleksova@pwc.com

The Real Estate Investment Companies in Bulgaria (BG-REITs) are regulated by the Special Purpose Investment Companies Act (the 'Act'). The Act was published on 20 May 2003 and has been amended several times since last in August 2018.

BG-REITs are public joint-stock companies which, in compliance with the Act, invest in real estates and raise funds by issuing securities. BG-REITs can carry out their activities lawfully only if licensed by the Bulgarian Financial Supervision Commission (FSC). BG-REITs established under the Act are exempt from corporate income taxation.

The adoption of the Act in 2003 was aimed at stimulating the real estate and investment markets. As at 26 August 2019 58 REITs are listed on the Bulgarian Stock Exchange – Sofia, of which 14 are listed on the stock exchange's main market, and the remainder, on the alternative market BaSE. The crisis put a hold on the development of Bulgarian REITs and since 2011 few new REITs have been registered while at the same time several REITs have exited the market. The combined market capitalization of the fourteen REITs listed on the main market of the Bulgarian Stock Exchange as of 26 August 2019 was about BGN 658 million.

The majority of the BG-REITs are diversified, i.e. they are designed for investment in a broad variety of real estate. There are also specialised funds, e.g. some of BG-REITs are specialised in agricultural land investments. Some of the BG-REITs are established for an indefinite period of time and some are term funds.

Legal form

A BG-REIT can be established only as a public joint-stock company. A BG-REIT can neither reorganise itself into another type of company nor change its scope of business.

Capital requirements

The registered capital of a BG-REIT must amount to at least BGN 500,000. It must be paid in full before the BG-REIT is registered and no contributions in kind are permitted.

Upon the incorporation of a BG-REIT, the constituent meeting is obliged to pass a resolution for an initial capital increase up to at least 30% of the initial share capital. This first capital increase can be performed only on the basis of a prospectus confirmed by the FSC. The increase is to be effected through the issuance of rights entitling the holders to take part in the subscription of the increase. The founding shareholders do not have pre-emption rights in the initial capital increase.

In order to operate legitimately, REITs should receive a licence from the FSC. If a REIT does not commence operations within 12 months of issuing the licence, its licence would be revoked.

Listing requirements

BG-REITs are required to obtain a listing on a regulated market at the time of the obligatory share capital increase (see previous section). It is the rights-related to the capital increase that must be listed first.

After the initial listing, REITs may migrate to the alternative segment of the stock exchange, which is at present the case with the majority of the REITs.

Restrictions on investors

There are no restrictions on investors, except that upon the incorporation of the BG-REIT at least 30% of the capital should be subscribed by institutional investors.

The Public Offering of Securities Act defines "an institutional investor" as bank, collective investment scheme and national investment fund, insurance company, pension fund or other company whose scope of activity includes the acquisition, holding and transfer of securities. In addition, according to

FSC guidelines, an institutional investor is described as a bank, insurance company, licensed pension fund or other financial institution, which are subject to the supervision of the FSC.

Asset/income/activity tests

BG-REITs are entitled to invest in

- real estate and limited property rights in real estate, construction works and improvements, with the purpose of providing the property for management, letting out, leasing and selling the property;
- mortgage-backed bonds (up to 10% of their own funds);
- service companies for their own needs (up to 10% of their own funds);
- SPVs specialized in acquisition of real estate and limited property rights and construction works (up to 30% of its total assets and provided that the REIT exercises control over the respective SPV). Certain additional requirements apply to SPVs, which are eligible investments by REITs; and
- other REITs (up to 10% of its total assets).

BG-REITs may not acquire real estate that is subject to a legal dispute and may not guarantee obligations of other persons or provide loans. However, the SPVs, in which REITs can make investments, may in turn invest in real estate located in Bulgaria or other EU member state.

Moreover, a BG-REIT may not perform directly the activities relating to the management and maintenance of acquired real estates, performance of constructions and improvements thereon, or, respectively, the collection of amounts resulting from acquired receivables. These have to be outsourced to one or more companies ('service companies'). BG-REITs may themselves invest in service companies under certain restrictions and within certain limitations.

Restrictions on foreign assets

The real estate acquired must be located in the territory of Bulgaria.

Distribution requirements

BG-REITs must distribute at least 90% of their adjusted accounting profits for the respective financial year as dividends, which are payable within 12 months as from the end of the financial year. Adjustments to the accounting profit aim to eliminate the effects of accounting entries, which are not related to cash flows.

Tax treatment at REIT level

The profits of the BG-REITs are not subject to corporate taxation. However, BG-REITs are legally obliged to distribute at least 90% of their profits (so called distribution profits) as dividends. The income from dividends distributed by the BG-REIT is subject to taxation at the level of the shareholder. There is no flow through treatment of the income of the BG-REIT for Bulgarian tax purposes.

Local taxes and fees apply for BG-REITs. The transfer of real estate is subject to transfer tax of 0.1%–3% on the higher of the purchase price or the tax value (statutory determined value) of the real estate. The tax is paid by the buyer unless agreed otherwise. Further, there is a 0.01%–0.45% annual real estate tax levied on the higher between the gross book value and the tax value of the real estate (except agricultural land and forests) held by the BG-REIT. The tax value is determined by the municipal authority where the real estate is situated. Garbage collection fee is also collected. The exact rates of these local taxes and fees are determined by the municipality in which the property is situated.

Withholding tax on distributions

Dividends distributed by a BG-REIT to individuals are subject to a 5% withholding tax.

The 5% withholding tax applies to dividends distributed to non-resident corporate entities, unless these entities are residents of EU/EEA. No withholding tax is levied if the dividends are distributed to a corporate shareholder in Bulgaria or an EU/EEA country.

Non-resident individuals and corporate entities could lower or eliminate the withholding tax on dividends under the provisions of an applicable DTT.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends derived from BG-REIT shares are subject to a final withholding tax of 5%.

Capital gains from the sale of the shares in the BG-REIT are exempt from tax if the sale was made on a regulated market of securities in the EU/EEA. If the sale was made off a regulated market in the EU/EEA, the capital gains are subject to 10% tax. The gain is determined as the difference between the acquisition price and the sales price of the shares.

Corporate investors

Dividends distributed by the BG-REIT would be included in the taxable result of the corporate shareholder subject to corporate income tax at a rate of 10%.

Capital gains from the disposal of shares in the BG-REIT (i.e. the difference between the acquisition price and the sales price of the shares) would be exempt from taxation if the disposal of the shares was done on a regulated market in the EU/EEA. If the sale was made off a regulated market in the EU/EEA, the capital gains would be included in the taxable result of the company and would be subject to 10% corporate income tax.

Non-resident investors

Individual investors

A withholding tax of 5% is levied on the gross amount of dividends distributed by the BG-REIT to a foreign individual.

Capital gains from the sale of the shares in the BG-REIT by foreign individuals are exempt from tax if the sale was made on a regulated market of securities in the EU/EEA. If the sale was made off a regulated market in the EU/EEA the capital gains are subject to 10% tax. The gain is determined as the difference between the acquisition price and the sales price of the shares.

Corporate investors

Under Bulgarian tax legislation, there is a 5% withholding tax on dividends distributed by the BG-REIT to a non-resident corporate entity. No withholding tax applies for EU/EEA shareholders.

Capital gains from the disposal of shares in the BG-REIT by a foreign corporate entity would be exempt from taxation if the disposal of the shares was done on a regulated market in the EU/EEA. If the sale was made off a regulated market in the EU/EEA, the capital gains would be subject to 10% withholding tax on the difference between the acquisition price and the sales price of the shares.

Chris Potter

PwC (Canada)
Tel: +1 416 869-2494
chris.j.potter@pwc.com

Chris Vangou

PwC (Canada)
Tel: +1 416 815-5015
chris.vangou@pwc.com

David Glicksman

PwC (Canada)
Tel: +1 416 947-8988
david.glicksman@pwc.com

Ken Griffin

PwC (Canada)
Tel: +1 416 815-5211
ken.griffin@pwc.com

Since 2007, Canada's income tax legislation has contained a specific set of rules that apply to listed REITs (the 'REIT Rules'). The REIT Rules were introduced as an exception to new provisions dealing with specified investment flow-through entities (i.e. certain publicly traded trusts and partnerships) (the 'SIFT Rules').

Entities subject to the SIFT Rules are subject to tax (the 'SIFT tax') in a manner similar to that of public corporations and are not entitled to the flow through tax treatment that is generally available to trusts and partnerships. In their legal form, REITs are mutual fund trusts (MFTs).

Those that qualify as REITs under the REIT Rules are subject to the flow through tax regime applicable to MFTs, provided they meet certain requirements. Most importantly, the REIT must distribute all of its income annually and the activities of the REIT must be passive in nature. The majority of REITs are sector specific (e.g. residential, office, retail, etc.). Others are involved in more than one sector and may own Canadian and/or non-Canadian real estate. There are also unlisted or private REITs that are not subject to the SIFT Rules and that can be involved in a broader range of activities through controlled partnerships and corporations. Private REITs, which usually have at least 150 investors, are generally not subject to tax so long as they distribute 100% of their taxable income annually. This chapter only considers REITs that are subject to the SIFT Rules unless they comply with the REIT Rules – i.e. listed REITs.

The first modern Canadian public REIT was formed in 1993 with the REIT market reaching a reasonable size in the late 1990s. Prior to that time, there had been a few publicly traded REITs, but the vast majority of listed real estate enterprises were structured as taxable corporations. As discussed in more detail below, the REIT Rules that became law in 2007 severely restrict the nature of activities that a qualifying REIT may carry on either directly or indirectly. As of 1 January 2011, the SIFT Rules apply to all listed MFTs. The initial application of the SIFT Rules was deferred, in general, until 2011 for listed MFTs that were in existence on 31 October 2006, the day that the intention to introduce the SIFT Rules was announced by the Federal Government. A number of the listed MFTs that, prior to 2011, referred to themselves as REITs no longer qualified for exemption from SIFT tax under the REIT Rules, due to the nature of the activities that they carried on.

However, some non-qualifying REITs were restructured before 2011 to bring themselves into compliance with the REIT Rules. The listed REIT market in Canada is small when compared to the total market capitalisation of the TSX, Canada's principal stock exchange. On 19 August 2019, there were 38 listed MFTs that referred to themselves as REITs with a market capitalisation of approximately CAD 87bn. Listed real estate corporations had a market capitalisation of approximately CAD 39bn at the same date. Similar to listed REITs in other countries, Canada's REITs generally provide predictable cash distributions and opportunities for capital appreciation.

Legal form

As noted above, REITs are formed as MFTs. MFTs may be closed-end or open-end funds.

Capital requirements

In order to list on the TSX, a REIT must have at least 1m free trading public shares, CAD 4m held by public shareholders and 300 public shareholders, each holding a board lot. If the operations of the REIT have a track record, the minimum net tangible asset ('NTA') requirement is CAD 2m. If the REIT is merely forecasting profitability, it will require a minimum NTA of CAD 7.5m.

Listing requirements

Closed-end funds must be listed on a designated stock exchange. Open-end funds are generally listed but there is no requirement to do so.

Restrictions on investors

Minimum number of investors

There must be at least 150 unitholders in order to qualify as a MFT. However, see listing requirements above.

Restrictions on non-resident investors

A REIT cannot be established or maintained primarily for the benefit of non-residents (ownership must be less than 50%).

Asset/income/activity tests

To qualify as a REIT, a trust must satisfy, throughout the entire year, certain property and revenue tests. The following rules apply to a REIT:

- The total fair market value of all non-portfolio properties (e.g. equity and debt of certain Canadian resident corporations, trusts or partnerships, real property and property used in carrying on a business in Canada) that are qualified REIT properties must be at least 90% of the total fair market value of all non-portfolio properties held by the trust.

Qualified REIT properties include real or immovable property, an eligible resale property, bankers' acceptance of a Canadian corporation, money, certain government debt or deposits with a credit union, a management subsidiary, a title subsidiary, or certain property ancillary to the earning of rental income and capital gains.

- At least 90% of gross REIT revenues must be from any combination of rent from real properties, dispositions of real properties that are capital properties, interest, dividends, royalties, and dispositions of eligible resale properties.

Real property excludes depreciable property, other than buildings and ancillary property, and leasehold interests in such property.

Eligible resale property is a real or immovable property that is not capital property and that is contiguous to a particular real or immovable property or eligible resale property and is ancillary to the holding of that particular property.

Gross REIT revenue means the total of all amounts that are received or receivable in a taxation year by the entity in excess of the cost to the entity of any property disposed of in the taxation year. Accordingly, recaptured depreciation will be excluded from this definition. For the purposes of determining gross REIT revenue, the amounts received or receivable from certain entities that have a particular character will retain that character.

- At least 75% of gross REIT revenues must be from any combination of rents from, or interest from mortgages on, real properties, or from dispositions of real properties that are capital properties.
- The fair market value of real properties, cash, bankers' acceptances, eligible resale property, debt or other Canadian government obligations must be at least 75% of the REIT's equity value.
- Investments in the trust are publicly listed or traded on a stock exchange or other public market.

In general, REITs must acquire, hold, maintain, improve, lease or manage real property (or interests therein) that is capital property, or invest its funds in other property. Other activities can be carried on through subsidiary entities, subject to asset and income tests.

In addition, the following rules apply to a closed-end REIT:

- At least 80% of its properties must consist of real properties situated in Canada, cash, shares, marketable securities, bonds, debentures and certain other assets;
- At least 95% of its income must be derived from, or from the disposition of, real properties situated in Canada, cash, shares, marketable securities, bonds, debenture and certain other assets;
- No more than 10% of its property can consist of bonds, securities or shares of any single corporation or debtor.

Restrictions on foreign assets

Closed-end REITs are subject to the restrictions described above. There are no restrictions for open-ended REITs.

Distribution requirements

There is no minimum distribution requirement. However, in order to avoid a tax liability at the REIT level, all of its taxable income, including taxable capital gains, must be paid or become payable to its unitholders each year.

Tax treatment at REIT level

REITs must be resident in Canada.

Taxable income of a REIT that is not paid or payable to unitholders is subject to tax at a combined federal and provincial rate ranging from approximately 45% to 54%. If the tests set out above under 'asset/income/activity tests' are not satisfied, certain types of income addressed by the SIFT Rules will be subject to tax at combined federal and provincial corporate rates ranging from approximately 26% to 31% in 2019.

Withholding tax on distributions

There is no withholding tax on REIT distributions to Canadian residents.

Non-resident unitholders are generally subject to a 25% withholding tax (may be reduced to 15% by treaty) on distributions of income and capital gains on certain Canadian property, and a 15% withholding tax on distributions in excess of such income and gains if the REIT's value is derived mainly from Canadian properties.

This 15% tax could be fully or partially recoverable, upon filing a special Canadian tax return, to the extent that the non-resident unitholder realises a loss from a subsequent disposition of the REIT units.

Tax treatment at the investor level

Resident investors

Unitholders are subject to tax on income and taxable capital gains paid or payable to them by the REIT. Returns of capital are not taxable but reduce the tax cost of the units.

Non-resident investors

Non-resident unitholders are subject to withholding tax as described above. Capital gains realised on a disposition of REIT units are generally not subject to tax in Canada unless such units are characterised as 'taxable Canadian property'.

Samuli Makkonen

PwC (Finland)

Tel: +358 9 20 787-7752

samuli.makkonen@pwc.com

Mikko Leinola

PwC (Finland)

Tel: +358 44 527-1617

mikko.leinola@pwc.com

Finnish legislation provided a framework for collective investments in real property ('REFs') as early as 1997 (Act on Real Estate Funds (the 'REF Act')). However, no funds were set up under the REF Act, mostly due to unattractive taxation: no tax exemptions were available for the REFs, which consequently were subject to regular corporate income tax on all income.

However, after a lengthy lobbying effort by the industry, a tax exemption for such real estate fund, governed by the said REF Act, was introduced with effect from 1 January 2009 by the Finnish Act on Tax Incentives for certain Limited Companies Carrying on Residential Renting Activities (299/2009, the 'FIN-REIT Act'). Despite the objections from the market participants, the tax exemption was only extended to real estate funds investing in residential property.

The introduction of the FIN-REIT Act was however subject to a state aid notification to the European Commission. On 12 May 2010, the Commission announced that the said tax exemption is not regarded as illegal state aid (subject to a minor adjustment in the legislation). Due to the notification procedure and the consequent amendments made to the FIN-REIT Act as a result, the FIN-REIT Act entered into force on 17 November 2010 with retroactive effect from 1 January 2010.

Under the REIT regime, qualifying REFs engaged in owning and renting of residential real property may make an application to be treated as REITs. A REIT is a tax-exempt entity in Finland. The REIT must, in order to claim the tax-exempt status, comply with requirements set out both in the REF Act and the FIN-REIT Act.

Legal form

The REIT must be incorporated as a Finnish public limited company.

Capital requirements

The minimum capital requirement for a REIT is EUR 5m.

Listing requirements

The shares of a REIT must be admitted to trading in a regulated stock exchange or in a multilateral trading facility within the European Economic Area. However, a REIT may be excused from this requirement for the first two years.

Restrictions on investors

Any one shareholder's shareholding in a REIT must be less than 10% of the REITs share capital.

Asset/income/activity tests

As mentioned above, only companies qualifying as REFs under the REF Act may apply to become REITs in accordance with the FIN-REIT Act. Therefore, a REIT must comply with both Acts.

Activities

A REIT is only allowed to carry on activities relating to owning and renting of residential real property and certain ancillary activities, such as property management and maintenance. Property development on own account is also permissible. The REIT is allowed to manage cash needed to carry on permissible activities.

Assets

A minimum of 80% of the REITs assets must consist of residential real property, as defined in the FIN-REIT Act, or of shares in mutual residential real estate companies (MRECs, i.e. companies, shares of which render the shareholder a right to possess and lease out certain defined premises owned by the MREC, and the right to rental income on a lease of the said premises) or comparable entities. In addition to these assets, the REIT is allowed to own certain other liquid assets as defined in the

FIN-REIT Act and the REF Act. However, a REIT is not allowed to hold shares in subsidiary companies other than MRECs and comparable entities.

Furthermore, there are notable restrictions on asset disposals (see under 'penalty charges and cancellation of REIT status').

Other requirements

- The total debt of a REIT must not exceed 80% of the value of the REITs assets (as presented in the financial statements).
- The REIT must derive at least 80% of its net profits (excluding capital gains) from its rental activities. In case the REIT fails to satisfy this rule, a penalty charge may become payable (see below).
- After achieving the REIT status, the company must also:
 - have its shares traded in a regulated market (see above); and
 - distribute as dividends at least 90% of its net profits (see below). Distributions in other form than dividends are not permitted.
- Furthermore, any subsidiaries of the REIT must not become involved in business rearrangements deemed to have a tax avoidance purpose or other transaction of similar nature.

Restrictions on foreign assets

Any MRECs or comparable entities the REIT holds shares in must be resident in the European Economic Area.

Distribution requirements

The REIT must distribute at least 90% of its net profits, excluding unrealised gains, subject to restrictions set out in the Finnish Companies Act.

Tax treatment at REIT level

As mentioned above, a Finnish REIT is a tax-exempt entity. Subsidiaries of a REIT do not benefit from the REIT status and are hence subject to general taxation. However, the REIT is only allowed to hold shares in residential MRECs and comparable entities. Such entities are typically not in a tax paying position.

In respect to foreign income, a REIT is not (as a tax-exempt entity) able to receive credit in Finland from any withholding taxes paid at source.

The tax exemption of a REIT does not cover taxes other than corporate income tax. Therefore, for example, transfer taxes and real property taxes (where REIT holds real property directly) would be payable. Transfer tax is a percentage of the transaction price of equities and real property (2% regarding equities in real estate companies (including MRECs) and 4% regarding real property; the tax is calculated on 'transfer base', as defined in the Transfer Tax Act).

Tax treatment at the investor level

Resident investors

Individual investors

Dividends are fully taxable capital income at a rate of 30% concerning the part of the overall capital income of the individual which does not exceed EUR 30,000 during the year, and 34% for the part of capital income exceeding EUR 30,000 during the year. Capital gains from disposals of REIT shares are similarly fully taxable capital income (at a rate of 30/34%).

Corporate investors

Dividends are fully taxable income at the general corporate income tax rate (currently 20%). Also capital gains from disposal of REIT shares are fully taxable income.

Non-resident investors

Individual investors

Dividends from a REIT are subject to a withholding tax at the domestic rate of 30% or at a lower treaty rate, if applicable.

Capital gains from disposals of REIT shares could be subject to Finnish tax in case more than 50% of the REITs assets would directly consist of Finnish real property. However, in practice it is more likely that the REIT would own the real property via MRECs, in which case disposals of REIT shares should be exempt from Finnish tax.

Corporate investors

As a starting point, dividends from a REIT would be subject to a withholding tax at the domestic rate of 15/20%, depending on the type of the investor, or at a lower treaty rate, if applicable. For legal entities other than corporates, the domestic withholding tax rate is 30%.

Capital gains from disposals of REIT shares could be subject to withholding tax in case more than 50% of the REITs assets would directly consist of Finnish real property. However, in practice it is more likely that the REIT would own the real property via MRECs, in which case disposals of REIT shares should be, as a starting point, exempt from Finnish withholding tax.

Future developments

The Finnish withholding tax legislation will be changed with the effect from 1 January 2021 onwards. In short, the application of a tax treaty will always require that the custodian or the payer of a dividend provides the Tax Administration with the information on the final recipient of the dividend. The tax at source for dividend will be increased to 35%, if the final recipient information is not provided. Assuming the final recipient information is provided, the withholding tax rate is similar as described above.

Transition to REIT/tax privileges

Conversion tax

Where an existing company carrying on residential activities converts into a REIT, its assets are valued to their fair market value and any unrealised gains will be subject to tax at general corporate tax rate (currently 20%). Upon REITs application, the charge may be spread to be paid over a period of three years.

Penalty charges and cancellation of REIT status

In case the REIT fails to satisfy certain criteria mentioned above, tax authorities may impose penalty charges or cancel the REIT status.

- As mentioned above, a REIT must derive at least 80% of its income from its rental activities. If a REIT fails on this, a penalty charge of 20% will be levied on the shortfall.
- In certain cases, capital gains (calculated separately for tax purposes) upon disposals of real property assets will be subject to tax at the general corporate income tax rate, currently 20%. Capital gains are taxable if:
 - the real property assets are held for less than five years, or
 - less than five years have elapsed from completion of a 'comprehensive renovation' of premises, where the cost of the renovation exceeded 30% of the premises' acquisition cost for tax purposes, or
 - the company disposes of more than 10% of its real property assets.
- If a REIT fails to satisfy the conditions for the applicability of the FIN-REIT Act discussed above, its tax-exempt status may be cancelled. The tax authorities must give the company a reasonable opportunity to correct the failings, unless it is obvious that the conditions for the applicability of the FIN-REIT Act will not be fulfilled. However, if a REIT has acted intentionally or with the intent for significant gain, its REIT status will be cancelled in all cases.

Bruno Lunghi

PwC Société d'Avocats
Tel: +33 1 5657-8279
bruno.lunghi@pwcavocats.com

Philippe Emiel

PwC Société d'Avocats
Tel: +33 1 5657-4166
philippe.emiel@pwcavocats.com

France was one of the first (in 2003) European countries to introduce a REIT regime, which is known by its French acronym 'SIIC' for *Sociétés d'Investissements Immobiliers Cotées*. The so-called SIIC regime is an optional (i.e. an election is required by the company to benefit from that regime) tax regime.

Since its introduction in 2003, the SIIC regime has been modified several times. Some of these changes aimed to close certain existing loopholes and some others to broaden the scope of this regime. The SIIC regime has now reached stability and maturity. SIICs have become key players on the French real estate market.

Legal form

The company must be incorporated under the legal form of a joint stock company or any other legal form eligible to be listed on a stock exchange.

Capital requirements

The share capital of a SIIC must amount to at least EUR 15 million.

Listing requirements

The shares of a SIIC must be listed on a French regulated stock market or on a foreign stock market that respects the provisions of Directive 2004/39/CE, dated 21 April 2004.

Restrictions on investors

Minimum number of investors

At the time the SIIC election is made, at least 15% of the share capital and voting rights must be held by investors who individually own (directly or indirectly) less than 2% of the share capital and voting rights of the SIIC.

Any investor, whether individual or corporate, other than a SIIC or a group of investors not acting in concert, may not hold, at any time, directly or indirectly, more than 60% of the share capital and voting rights of the listed parent company.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

The SIIC regime is available (upon election) to companies (subject to corporate income tax) whose main activity is to acquire or to build, directly or indirectly (i.e., through intermediary companies) real estate properties for the purposes of renting them. The SIIC regime is also available (upon election) to French subsidiaries carrying out an above-mentioned eligible activity, subject to corporate income tax, that are held at 95% or more by one or several SIICs or by one or several SPPICAVs or jointly by one (or several) SPPICAV and one (or several) SIIC.

Companies benefiting from the SIIC regime can carry out other activities provided they remain ancillary. The income deriving from these activities remains subject to corporate income tax at the standard rate of 28% (or 28.924% if the additional surcharge applies) to be reduced to 26.5% in 2021 and 25% in 2022.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

A SIIC must distribute at least 95% of its rental income, 70% of the capital gains realised and 100% of the dividends it received from its 95% or more held French subsidiaries, which elected for the SIIC regime or from another SIIC or from a SPPICAV (provided certain conditions are met). The above

distribution requirements apply only with respect to the income and the capital gains deriving from the tax-exempted sector.

Tax treatment at REIT level

A company that benefits from the SIIC regime is exempt from corporate income tax on the following items:

- Income deriving from:
 - the rental of real estate properties held either directly or indirectly through pass-through entities;
 - the sub-leasing of real estate properties, which are financed through a real estate financial lease agreement concluded or acquired on or after 1 January 2005.
- Capital gains realised on the disposal to non-related parties of:
 - real estate properties held either directly or through pass-through entities;
 - rights in real estate financial lease agreements concluded or acquired on or after 1 January 2005;
 - shares in pass-through entities carrying out an activity similar to a SIIC;
 - shares in 95%-or-more-held French subsidiaries, which elected for the SIIC regime.
- Dividends received by a SIIC from:
 - its 95%-or-more-held French subsidiaries, which elected for the SIIC regime;
 - another SIIC or from a SPPICAV (in both cases provided certain conditions are met).

All the other income and capital gains realised by the SIIC belong, in principle, to the taxable sector and are subject to corporate income tax at the standard rate of 28% (or 28.924% if the additional surcharge applies) to be reduced to 26.5% in 2021 and 25% in 2022. These other income and capital gains are not subject to any dividend distribution requirements.

Tax treatment at the investor level

French resident investors

Individual investors

Dividends received from SIICs by individual investors are subject to taxation at the flat rate of 30% (12.8% personal income tax and 17.2% social contributions).

However, upon election of the individual investors, these dividends are subject to personal income tax at progressive rates (up to 45% which can be increased, in certain cases, by the exceptional contribution of 3% or 4%). These dividends are also subject to the 17.2% social contributions (bearing in mind that 6.8% of these social contributions are taxed deductible for personal income tax). The election to subject the dividends to personal income tax at progressive rates applies not only to the dividends received by the individual investors from the SIICs but also to any and all dividends, interest and capital gains on shares received/realized during the same calendar year by the individual investors.

Capital gains realised by individual investors on the disposal of shares in a SIIC are subject to taxation at the flat rate of 30% (12.8% personal income tax and 17.2% social contributions).

However, upon election of the individual investors, these capital gains are subject to personal income tax at progressive rates (up to 45% which can be increased, in certain cases, by the exceptional contribution of 3% or 4%). These capital gains are also subject to the 17.2% social contributions (bearing in mind that 6.8% of these social contributions are taxed deductible for personal income tax). For the shares acquired or subscribed before 1 January 2018, only 50% of the capital gain realized is subject to taxation to personal income tax and social contributions if the SIIC shares have been held for at least two years and less than eight years and only 35% if the SIIC shares have been held for at least eight years. As indicated above, the election for the taxation at progressive rates applies to any and all dividends, interest and capital gains received/realized by the individual investor during the calendar year.

Corporate investors

Dividends from SIICs deriving from the tax-exempt sector are subject to corporate income tax at the standard rate of 28% (or 28.924% if the additional surcharge applies) to be reduced to 26.5% in 2021 and to 25% in 2022.

On the other hand, dividends from SIICs deriving from the taxable sector benefit from the domestic parent-subsidiary regime if certain conditions are met (5% shareholding requirement for at least two years) meaning an effective corporate income tax rate of 1.4% (or 1.44% if the additional surcharge applies).

Dividends paid by SIICs to French mutual funds (OPCVM and OPCI) are subject to French withholding tax at the rate of 15%.

Capital gains realised by corporate investors upon the disposal of SIIC shares are subject to either the standard corporate income tax rate of 28%, (or 28.924% if the additional surcharge applies) or the specific long-term capital gain tax rate of 19% (or 19.63%, if the additional surcharge applies). To qualify for the lower long-term capital gain rate, the shares must have been held for at least two years and the shares must qualify as participating shares for accounting purposes, which means that the investor must hold at least a 5% interest in the SIIC.

Non-resident investors

Individual investors

An individual shareholder who receives dividends from a SIIC is subject to French withholding tax at the rate of 12.8% (subject to reduction under applicable double tax treaty).

Dividends paid by SIICs in a Non-Cooperative State or Territory (NCST) are subject to French withholding tax at the rate of 75%.

Capital gains realised on the disposal of shares in a SIIC are tax-exempted if the individual shareholder holds, directly or indirectly, less than 10% in the SIIC.

If the individual shareholder holds, directly or indirectly, 10% or more of the SIIC, the capital gains (reduced in certain situations by an allowance for duration of holding) realized on the disposal are subject to French withholding tax, at the rate of 19% and are subject to social contributions at the rate of 7.5% for individuals who are tax residents in the EU, in Norway, Iceland, Liechtenstein and Switzerland and 17.2% in all the other cases.

Corporate investors

Dividends from SIICs are subject to French withholding tax at the rate of 30% (subject to reduction under applicable double tax treaty).

By exception to the foregoing, dividends from SIIC are subject to French withholding tax at the rate of:

- 75% if paid to an entity in a NCST;
- 15% if paid to a mutual fund (which fulfills certain conditions) established in an EU country or in a country that has signed a tax treaty containing an administrative clause with France.

A 20% special levy is due when a SIIC pays a dividend out of its tax-exempt sector to a foreign corporate shareholder when the two following conditions are met:

- the foreign corporate shareholder holds, directly or indirectly, 10% or more of the financial rights in the SIIC; and
- the foreign corporate shareholder is either exempt from corporate income tax on the dividend received or is subject to corporate income tax at a rate lower than 2/3 of standard CIT rate (i.e. circa 9.33%).

Capital gains realised on the disposal of shares in a SIIC should, in principle, be tax-exempt (even though it is a debatable point) if the corporate shareholder holds, directly or indirectly, less than 10% of the SIIC.

If the corporate shareholder holds, directly or indirectly, 10% or more in the SIIC, the capital gains are then subject to French withholding tax either at the rate of 19% (if the corporate shareholder is established in an EU country, in Iceland, Norway or in Liechtenstein and if certain conditions are met) or at the rate of 28% in all the other cases.

Transition to REIT/Tax privileges

Existing listed real estate companies electing for the SIIC regime must pay an exit tax of 19% (payable over four years in four equal installments) assessed on the amount of the latent capital gains existing on the eligible SIIC assets at the time of entry into the SIIC regime. This provision also applies when a 95% – or more – held French subsidiary (subject to corporate income tax) of a SIIC elects for the SIIC regime.

Suspension and exit from the SIIC regime

The SIIC regime is suspended when the 60% above-mentioned threshold (regarding maximum individual ownership) is exceeded at any moment during a financial year and that the situation is not regularised by the end of that financial year.

In such a case, the SIIC regime is suspended with respect to that financial year. Specific tax provisions apply when the SIIC regime is suspended.

There are various situations under which a SIIC exits from the SIIC regime. Adverse tax consequences apply in that case.

Uwe Stoschek

PwC (Germany)

Tel: +49 30 2636-5286

uwe.stoschek@pwc.com

Helge Dammann

PwC (Germany)

Tel: +49 30 2636-5222

helge.dammann@pwc.com

The German REIT Act (REITA) was introduced in 2007. The introduction followed intensive lobbying by the German real estate industry to keep Germany a competitive real estate market place in the European Union (EU).

German REITs (G-REITs) are income tax-exempt stock corporations that must be listed on an organised stock market.

The initial phase of the newly introduced investment vehicle was difficult due to a weak IPO market. Lately, the EU driven reform of investment fund products strengthened property funds as the predominant competitors in the German market for real estate investment products. The number of G-REITs is six as of June 2019. The companies' market capitalisation amounts to EUR 4.83bn as of June 2019.

According to the German Federal Financial Supervisory Authority (BaFin), G-REITs, with regard to their obligatory registration as German joint stock corporation (Aktiengesellschaft), do not qualify as alternative investment funds and are therefore not subject to AIFMS regulation and supervision. As to foreign REITs, which shares are traded in Germany, a decision must be made on a case-by-case basis depending on the strategy and business of the REIT.

Legal form

The only legal form that is permissible for a G-REIT is a joint stock corporation (Aktiengesellschaft, or AG).

Capital requirements

The nominal capital of a G-REIT must amount to at least EUR 15m.

The G-REITs equity must not fall below 45% of the immovable property value as shown in the consolidated or the individual financial statements under IFRS (leverage provision).

Listing requirements

G-REITs must be listed on an organised stock market in Germany, the EU or the European Economic Area.

Restrictions on investors

Minimum number of investors

At least 15% of the shares must be freely available to the public (free float), with the further provision that the holders of these shares each hold less than 3%.

In regard to the remaining 85% of the shares, a single shareholder is not allowed to hold 10% or more in the G-REIT, directly. The shareholding requirement does not apply to indirect shareholdings.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

At least 75% of the assets and earnings (held/derived by the G-REIT and its subsidiaries) must relate to real estate assets.

Side-line occupations (such as facility management) rendered to third parties may only be performed through wholly owned service corporations. Their assets and earnings must not exceed 20% of the G-REITs total assets/earnings.

Germany

The G-REIT may not trade in real estate, i.e. the G-REITs and its subsidiaries' proceeds from the disposal of immovable property in the last five fiscal years must not exceed half of the value of immovable property held on average during that period.

The aforementioned tests are carried out, based on the consolidated or the individual financial statements under IFRS.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

The G-REIT is obliged to distribute at least 90% of its profits (determined under German Commercial Code).

Tax treatment at REIT level

The G-REIT must be a German tax resident. G-REITs are income and trade tax-exempt (irrespective of whether the income is derived from real estate or non-real estate assets). The tax exemption applies retroactively from the start of the financial year in which the G-REIT is registered in the commercial register.

The G-REITs subsidiaries do not benefit from the tax exemption. They are subject to the general taxation rules.

Withholding tax on distributions

Dividend distributions by the G-REIT are subject to a 26.4% withholding tax (including solidarity surcharge).

If the G-REIT shares are held by resident individual shareholders, the withholding tax is final.

Resident corporate shareholders may credit withholding taxes or claim it back.

In case of non-resident shareholders, most German double tax treaties provide for a reduced withholding tax rate of 15%. The REIT Act stipulates that foreign corporate shareholders may not exercise their rights to a further reduction under a double tax treaty if the restrictive treaty requires a shareholding of 10% or more. Therefore, the international affiliation privilege, which grants further reduction to foreign corporate shareholders is regularly not applicable. Moreover, the EU Parent Subsidiary Directive does not apply, due to the G-REITs tax exemption.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends derived from G-REIT shares held as private assets are subject to a final withholding tax of 26.4%.

Germany

In regard to capital gains derived from the disposal of G-REIT shares held as private assets, the following applies:

- if the shareholder did not hold 1% or more of the shares at any time during a five-year period prior to the disposal and
 - the shares were acquired before 1 January 2009, capital gains are only taxable (at the personal income tax rate of up to 47.5% including solidarity surcharge) if the shares are disposed of within one year after acquisition;
 - the shares were acquired after 1 January 2009, capital gains are subject to a final tax of 26.4% (irrespective of the holding period);
- if the shareholder held 1% or more of the shares at any time during a five-year period prior to the disposal, capital gains from shares are fully subject to personal income tax.

Dividends and capital gains derived by resident shareholders from shares held as a business asset are fully subject to personal income tax.

Corporate investors

Dividends and capital gains derived from the disposal of G-REIT shares are fully subject to corporate income tax at a rate of 15.8% (including solidarity surcharge).

Tax relief in order to avoid double taxation

REITs are obliged to distribute 90% of their profits. Dividends distributed may stem from non-taxed German properties held by the G-REIT itself, or from taxed income from foreign properties, or taxable subsidiaries.

In order to avoid double taxation, dividend distributions of a G-REIT are entitled to the same tax privileges that apply to ordinary dividends, to the extent that the REIT distributions stem from pre-taxed income (by definition of the REIT Act, income that has been taxed with German corporate income tax or a comparable foreign tax).

As a result, pre-taxed dividends will be 95% tax-exempt if received by a corporate taxpayer and 40% exempt in the hands of private individuals holding the REIT share as a business asset. In regard to individual shareholders holding the REIT shares as private assets, dividends are subject to the final withholding tax of only 26.4%. Therefore, a further relief does not apply.

Non-resident investors

Individual investors

Dividends are subject to German withholding tax.

Capital gains from the disposal of G-REIT shares are only subject to personal income tax (on the total German source income) if the shareholder has held at least 1% of the shares in the G-REIT at any time within a five-year period preceding the disposal. Many German double tax treaties, however, usually provide for a tax exemption of capital gains in Germany.

Corporate investors

The same applies as for non-resident individual investors. If a taxable disposal is at hand (see above), corporate income tax at 15.8% (including solidarity surcharge) applies.

Fredy Yatracou

PwC (Greece)

Tel.: +30 210 687-4017

fredy.yatracou@pwc.com

Greek REITs are special purpose entities whose main activity is investment in real estate assets prescribed by the Greek REIT law. The Greek REIT law was introduced in December 1999 by L.2778/1999, but was subject to legislative amendments (L.4141/2013, L.4209/2013, L.4223/2013, L.4261/2014, L.4281/2014, L.4389/2016, L.4416/2016, L.4514/2018) in order to adapt to the current economic circumstances and facilitate the establishment of REIT structures in Greece.

Legal form

The Greek REIT law provides for two types of REITs:

- Those having a corporate legal form (Real Estate Investment Companies or REICs). The REIC is a special type of *societe Anonyme Company*, which has the exclusive purpose of engaging in the management of an asset portfolio composed of real estate (mainly), securities and cash. REICs must obtain a listing on a recognised stock exchange operating in Greece (i.e. the Athens Stock Exchange).
- Those having a legal form similar to a unit trust (Real Estate Mutual Funds or REMFs). The REMF is actually a pool of assets composed of real estate and liquid financial instruments. REMFs are jointly owned by a number of investors and managed by a management company, which must have the form of a *societe anonyme* and is also a special purpose company. REMFs are not listed vehicles.

Capital requirements

For the establishment of a REIC, the company must hold a share capital of at least EUR 25m, fully payable upon incorporation. The share capital of a REMF management company must be at least EUR 2.93m, fully payable upon incorporation. Its share capital, divided into registered shares, should be at least 51% owned by one or more financial institutions and/or insurance companies and/or companies offering investment services with a minimum share capital of at least EUR 2.93m.

Listing requirements

For REICs, a listing must be sought within two years from formation on a recognised stock exchange operating in Greece (i.e. the Athens Stock Exchange), provided that by the time of the listing at least 50% of the share capital of the company will be invested in real estate property. Such deadline may be extended subject to the Capital Market's Committee approval, but it cannot exceed another two years in total. If the Company fails to list its shares on a recognised stock exchange operating in Greece (i.e., the Athens Stock Exchange), the Capital Market Committee will revoke its operation license and the REIC is put in liquidation. In case of a revocation of the operation license of the REIC, any tax benefits and favourable tax regulations provided are repealed as well.

One month prior to the listing of the REICs, investors that intend to acquire a participation (shares or voting rights) in such REIC (ranging from 10% to 66.6%), directly or indirectly, are obliged to announce such intention to the Hellenic Capital Market Commission and provide any information required for the latter to decide on the suitability of the investor in order to ensure the prudent management and administration of the REIC. The costs with respect to the initial listing of shares on the Athens Stock Exchange, will depend on the value of shares, multiplied by a rate up to 0.024%.

Restrictions on investors

There are no restrictions on the identity of investors in a REIT. However, there are significant restrictions on the investments that the REIT itself may carry out.

Asset/income/activity tests

REIC

The available funds of a REIC must be invested in only:

Real estate property located in Greece or another European Economic Area (EEA) Member State, exceeding 80% of the REIC's funds.

The concept of real estate property includes (a) subsidiaries, holding or participation companies that are at least 80% owned, provided that such companies are exclusively engaged in real estate activities

and invest in real estate property in which a REIC may also invest directly, (b) companies being in a parent-subsidiary relationship with the REIC, at least 10% owned, provided that the subsidiary company is engaged in the acquisition, management and exploitation of property and its participation in the REIC is part of a common business strategy for the development of properties exceeding EUR 10m in value and c) a participation of at least 80% in UCITS investing in real estate investment companies, REITs and Alternative Investment Funds provided that said Funds have received an operating licence in an EU Member State and are subject to the legislation and supervisory authority in such EU Member State and its assets are invested in real estate.

- Real estate property is defined as property that may be used for commercial and generally business purposes (e.g. hotels, tourist residences, marinas), or the exploitation of residential properties not exceeding 25% of the total real estate investments
- Money market instruments and securities.
- Surface rights over public properties, long-term assignment of use or commercial exploitation of properties (e.g. hotels, marinas, plots in special building zones etc.)
- Investments in real estate property in non-EEA Member States may not exceed 20% of total real estate investments.

A REIC can also invest in other movable assets that serve the company's operational needs, provided that such assets, along with the value of any real estate property acquired for this purpose, do not exceed 10% in total of REICs assets.

Furthermore, the law provides for a number of restrictions on the nature of assets in which a REIT may invest, such as:

- Each individual property in which funds are invested may not exceed 25% of the total investment value of all properties.
- Property under development is allowed only to the extent that it is expected to be completed within 36 months from the issuance of the respective building permit or acquisition of property and that the budgeted remaining costs do not exceed 40% of the value of the property, which will be evaluated once works are completed.
- The REIC may not invest more than 25% in properties acquired under financial leasing contracts, provided that each contract individually does not exceed 25% of its total investments as well. Furthermore, no more than 20% of the total investments in real estate property may consist of properties for which the REIT does not hold full ownership.
- Properties acquired may not be sold in less than 12 months from the acquisition date, with the exception of residential properties and properties under construction.
- It should be noted that both the acquisition or disposal of real estate property must be preceded by a valuation thereof by a certified evaluator, and the price paid may not deviate (upwards for acquisition or downwards for disposal) more than 5% from their value, as determined by the certified evaluator.

REMF

The available funds of a REMF must be invested in:

- Real estate property located in Greece or another European Economic Area (EEA) Member State.

The concept of real estate property includes subsidiaries that are at least 90% owned, provided that such subsidiaries are engaged exclusively in real estate activities and invest in real estate property in which a REMF may also invest directly

Real estate property is defined as property that may be used for commercial and generally business purposes: the definition seems to exclude residential projects and ownership of bare land.

- Money market instruments, even though this investment should not exceed 10% of the minimum share capital of the management company.
- Investments in real estate property in non-EEA Member States may not exceed 10% of total real estate investments.

Furthermore, the law provides for a number of restrictions on the nature of assets in which a REMF may invest, such as:

- Each individual property in which funds are invested may not exceed 15% or 25% for property units of the total investment value .
- Property under development is allowed only to the extent that it is expected to be completed within a reasonable amount of time and that the budgeted remaining costs do not exceed 25% of the value of the property, which will be evaluated once works are completed.
- The REMF may not invest more than 25% of its investments in properties acquired under financial leasing contracts, provided that each contract individually does not exceed 10% of the total investments as well. Furthermore, no more than 10% of the total investments in real estate property may consist of properties for which the REMF does not hold full ownership.

Properties acquired may not be sold in less than 12 months from their acquisition date.

- It should be noted that both the acquisition or disposal of real estate property must be preceded by a valuation thereof by a certified evaluator, and the price paid may not deviate (upwards for acquisition or downwards for disposal) more than 5% from their value, as determined by the certified evaluator.
- Finally, there are several restrictions and rules as to the investment in other financial assets.

Restrictions on foreign assets

No specific restrictions, provided that the above asset tests are met.

Distribution requirements

The REIC is obliged to distribute on an annual basis at least 50% of its annual net profits. Exceptionally, and if so provided in the Articles of Association, the dividend distribution may be waived following a resolution of General Assembly for the purposes of either:

- forming a special reserve from profits other than gains, or
- converting profits into share capital and issuing free shares to shareholders.

Furthermore, the General Assembly may decide on creating reserves from capital gains for the purposes of offsetting losses incurred from the sale of securities with values lower than the acquisition cost. The net profits of the REMF are distributed following the procedure as specified in the regulation of the REMF.

Tax treatment at REIT level

REITs are exempt from any income tax. Therefore, the tax accounting rules are not that relevant. However, REITs are subject to a tax imposed on their average net asset value.

The tax rate is 10% of the respective intervention interest rate as determined by the European Central Bank, increased by 1 percentage point or 0,375% per semester of the average of its investments as reported in the table of investments per semester. The tax is payable by the REIT, within the first 15 days of the month following the end of the respective semester.

Withholding tax on distributions

No withholding tax is levied on dividends distributed by REICs.

Tax treatment at the investor level

Private Investors

Taxation of current income (all income derived from REIT in holding phase)

Dividends distributed by REITs are tax free in the hands of private investors. To be noted, however, that such dividends will be subject to the Special Solidarity Contribution of up to 10% levied on individuals' income generated in the respective tax year.

However, if the owner is a Greek company, further distribution of the relevant dividend income by such company may result in taxation imposed at the CIT rate (28% [as per the official announcements the CIT rate for income realized within 2019 will be reduced to 24%]).

Taxation of capital gains (from disposal of REIT shares)

Individuals: Capital gains deriving from the sale of non-listed shares is exempt from capital gains tax. Capital gains derived from the sale of listed shares are subject to a 15%-tax for individuals and 28% (as per the official announcements the CIT rate for income realized within 2019 will be reduced to 24%) for resident legal entities or non-resident legal entities with a permanent establishment in Greece. In the case of individuals, said 15% capital gains tax is only imposed in case the individual participates in the share capital of the REIC at a percentage of at least 0.5% and the shares to be transferred have been acquired from 1 January 2009 onwards and said transaction does not qualify as a "business transaction". Said capital gains taxation may be eliminated under the provisions of a DTT. Redemption of REMF units is exempt from taxation for individuals. If the owner is a Greek company, the profit from disposal of a REIC is subject to CIT as part of its annual taxable profits. Irrespective of whether the seller is an individual or a company, in the case of listed shares (i.e., once REIC becomes listed) a 0.2% transaction duty applies. Furthermore, the redemption gains from a REMF unit is exempt only until such company distributes such gain to its own shareholders, in which case any further distribution may be subject to WHT.

Institutional Investors

Taxation of current income (all income derived from REIT in holding phase)

There are no special tax rules for the taxation of institutional investors on income from a REIT. Therefore, the provisions mentioned above in the private investors section equally applies in this respect, unless institutional investors enjoy a differentiated tax treatment themselves, depending on their legal form and residence.

Taxation of capital gains (from disposal of REIT shares)

There are no special tax rules for the taxation of institutional investors on income from a REIT. Therefore, the provisions mentioned above in the private investors section equally applies in this respect, unless institutional investors enjoy a differentiated tax treatment themselves, depending on their legal form and residence.

Transition to REIT/Tax privileges

The transition to a REIC may be effected in a tax neutral manner through corporate restructuring (e.g. mergers, divisions and spin offs). With respect to tax privileges, the issuance of shares by a REIC/ REMF parts and transfer of real estate property to the REIC or REMF is exempt from real estate transfer tax, and any other tax or duty in favour of the State or third parties.

KK So

PwC (Hong Kong)

Tel: +852 2289-3789

kk.so@hk.pwc.com

In Hong Kong, REITs generally refer to real estate investment trusts authorised by the Securities and Futures Commission (SFC) under the Code on Real Estate Investment Trust (the 'Code'), which was published in August 2003. The revised REIT Code has become effective on 29 August 2014 upon gazettal.

There are currently ten REITs with a total market capitalisation of approximately USD 39.3bn in August 2019. These REITs invested in different types of real estate, including office buildings, shopping malls, and hotels. Six of these REITs hold real estate predominately in Hong Kong, while the other four hold real estate predominantly in Mainland China. The first RMB-denominated REIT, with major assets in Mainland China, was listed in Hong Kong in April 2011.

Legal form

An SFC-authorized REIT is required to be structured in the form of a trust. The REIT may hold real estate, directly or indirectly, through special purpose vehicles that are legally and beneficially owned by the REIT.

Capital requirements

There are no specific requirements as to the minimum capital, market capitalisation, etc.

Listing requirements

The REIT has 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.

Restrictions on investors

The Code does not impose any specific restrictions that apply to the investors in a REIT. Both Hong Kong and overseas investors may invest in a REIT. There are no requirements on the minimum number of investors under the Code. Moreover, there are no restrictions on foreign investors.

Asset/income/activity tests

The REIT should primarily invest in real estate. The real estate may be located in Hong Kong or overseas. Where the REIT invests in hotels, recreation parks or serviced apartments, the Code requires that such investments be held by special purpose vehicles.

The REIT is prohibited from investing in vacant land or engaging in or participating in property development activities (refurbishment, retrofitting, renovations, and certain property development activities excepted).

The REIT should hold its interest in each property for a period of at least two years, unless consent for an earlier disposal is obtained from the investors by way of a special resolution at a general meeting.

If the REIT indicates a particular type of real estate in its name, the REIT should invest at least 70% of its non-cash assets in such type of real estate.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

The REIT is obligated to distribute to unit holders as dividends each year an amount not less than 90% of its audited annual net income after tax.

Hong Kong

Tax treatment at REIT level

An authorised 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 from that, such rental income will be subject to Hong Kong property tax.

Where the REIT holds real estate in Hong Kong indirectly via special purpose vehicles, such special purpose vehicles will be subject to profits tax at 16.5% (i.e. the tax rate for the year of assessment 2018/19) in respect of the profits derived from the real estate. Such special purpose vehicles would generally be exempt from property tax.

Under the two-tier profits tax rates regime which is effective from the year of assessment 2018/19, the first HKD 2 million of assessable profits of a REIT may be taxed at 8.25% (i.e. half of the normal tax rates). The remaining assessable profits will be subject to the original rate of 16.5%.

Income derived from real estate situated outside Hong Kong and capital gains are generally exempt from property tax and profits tax.

Dividends paid by a special purpose vehicle to another special purpose vehicle are generally exempt from profits tax.

Stamp duty

Hong Kong stamp duty is charged on transfers of real estate in Hong Kong.

Generally speaking, the maximum rate of 8.5% applies to the transfer of non-residential property where the transfer consideration or value of real estate amounts to HKD 21,739,130 or above. 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. All parties to the transfer are liable to the stamp duty. In practice, however, the stamp duty is typically borne by the purchaser.

Hong Kong introduced a Buyer's Stamp Duty (BSD) with effect from 27 October 2012. Unless specially exempted, any purchaser who is an individual without Hong Kong permanent residence or a corporation (irrespective of its place of incorporation or residence) would be liable to BSD for transfer of residential property on or after 27 October 2012. BSD is charged at 15% on the higher of sales consideration or market value.

Hong Kong introduced a Special Stamp Duty (SSD) with effect from 20 November 2010. Unless specifically exempted, any residential property acquired on or after 20 November 2010, and resold or transferred within a specified period of time after acquisition, would be subject to SSD. The SSD payable is calculated by reference to the stated consideration or the market value, whichever is higher, at the specified regressive rates for the different holding periods. The SSD rates were revised for any residential property acquired on or after 27 October 2012 (see the current rates in the following table). All parties to the transfer are liable to the SSD.

SSD rates for transfer of residential property

| Period within which the residential property is resold or transferred after its acquisition | SSD rate (acquired on or after 27 October 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

Where shares in a Hong Kong company are transferred, Hong Kong stamp duty at the rate of 0.2% applies to the higher 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.

Withholding tax on distributions

There is no withholding tax on interest, dividends or distributions from a REIT in Hong Kong.

Tax treatment at the investor level

Taxation of current income

Distributions received from a REIT are not subject to any Hong Kong tax.

Taxation of capital gains

Profits tax

Gains on disposal of units in a REIT are exempt from Hong Kong profits tax if such gains are capital gains. An investor carrying on a trade or business in Hong Kong consisting of acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from disposal of the units in Hong Kong.

Stamp duty

Hong Kong stamp duty is chargeable in respect of the transfer of the REIT units at 0.2% of the transfer consideration (payable by the transferor and transferee at 0.1% each). In addition, a fixed duty of HKD5 is currently payable on any instrument of transfer of units.

Transition to REIT/Tax privileges

There are no specific tax privileges and concessions during exit. However, there is a territorial concept of taxation and no capital gains tax generally. In addition, certain transactions undertaken by genuine foreign funds are exempt from Hong Kong tax.

Gergely Juhász
PwC (Hungary)
Tel: +36 30 689-5487
gergely.juhasz@pwc.com

The Real Estate Investment Companies in Hungary (HU-REITs) are subject to the general rules for Hungarian registered companies that is the Hungarian Civil Code and the Company Registration Act, while the conditions for the REIT status are regulated within the REIT Act. Due to their listing, HU-REITs are also subject to the Capital Market Act.

As far as the Alternative Investment Fund Managers Directive is concerned, it was implemented on 15 March 2014 by the amendment of Act XVI of 2014 on the Collective Investment Funds and their Fund Managers. Although the aforementioned Act contains specific rules for real estate funds, HU-REITs are not expressly specified in the regulations and hence, currently it is understood that such Act does not apply to HU-REITs even though, the Directive may apply thereto.

Traditionally, investments into real estate were done through 'Project Companies' in Hungary. The HU-REIT is an investment vehicle which was introduced on 28 July 2011. The Government's aim was to enhance the real estate market in Hungary and wished to create a regime similar to the existing European real estate investment trusts.

The first pre-REIT was registered in 2017, and at the time of preparing this summary only a couple of REITs operate in Hungary.

Legal form

The only legal form that is permissible for a HU-REIT is a stock corporation (public company limited by shares) which may be seated in Hungary or in any other Member State of the European Economic Area. The HU-REIT has to be listed on a regulated market within the European Union.

There is no specification as to the company form of a Project Company. The wording of the law implies that foreign registered companies may also qualify for Project Company status.

Capital requirements

The nominal capital of a HU-REIT must amount to at least HUF 5 billion (approx. EUR 16 million) either on a standalone or consolidated basis. A HU-REIT can issue exclusively ordinary shares, employee stocks and certain preference share types. A HU-REIT has to have a 25% ratio of public ownership on a regulated market (upon registration, 25% of the entire series of shares should be owned by shareholders holding a maximum of 5% of the total shares, which diversified ownership status has to be maintained in the case of HU-REITs non-entirely listed on a stock exchange). Investors may include both small investors and large institutional investors, but credit institutions and insurance companies should not have directly more than 10% voting right in HU-REITs.

The REIT Act stipulates a limit on debt financing (leverage provision). Thus, the HU-REIT's debt financing may not exceed 65% of the real property value as shown in the consolidated or the individual financial statements prepared under HU GAAP or IFRS.

HU-REITs may own Project Companies that are one-man companies solely owned by a HU-REIT. Project Companies' debt financing (if they are not involved in consolidation) may not exceed 70% of the real property value.

Listing requirements

HU-REITs are stock corporations that must be listed on a regulated stock market within the European Union. A HU-REIT may hold and operate its real estate portfolio directly, or, alternatively, through its 100% owned companies (Project Companies).

Restrictions on investors

Upon registration at least 25% of the shares of the HU-REIT must be freely available to the public (free-float), each shareholders of which may hold up to 5% of the total shares. This restriction applies

to both direct and indirect shareholding. In the case of HU-REITs not entirely listed on a stock exchange, this 5% threshold may only be exceeded temporarily since the shareholders' compliance thereto has to be reported quarterly. Should the 5% ownership be exceeded, until the obligatory disposal of the excess shares the respective voting rights are limited to 5%. Investors may include both small investors and large institutional investors, but the direct voting rights of credit institutions and insurance companies is limited to 10% of the issued shares. The voting requirement does not apply to indirect shareholdings.

Asset/income/activity tests

A HU-REIT's activity may comprise several real estate related services such as trading, leasing, asset management and certain real estate development activities.

HU-REITs have to limit their business activities to the sale, lease and operation of their own real estate, management of real estate, asset management and organization of real estate development projects. Project Companies may also pursue exclusively the above business activities but may not have any participation in any companies.

HU-REITs may have shares exclusively in Project Companies, other HU-REITs and companies organising building construction projects or building residential and non-residential buildings as main activity. In the case of other HU-REITs the REIT's stake may not exceed 10%.

Furthermore, a HU-REIT may hold other assets exclusively (besides the ones directly linked to its operation) in bank deposits at sight, term bank deposits, government securities issued by the Member States of the European Economic Area and OECD, debt securities issued by international financial institutions and securities introduced to recognised capital markets. The asset portfolio of a HU-REIT may also include derivative transactions.

At least 70% of the HU-REIT's total assets must consist of immovable property. Immovable property held as fixed asset is taken into account at its fair value. Furthermore, none of the value of the real properties (or shareholding in another HU-REIT) may exceed 30% of the total assets of the HU-REIT. The asset structure requirements are determined based on the consolidated financial statements under Hungarian GAAP or IFRS. If consolidated financial statements do not have to be prepared, the standalone financial statements are used.

Restrictions on foreign assets

Not applicable.

Distribution requirements

The HU-REIT is obliged to distribute the expected dividends (which is 90% of the distributable profit, unless the free cash's and cash-equivalents' sum is lower than such amount), provided that the shareholders accept such proposal from the management. The amount of profit is determined under Hungarian GAAP or IFRS, as profit after tax. Project Companies must pay out 100% of their profit to the REITs or 100% of the available free cash (whichever is smaller), provided that the shareholder (HU-REIT) accept such proposal from the management.

Both HU-REITs and Project Companies may not conclude any contracts that include any limitations to their dividend payments (except for loan agreements with financial institutions).

Tax treatment at REIT level

HU-REITs (the term here also includes pre-REITs and the Project Companies) are in principle exempt from corporate income taxation. However, due to certain penalty like measures and the general anti-avoidance rules, the corporate income tax bases of the HU-REITs still have to be calculated.

The HU-REITs' corporate income tax base is calculated according to the general rules, with the following differences. HU-REITs are not allowed to apply certain tax base adjusting items, most of which relate to tax base allowances. To prevent the erosion of tax bases within company groups, HU-REITs are not entitled to apply the corporate income tax exemption (on a pro-rata basis) for income earned from those related parties that do not fall under the scope of the REIT Act. These are generally foreign entities with the exception of Project Companies, and Hungarian entities that are not REITs. When calculating such income, the general transfer pricing regulations are applicable, which in particular mean that the prices applied in such transactions have to be at arm's length, or the tax bases of the entities affected by such transaction have to be modified accordingly.

Hungary has a VAT system with a standard rate of 27%. Such VAT system does not provide special rules for HU-REITs. However, based on the general rules, with the exception of newly built buildings and building plots, renting, leasing and selling real estate is exempt from VAT. In return such activities do not allow for the deduction of input VAT.

A taxpayer may opt for the VATable treatment of the above transactions. In this case the input VAT relating to such activities is deductible, but the taxpayer may not return to the VAT exempt treatment within five years following the last day of the calendar year in which it has opted for the VATable treatment.

Subject to the local municipalities' decision, on the basis of their business activities performed in the given municipality's jurisdiction, companies may be obliged to pay up to 2% local business tax calculated on their net sales revenues reduced by the cost of goods sold, the cost of mediated services and material costs (in the cases of the first two deductions subject to certain limitations). HU-REITs on the other hand are exempted from the above local business tax payment obligation.

In general, the transfer tax payable on the acquisition of real estates, property rights related to real estates, and the 75% participations of certain real estate holding companies is 4% up to a tax base of HUF 1 billion (approx. EUR 3.1 million) and 2% for the amount exceeding such threshold, but is capped at HUF 200 million (approx. EUR 625,000) per real estate. The tax base of the transfer tax is the real estates' market value (in the case of participations of real estate holding companies, the tax base is the proportionate amount of the company's real estates' market value). In the case of HU-REITs the above transfer tax rates are uniformly reduced to 2%, but the HUF 200 million cap does not apply.

Withholding tax on distributions

Distributions to Hungarian resident individuals are subject to the general rules, that is, to 15% personal income tax and 17.5% social tax withheld at the source. The yearly social tax's base is capped at 24 times of the applicable minimum wage in Hungary (resulting in social tax cap of HUF 626,000 (approx. EUR 1,925) in 2019).

Exception applies for the above social tax liability if it is paid after the dividend deriving from a share which is traded on a recognised stock exchange in the European Economic Area.

As per the general rules, foreign resident individuals are subject to 15% personal income tax withheld at source on distributions made thereto. Such general withholding tax rate may be reduced by an applicable treaty.

Distributions to entities are not subject to withholding taxation.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends distributed by HU-REITs to Hungarian resident private individuals is subject to taxation as described previously under withholding tax section.

Capital gain on the disposal of shares in a HU-REIT is taxable under the general rules in Hungary, that is, it is subject to 15% personal income tax and 17.5% social tax, the latter of which is capped at approx. EUR 1,925 in 2019. In addition, if certain conditions are met, exemption from the 17.5% social tax may be achieved and certain capital losses of the given tax year may be taken into consideration as a reducing item for the purposes of calculating the personal income tax base.

Corporate investors

Dividend distributions to corporate investors are subject to the general rules. Thus, dividend from a HU-REIT is corporate income tax exempt.

Capital gain on the disposal of shares in a REIT is taxable under the normal corporate income tax rules. Thus, they are subject to corporate income tax, unless the participation exemption rules may apply, which results in no taxation.

Effective from 1 January 2018, no minimum participation threshold has to be met in order to benefit from the Hungarian participation exemption regime but the acquisition has to be reported to the tax authority within seventy-five days, and the disposal has to happen at least one year following the acquisition of the shares. (Additional acquisitions may also be reported to the Tax Authority.)

Non-resident investors

Individual investors

Dividends distributed by HU-REITs to foreign resident private individuals is subject to taxation as described previously under withholding tax section.

Corporate investors

Based on the general domestic rules, no withholding tax is applicable to dividend distributions made to foreign legal entities.

Provided that the HU-REIT is registered on a recognised stock exchange, no Hungarian taxation may arise, if the shares thereof are alienated by a foreign resident entity.

Transition to REIT/Tax privileges

No special rules apply to HU-REITs in this regard.

Bhairav Dalal

PwC (India)

Tel: +91 22 6689-1130

bhairav.dalal@pwc.com

Anish Sanghvi

PwC (India)

Tel: +91 22 6689-1133

anish.sanghvi@pwc.com

Bhavin Vora

PwC (India)

Tel: +91 22 6689-1238

bhavin.vora@pwc.com

The Real Estate Investment Trusts in India (IN-REITs) are regulated by the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 ('REIT Regulations'). The REIT Regulations were enacted on 26 September, 2014. Over the years, the regulator has partnered with relevant stake-holders in the country including government bodies, investors and real estate developers to bring the REIT Regulations in line with globally recognised norms.

REIT is an investment vehicle that owns and operates real estate related assets and allows individual investors to earn income produced through real estate ownership without actually having to buy any such assets.

Typically, income producing real estate assets owned by a REIT include office buildings, shopping malls apartments, warehouses and mortgages.

Legal form

An IN-REIT can be established only as a trust with its main objective being under- taking activities in accordance with the REIT Regulations.

Key eligibility requirements**Sponsor**

No upper limit on number of sponsors for an IN-REIT. REIT Regulations have also introduced concept of 'sponsor group'.

Sponsors collectively should have a net worth of not less than INR 1,000 million and individually not less than INR 200 million. Sponsor (or its associates) to have minimum experience of five years in development of real estate or real estate fund management. Where the sponsor is a developer, the sponsor to have a track record of at least two completed projects.

Manager

Manager of IN-REIT should have a minimum net worth of INR 100 million. Manager (or its associates) should have minimum experience of five years in fund management or advisory services or property management in the real estate sector or in real estate development.

Further, the manager should have a minimum of two key personnel with an experience of at least five years.

Trustee

Trustee of IN-REIT to be SEBI registered and should not be related to the sponsor or the manager.

Sponsor holding and lock-in requirements

Sponsors and sponsor groups to collectively hold a minimum of 25% units of IN-REIT on a post-issue basis for a period at least three years from initial offer. One year lock-in period from the date of listing of units prescribed for sponsor and sponsor group holding in excess of 25%. Further, at least 15% of the outstanding units of IN-REIT shall be held by sponsors and sponsor groups at all times (on a continued basis, post the initial lock-in period of three years), such that individual holding of each sponsor is at least 5% of the total outstanding units of IN-REIT. Divestment of the continued holding of 15% and 5% of the out- standing units, mentioned above, is possible only after a period of three years from the date of listing but subject to another sponsor acquiring such minimum holding with the prior approval of the unitholders.

Asset/income/activity tests

IN-REIT can invest in real estate assets either directly or through a holding company (Hold Co) and/or special purpose vehicle (SPV):

- Hold Co to be a company or a limited liability partnership (LLP) in which an IN-REIT holds a minimum of 51% stake; and
- SPV to be a company or an LLP in which IN-REIT holds 51% (if held directly)/effectively 26% (if held through a Hold Co).

An IN-REIT cannot invest in vacant land or agricultural land or mortgages. However, investment in such land is possible where the land is contiguous and extension of an existing project being implemented in stages. Other conditions on investments are as under:

- At least 80% of the value of an IN-REIT should be invested in completed and rent and/or income generating real estate assets. Such investment is subject to a lock in of three years from the date of purchase.
- Maximum 20% of the value of IN-REIT can be represented by:
 - Under construction properties, subject to a lock in of three years post completion;
 - Completed but non-rent generating properties with a lock-in period of three years from the date of purchase;
 - Listed or unlisted debt of real estate companies (not including investment in debt of Hold Co and/or SPV);
 - Mortgage-backed securities;
 - Equity of listed/ unlisted 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; and
 - Cash or money market instruments.
- At least 51% of the revenue of IN-REIT, Hold Co and SPV should be from rental, leasing and letting out of assets, or incidental revenue.
- Investments in other IN-REITs or lending is not permitted.
- Approval from unitholders is required in case of sale of property by IN-REIT or Hold Co or SPV or sale of share in the SPV by the Hold Co or IN-REIT exceeding 10% of the value of IN-REIT assets in a financial year
- Valuation needs to be undertaken for each purchase or sale of property and unitholder's approval is required where:
 - the acquisition price is more than 110% of such valuation;
 - sale price is less than 90% of such valuation
- Co-investment permitted, subject to certain conditions.

Leverage

Aggregate net consolidated borrowings and deferred payments of IN-REIT, Hold Co and SPV(s) to be capped at 49% of the total asset value of IN-REIT. Further, aggregate net consolidated borrowings and deferred payments of IN-REIT, Hold Co and SPV(s) higher than 25% of total asset value of IN-REIT to be subject to credit rating and unitholders approval.

Distribution requirements

An IN-REIT must distribute at least 90% of its net distributable cash flows to the unit holders. Further, on sale of a real estate asset, 90% of the proceeds are to be distributed unless, reinvestment is proposed within a period of one year.

Minimum cash flow to be distributed by a Hold Co to IN-REIT shall be: 100% of the cash flows received from SPVs and 90% of the balance. An SPV to distribute a minimum of 90% of its net distributable cash flows to an IN-REIT/Hold Co.

A Hold Co/SPV is to mandatorily distribute the proceeds from sale of property even if reinvestment is proposed. IN-REIT, Hold Co and SPV to undertake distribution at least once every six months.

Listing requirements

It is mandatory for all units of the IN-REITs to be listed on a recognised stock exchange within a period of twelve working days from the date of closure of the initial public offer.

At the time of initial offer, value of the assets owned by IN-REIT should be at least INR 5,000 million. Minimum subscription amount from an applicant should be at least INR 0.05 million.

Additionally, the following conditions should be adhered to:

- Slabs for minimum offer size and public float have been prescribed as follows:
 - If post-issue capital is less than INR 16,000 million: minimum 25% of such capital or INR 2,500 million, whichever is higher;
 - If post-issue capital is equal to or more than INR 16,000 million but less than INR 40,000 million: minimum INR 4,000 million;
 - If post-issue capital is equal to or more than INR 40,000 million: minimum 10%
 - However, the public float, to be increased to a minimum of 25% within a period of three years from the date of listing (in cases where the public float computed as per above slabs is below 25%).
- Minimum number of unit holders forming a part of the public should be at least 200.
- IN-REIT to refund money to all applicants if it fails to raise subscriptions exceeding 90% of the fresh issue size.
- Minimum trading lot should be 100 units.

Restrictions on foreign assets

The real estate properties or securities acquired must be in the territory of India.

Tax treatment at REIT level

Any income by way of interest received from an SPV ('interest income') or by way of renting or leasing or letting out any real estate asset owned directly by IN-REIT ('lease rent') should be exempt from tax in the hands of IN-REIT. Further, dividends¹/share of profit, as the case may be, are also exempt from tax, in the hands of IN-REIT.

Gains on transfer of the securities in the SPVs, or real estate assets held by the IN-REIT, should be subject to capital gains tax as summarised under:

- In case of transfer of unlisted equity shares held by an IN-REIT in a Hold Co/SPV, capital gains arising therefrom, if any, would be taxed at 20% , if the securities were held for more than 24 months and 30%², if the securities were held for up to 24 months.
- Where IN-REIT holds listed equity shares in the Hold Co/SPV, capital gains, if any, would be 10%² if the equity shares are held for more than 12 months and would be taxed at a concessional rate of 15%² if the equity shares are held for up to 12 months, subject to payment of Securities Transaction Tax (STT)⁵
- In case of immovable property being land, building or both, directly held by IN-REIT, income arising on its transfer would be chargeable to tax at the rate of 20%² where the property is held for more than 24 months. Since the regulations provide for a lock in of three years, tax implications, in a scenario where the property is transferred prior to two years, is not considered.
- Any other income of IN-REIT, would be chargeable to tax at the rate of 30%².

Withholding tax on distributions

Resident Investors

Where IN-REIT distributes the income received by it, by way of interest from the SPVs or lease rentals, to a resident unit holder, IN-REIT is required to withhold tax at the rate of 10%².

Non-resident investors³

Where the interest income received by the IN-REIT is distributed to a non-resident unit holder, the IN-REIT is required to withhold tax at the rate of 5%⁴.

Where lease rental income received by IN-REIT is distributed to non-resident unit holders, IN-REIT is required to withhold tax at the rates in force i.e. 30%⁴ in case of individuals and 40%⁴ in case of corporates.

Tax treatment at the investor level

Resident investors

The income distributed by the IN-REIT, received by it by way of interest or lease rent, could be taxed at a maximum rate of 30%². Any other income distributed by the IN-REIT ought not to be taxable in the hands of the investors.

The tax withheld, as discussed above, should be available as credit.

Tax implications on capital gains on the sale of the units in the IN-REIT are discussed below:

- Capital gains on transfer of units listed on a recognised stock exchange in India, held for more than 36 months, are chargeable to tax at the rate of 10%² subject to payment of STT⁵.
- Capital gains on transfer of units listed on a recognised stock exchange in India, held for up to 36 months, are chargeable to tax at the rate of 15%² subject to payment of STT⁵.

Non-resident investors³

The income distributed by the IN-REIT, received by it by way of interest should be taxed at the rate of 5%⁴ in the case of individuals/corporates.

Lease rent income received by the IN-REIT, distributed to the unit holders, could be taxed at a maximum rate of 30%⁴, in the case of individuals and a rate of 40%⁴, in the case of corporates. The tax withheld, as discussed above, should be available as credit.

Tax implications on capital gains from the sale of the units in the IN-REIT are discussed below:

- Capital gains on transfer of units listed on a recognised stock exchange in India, held for more than 36 months, are chargeable to tax at the rate of 10%⁴ subject to payment of STT.
- Capital gains on transfer of units listed on a recognised stock exchange in India, held for up to 36 months, are subject to tax at the rate of 15%⁴, in case of individuals/corporates, subject to payment of STT⁵.

In addition to the above, Minimum Alternate Tax (MAT), at the rate of 18.5%² for domestic corporates, shall be payable on profits arising (as per books of accounts) from sale of units.

Swap of shares of SPV for units in IN-REIT

Swap of shares in an SPV for units in an IN-REIT is a transaction exempt from tax. However, where units are received in exchange for assets, other than shares in an SPV, such a transaction should be chargeable to tax. Where the exchanged assets are held for more than 24 months, the tax rate is 20%², and held for up to 24 months, the tax rate is 30%².

If the entity swapping the SPV shares is a domestic corporate entity, MAT at the rate of 18.5%² would be applicable.

However, MAT is levied only at the time of eventual transfer of units of the IN-REIT, and not at the time of swap of shares of the SPV for units in the IN-REIT. A separate mechanism for such MAT computation has been prescribed.

India

Foreign investment in IN-REIT

The Indian Government, in an attempt to open new avenues from which IN-REITs could access funds, allowed foreign investors to participate in IN-REITs. Investment in IN-REITs was allowed under the automatic route by introduction of the concept of 'investment vehicles' which inter alia include IN-REITs.

Separately, SEBI has issued amendment regulations dated 15 December 2017 permitting IN-REITs to issue debt securities. This is however subject to the condition that the debt securities are listed on recognised stock exchanges.

¹ There could be a risk of dividend in excess of INR 1 million being taxed at 10%. Clarity is required on the language in the Indian Income-tax Act, 1961.

² The tax rate to be increased by applicable surcharge at the rate 37% (being maximum applicable rate for FY 2018–19) for individuals and Trusts and 12% for domestic companies and education cess at the rate of 4% on applicable tax and surcharge. As per press release dated 24 August 2019 issued by Ministry of Finance, erstwhile surcharge rate of 15% for individual & trusts (being maximum applicable rate) would be applicable on capital gains arising on transfer of inter alia listed equity shares and units of IN-REIT which are liable to STT.

³ Availability of tax-treaty benefits, if any, has not been considered.

⁴ The tax rate to be increased by applicable surcharge at the rate 37% (being maximum applicable rate for FY 2018–19) for foreign individuals and 5% for foreign corporates and education cess at the rate of 4% on applicable tax and surcharge. As per press release dated 24 August 2019 issued by Ministry of Finance, erstwhile surcharge rate of 5% for foreign individuals (being maximum applicable rate) would be applicable on capital gains arising on transfer of inter alia listed equity shares and units of IN-REIT which are liable to STT.

⁵ STT is charged at the rate of 0.1% on the transaction value in case of sale/purchase of the units of IN-REITs and equity shares on a recognised stock exchange.

Ireland

Ilona McElroy

PwC (Ireland)
Tel: +353 1 792-8768
ilona.mcelroy@pwc.com

Rosaleen Carey

PwC (Ireland)
Tel: +353 1 792-8756
rosaleen.carey@pwc.com

Robert Fitzgerald

PwC (Ireland)
Tel: +353 1 792-7055
robert.r.fitzgerald@pwc.com

The Irish Real Estate Investment Trust (REIT) was introduced in the Finance Act 2013 with the first Irish REIT listing on the Irish Stock Exchange on 18 July 2013.

The Irish REIT was introduced in 2013, with the first REIT listing on the Irish Stock Exchange on 18 July 2013. There are currently three REITs in Ireland,

Provided an Irish REIT meets the various conditions of the legislation, it will not be liable to corporate tax on income and capital gains arising from its property rental business.

Furthermore, non-residents can dispose of shares in an Irish REIT without giving rise to a charge to Irish capital gains tax.

Legal form

An Irish REIT can be structured as a group of companies with a parent company (Group REIT) or as a single company REIT.

To become an Irish REIT a company must give notice to the Irish Revenue Commissioners and comply with a series of conditions. Some of these conditions are applicable on day one, some at the end of the first accounting period while the remainder can be satisfied within a period of three years of becoming a REIT.

The REIT (or where it is a Group REIT, the principal company) must be resident in Ireland and not resident elsewhere, and must be a company incorporated in Ireland under the Companies Acts from day one.

Capital requirements

There are no capital requirements, but there is a limitation on the type of shares that the parent company of an Irish REIT can issue, being ordinary shares and non-voting preference shares. It must have only one class of ordinary share capital.

There are financing restrictions.

At the end of the first accounting period the REIT must have a profit financing ratio where the profits are at least 1.25 times the finance costs. Where this ratio is not maintained the REIT shall be charged to corporation tax at a rate of 25% on the amount by which the property financing costs would have to be reduced to achieve a 1.25:1 ratio. The amount subject to corporation tax shall not exceed 20% of the property income of the REIT (or group REIT as the case may be).

The REIT must maintain a loan to value ratio up to a maximum of 50% by the end of the first accounting period.

Listing requirements

The REIT's shares must be listed on the main market of a recognised stock exchange in an EU Member State. Euronext Dublin, previously The Irish Stock Exchange, has created a listing regime for REITs and has aligned the new requirements with those of the FCA Listing Rules in the UK so as to facilitate REITs that may seek a dual listing in Ireland and the UK. For a new REIT there is a grace period of three years for the shares to be trading on the Main Securities Market (MSM) or other recognised stock exchange.

Restrictions on investors

An Irish REIT cannot be a close company (which is a company controlled by five or fewer investors). Where a new REIT is formed it can be 'close' for the first three years.

Ireland

An Irish REIT is penalised (i.e. a corporate tax charge of 25% applies on the distribution amount, payable by the REIT) if it makes distributions to shareholders with 10% or more of the share capital, distribution or voting rights in the REIT (other than “qualifying investors”) unless reasonable steps were put in place to prevent the making of the distribution to such a person. A qualifying investor includes any Irish pension scheme, life company or charity, National Asset Management Agency (NAMA) and other specified persons including QIAIFs.

There are no additional restrictions in respect of non-resident investors.

Asset/income/activity tests

It is possible for an Irish REIT to have both a property rental business and other activities. By the end of the first accounting period at least 75% of the income and 75% of the market value of the assets of the REIT must relate to assets of the property rental business of the REIT.

Within three years of commencement the REIT must conduct a property rental business consisting of at least three properties, with no one property accounting for more than 40% of the total market value of the properties constituting the property rental business.

A corporation tax charge will arise where a property asset is developed at a cost exceeding 30% of its market value and sold within three years of completion of the development.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

At the end of each accounting period (subject to having sufficient distributable reserves) the REIT must distribute, by way of property income dividend to its shareholders, at least 85% of the property income of that accounting period (on or before the tax return filing date, which is normally circa nine months from the end of the particular accounting period).

Tax treatment at REIT level

An Irish REIT should not be chargeable to tax in respect of either rental income earned or chargeable gains accruing on the disposal of assets of its property rental business. It is subject to corporation tax on all other income and gains under the usual taxation rules.

Any disbursement or expense which is deducted when computing the aggregate profits of a REIT or group REIT which is not incurred wholly and exclusively for the purposes of its property rental business is chargeable to corporation tax at the 25% rate. The measure will apply from 1 January 2020.

Finance Bill 2019 provides that, within 24 months of a property disposal, the REIT must either reinvest or distribute the income. 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. This measure applies to disposals after 8 October 2019. In addition, unrealised property gains which have accrued to a REIT are brought within the scope of capital gains tax if the REIT exits the regime within 15 years.

There is no exemption from value added tax, property rates, employment taxes or stamp duty. Stamp duty, which is currently at a rate of 7.5% in respect of commercial property and 2% in respect of residential property, (1% for residential property up to a value of €1m), should apply to properties acquired.

Withholding tax on distributions

Dividend distributions out of rental income and gains by an Irish REIT are generally subject to a withholding tax of 20%. Finance Bill 2019 increased the dividend withholding tax rate to 25% effective from 1 January 2020.

Distributions out of taxed income are treated as ordinary dividends.

Tax treatment at the investor level

Resident investors

Individual investors

Irish resident shareholders in a REIT should be subject to income tax at normal rates on income distributions with a credit for Dividend Withholding Tax (current rate is 20%/25% from 1 January 2020). Individuals will be taxed at marginal rates of income tax plus PRSI and USC. Certain categories of exempt investors exist, e.g. Pension funds, regulated funds, etc.

Corporate investors

Irish resident corporate investors should be liable to 25% corporate tax on income distributions from the REIT and will be liable to capital gains tax at a rate of 33% on the disposal of shares in the REIT.

Non-resident investors

Non-resident investors will not be liable to Irish capital gains tax on the disposal of REIT shares because the REIT is a publicly listed company. However, these investors may be liable to such taxes in their home jurisdiction. The REIT will apply dividend withholding tax (DWT) at the rate of 20% (25% rate effective from 1 January 2020) from income and gain distributions to non-residents who, depending on their country of residence, may be able to reclaim some or all of this DWT under a relevant double taxation treaty. The reduced treaty rate must be claimed as a refund.

Typically, a transfer of shares in the REIT should be subject to 1% stamp duty.

Tax on converting to a REIT

No conversion charge will apply for an existing company converting to a REIT. However a company that converts to a REIT will be deemed for capital gains tax (CGT) purposes to have sold its assets at market value, on the day of conversion, immediately before becoming a REIT and reacquired them on becoming a REIT thus creating a CGT liability on any gains at that point.

Additionally, where an asset which was used for the property rental business of a REIT ceases to be so used, it will be treated, for CGT purposes, as having been disposed of by the REIT and reacquired by it at market value.

Daniele Di Michele

PwC (Italy)

Tel: +39 02 91605-002

daniele.di.michele@pwc.com

Mario Joseph Feminò

PwC (Italy)

Tel: +39 02 91605-010

mario.joseph.femino@pwc.com

Italy has a real estate investment vehicle similar to the better known REITs in force in other countries: the SIIQ, *Società di Investimento Immobiliare Quotata* (i.e. 'Listed Real Estate Investment Company').

The SIIQ is a listed Italian stock corporation, which has real estate rental activity as its main business (even indirectly performed, in stated circumstances) and, as such, benefits from income tax exemption with regard to this activity and to investments, inter alia, in other SIIQs. Under certain conditions, this regime can be applied to non-listed Italian corporations (consequently named as SIINQs) and extended to eligible foreign companies with respect to their Italian permanent establishments.

Legal form

The SIIQ is a stock corporation (i.e. a company limited by shares), resident in Italy for tax purposes, mainly carrying on real estate rental activity and fulfilling certain requirements.

Rather than a new type of entity, the SIIQ is a special civil and tax law regime, which applies upon an irrevocable option (to be exercised before the beginning of the first tax period under the SIIQ status) and is based on income tax exemption and other tax benefits for the real estate lease business performed and related assets.

The SIIQ regime has been afterwards extended also to Italian permanent establishments (PE) of companies resident in the countries of the European Union or the European Economic Area included in the Italian white-list (i.e. 'non-tax-haven' countries with information exchange procedures with Italy) which fulfil the SIIQ subjective requirements, if the PE's main business consists of real estate rental activity.

The Law clarified that the SIIQ is not an "undertaking for the collective investment of saving". As a consequence, the SIIQ should not qualify as an 'Alternative Investment Fund' and should not be subject to AIFMD regulations.

Capital requirements

The capital requirement to obtain the SIIQ status varies according to the listing market. The minimum market capitalisation for listing on the main segments of the Italian market is equal to EUR 40m.

Listing requirements

The SIIQ must be listed on an organised stock market in the European Union or in the European Economic Area included in the Italian white-list.

However, the special regime may be extended to unlisted stock companies (SIINQ), provided that they are resident in Italy, carry on the real estate rental activity (as 'prevalent' business, as defined for SIIQ qualification), are owned at least at 95% by SIIQs (in terms of voting rights and profit participation) and opt for the domestic income tax consolidation regime with the controlling SIIQ.

SIIQs (and SIINQs) are required to apply IAS/IFRS (same obligation should apply to Italian PEs of foreign companies which elect for the SIIQ regime).

Restrictions on investors

Minimum number of investors

The following shareholding requirements in the SIIQ must be met:

- No shareholder shall hold, directly or indirectly, more than 60% of the voting rights in the general meeting and no shareholder shall participate in more than 60% of the profits;
- At least 25% of the SIIQ shares have to be owned by shareholders, each one not holding at the time of the option, directly or indirectly, more than 2% of the voting rights in the general meeting and not more than 2% of participation in the profits (free float).

The free float condition is not required if the applicant is already listed.

If the 'main-shareholder' requirement is not observed by the end of the first tax period under the special regime, it may be also fulfilled within the following two years; meantime, the special income tax regime is suspended (until the beginning of the year in which this requirement is met), while indirect taxes benefits are only temporarily applied.

If, afterwards, the 'main-shareholder' requirement is overcome in consequence of a corporate reorganisation or a capital market operation, the special tax regime is suspended until the requirements are restored.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

The SIIQ's 'prevalent' activity has to be the real estate rental. Prevalence occurs if both the following tests are met:

- **Asset Test:** at least 80% of the assets are real estate properties and rights referred to the exempt business (i.e. the real estate rental activity) and/or shareholdings in other SIIQs or SIINQs booked as fixed assets and/or units in Italian Real Estate Investment Funds (REIFs) which prevalently invest in real estate related assets addressed to the lease activity (as SIIQs).
- **Profit Test:** at least 80% of the SIIQ's annual revenues are derived from the aforementioned tax exempt business. Eligible revenues include:
 - (i) dividends received from other SIIQs or SIINQs paid out from their profits from the exempt business;
 - (ii) distributions from REIFs which qualify for the Asset Test;
 - (iii) capital gains from disposal of real estate properties and rights for lease.

The SIIQ status is lost if for three consecutive years even one of the prevalence requirements is not fulfilled, retroactively from the beginning of the second year, or in the year when both of them are failed.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

SIIQs are required to annually distribute at least 70% of the net profit available for distribution derived from the tax exempt business. Net capital gains from disposal of real estate properties and rights and interest in SIIQs, SIINQs and REIFs related to such business, have to be distributed for at least 50% of their amount, over the two years following the year of their earning.

If the net profit available for distribution is lower than the accounting net profit from the tax exempt business, up to the amount of this difference, the subsequent years' accounting net profit from the taxable businesses is deemed to be earned from the tax exempt business, thus subject to the 70% minimum distribution obligation.

Failure to fulfil the distribution requirement implies the repeal of the SIIQ regime (retroactively from the year of earning of the undistributed tax exempt profit).

Tax treatment at REIT level

For Italian stock corporations that opt for the SIIQ regime, the income associated with the rental business and that derived from the other eligible assets (see Asset and Profit Tests) are exempt from corporate income tax (IRES, with current ordinary rate of 24%) and from regional tax (IRAP, with current ordinary rate of 3.9%).

Income from the other activities is subject to ordinary taxation.

For permanent establishments (PEs) of foreign companies that elect for the SIIQ regime, the annual income derived from the rental activity is subject to a 20% substitute tax.

Withholding tax on distributions

Dividends distributed by the SIIQ (or SIINQ) out of profit derived from the tax exempt business are subject to withholding tax (WHT) at source at a rate of 26%.

The WHT is applied as advance payment in the case of resident individual entrepreneurs and resident entities subject to the business income tax rules, including limited liability companies and Italian PEs of foreign entities.

In other circumstances, such as the case of non-resident shareholders, the WHT is applied as a definitive payment.

The WHT is not applied for distributions to: other SIIQs, Italian pension funds, Italian undertakings for collective investments (e.g., UCITSs, REIFs, SICAVs) and private wealth management subject to substitute tax regime.

In addition, WHT does not apply to profit repatriations executed by PEs of foreign companies that opted for the SIIQ regime (because already subject to substitute tax at PE level).

Dividends distributed out of profit from the taxable businesses are subject to the ordinary rules.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends distributed out of profit derived from the tax exempt business are subject to a 26% definite WHT. No further income taxation applies at the level of the individual shareholders.

Capital gains are subject to tax at 26% (this tax regime applies from 1 January 2019; earlier, it was stated for 'non-qualified' investor's interest, i.e. not exceeding 2% of the voting rights or 5% of the capital of a listed company – like the SIIQ – and 20% of the voting rights or 25% of the capital of a non-listed company – like the SIINQ –, tested on a 12-month basis; otherwise, capital gains were subject to individual income tax at the progressive income tax rates from 23% up to 43%, increased by local surcharges, with the highest rate applicable to the amount of the aggregate taxable income which exceeds € 75,000).

Participation exemption does not apply.

Dividends out of the exempt profit collected by resident individual shareholders acting in their business capacity are fully included in the business income (dividend exemption does not apply) and consequently subject to individual income tax with progressive rates, presently ranging from 23% up to 43% (plus local surcharges). The 26% WHT applied at source is credited against the income tax due.

Capital gains should also be fully included in the business income (participation exemption does not apply) and taxed accordingly.

Corporate investors

Dividends out of the exempt profit collected by resident companies and Italian PEs of foreign entities are fully subject to IRES, at 24% (dividend exemption does not apply). The 26% WHT applied at source is credited against IRES due. In certain circumstances, IRAP is also due, with a rate ranging from 4.65% to about 6.82%.

Capital gains are fully subject to IRES (participation exemption does not apply). In certain circumstances, IRAP is also due, with a rate ranging from 4.65% to about 6.82%.

Non-resident investors

Individual investors

Dividends out of the exempt profit are taxed in Italy by way of the mentioned 26% definite WHT. DTTs regime, if more favourable, is applicable.

Capital gains on 'non-qualified' shareholdings into: (a) SIIQs (listed companies) are not taxable in Italy for the lack of the territoriality requirement; (b) SIINQs (non-listed companies) are subject to a 26% taxation, which may be reduced to nil for residents in the Italian white-list countries or most Treaty countries.

Otherwise, capital gains are taxed at 26% (participation exemption does not apply), unless DTTs provide for lower taxation.

Corporate investors

Dividends out of the exempt profit paid to non-residents (without PE in Italy) are subject to Italian definite WHT of 26%. The WHT rate may be reduced under the applicable DTTs. The benefits of the EU Parent-Subsidiary Directive are not available.

Capital gains on 'non-qualified' shareholdings into: (a) SIIQs (listed companies) are not taxable in Italy for the lack of the territoriality requirement; (b) SIINQs (non-listed companies) are subject to a 26% taxation, which may be reduced to nil for residents in the Italian white-list countries or most Treaty countries. Otherwise, capital gains are subject to tax at 26% (participation exemption does not apply), unless DTTs provide for lower taxation.

Transition to REIT/Tax privileges

Election for SIIQ regime implies the step-up at fair market value of the real estate properties and rights held and relating to the real estate rental business (tax relevance of the step-up is postponed to the fourth following year). Any net built-in gain, in lieu of the ordinary taxation, may be taxed with a 20% substitute tax, potentially payable over a five-year period (with interest). This favourable tax treatment applies only if the assets are retained for at least three years.

This favourable 20% substitute taxation is also provided, in lieu of the ordinary taxation, for capital gains realised upon contribution of real estate properties and rights to SIIQs (and to SIINQs), to the extent that these assets will be held for at least three years. The substitute tax is payable over five years (with interest).

Contributions to SIIQs (and to SIINQs) of pluralities of real estate properties, rented for their majority, should not be subject to other material tax costs other than the above-mentioned taxation in the hands of the contributing entity (i.e. no proportional VAT and transfer taxes).

With regard to indirect taxes due on contributions and sales of real estate properties to SIIQs (and to SIINQs), several reductions are provided.

Moreover, favourable regimes in terms of indirect taxes are provided to facilitate the contribution/assignment to SIIQs of leased real estate properties held by REIFs.

Hiroshi Takagi

PwC (Japan)
Tel: +81 3 5251-2788
hiroshi.takagi@pwc.com

Raymond Kahn

PwC (Japan)
Tel: +81 3 5251-2909
raymond.a.kahn@pwc.com

Japanese REITs (J-REITs) are formed under the Law Concerning Investment Trusts and Investment Corporations (ITL) with a view to managing investments in specified assets, including real estate. Except as may be necessary for context, the term J-REIT means a J-REIT that is listed on the Japanese stock exchange.

Legal form

Under the ITL, there are two different types of investment vehicles: investment trusts and investment corporations. To date, all listed J-REITs have been formed as investment corporations.

Capital requirements

Under the ITL, the minimum share capital of a J-REIT is JPY100 million.

Listing requirements

J-REITs are not required to be listed on a stock exchange. While most J-REITs are listed, private REITs are also very popular in Japan.

J-REITs that are listed on the Tokyo Stock Exchange are subject to Tokyo Stock Exchange Listing Standards (the 'TSE Rules').

Restrictions on investors**Minimum number of investors**

The TSE Rules require that the number of units expected to be held by the lead investor at listing is 75% or less of the total and that there are expected to be at least 1,000 investors other than the lead investor.

Restrictions on non-resident investors

Under the Special Taxation Measure Law (STML), an offer of an investment in the units of the J-REIT has to be made mainly in the domestic market (the 'Domestic Offering Test').

Asset/income/activity tests

Under the TSE Rules, the following listing screening standards are required to be met in relation to the J-REIT's assets (the 'Asset Test'):

- The ratio of real estate in the fund's managed assets is expected to be 70% or more;
- The ratio of real estate, real estate related assets and liquid assets summed together is expected to be 95% or more of the total assets under management;
- Net assets are expected to be at least JPY 1bn; and
- Total assets are expected to be at least JPY 5bn.

In addition, under the STML the activities of a J-REIT are subject to the following restrictions (the 'Activity Test').

- The J-REIT does not engage in any business other than asset management, has not opened any place of business other than its head office and has not hired any employees;
- The J-REIT has outsourced the asset management function to an asset management corporation; and
- The J-REIT has outsourced custody of the assets to a custodian.

Restrictions on foreign assets

The restrictions on investment in foreign assets by J-REITs were lifted on 12 May 2008. To date, one listed J-REIT has acquired foreign assets.

Distribution requirements

Under the STML, a J-REIT must pay out dividends in excess of 90% of its distributable profits to qualify for the dividend payment deduction (the '90% Distribution Test'). On the other hand, the TSE Rules require that the J-REIT maintain net assets of at least JPY 1bn.

Tax treatment at REIT level

Under the STML, dividends paid by a J-REIT to its investors are deductible for corporate tax purposes, provided it satisfies certain requirements. Set out below is a summary of certain requirements deserving special attention.

Requirements relating to the J-REIT:

- One of the following requirements is met:
 - A public offering of JPY 100m or more was made at the time of establishment; or
 - The units of the J-REIT are held by 50 or more investors at the end of each fiscal period, or 100% of the units of the J-REIT are held by institutional investors as defined in the STML;
- The Domestic Offering Test is met; and
- The J-REIT must have an accounting period of one year or less.

Requirements relating to the year of taxation:

- The Activity Test is met;
- The J-REIT is not treated as a family corporation at the end of the fiscal year (a family corporation is defined as a corporation in which a single individual or corporate unitholder (including its related parties) holds 50% or more of the units of the J-REIT);
- The 90% Distribution Test is met;
- The J-REIT does not hold 50% or more of the equity or *tokumei-kumiai* interests in another corporation (excluding the shares in a foreign SPC holding real estate located outside of Japan);
- The value of specified assets listed in Article 2(1) of the ITL excluding renewable energy facilities and concessions for public facilities must be more than 50% of the J-REIT's total asset value; and
- The J-REIT has not obtained loans from parties other than institutional investors as defined in the STML.

Withholding tax on distributions

Dividend distributions paid by a J-REIT to Japanese individual investors and non-Japanese individual investors with a permanent establishment (PE) in Japan ('Individual Investors') whose ownership is less than 3% ('Minor Individual Investors') are currently subject to 20.315% withholding tax (including a local tax portion of 5%). For Individual Investors whose ownership is 3% or more ('Major Individual Investors'), the above withholding tax rate would be 20.42%. Such 20.315% or 20.42% withholding tax on dividend distribution is creditable in full from income tax due upon the filing of an income tax return reporting such dividend income.

Dividend distributions paid by a J-REIT to Japanese corporate investors and non-Japanese corporate investors with a PE in Japan ('Corporate Investors') are currently subject to 15.315% withholding tax. In principle, a portion of such withholding tax is creditable against corporation tax payable or refundable upon the filing of the corporation tax return, if the amount exceeds the tax due.

Dividend distributions paid by a J-REIT to non-resident investors without a PE in Japan ('Non-Resident Investors') are currently subject to 15.315% withholding tax in the absence of an applicable tax treaty. Notwithstanding the foregoing, the above withholding tax rate would be 20.42% for individual Non-Resident Investors whose ownership is 3% or more.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends distributions paid by a J-REIT to Individual Investors are currently subject to 20.315% (including the local tax portion of 5%) or 20.42% withholding tax as described above.

Generally, Individual Investors are required to file an income tax return reporting such dividends as dividend income. In principle, this income is aggregated with the Individual Investor's other income and is subject to income tax at the graduated rate. However, Minor Individual Investors are able to elect

separate assessment taxation in filing such income, in which case the capital loss from the transfer of units in a listed J-REIT can be utilised to offset dividend income arising from listed shares and the balance is currently taxed at 20.315% (including local tax portion of 5%). Individual Investors can credit in full any withholding taxes against their income tax due.

Notwithstanding the above, Minor Individual Investors may elect not to report the income in which case the withholding tax is a final tax; however, in such cases no credit would be available for withholding taxes paid.

Capital gains derived from the transfer of units in a J-REIT are treated as a separate income and are currently subject to Japanese capital gains tax at 20.315% (including a local tax portion of 5%) upon filing.

Corporate investors

Dividend distributions paid by a J-REIT to Corporate Investors are currently subject to 15.315% withholding tax as described above. As the dividend exclusion rule does not apply to dividends paid by a J-REIT, the entire portion of such dividends is subject to corporate tax at a rate of approximately 32%. In principle, a portion of the 15.315% withholding tax on such dividends is creditable against corporation tax payable or refundable upon the filing of the corporation tax return, if the amount exceeds the tax due.

Capital gains derived from the transfer of units in a J-REIT are included in taxable income and subject to Japanese corporate taxes at an effective tax rate of approximately 32%.

Non-resident investors

In the absence of an applicable tax treaty, dividend distributions paid by a J-REIT to Non-Resident Investors are currently subject to 15.315% or 20.42% withholding tax, as described above.

This withholding tax is a final tax and a tax filing is not required.

Capital gains derived from the transfer of units in a J-REIT are generally not subject to Japanese capital gain tax. If a transferor owns more than 5% (in the case of a listed J-REIT), or more than 2% (in the case of a non-listed REIT) of the units in the J-REIT as of the end of the fiscal year immediately prior to the year in which the transfer occurs, however, the gain is subject to Japanese capital gain tax at approximately 25%, unless protected by treaty.

Transition to REIT/Tax privileges

Acquisition tax

A J-REIT is currently entitled to the following concessionary rates:

- 1.6% for the acquisition of a non-residential building;
- 1.2% for the acquisition of residential building; and
- 0.6% for the acquisition of land.

Registration tax

A J-REIT is currently entitled to the concessionary rate of 1.3% of the assessed value for buildings and land.

Luxembourg

Alexandre Jaumotte

Tel. +352 49 4848-5380
alexandre.jaumotte@pwc.com

Nicolas Schulz

Tel. +352 49 4848-4211
nicolas.schulz@pwc.com

Kerstin Boernecke

Tel: +352 49 4848-5468
kerstin.boernecke@pwc.com

Marco Cesa Mascarello

Tel: +352 49 4848-3722
marco.cesa.mascarello@pwc.com

Luxembourg has not yet enacted a REIT regime per se, but the Specialised Investment Fund (SIF) regime enacted on 13 February 2007 has developed into a specialised property fund regime for years. In addition, the law of 23 July 2016 introduced the Reserved Alternative Investment Funds (RAIF). The RAIF has been very popular as a regulatory regime for real estate focused investment funds and presents an alternative to the SIF regime. The main difference between RAIF and SIF is that the RAIF is not subject to the direct supervision of the Luxembourg regulator (*Commission de Surveillance du Secteur Financier*, or CSSF).

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 in order to spread the investment risks and to ensure for the investors the benefit of the results of the management of its assets, and (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 (the SIF Law). 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 discussions amongst the authorities and the market players.

A RAIF adopting the tax and regulatory regime of a SIF shall have the same investment policy as a SIF and its investors shall also be well-informed investors. The RAIF is not directly supervised by the CSSF but it must appoint a manager complying with the AIFM Directive requirements, notably the AIFM shall be supervised in Europe. The RAIF regime allows more flexibility in terms of time to market as there is no pre-approval of the CSSF for launching such fund.

An entity established as a RAIF is also being able to benefit from the existing substance and management of an authorised Luxembourg AIFM.

RAIFs are benefiting from the AIFMD passport under certain conditions to be marketed to professional investors (and retail investors if permitted by the relevant Member States) in the EU.

When a RAIF has been established, it needs to be recorded by notarial deed within a deadline of five days from the establishment of the RAIF.

A notification must be filed, together with an indication of the name of the external AIFM of the RAIF, with the Register of Commerce and Companies within a deadline of fifteen days from the notarial deed attesting the establishment of the RAIF and published on the electronic platform of central publication, the *Recueil Electronique des Sociétés et Associations*.

Legal form

A SIF or a RAIF 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 (subject to conditions) 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 the management regulations of the FCP).

Unitholders are only liable up to the amount contributed by them.

- ii. Investment Company with Variable Capital (*Société d'investissement à capital variable*, or SICAV):
A SIF or a RAIF may be incorporated in the form of a public limited company (*Société anonyme*, or SA), a partnership limited by shares (*Société en commandite par actions*, or SCA), a limited partnership (*Société en commandite simple*, or SCS), a special limited partnership (*Société en commandite speciale*, or SCSp), a private limited liability company (*Société à responsabilité limitée*, or Sàrl) or as a cooperative company organised as a public limited company (*Société coopérative organisée sous forme de société anonyme*, or 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. SIF or RAIF which are neither FCPs nor SICAVs:
This third category is a residual category allowing the formation of a SIF/RAIF 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 a fixed capital (and then referred to as a SICAF).

All of the above fund types may furthermore be organised as single funds or as 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 a 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/RAIF. In addition to the umbrella structure, it is also possible to create various classes of units or shares in a SIF/RAIF 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.

Capital requirements

The minimum capitalisation for a real estate SIF/RAIF is EUR 1.25 million. This minimum must be reached within 12 months from the authorisation the SIF (or of the launch for a RAIF), 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/RAIF, this minimum capital requirement applies to the SIF/RAIF as whole and not to a single compartment.

Listing requirements

There are no mandatory listing requirements to fulfil in order to achieve SIF/RAIF eligibility.

Restrictions on investors

Units, shares and other securities

issued by SIFs/RAIFs are reserved to '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 well-informed investor, and
- b. (i) invests a minimum of EUR 125,000 in the SIF/RAIF, 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/RAIF.

Asset/income/activity tests

A SIF/RAIF may invest into 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/RAIF, (ii) participations 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 tenancing 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 and RAIF 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 its 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 or (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 cases of SIFs with specific investment policies.

Distribution

There are no profit distribution obligations or restrictions applicable to SIFs/RAIFs 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.

Tax treatment at SIF/RAIF level

Luxembourg specialised real estate funds are fully exempt from 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 exempt from withholding tax upon dividend distribution, capital reduction, interest payment, etc.

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.

As such, no capital duty will be levied on the issuance of shares or increase in capital. That being 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).

Specialised real estate funds owning Luxembourg real property may be subject to certain real estate taxes and transfer taxes in Luxembourg.

Based on established Luxembourg VAT administrative practice, Luxembourg regulated funds are considered as 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 or owning and letting immovable property subject to Luxembourg VAT.

Management services provided to a Luxembourg specialised real estate fund in principle are exempt from Luxembourg VAT.

Luxembourg

Withholding tax on distributions

Dividend distributions made by a specialised real estate fund are not, in principle, subject to dividend withholding tax.

Tax treatment at the investor level

Resident investors

Individual investors

Income and profit received by an individual domestic shareholder from a Luxembourg specialised real estate fund are not, in principle, subject to Luxembourg withholding tax.

Interest paid by the fund to an individual domestic shareholder managing his or her own private wealth is not subject to 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 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.

Corporate investors

A corporate domestic shareholder will be fully subject to tax on any income derived from a Luxembourg specialised real estate fund in the form of a corporate entity. Therefore dividends, capital gains and return of capital received by such shareholder 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 2019).

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, but not to the extent the corporate shareholder could apply the participation exemption (by tax transparency) 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 at a rate of 0.5%, in principle, shares and units in a Luxembourg specialised real estate fund in the form of a SICAV or SICAF are fully subject to net wealth tax. Units in FCP or SCS (including SCSp) in the form of a specialised real estate fund are in principle also subject to net wealth tax, but not to the extent the corporate shareholders could apply the Luxembourg participation exemption (by tax transparency) on a double taxation treaty to the fund's underlying investments if applicable.

Non-resident investors

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 taxes in Luxembourg.

Jennifer Chang

PwC (Malaysia)

Tel: +60 3 2173-1828

jennifer.chang@pwc.com

The Malaysian REIT industry started off a property trust fund in 1989. The term REIT was subsequently adopted, and the industry grew with an increasing number of listed REITs.

REITs in Malaysia can be sector specific (e.g. industrial, offices, etc.) or diversified. Malaysia saw the establishment of its first Islamic REIT in 2005.

While the Malaysian REIT market is still relatively small and untapped compared to other regional markets such as Singapore or Australia, it is expected to continue growing. As of 31 December 2018, there are 18 listed REITs, four of which are Islamic funds.

REITs in Malaysia are principally governed by the Securities Commission of Malaysia (SC). Malaysian REITs are managed by management companies approved by the SC, while properties are held by appointed trustee(s).

Legal form

Malaysian REITs are governed by general trust law. Trusts are not separate legal entities, but are generally a set of obligations accepted by a trustee in relation to the properties held in trust for beneficiaries.

Capital requirements

The initial size of a REIT should be at least MYR 100m (approximately EUR 22m as of September 2019). The SC, however, reserves the right to review the reasonableness of the REITs size.

Listing requirements

Only REITs registered with the SC are allowed to be listed on Bursa Malaysia.

Restrictions on investors

Minimum number of investors

There is no minimum requirement on the number or composition of units that must be subscribed to.

Restrictions on non-resident investors

There are no restrictions on non-resident unitholders of REITs.

Asset/income/activity tests

A REIT may only invest in the following assets:

- Real estate;
- Single-purpose companies;
- Real estate-related assets;
- Non-real estate-related assets; and
- Cash, deposits and money market instruments.

At least 50% of the REITs total asset value must be invested in real estate and/or single-purpose companies at all times. Investment in non-real estate related assets and/or cash, deposits and money market instruments must not exceed 25% of the REITs total asset value.

REITs are not permitted to extend loans or any other credit facilities; or develop properties; or acquire vacant land.

Listed REITs may only invest in real estate, non-real estate-related assets and cash, deposits and money market instruments and at least 75% of the fund's total asset value must be invested in real estate at all times.

All real estate acquired by REITs must be insured for full replacement value, including loss of rental, where appropriate, with insurance companies approved by the trustee.

Restrictions on foreign assets

There are no restrictions on the acquisition of foreign assets.

Borrowing or financing facilities

REITs may issue debt securities or Sukuk through a wholly owned special purpose vehicle. However, the total borrowings of a REIT should not exceed 50% of total asset value.

Distribution requirements

Distribution of income should only be made from realised gains or realised income. There is no minimum requirement on how much REITs have to distribute to unitholders.

Tax treatment at REIT level

The taxation of a REIT depends on the amount of income that is distributed to unitholders. If a REIT distributes 90% of its taxable income, tax transparency rules will apply, and the REIT would not be subject to corporate income tax. If this 90% condition is not met, the REIT would be subject to tax at the prevailing corporate income tax rate of 24%. General deductibility rules would apply to the REIT.

Withholding tax on distributions

Where a REIT has been taxed for a year of assessment (i.e. failed to meet the 90% distribution requirement for tax transparency), the income distributed to investors would have tax credits attached to them. Resident investors can set off such tax credits against their own tax payable on such distributions received. Non-resident investors will not be subject to any further tax or withholding tax.

Where tax transparency has been achieved, the REIT does not pay income tax. Distributions made to investors will instead (except for resident companies) be subjected to a withholding tax mechanism which is a final tax. The rates of withholding tax are:

WHT rates

| Category | WHT rate |
|---|--|
| Individuals and all other non-corporate investors such as institutional investors (resident and non-resident) | 10% up to YA 2019 |
| Non-resident corporate investors | 24% |
| Resident corporate investors | No withholding tax deducted for resident companies which pay corporate tax |

Tax treatment at the investor level

There is no capital gains tax regime in Malaysia for the sale of shares or marketable securities. Normally, gains received by investors from disposal of REIT units will be treated as capital gains and not subject to income tax. The exception would be financial institutions and investment dealing companies where such gains are treated to be revenue in nature and subject to normal income tax.

Tax transparency applies

Resident individual and all other non-corporate resident investors

Where a REIT is treated as tax transparent and no tax is paid, individuals and all other non-corporate investors such as institutional investors (resident) are subject to a final withholding tax of 10% up to year of assessment (YA) 2019. The withholding tax imposed is a final tax and individual as well as non-corporate resident unitholders need not declare the income received from the REIT in their income tax returns.

Resident corporate investors

Where a REIT does not pay corporate income tax, resident corporate investors would have to file tax returns and declare such REIT income which is taxed at 24%.

Non-resident individual investors

Where the REIT is not subject to income tax due to tax transparency, individual unitholders are subject to a final 10% withholding tax up to YA 2019.

Non-resident non-corporate investors

Where corporate income tax has not been levied at the REIT level, non-resident institutional investors (i.e. pension funds and collective investment schemes or such other person approved by the Minister of Finance) are subject to a final withholding tax of 10% up to YA 2019.

Non-resident corporate investors

Non-resident corporate investors are subject to final withholding tax of 24% on distributions that have not been taxed at the REIT level.

Tax transparency does not apply

Resident individual and all other non-corporate resident investors

Where income tax is paid by the REIT, individual and non-corporate resident unitholders would be entitled to a tax credit.

Resident corporate investors

Where tax has been levied at REIT level, the resident corporate investors are entitled to tax credits.

Non-resident individual investors

Individual non-resident unitholders who receive distributions from REITs which have paid corporate income tax would not be subject to any further Malaysian tax. Where individual non-resident unitholders are subject to income tax in their respective jurisdictions, depending on the provisions of their country's tax legislation, they may be entitled to tax credits paid by the REIT.

Non-resident non-corporate investors

Distributions to non-resident institutional investors which have been taxed at the REIT-level would not suffer further income tax, and depending on the provisions of their country's tax legislation, they may be entitled to tax credits paid by the REIT.

Non-resident corporate investors

Where the tax has been levied at REIT level, no further taxes or withholding tax would be applicable to non-resident corporate investors. They may be subject to tax in their respective jurisdictions, depending on the provisions of their country's tax legislation, they may be entitled to tax credits paid by the REIT.

Tax incentives to REITS

Other tax incentives include exemptions from stamp duty in respect of all instruments of transfer of real property and instruments of deed of assignments to REITs; exemption from real property gains tax (RPGT); and allowable deductions on establishment expenditure incurred by REITs.

Malaysia

Disposals of properties by REITs subsequently will be subject to RPGT. The chargeable gain on disposal of chargeable asset from the date of acquisition would be taxed as follows:

| RPGT rates | |
|---|------------------------------|
| Holding period | RPGT rate (1/1/2019 onwards) |
| Disposal within 3 years of acquisition | 30% |
| Disposal in the 4th year of acquisition | 20% |
| Disposal in the 5th year of acquisition | 15% |
| Disposal in the 6th and subsequent years of acquisition | 10% |

Exempt income

Since REITs are considered to be unit trusts, tax exemption is available on certain income including interest or discount income from the following investments:

- Securities or bonds issued or guaranteed by the Government;
- Debentures or Islamic securities, other than convertible loan stocks, approved by the Securities Commission (SC);
- Bon Simpanan Malaysia issued by Bank Negara Malaysia;
- Interest income from Islamic securities originated in Malaysia, other than convertible loans stock issued in any currency other than Ringgit Malaysia and approved by the SC and Labuan Offshore Financial Services Authority; and
- Bonds and securities issued by Pengurusan Danaharta Nasional Berhad.

Interest paid or credited by any bank or financial institution licensed under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983 are tax exempted.

Offshore sourced income received by the REIT from overseas investment will also be tax exempted.

The income exempted from tax at REIT level will also be exempted from tax upon distribution to Unitholders.

Mexico

David Cuellar

PwC (Mexico)
Tel: +52 55 5263-5816
david.cuellar@pwc.com

Mario Alberto Gutiérrez

PwC (Mexico)
Tel: +52 55 5263-5827
mario.alberto.gutierrez@pwc.com

Mario Alberto Rocha

PwC (Mexico)
Tel: +52 55 5263-8602
mario.alberto.rocha@pwc.com

Marco Nava

PwC (Mexico)
Tel: +52 55 5263-5894
marco.nava@pwc.com

Mexican REITs continue growing as a potential vehicle while doing business in Mexico and are becoming more popular for public investors as well as real estate developers and operators. With the objective of fostering investment in real estate infrastructure in Mexico, a number of provisions were incorporated into the Mexican Income Tax Law (MITL) since 2005, which established the requirements for a trust to receive a particular – beneficial – tax treatment. Additionally, as a consequence of the Mexican energy reform in 2014 (where many sectors of the energy power generation were opened to private investors before exclusively operated by the Mexican government), the Mexican tax authorities introduced a new variation of REIT for hydrocarbon, electricity and other public infrastructure activities known as FIBRA-E (REIT-E) that would have similar benefits than the regular REIT.

Mexican REITs were welcomed by Mexican investors. However, investors remain cautious for using this kind of platform in order to raise new investments in Mexico. Now, there are around 15 Mexican REITs (FIBRAS) listed on the Mexican Stock Exchange. On the other hand, the first Mexican REIT-E listed on the Mexican Stock Exchange was put in place in October 2016 and now there are around 3 Mexican REIT-E listed.

The Mexican Stock Exchange Market has intensified the promotion of public REITs in Mexico. In 2019, there are around 11 REITs and 3 REIT-E listed in the Mexican Stock Exchange Market that were created to develop different infrastructure/energy projects in Mexico and they continue growing.

Legal form

Mexican REITs can only have the legal form of trusts, incorporated under Mexican laws, and with a Mexican resident credit institution acting as trustee.

Mexican corporations or limited liability companies incorporated under Mexican laws are not eligible for REITs tax treatment.

Capital requirements

There are no specific capital requirements for Mexican REITs.

At least 70% of the equity of the Mexican REIT should be invested in real estate projects (or rights derived from them). The surplus of such equity (the other 30%) should be invested in government bonds or debt instruments issued by Mutual Funds.

Listing requirements

Mexican REITs should be listed on the Mexican Stock Exchange. It is possible to have a privately funded Mexican REIT, but it will not have access to all the tax benefits available for public Mexican REITs.

Restrictions on investors

Minimum number of shareholders

Participation certificates for the goods that are part of the Mexican REITs equity are issued by the trustee. These certificates must be publicly traded or acquired by a group of investors formed by at least ten unrelated parties, whereby none of them may individually hold more than 20% of the total amount of the certificates issued.

Restrictions on foreign shareholders

There are no specific restrictions on foreign shareholders.

Asset/income/activity tests

The Mexican REITs main purpose must be the construction or acquisition of real estate intended for lease (and possible subsequent alienation), the acquisition of the right to obtain revenues from such leases and the granting of financing for said purposes guaranteed by the assets.

As previously mentioned, the Mexican REIT must invest at least 70% of its equity in real estate or rights derived from it. The other 30% should be invested in government bonds or debt instruments issued by Mutual Funds.

The real estate acquired or developed must be leased and owned for a period of at least four years after the date on which such real estate was acquired or developed before alienating it. Mexican REITs are not allowed to have investments in subsidiaries.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

The Mexican REIT must distribute at least once per year before 15 March, at least 95% of its prior year's taxable income to its holders.

Tax treatment at REIT level

The taxation of Mexican REITs income occurs at the holder level. The trustee will determine the taxable income according to the general rules provided in the MITL, considering the income generated by the Mexican REITs assets.

Once determined, the taxable income will be divided between the number of participation certificates issued by the trust to determine the amount of the taxable income that corresponds to each holder.

Lastly, the trustee will withhold the corresponding income tax from the amount of the distribution made to each holder by applying the 30% tax rate (applicable for 2017).

Please note that when the FIBRA participation certificates are publicly traded, the financial intermediary having the custody of the certificates should be the person in charge of withholding the corresponding income tax.

When the Mexican REIT certificates are publicly traded and sold on a recognised stock market, foreign resident individual holders will be exempt from Mexican income tax on the sale of such certificates.

Withholding tax on distributions

Starting from 1 January 2014; profits distributed by a Mexican entity and/or business trusts to a foreign resident or Mexican individuals would be subject to a 10% withholding tax rate in Mexico on the gross proceeds.

It has to be analysed in detail on a case by case basis whether or not a REIT should be subject to the 10% withholding tax on profit distributions.

Tax treatment at the investor level

Resident investors

Individual investors

Mexican resident individuals will consider the income received from the Mexican REIT as income arising from certificates in immovable property. They will accrue the total amount of the taxable income related to their participation certificates, without claiming a deduction for the income tax withheld by the trustee. Such income tax will be creditable against their income tax liability of the corresponding year.

With regard to capital gains derived from the disposal of the Mexican REIT certificates, Mexican resident individual holders will be subject to Mexican income tax on the gain arising from the sale of the certificates in the Mexican REIT. The gain will be the difference between the sale price of the certificates and their tax basis.

When the Mexican REIT certificates are publicly traded and sold on a recognised stock market, Mexican individual holders will be exempt from Mexican income tax on the sale of such certificates.

Corporate investors

Mexican resident corporate holders must accrue the total amount of the taxable income related to their participation certificates, without claiming a deduction for the income tax withheld by the trustee. Such income tax will be creditable against their income tax liability of the corresponding year. Holders that are exempt from Mexican income tax with respect to the income generated by the trust should not accrue said income.

Capital gains derived from the disposal of the Mexican REIT certificates will be taxable in Mexico on the gain arising from the sale of the certificates in the Mexican REIT. The gain should be the difference between the sale price of the certificates and their tax basis.

Non-resident investors

Individual investors

Non-resident individuals holding Mexican REIT certificates will consider the withholding carried out by the trustee as a final income tax payment. For the case of capital gains from the disposal of a Mexican REIT certificates, the buyer must withhold and remit to the tax authorities the income tax related to the transaction. The MITL provides a 10% withholding rate on the gross amount of the sale.

This will not apply to the extent the foreign resident seller is exempt from income tax on the income arising from the Mexican REITs assets (e.g. some pension funds). Additionally, when the Mexican REIT certificates are publicly traded and sold on recognised stock markets, non-resident individual investors will be exempt from Mexican income tax on the sale of such certificates.

Transition to REIT/Tax privileges

The specific tax incentives for Mexican REITs include:

- Deferral of the income tax on the contribution of real estate to a Mexican REIT. The holders of the Mexican REIT certificates should consider as taxable income the gain on such contribution until they sell the corresponding certificates, or the Mexican REIT sells the real estate contributed by the holders. The deferred gain should be restated by inflation as from the moment in which the real estate was contributed into the Mexican REIT until the moment in which the certificates or the real estate are sold.
- The Mexican REIT is not obliged to file monthly estimated advanced income tax. This results in no cash disbursements for income tax until the moment in which the annual tax return is filed.
- Foreign resident pension funds investing in a Mexican REIT will be exempt from Mexican income tax on the amount related to their investment, to the extent such funds are exempt from income tax in their country of residence and they demonstrate it before the Mexican tax authorities, provided several conditions are met.
- Foreign resident investors (individual and corporate) will be exempt from capital gains deriving from the sale of Mexican REIT certificates that are publicly traded and sold in a recognised stock market.

REIT-E

- The corporate purpose of a REIT-E is to invest in Mexican entities (qualifying entities) which, among other requirements and characteristics, are engaged exclusively in the following activities (or a combination of such activities) as included in the miscellaneous regulations, among others, the following:
 - a. Activities included in the Mexican Hydrocarbons Law, among other, energy related activities.
 - b. Activities such as the transport, storage and distribution of hydrocarbons.
 - c. Activities related to the generation, transfer or distribution of electric energy.
 - d. Infrastructure projects carried through concessions, service contracts or other contractual schemes, to the extent the aforementioned contracts are celebrated between the public and private sector currently under operation (subject to some limitations) in any of the following concepts: roads, railroads, transport facilities, backbone network communication structure, public security and social rehabilitation facilities, drinking water, drainage system and water-waste treatment facilities.
 - e. Managing other Energy and Infrastructure Trusts.

Please note that the beneficial tax treatment is substantially the same as the one included for regular REITs. However, unlike a REIT which must maintain its assets directly, the REIT-E will instead hold qualifying Mexican entities that own and operate the assets. Note that the qualifying Mexican tax resident entities in which the REIT-E participates would also be relieved from filing monthly income tax returns.

In order to make it possible for the REIT-E structure not to result in double taxation, the MTR grant tax transparency to the entities held by the REIT-E, in other words, the qualifying entities are treated as if they were part of the trust, but subject to the compliance of the several requirements. In this regard, such entities would be regarded as pass-through entities for Mexican income tax purposes. Distributions made by the qualifying entity should not be subject to the 10% income tax withholding that would normally be applicable to distributions made to non-resident investors.

Finally, it is important to consider that when a REIT-E acquires the shares of a qualifying Mexican entity for the first time, the fiscal year of such portfolio company would be considered to have ended and a new short fiscal year to which the special REIT-E tax regime would apply will begin on the following day and run until 31 December of the same calendar year. Note that at the moment of the acquisition of shares by the REIT-E, the monetary assets of the qualified portfolio company should not represent more than 5% of its total assets, or otherwise, such monetary assets would be deemed to be proportionally distributed as a reimbursement to its previous shareholders.

Miscellaneous regulations

It is important to consider that several Miscellaneous regulations have been issued by the Mexican tax authorities to rule some of the participants of the Mexican REIT, such as the credit institution acting as trustee, or the financial intermediary holding the certificates for publicly traded Mexican REIT. Also other specific rules have been issued regarding Mexican REITs engaged in the hospitality industry that must be analyzed in detail before implementation.

New Zealand

Mark Russell

PwC (New Zealand)
Tel: +64 21 568-444
mark.r.russell@pwc.com

Helen Johnson

PwC (New Zealand)
Tel: +64 27 501-9007
helen.n.johnson@pwc.com

The New Zealand real estate investment market is well established. Listed real estate funds have over \$13Bn of assets under management and are continuing to be a significant growth area in the New Zealand market. There is also considerable investment in unlisted real estate fund vehicles in New Zealand.

Legal form

There are no specific REIT rules in New Zealand. New Zealand REITs are a mixture of limited liability companies and unit trusts. New Zealand REITs can be sector specific (eg, industrial, office, etc) or diversified funds.

For income tax purposes, most REITs are Portfolio Investment Entities (PIEs). These rules were introduced in 2007 and govern the tax treatment of investment vehicles in New Zealand, including REITs. A company that satisfies certain ownership and activity requirements is able to elect into the PIE regime. The PIE regime has specific tax rules that are aimed to benefit investors.

A REIT that is a PIE can be one of two forms of PIE, a "Listed PIE" or a "Multi-Rate PIE" (MRP).

Capital requirements

There are no specific capital requirements for a REIT (if listed, however, the REIT must meet NZX requirements).

Listing requirements

There are no listing requirements. A REIT can be listed or unlisted. The majority of the REIT sector is listed.

Restrictions on investors

There are no specific investment restrictions for investors for REITs. However, in order for a REIT to qualify as a PIE, there are restrictions on investors holding a material investment in the vehicle. Broadly, the REIT must have 20 or more investors and no single investor can hold an interest greater than 20%. However, there are concessions to these requirements for investors that are themselves widely held investment vehicles or controlled by such vehicles.

Where a REIT has 25% or more of its shareholders that are not resident in New Zealand, approval to own or acquire land is required from the Overseas Investment Office where any of the land is regarded as sensitive or the size of the land holdings exceeds certain thresholds.

Asset/income/activity tests

There are no asset, income or activity tests to be a REIT. However, to qualify as a PIE 90% or more of assets must be designated "passive" investments, including land. In addition, 90% or more of income must be from designated "passive" sources, including rental income and proceeds from selling land.

Restrictions on foreign assets

There are no restrictions on a NZ REIT holding foreign assets.

Distribution requirements

There are no requirements to distribute earnings at a particular time (eg, annually). Also, if a REIT has elected to be a PIE, its tax obligations are generally not impacted by the timing of distributions.

New Zealand

Withholding tax on distributions

- Listed PIE:
 - NZ resident investors: no withholding tax.
 - Non-NZ resident investors: no withholding tax
- MRP:
 - NZ resident investors: No withholding for institutional investors, however for direct investment by individuals, tax on the underlying income is paid by the REIT at rates between 10.5 and 28%.
 - Non-NZ resident investors: No withholding, however tax on the underlying income is paid by the REIT at 28%.
- Not a PIE:
 - NZ resident investors: withholding is required at 5% for income on which tax has been paid and 33% for income on which tax has not been paid.
 - Non-NZ resident investors: No withholding to the extent underlying income tax has been paid. Distributions on which tax has not been paid are subject to withholding tax at 30% (usually reduced by any relevant tax treaty to 15%).

Tax treatment at the investor level

New Zealand does not have a capital gains tax. Therefore, provided investors are holding their investment in the REIT on capital account, there should not be New Zealand tax on the disposal of an investment interest in a REIT. The tax treatment of distributions is set out below.

- Listed PIE:
 - NZ resident investors: distributions are not liable to tax, however to the extent an individual or family trust receives a tax paid distribution this can be included in a tax return to offset tax credits against other income.
 - Non-NZ resident investors: no tax
- MRP:
 - NZ resident investors: For individuals tax applies to the investors share of underlying income at rates between 10.5 and 28%, paid by the REIT. Companies and most trusts treat their share of underlying income as taxable.
 - Non-NZ resident investors: Tax applies on the underlying income at 28% which is paid by the REIT.
- Not a PIE:
 - NZ resident investors: distributions are taxable with a credit for underlying tax paid by the REIT and any withholding tax deducted.
 - Non-NZ resident investors: only subject to withholding tax (see above).

Transition to REIT/Tax privileges

Not applicable

Singapore

Lim Maan Huey

PwC (Singapore)

Tel: +65 9734 0718

maan.huey.lim@pwc.com

Lennon KL Lee

PwC (Singapore)

Tel: +65 8182 5220

lennon.kl.lee@pwc.com

The REIT regime in Singapore was officially launched in 1999, although the first Singaporean REIT (S-REIT) was listed on the Singapore Exchange (SGX) in 2002.

The S-REIT market has grown exponentially in the last few years and has established itself as one of the largest in Asia (excluding Japan). To date, 44 S-REITs and Property Trusts are listed on the SGX. The total market capitalisation of S-REITs is approximately USD 100bn as at 31 October 2018. We expect to see more listings on the Singapore Exchange as Singapore has grown to be a popular and marketable location for REITs.

Multiple factors fueled the accelerated growth of the S-REIT market. On the regulatory front, a strong framework and comprehensive investment guidelines for property funds were put in place to instill confidence in the S-REIT industry. The tax regime was also crafted to confer attractive tax concessions to S-REITs in terms of flow-through treatment for certain classes of income, exemption of specified foreign income, stamp duty remission on property transfers, etc.

Legal form

In Singapore, a S-REIT is constituted as a unit trust and is governed by the Collective Investment Scheme regime.

Capital requirements

A listed S-REIT must have a minimum market capitalisation of SGD 300m based on issue price and post-invitation issued share capital when seeking a listing.

Listing requirements

Although S-REITs can be listed or unlisted, listing is necessary to qualify for tax concessions.

Restrictions on investors

Minimum number of investors

For listed S-REITs denominated in Singapore dollars, at least 25% of the share capital or units must be held by a minimum of 500 public shareholders. For S-REITs denominated in foreign currencies, the 'spread of holders' requirement must be complied with.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

A S-REIT, being a property fund, is bound by the Code on Collective Investment Schemes (the 'Code') and the Property Fund Guidelines (PFG) appended to the Code.

The scope of investments which a

S-REIT is allowed to make is restricted to the following types of 'permissible investments':

- Real estate in or outside Singapore
- Real estate-related assets
- Debt securities and listed shares of non-property corporations
- Securities issued by a government, supranational agency or Singapore statutory board and
- Cash and cash equivalents.

Moreover, a S-REIT is also subject to the restrictions in terms of its investment activities including:

- At least 75% of the deposited property should be invested in income-producing real estate;
- The fund should not undertake property development activities or invest in unlisted property development companies unless it intends to hold the developed property upon completion;
- The fund should not invest in vacant land or mortgages (except for mortgage-backed securities);

Singapore

- The total contract value of property development activities and investments in uncompleted property developments should not exceed 10% of the value of deposited property (this limit can be increased to 25% subject to certain conditions); and
- Not more than 5% of the deposited property should be invested in any one issuer's securities or manager's funds.

Restrictions on foreign assets

There are no restrictions on the ownership of foreign assets.

Distribution requirements

Strictly, there is no legal or regulatory requirement for a S-REIT to distribute any predetermined percentage of its income as distributions for a given financial year.

However, in order to enjoy tax transparency treatment, a S-REIT will be required to distribute at least 90% of its 'Taxable Income' in a financial year. 'Taxable Income' refers to the following:

- 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 and Singaporean dividends;
- c) Income (excluding Singaporean dividends) 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 in relation to any immovable property, that 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; and
- e) Distributions from an approved sub-trust of the real estate investment trust out of income referred to in (a), (b) and (c) above.

Tax treatment at REIT level

Subject to obtaining the necessary approvals from the Inland Revenue Authority of Singapore (IRAS), a S-REIT can enjoy 'tax transparency' treatment for taxable income distributed to its unitholders. Under this treatment, the trustee will not be taxed in respect of the S-REIT's income. Instead, tax (if any) is levied only at the level of the unitholder. Any portion of the specified income not distributed will be assessed to a final tax at the trustee level.

Foreign-sourced dividend income received by a S-REIT may be exempt from tax under section 13(8) of the Income Tax Act (ITA), provided certain qualifying conditions are met. If the foreign-sourced dividend income does not qualify for the section 13(8) exemption, or if the foreign income is not dividend income (e.g. interest income on shareholders' loans), the S-REIT may apply to the IRAS for tax exemption under section 13(12) of the ITA for qualifying foreign-sourced income that is received in Singapore on or before 31 December 2025.

Rental and related income derived by a S-REIT will likely be treated as income derived from the business of the making of investments in accordance with section 10E of the ITA. These provisions do not allow the carry forward or set-off of any tax losses or unused tax depreciation for a particular year of assessment.

Singapore

Withholding tax on distributions

Distributions out of taxable income

No tax will be withheld on distributions to the following unitholders:

- Individuals;
- Companies incorporated and resident in Singapore;
- Branches in Singapore that have obtained approval to receive such distributions without deduction of tax; and
- A body of persons constituted or registered in Singapore.

Tax will be withheld at 10% on distributions to non-resident non-individuals from 18 February 2005 to 31 December 2025. It has been proposed in Budget 2019 that certain funds which are managed by Singapore based fund managers in Singapore would similarly be subject to the above mentioned 10% withholding tax instead of the 17% tax rate. Tax will be withheld at the prevailing corporate tax rate (currently 17%) on distributions to all other persons.

Distributions out of other income

Distributions made by a S-REIT out of the following will be exempt from Singaporean tax in the hands of all unitholders:

- Income taxed at the trustee level;
- Capital gains;
- Income originating from the holding of foreign properties, which is exempt under sections 13(8) or 13(12) of the ITA; and
- Dividends from Singaporean companies.

Tax treatment at the investor level

Resident investors

Individual investors

Distributions made by a S-REIT to individuals will be exempt from Singaporean income tax unless the distributions are made out of taxable income and they receive the distributions as their trading income or through a partnership, in which case the distribution will be subject to income tax at the prevailing rate.

Any gain derived by unitholders from the sale of their units 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. Unitholders who trade or deal in investments will be subject to tax on any gain derived from the disposal of the units.

Corporate investors

Distributions by a S-REIT out of taxable income to companies incorporated and resident in Singapore are subject to Singaporean income tax at the prevailing corporate tax rate (currently 17%). Distributions out of other income as specified above will be exempt from tax.

Non-resident investors

Individual investors

As above, distributions made by a S-REIT to individuals will be exempt from Singaporean withholding tax.

Corporate investors

Distributions by S-REITs to non-individual persons who are not tax resident in Singapore and either do not have a permanent establishment (PE) in Singapore or, where they carry out operations through PEs in Singapore, do not use funds from these operations to acquire units, will be subject to 10% withholding tax (for distributions made on or before December 2025). This tax is a final tax.

Singapore

Although Singapore has concluded a wide network of tax treaties, S-REITs will in reality find it difficult to access the benefits provided under these treaties because the IRAS, as a matter of policy and practice, has been reluctant to certify a S-REIT as a Singaporean tax resident for tax treaty purposes.

Other taxes

Stamp duty

The sale or transfer of immovable property located in Singapore is subject to up to 3% stamp duty (for non-residential properties), and up to 4% stamp duty (for residential properties), on the purchase consideration, or the market value of the asset, whichever is higher. This stamp duty is generally referred to as Buyer's Stamp Duty (BSD). Additional Buyer's Stamp Duty (ABSD) and Seller's Stamp Duty (SSD) are introduced as measures to cool the Singapore property market in respect of certain types of properties.

ABSD is imposed in addition to the BSD and applies to direct purchases of Singapore residential property. ABSD for entities (i.e. non-individuals) is imposed at 15% (for Contracts, Agreements, or Documents of Transfer dated on or after 12 January 2013 to 5 July 2018), or 25% (for Contracts, Agreements or Documents of Transfer dated on or after 6 July 2018). Housing developers may apply for remission of the 25% ABSD. However, an additional 5% ABSD (non-remittable) will apply to property developers.

SSD is imposed at 5% to 15% (depending on how long the seller has held the property for) for transfers of Singapore industrial property, which were acquired by the seller on or after 12 January 2013 and sold/disposed within three years. For transfers of Singapore residential property, SSD of 4% to 12% (depending on when the seller acquired the property and how long the seller held it for) generally applies for properties acquired on or after 11 March 2017 if a property is held by the seller for three years or less. In addition, for residential properties acquired on and after 11 March 2017, no SSD is payable on disposal if the properties are held for more than three years.

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 its net asset value, whichever is higher.

Additional conveyance duties (ACD) may apply to buying or selling of shares or units (equity interest) on or after 11 March 2017 in property-holding entities (PHEs) that own primarily residential properties in Singapore. With effect from 6 July 2018, ACDB rate of up to 34% may apply on an instrument, while an ACDS flat rate of 12% applies. The ACD provision applies to the purchase or sale of equity interests acquired within three years on or after 11 March 2017 by persons or entities who are significant owners of the PHE or who become one after the purchase.

The transfer of REIT units listed on the SGX is not subject to Singapore stamp duty. If the sale or transfer of the listed REIT units is conducted through a private arrangement involving an instrument of transfer, no Singapore stamp duty will be imposed if the Trust Deed provides that the Unitholders do not have any beneficial interest in the REIT's assets, and the REIT's trustee has both legal and beneficial ownership of the REIT's assets.

Good and Services Tax (GST)

A REIT can be registered for GST (Singapore VAT) in Singapore. Once registered, the REIT has to charge GST (at the prevailing rate of 7%) on the rental and related income derived from its property holding, property management, and related activities. This is termed as Output GST, which the REIT has to collect and remit to the IRAS, net of any Input GST. Input GST refers to GST incurred by a REIT on its expenses such as management fees, statutory audit and tax fees, property maintenance expenses, IPO-related expenses, etc.

Singapore

A GST concession is available whereby S-REITs that derive primarily dividend income or distributions (which are not taxable supplies for GST purposes) can claim input tax on business expenses incurred between 17 February 2006 and 31 December 2025. This concession is subject to certain conditions but is available regardless of whether the S-REIT can be registered for GST purposes.

To facilitate fundraising by S-REITs through the use of special purpose vehicles (SPVs), 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 from 1 April 2015 to 31 December 2025 to set up the SPVs as well as the GST on the business expenses of such SPVs.

South Africa

Kyle Mandy

PwC (South Africa)

Tel: +27 (11) 797-4977

kyle.mandy@pwc.com

The South African REIT Market is still in its infancy, having only commenced on 1 May 2013. Previously, a proxy regime was conducted through a combination of property unit trusts (unlisted mutual funds) and listed property loan stock companies using stapled securities.

With effect from 1 May 2013, a formalised REIT Regime commenced in South Africa, bringing a sense of familiarity to foreign investors owing to the fact that the South African REIT regime attempts to mirror international best practice. The South African REIT regime is mainly based on the NAREIT in the US and EPRA in Europe.

A South African REIT refers to a company (as defined in the Income Tax Act No. 58 of 1962 (the Income Tax Act) that owns and operates income-producing immovable property and the shares are listed on an exchange as defined in section 1 of the Financial Markets Act No. 19 of 2012 (the "Financial Markets Act") and is licensed under section 9 of the Financial Markets Act. Furthermore, the shares must be listed as shares in a REIT as defined in the listing requirements of an exchange and such listing requirements must meet the requirements in terms of section 11 of the Financial Markets Act.

The regime is essentially designed to provide for a 'flow-through' structure that results in distributions being taxable in the hands of a shareholder.

In order to achieve this 'flow-through structure', section 25BB of the Income Tax Act regulates the taxation of South African REIT's and, provides for the deduction of dividends declared by a REIT or interest incurred in respect of debentures on linked units issued by a REIT, including an exemption from capital gains tax in certain instances.

The dividends distributed by a REIT do not qualify for the dividend exemption in the hands of the shareholder unless it is distributed to a non-resident (in which case such dividends are subject to a dividend withholding tax as a final tax). A South African tax resident shareholder is generally taxed on the dividends received from a REIT (in which case no dividends tax is imposed on such distribution) unless the shareholder is itself exempt from income tax, for example a pension fund.

Furthermore, a REIT does not qualify for capital allowances on fixed property.

It should also be noted that certain income (e.g., income from financial instruments) will still be taxed as ordinary revenue in the hands of the REIT unless the REIT is able to distribute a matching amount which qualifies as a deduction for income tax purposes.

Legal form

There are two types of South African REIT's, namely "Company REIT's" and "Trust REIT's". Both types are, however, treated in an identical manner as companies for tax purposes.

Key characteristics of a Company REIT are:

- the name will end with 'Limited' or 'LTD' and it will also have a company registration number;
- the shareholders are active participants and enjoy the full protection of the Companies Act and Takeovers Regulations Panel;
- the shareholders can vote on specific issues in general meetings;
- shareholders vote for the company to qualify as a REIT;
- the company has the REIT Structure recorded in its memorandum of incorporation;
- the company directors are responsible for its ongoing compliance with the listing requirements of the relevant stock exchange and the Companies Act; and
- the company can have external or internal management and/or property administration.

South Africa

The key characteristics of a Trust REIT are:

- investors' interests are protected by a trust deed and the trustee, whose role it is to ensure compliance with the Collective Investment Schemes Control Act and to safeguard investors' assets;
- required to meet the listing requirements of the relevant stock exchange
- a Trust REIT is not subject to Takeover Regulations;
- trustees report to the Registrar and must meet all the requirements of the Collective Investment Schemes Control Act; and
- in terms of the Collective Investment Schemes Control Act, a Trust REIT must have an external asset and property manager.

Capital requirements

A REIT must have at least ZAR 300m of gross assets as reflected in its financial statements. Furthermore, the SA-REIT must have debt below 60% of its gross asset value.

Listing requirements

If a company is desirous of receiving REIT status, an application must be made to list as a REIT on a stock exchange. The stock exchanges have certain requirements for listing as well as additional requirements that must be met in order to achieve REIT status.

The requirements to list a REIT on a stock exchange may be summarized as follows:

A REIT must:

- own at least ZAR 300 million of property;
- maintain its debt below 60% of its gross asset value;
- earn 75% of its income from rental or dividends from other unconsolidated REITs;
- have a committee in place to monitor risk;
- not enter into derivative instruments that are not in the ordinary course of business; and
- distribute at least 75% of its taxable earnings available for distribution to its investors each year.

Restrictions on investors

There are no restrictions on investors.

Asset/income/activity tests

A REIT must be primarily engaged, directly or indirectly in property activities including:

- the holding of properties and development of properties for letting and retention as investments; or
- the purchase of land for development of properties for retention as investments.

In addition, it must have gross assets of at least ZAR 300 million and must derive 75% of its revenue as reflected on the statement of comprehensive income from rental or dividends from other unconsolidated REITs.

Consequently, the main activity of a REIT will be to produce rental income or to invest in REITs that predominantly own property.

Restrictions on foreign assets

There are no restrictions on a REIT holding foreign assets.

Taxation of a foreign REIT holding assets in South Africa

There are no special rules for the taxation of foreign REITs and they are treated like any other investor.

South Africa

Taxation of investors holding shares in a foreign REIT

Income from foreign dividends is exempt if the owner owns 10% or more of the shares whether the shareholder is an individual, a company or a trust. If the owner of the shares holds less than 10% then the dividend received from the foreign REIT will be taxed in accordance with the normal tax rules applicable to that shareholder, subject to a possible reduction of the tax rate if a tax treaty applies.

Gains arising on the disposal of shares in a foreign REIT would depend on whether the South African investor is holding the shares on revenue or capital account. If the shares are held on capital account, it may be possible that any gain is exempt from South African income tax on the basis of the participation exemption, depending on the circumstances.

Distribution requirements

To benefit from the rules set out under section 25BB of the Income Tax Act, 75% of an REIT's taxable earnings must be distributed to its investors on an annual basis.

Tax treatment at REIT level

Corporate Income Tax

Determination of taxable income

The Income Tax Act deals with the taxation of South African REITs as well as so-called 'controlled companies' in relation to REITs.

A 'controlled company' is a subsidiary, as defined in the International Financial Reporting Standards, of a REIT.

Both, a REIT and a controlled company may deduct 'qualifying distributions' for purposes of determining their respective taxable incomes for the year of assessment.

A qualifying distribution is defined as interest incurred by virtue of a debenture on a linked unit or dividends paid or payable by a REIT or a 'controlled company' if the amount thereof is determined with reference to the financial results of the company as reflected in the financial statements for that year of assessment and 75% of the gross income of the REIT or controlled company is attributable to rental income in the preceding year of assessment.

If it is the first year of assessment for the REIT or the controlled company, then the 75% test is to be applied in respect of the current year of assessment.

If one bears in mind that at least 75% of the taxable earnings of a REIT must be distributed each year, then a REIT will invariably claim a deduction of a significant amount from its income.

However, the deduction of the 'qualifying distributions' may not exceed the income of the REIT before taking into account:

- the qualifying distribution itself;
- any assessed loss brought forward; and
- any taxable capital gain.

This means that the deduction of a 'qualifying distribution' may not in itself create an assessed loss for either a REIT or a 'controlled company'.

Any amounts derived from a financial instrument held by a REIT or controlled company must be included in the income of that entity. The ordinary VAT rules apply to a REIT as there is no specific VAT regime for REITs.

South Africa

Capital gains tax and capital allowances

Capital gains (or loss) will be disregarded for both a REIT and a 'controlled company' in terms of the disposal of any:

- Immovable property;
- A share or a linked unit in a company that is a REIT on the day of disposal; or
- A share in a company that is a property company at the time of the disposal.

Furthermore, the following capital allowances may not be deducted in respect of immovable property:

- expenditure in respect of leasehold improvement;
- expenditure in respect of buildings used in a manufacturing process;
- expenditure in respect of building used by hotel keepers;
- expenditure in respect of the erection or improvement of buildings in the urban development zones;
- expenditure in respect of commercial buildings; and
- expenditure in respect of certain residential units.

Withholding tax on distributions

Dividends paid by a REIT or a 'controlled company' to a non-resident investor will be subject to dividends withholding tax at a rate of 20%. The dividends withholding tax may be reduced by an applicable DTA.

South African resident investors will be exempt from the dividends withholding tax.

Tax treatment at the investor level

Resident investors

South African private investors (individual or company)

There is no exemption from income tax in relation to distributions received from a REIT. Consequently, the tax consequences in the hands of each shareholder will depend on the nature and profile of the shareholder concerned. Therefore, if the shareholder is not an exempt entity such as a pension fund, the dividend received from the SA-REIT will be included in the shareholder's gross income which will be taxed at 28% (if the shareholder is a company) or at the marginal rate applicable to the individual.

Investors will be subject to capital gains tax or income tax on the gain made in respect of the disposal of shares in a REIT depending on the purpose for which they held the shares.

Shares not held for trade will be subject to capital gains tax. The effective capital gains rate for companies is 22.4% and for individuals, the maximum effective rate is 18%.

Tax treatment at the investor level

South African private investors (individual or company)

The transfer of shares in a REIT is exempt from securities transfer tax. This exemption does not extend to "controlled companies" or "property companies", as defined in s25BB of the Income Tax Act.

Institutional investors

Certain institutions such as pension funds are exempt from tax and will therefore not be taxed on the dividends received from a REIT.

Non-resident investors

Foreign investors

Foreign investors will be exempt from income tax on dividends received from a REIT or a controlled company, but will be subject to dividends withholding tax.

South Africa

Non-residents may be subject to capital gains tax on the disposal of shares in a REIT where that person held (directly or indirectly and together with any connected person) at least 20% of the shares in the company and at least 80% of the gross assets of that company were attributable to immovable property. South Africa's ability to impose capital gains tax in these circumstances may still be subject to the allocation of taxing rights by an applicable DTA.

Transition to REIT/Tax privileges

There are no special tax rules for a company entering the REIT regime which will be treated as such for the full year of assessment in which it becomes a REIT.

Section 25BB(7) of the Income Tax Act determines that when a company ceases to be a REIT or a controlled company in relation to a REIT, its year of assessment is deemed to end on that day and the first day of the next year of assessment commences on the following day. In the following year, the company will then be liable for tax in terms of normal company tax and the REIT tax regime will no longer apply.

South Korea

Taejin Park

PwC (South Korea)
Tel: +82 2 709-8833
tjpark@pwc.com

Jaedok Lee

PwC (South Korea)
Tel: +82 2 709-0282
jdlee@pwc.com

Sean Park

PwC (South Korea)
Tel: +82 2 709-8770
sungchul.park@pwc.com

There are three types of REITs (comprehensively ‘the REIT’) in Korea: Self-managed REIT (K-REIT), Paper company type REIT (P-REIT) and Corporate Restructuring REIT (CR-REIT). P-REIT and CR-REIT are paper companies (special purpose companies).

K-REIT and CR-REIT were introduced by the so-called Real Estate Investment Company Act (REICA), which was enacted in April 2001.

So as to boost the foreign investment in Korean REIT market, the Korean Ministry of Land Transport and Maritime Affairs (MLTM) amended the REICA again in March 2013 by specifying the subordinate regulation.

As of June 2019, there were 29 CR-REITs, 4 K-REITs and 195 P-REITs Showing a total asset value of KRW 44,000 billion.

Legal form

The REIT, as a legal entity, is incorporated as a form of general stock corporation.

Capital requirements

P-REIT and CR-REIT have to be incorporated with a minimum capital of KRW 0.3 billion and K-REITs have to be incorporated with a minimum capital of KRW 0.5 billion. However, REITs must increase their capital up to KRW 7 billion for K-REIT and 5 billion for P-REIT and CR-REIT within the six months of the minimum capital preparation period.

Listing requirements

K-REIT and P-REIT must publicly offer more than 30% of total issued shares within two years from the date of operation approval or registration. Then it must list its stocks on the securities market of the Korea Stock Exchange or register them with the Korea Stock Exchange or in the association brokerage market of the Korea Securities Dealers Association if certain conditions are met. But, K-REIT and P-REIT are not allowed to publicly offer before the date of operation approval or registration.

CR-REIT is not restricted in this public offer rule.

Restrictions on investors

Minimum number of investors

One shareholder and anyone who is specially related with the shareholder shall not possess in excess 50% of the total stocks issued by REITs after the minimum capital preparation period.

This provision does not apply within the minimum capital preparation period.

CR-REITs are not subject to this restriction.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

At least 80% of total assets of K-REIT and P-REITs must be invested in real estate, real estate-related securities and cash as of the end of each quarter after the minimum capital preparation period. In addition to those requirements, at least 70% of total assets of a K-REIT and P-REIT must be real estate (including buildings under construction).

In case of CR-REIT, 70% or more of the CR-REITs total assets must consist of real estate that a company sells in order to repay its existing borrowings, real estate for the purpose of the execution of a financial restructuring plan and the execution of a corporate restructuring plan.

South Korea

The minimum real estate holding period of a REIT is one year. There are no restrictions on a CR-REIT.

REITs are allowed to invest their entire assets in real estate development projects.

REITs shall not acquire more than 10% of the voting shares in other companies except for the cases such as merger and acquisition.

Distribution requirements

The REIT is obliged to distribute at least 90% of its distributable income. The term 'distributable income' is the net asset value excluding capital and capital reserve.

Tax treatment at REIT level

Under Article 51-2 of the Corporate Income Tax Act (CITA), if a CR-REIT or a P-REIT declares 90% or more of its distributable income as dividend, the amount declared as dividend can be deducted from the REITs taxable income.

Moreover, legal reserve of retained earnings is not required to be accumulated.

Therefore, income derived by a CR-REIT or a P-REIT is effectively exempt from corporate income tax (CIT) to the extent of the income that a CR-REIT or a P-REIT declares as dividend.

Withholding tax on distributions

Dividend distributions by the REIT to residents are subject to a 15.4% withholding tax (including residential surtax). Dividend distributions to non-residents that do not maintain a permanent establishment (PE) in Korea are subject to 22% withholding tax. If the tax treaties are applicable, the withholding tax rate can be reduced by Korean double tax treaties.

For domestic corporations, dividend income received by a REIT is not subject to withholding tax.

A foreign company that does not have permanent establishment is subject to withholding tax at a rate of 22% including a residential surtax. In the case of a tax treaty, the rate can be reduced.

Tax treatment at the investor level

Resident investors

Individual investors

When a resident individual shareholder disposes of REIT shares that are listed on the Korea Stock Exchange or KOSDAQ, the capital gains will be treated as follows:

- Capital gains are exempt from income tax if an individual is a minor share- holder, i.e. a shareholder (including related parties to him/her) that holds less than 1% of REIT shares that are listed on the Korean Stock Exchange or less than 2% of REIT shares that are registered with KOSDAQ;
- If an individual shareholder (including related parties to him/her) holds more than 1% in REIT shares that are listed on the Korean Stock Exchange or more than 2% in REIT shares that are registered with KOSDAQ, respectively, capital gains are subject to income tax at a rate of 22% to the extent of KRW 300 million of income, and 27.5% to income over KRW 300 million (33% if the shares are sold within one year from the acquisition date).

Corporate investors

Dividends and capital gains derived from the disposal of REIT shares are fully subject to corporate income tax at a rate of 11%, 22%, 24.2% and 27.5% (including Resident Surtax), 11% for up to the first KRW 200 million of taxable income, 22% for taxable income ranges from KRW 200 million to KRW 20 billion, 24.2% for taxable income ranges from KRW 20 billion to KRW 300 billion, and 27.5% for taxable income exceeding KRW 300 billion, respectively.

South Korea

Non-resident investors

Individual investors

Capital gains arising from the disposal of REIT shares is not taxable if the respective REIT is listed on the Korean Stock Exchange or registered with KOSDAQ and the non-resident individual shareholder (including related parties to him/her) holds or has held less than 25% of the REIT shares during the year of disposal and the preceding five calendar years.

Capital gains arising from the disposal of REIT shares by non-resident individual shareholders are subject to Korean withholding tax. Withholding tax is assessed at the lesser amount of 22% on the capital gain or 11% on the gross proceeds. In the case of non-listed REIT shares, the individual income tax return will be required and then the total tax burden will be 6.6% to 46.2%, depending on the tax bases with the above withheld amount being deducted.

Corporate investors

If the respective REIT is listed on the Korea Stock Exchange or registered with KOSDAQ, the same exception applies as for foreign individual shareholders. In that case a capital gain from disposal is not taxable.

Capital gains arising from the disposal of REIT shares by foreign corporations that do not have a PE in Korea are subject to Korean withholding tax. The withholding tax is the lesser amount of 22% (including Resident surtax) on the capital gains or 11% (including Resident surtax) on the gross proceeds. In the case of non-listed REIT shares, a corporate income tax return will be required and then the final tax burden will be at a rate of 11%, 22%, 24.2% and 27.5% depending on the tax bases, with the above withheld amount being deducted.

Transition to REIT/Tax privileges

Acquisition tax on transfer of real estate is generally levied at a rate of 4.6% including Agriculture and Fishery Tax, and Education surtax.

Antonio Sánchez

PwC (Spain)

Tel: +34 91 568-5615

antonio.sanchez.recio@pwc.com

José Azqueta Nerecan

PwC (Spain)

Tel: +34 91 568-4349

jose.azqueta.nerecan@pwc.com

In October 2009, Spain introduced the SOCIMI regime (*Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario*), the Spanish version of a REIT vehicle. SOCIMIs are listed corporations whose main activity is direct and indirect investment in urban real estate for lease. In December 2012, significant amendments to the REIT Act were introduced for tax periods starting on or after 1 January 2013, including the 0% CIT rate for the REIT vehicle. The reform was oriented to relax many of the requirements and make the regime more attractive overall converting the SOCIMI into the most tax efficient structure to invest in urban real estate for lease in Spain.

In the context of a change of sentiment towards Spanish real estate, the new SOCIMI rules have marked a turning point in the short history of the SOCIMI with a remarkable record of entrants to the Spanish regime so far. Long story short, REITs have become major and very active players in the Spanish real estate industry in the course of the last years.

Additionally, it is worth mentioning that Spanish subsidiaries of qualifying foreign listed companies, including REIT vehicles, may be eligible for the SOCIMI regime under the form of non-listed SOCIMIs for their Spanish rental income and capital gains.

Legal form

The SOCIMI must be a Spanish stock corporation (Sociedad Anónima, or SA).

Capital requirements

The nominal capital of a SOCIMI must amount to at least EUR 5m. There is no maximum threshold for external debt.

Listing requirements

SOCIMIs must be listed on an organised stock market in Spain, the EU, the EEA, or in other countries with an effective tax information exchange with Spain.

Listing is also possible on a multilateral trading system in Spain, the EU or the EEA.

Restrictions on investors

Minimum number of investors

There are no specific provisions for SOCIMI.

Pursuant to the corresponding Stock Exchange regulations in Spain, a listed entity must have at least 100 share-holders with an interest lower than 25%, a minimum 25% free float being standard practice.

In the case of the Spanish multilateral trading system (MAB) minority shareholders – shareholders holding less than 5% of the share capital – must together represent lesser of (a) shares with EUR 2m of market value, or (b) 25% of the share capital.

As from 1 August 2017, a minimum number of minority shareholders (between 20 and 25) is required to be listed in the MAB. Free float requirements must be met from day one.

Restrictions on non-resident investors

There are no specific restrictions on non-resident investors.

Asset/income/activity tests

The primary corporate activity of the SOCIMI must be the following:

- The acquisition and development of urban real estate for lease, including the refurbishment of buildings;
- The holding of shares in other SOCIMIs or in foreign companies with the same corporate activity and similar dividend distribution requirements as SOCIMIs;

- The holding of shares in Spanish or foreign companies with the same corporate activity, dividend distribution obligations, asset and income tests as SOCIMIs; and
- The holding of shares or units in Spanish regulated real estate collective investment institutions.

At least 80% of the value of the assets must consist of qualifying real estate assets and shares.

In addition, at least 80% of earnings, exclusive of capital gains derived from the transfer of real estate which has met with the minimum holding period, must relate to rents and dividends from qualifying assets and shares.

Qualifying assets and shares must be held for a minimum period of three years.

Restrictions on foreign assets

There are no restrictions on foreign assets assuming that they are similar to the Spanish qualifying assets and they are located in a jurisdiction with tax information exchange with Spain.

Distribution requirements

The SOCIMI is obliged to distribute the following amounts once all the corporate law obligations are met:

- 100% of profits derived from dividends received from other SOCIMIs, foreign REITs, qualifying subsidiaries and collective investment institutions.
- At least 50% of capital gains derived from qualifying real estate assets and shares. The remaining gain shall be reinvested within a three-year period or fully distributed once the three-year period has elapsed and no reinvestment has been made; and
- At least 80% of profits derived from income other than dividends and capital gains, i.e. including rental income and ancillary activities.

Distribution of dividends shall be agreed within the six-month period following the end of the financial year, and be paid within the month following the date of the distribution agreement.

Tax treatment at REIT level

The SOCIMI must be a tax resident in Spain. The SOCIMI is subject to Spanish corporate income tax at 0%.

However income and capital gains derived from investments which do not respect the three year holding period will be taxable at the level of the SOCIMI at the standard corporate income tax rate.

The qualifying subsidiaries whose share capital is fully owned by one or more SOCIMIs may benefit from this tax regime.

In addition, Spanish subsidiaries of qualifying listed foreign vehicles, including REITs, are eligible for the SOCIMI regime for their Spanish rental income and capital gains (the so-called 'non-listed SOCIMI').

Delisting, waiver of the regime, substantial non-compliance of reporting information, or dividend distribution obligations, or any other requirements will result in removal from the SOCIMI regime and a three year ban to opting again for the REIT regime.

On the other hand, the SOCIMI will be required to pay a 19% 'special tax' on dividends distributed to shareholders holding an interest of at least 5% that are either tax exempt or subject to an effective tax rate below 10%. Any withholding tax at source shall be taken into account for these purposes. This special tax will not be due if the recipient of the dividends is a foreign REIT itself or a qualifying foreign entity as long as those dividends are subject to a minimum effective tax rate of 10% at the level of the shareholders holding 5% or more of the foreign vehicle. The investor taxation of at least 10% must be

communicated to the SOCIMI within ten days from the dividends payment in order to avoid the special tax.

Withholding tax on distributions

Dividend distributions by the SOCIMI, both to residents and non-residents, are subject to general withholding tax rules and applicable treaty rates.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends derived from SOCIMI shares are subject to general personal income tax rules, with no recourse to domestic exemptions.

Capital gains derived from the disposal of SOCIMI shares are subject to general personal income tax rules.

Corporate investors

Dividends are subject in their entirety to corporate income tax at the general rate (25% from 2016 onwards) with no recourse to the domestic participation-exemption regime.

Capital gains derived from the disposal of SOCIMI shares shall be subject to the general income rate (25% from 2016 onwards) with no recourse to the domestic participation-exemption regime.

Non-resident investors

Individuals and corporate investors without a Spanish permanent establishment

Dividends and capital gains are subject to general rules for non-residents and tax treaties and with no recourse to domestic exemptions on capital gains.

However, capital gains derived from the disposal of shares in a SOCIMI listed in a Spanish official market are tax exempt in Spain if the non-resident shareholder holds less than 5% of the share capital.

Individuals and corporate investors with a Spanish permanent establishment

Dividends and capital gains are subject to the same rules described above for resident corporate shareholders.

Transition to REIT/Tax privileges

There is no entry tax charge established for the transition to the SOCIMI regime.

However, capital gains obtained by a SOCIMI corresponding to assets held prior to the election would be taxable only for the portion of gains allocated into the pre-SOCIMI holding period.

Applicants can opt for the SOCIMI regime by notifying the Tax Administration before the beginning of the last quarter of the tax period. The regime applies retroactively from the start of the financial year in which the SOCIMI has validly applied for this tax regime.

The law grants a two year period in order to meet certain REIT requirements, including the listing, during which the SOCIMI is taxed at 0%.

Transfer tax and stamp duty benefits may be of application in connection with the acquisition of residential for lease.

Restructurings aiming at the incorporation of a SOCIMI or the conversion of existing entities into a SOCIMI are deemed as business driven for the purposes of the tax neutrality regime for corporate reorganisations.

Taiwan

Richard Watanabe

PwC (Taiwan)

Tel: 886-2-2729-6704

richard.watanabe@tw.pwc.com

Jessie Chen

PwC (Taiwan)

Tel: 886-2-2729-5360

jessie.chen@tw.pwc.com

Ying-Te Chien

PwC (Taiwan)

Tel: 886-2-2729-6666

Ext: 23245

edward.y.chien@tw.pwc.com

Jeff Liou

PwC (Taiwan)

Tel: 886-2-2729-6666

Ext: 23260

jeff.f.liou@tw.pwc.com

Yu-Chen Hu

PwC (Taiwan)

Tel: 886-2-2729-6666

Ext: 23634

yu-chen.hu@tw.pwc.com

In Taiwan, REITs refer to real estate investment trusts approved by the Financial Supervisory Commission (FSC) under the Real Estate Securitization Act (the Act), which was published in on July 23, 2003 and since then has been amended several times to relax the restrictions on REITs. The latest revised Act took effective on December 6, 2017. The FSC also issued the administrative guidelines that govern the enforcement details.

There are currently 7 REITs with a total market capitalisation of approximately USD 2.72 billion in June 2019. These REITs invested in different types of real estate, including office buildings, shopping malls, and hotels.

Legal form

A REIT is required to be approved by FSC in the form of a trust. The REIT may hold real estate, directly or indirectly, through special purpose trustee that are legally and beneficially owned by the REIT.

Capital requirements

There are no specific requirements as to the minimum capital, market capitalisation, etc.

Listing requirements

The REIT is not required to be listed on the Taiwan Stock Exchange. The REIT can be either privately or publicly traded.

Restrictions on investors

The Act does not impose any specific restrictions that apply to the investors in a REIT. Both Taiwan and overseas investors may invest in a REIT. There are no requirements on the minimum number of investors under the Act. Moreover, there are no restrictions on foreign investors.

Asset/income/activity tests**Asset Restrictions**

- The total amount invested in real estate or other real estate-related rights under development or generating stable income, real estate securities, government bonds, or cash (including bank deposits) shall exceed 75% of the net asset value 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 NT\$600 million, provided that the investment in securities relating to real estate is not restricted.
- The limitation that the investment of a publicly traded REIT fund in development-oriented real estate falling under infrastructure should not exceed 15% of the value of the fund's trust property lifted.
- The limitation that the investment of a privately placed REIT fund in development-oriented real estate falling under infrastructure should not exceed 40% of the value of the fund's trust property lifted. However, when investing in infrastructure as defined in the Act for Promotion of Private Participation in Infrastructure Projects and participating in infrastructure approved by the competent authority, the investment will not be subject to 40% limitation.

Restrictions on foreign assets

The restrictions on investment in foreign assets by Taiwanese REITs were lifted on 22 March 2016. Furthermore, in order to protect the rights and interests of domestic investors investing in REITs, the REIT plan for public offering or private placement of REITs by the trustee involving investment in foreign real estate shall specify the investment vehicles and such a plan shall be submitted to the FSC for approval.

In addition, the FSC has also imposed several limits on related percentages of such investment based on the spirit of the Act and the principle of risk diversification. The limits are: (1) the total amount of investments in foreign REIT funds, beneficiary securities and asset-backed securities issued or delivered by other trustee institutions or special purpose vehicles shall not exceed 25% of the net asset

value of the investing fund; (2) investment in one single foreign REIT fund shall not exceed 5% of the net asset value of the investing fund; (3) the total amount of investments in foreign real estate and foreign REIT funds shall be less than 50% of the net asset value of the investing fund.

Distribution requirements

There is no minimum distribution requirement. However, the net income derived from the REIT investment, which shall be distributed pursuant to the REIT contract, shall be distributed within six (6) months after the end of each fiscal year.

Tax treatment at REIT level

The REIT is income tax-exempt (irrespective of whether the income is derived from real estate or non-real estate assets).

Indirect taxes, including 5% value-added tax, 0.1% stamp tax, 6% deed tax, 20% to 40% land value incremental tax, would apply upon transfer of real estate where applicable.

Withholding on distributions

Resident individual investors

10% withholding tax should apply as final tax when REIT distributes earnings to resident individual investors.

Resident corporate investors and Non-resident corporate investors with a fixed place of business in Taiwan

10% withholding tax should apply when REIT distributes earnings to resident corporate investors and non-resident investors with a fixed place of business in Taiwan. The distribution should be included in the said investors' annual taxable income and subject to 20% income tax. The aforesaid withholding tax could be creditable against the annual income tax payable.

Non-resident individual investors and non-resident corporate investors without a fixed place of business in Taiwan

15% withholding tax should apply as final tax when REIT distributes earnings to non-resident investors without a fixed place of business in Taiwan. The withholding tax rate may be reduced with the application of Taiwan treaty network, provided that all treaty conditions and documentation requirements are satisfied.

Tax treatment at the investor level

Resident individual investors

10% withholding tax is imposed as final tax on distributions from a REIT.

Disposal of beneficiary certificates is exempt from tax.

Resident corporate investors and non-resident corporate investors with a permanent establishment (PE) in Taiwan

Distributions from a REIT should be included in the investors' annual taxable income and subject to 20% income tax. The 10% withholding tax could be creditable against the annual income tax payable.

Disposal of beneficiary certificates is subject to 12% Alternative Minimum Tax.

Non-resident individual investors and non-resident corporate investors without a PE in Taiwan

15% withholding tax is imposed as final tax on distributions from a REIT.

Disposal of beneficiary certificates is exempt from tax.

Thailand

Paul B.A. Stitt

PwC (Thailand)

Tel: +66 (0) 2 844-1119

paul.stitt@pwc.com

Thailand introduced REIT in 2010, reflecting a need to liberalize the market for property investment and provide alternative funding options to a sector heavily reliant on bank debt. There are now more than 60 REIT on the Stock Exchange of Thailand, with market capitalisation in excess of Baht 300bn.

Legal form

A REIT is a trust in which the trustee has legal ownership of assets on behalf of the beneficial owners (the unit holders). The REIT is established through a deed prepared in compliance with the Trust For Transactions in the Capital Market Act B.E. 2550 (2007) and accompanying regulations.

The Trustee is responsible for the custody and control of the REIT and for appointing and directing the REIT manager.

The REIT manager is responsible for the day-to-day operations of the REIT including, strategy, risk management, regulatory compliance and investor relations.

Capital requirements

A REIT must have minimum capital of Baht 500m.

Listing requirements

A REIT must be listed on the Stock Exchange of Thailand.

Approval for listing must be obtained for the Securities and Exchange Commission. The REIT must have a trustee and manager who meet the Securities and Exchange Commission qualifications. The Thailand Securities Depository Company (or another registrar approved by the Stock Exchange of Thailand) must be appointed as registrar.

The free float must be at least 20% of total units (or each tranche of units). All units must be issued fully paid-up.

Restrictions on investors

A REIT must have a minimum of 250 unit holders on establishment and must maintain at least 35 thereafter. At least 20% of the units must be listed on the Stock Exchange of Thailand. No investor or investor group may hold more than 50% of the units (or each tranche of units).

Asset/income/activity tests

The REIT may invest in the following:

- Freehold or leasehold property within or outside Thailand.
- Shares in a company holding real property, provided the REIT holds at least 99% of the total shares.
- Other assets/securities.

Real estate assets generating income must represent at least 75% of the value of units. The balance of the value may be invested in other assets or property.

Undeveloped property may not exceed 10% of the total assets.

The REIT must limit operations to leasing real property. It is not permitted to act as an operator or manager of a business operating in the property. Rental income may be linked to the performance of the lessee. However, the variable element cannot exceed 50% of the fixed rent.

A REIT may borrow up to 35% of the value of its total assets (increased to 60% for investment grade assets).

Restrictions on foreign assets

There is no restriction on ownership of assets outside Thailand.

Thailand

Borrowing or financing facilities

REITs may issue debt securities or Sukuk through a wholly owned special purpose vehicle. However, the total borrowings of a REIT should not exceed 50% of total asset value.

Distribution requirements

A REIT must distribute at least 90% of its net income.

Tax treatment at REIT level

A REIT is not subject to corporate income tax on profits derived from its operations or from the disposal of assets or investments. Property holding companies (in which the REIT invests) are subject to corporate income tax of 20%.

Withholding tax on distributions

Distributions by the REIT are subject to withholding tax of 10% (irrespective of the residence or status of the recipient).

Tax treatment at the investor level

Resident investors

Individual investors

Resident individuals may treat the withholding tax deducted from REIT distribution as a final tax and are not required to include the distributions in their income subject to tax.

Resident individuals are exempt from tax on gains derived from the sale of units on the Stock Exchange of Thailand.

Corporate investors

Resident corporations are subject to corporate income tax of 20% on distributions received from a REIT.

Resident corporations are subject to corporate income tax of 20% on gains derived from the sale of units.

Non-resident investors

Individual investors

Non-resident individuals are not subject to further tax in Thailand on distributions from the REIT.

Non-resident individuals are exempt from tax on gains derived from the sale of units on the Stock Exchange of Thailand.

Corporate investors

Non-resident corporations are subject to a withholding tax of 15% on gains derived from sale of units in a REIT on the Stock Exchange of Thailand. A resident of a jurisdiction with which Thailand has a double taxation agreement may be exempt from the withholding tax.

Other taxes

Stamp Duty

Transfer of real property is exempt from stamp duty if subject to Specific Business Tax. Lease of immovable property is subject to stamp duty of 0.1% of the total lease value.

Specific Business Tax

Sale of real property is subject to specific business tax of 3.3% of the gross sales proceeds.

Value Added Tax

Income from the lease of immovable property is not subject to VAT.

The Netherlands

Jeroen Elink Schuurman

PwC (The Netherlands)
Tel: +31 88 792-6428
jeroen.elink.schuurman@
pwc.com

Serge de Lange

PwC (The Netherlands)
Tel: +31 88 792-6390
serge.de.lange@pwc.com

The FBI regime was introduced in the Netherlands in 1969. The Dutch regime was the first REIT look-a-like regime in Europe.

The FBI regime enjoys a corporate income tax rate of 0% (a de facto full exemption). Dividends paid by an FBI are subject to 15% dividend withholding tax. Individuals, financial institutions like pension funds and insurance companies make frequent use of FBIs.

Legal form

The FBI regime is open for Dutch public companies, limited liability companies and mutual funds. Also, non-Dutch entities established under the laws of an EU Member State, the islands formerly known as the Dutch Antilles (including Aruba), or a country that has concluded a tax treaty with the Netherlands containing a non-discrimination clause may qualify for the FBI regime under the condition that the entity has similar characteristics as a Dutch public company, limited liability company or mutual fund.

Capital requirements

Based on Dutch civil law, Dutch public companies require a minimum share capital of EUR 45,000. There is no minimum share capital requirement for Dutch limited liability companies and mutual funds.

Moreover, gearing restrictions should be observed. In principle, investments may be financed out of borrowings (both shareholder and third-party loans) up to:

- a maximum of 60% of the tax book value of directly – or indirectly – held real estate investments; and
- a maximum of 20% of the tax book value of other investments.

Listing requirements

Although S-REITs can be listed or unlisted, listing is necessary to qualify for tax concessions' with 'The FBI regime does not require listing on a stock exchange'.

Restrictions on investors

For the shareholder restrictions a distinction must be made between regulated and private FBIs.

FBIs whose shares are officially quoted on a stock exchange and FBIs that are regulated and hold a permit to issue shares to the public, are considered a regulated FBI. With the incorporation of the AIFMD in the Dutch legislation, a larger group of FBIs fall under supervision and are as a result considered regulated FBIs. Regulated FBIs are able to benefit from more relaxed shareholder restrictions opposed to private FBIs.

Minimum number of investors**Regulated FBIs**

- No single entity that is subject to tax on its profits (or the profits of which are subject to tax at the level of the shareholders/participants of such entity) may, together with related entities, own 45% or more of the shares in the FBI;
- No single individual may hold an interest of 25% or more.

Private FBIs

75% or more of the total shares in an FBI must be held by:

- Individuals; and/or
- Entities that are not subject to a taxation on their profits or are exempt from tax and the profits of which entities are not subject to tax at the level of the shareholders/participants of such entities; and/or
- Regulated FBIs.
- No individual may hold a substantial interest (which broadly means a direct or indirect interest of 5% or more).

The Netherlands

In addition to the above described share-holding requirements, the following restriction applies to regulated and private FBIs:

- Dutch resident entities may not hold an interest of 25% or more in the FBI through non-resident mutual funds or through non-resident entities with a capital fully or partly divided into shares.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

The statutory purpose, as well as the actual activities of the FBI must consist solely of passive investment activities.

Investment activities may include any type of investment including real estate or investments of a financial nature (such as loan notes, shares or other securities). Activities such as trading in real estate or real estate development are generally not allowed.

The FBI is allowed to manage and hold shares in an entity carrying out real estate development activities for this entity itself, for the FBI, or for certain related entities. This development subsidiary is taxed on its profits and/or losses at the regular corporate income tax rate of a maximum of 25% (2019), a reduced 19% rate applies on profits up to EUR 200,000. It should be noted that the standard corporate income tax rates will be lowered to 22.55% in 2020 and 20.50% in 2021. The reduced corporate income tax rate will be lowered to 16.50% in 2020 and 15% in 2021.

Based on the 2020 tax plan, presented on Budget Day in September the corporate income tax rate for the first EUR 200,000 is to be reduced to 16.5 per cent. However, the rate for profit over and above the first EUR 200,000 will continue to be 25 per cent as of 1 January 2020, despite the fact that last year it was decided that the top rate would be reduced to 22.55 per cent. As of 1 January 2021 the top rate is going to be reduced, but only to 21.7 per cent rather than 20.5 per cent. The decrease in the rate for the first EUR 200,000 has not been changed (to 16.5 per cent in 2020 and 15 per cent in 2021).

Furthermore, the FBI is allowed to hold shares in – as well as manage – a taxable-service subsidiary. As a precondition, the activities of this subsidiary must consist of customary services in relation to the real estate held by the FBI or other affiliated entities. Examples of such services are conference facilities or the exploitation of an in-house restaurant but also thermal storage or the supply of solar energy is under conditions permitted. The rationale of this provision is that non-investment activities of the FBI are separated from its investment activities and are taxed accordingly the regular CIT rate of 25% (2019). The improvement or expansion, including maintenance of real estate is considered a passive investment activity if it is less than 30% of the official market value of the real estate.

Guarantees towards third parties in relation to obligations of subsidiaries and the on-lending of third-party financing to subsidiaries are considered passive investments activities.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

An FBI is required to distribute its entire taxable profit within eight months following the financial year-end. Capital gains do not have to be distributed if they are contributed to a reinvestment reserve.

Tax treatment at REIT level

An entity can elect to apply the FBI regime in its corporate income tax return. The FBI regime can only be applied for with effect from the beginning of a financial year, if all statutory requirements being met from that date. The FBI is subject to Dutch corporate income tax at a rate of 0%.

Being an entity resident in the Netherlands, the FBI can benefit from the Dutch tax treaties.

The Netherlands

Withholding tax on distributions

Dividends paid by an FBI are subject to a 15% dividend withholding tax.

Reduction of this rate under applicable tax treaty may apply. Further, shareholders may credit the withholding tax levied against their Dutch income tax liability. Distributions out of the reinvestment reserve are in principle exempt from withholding tax. As per 2017, on request and under conditions, certain non-resident shareholders who qualify as beneficial owner of revenues on which they do not pay personal income tax or corporate income tax in the Netherlands, can receive a refund of withheld dividend tax insofar as this levy is higher than the (personal or corporate) income tax they would owe if they would have resided or been based in the Netherlands.

Tax relief in order to avoid double taxation

Dividends and interest payments received by the FBI may be subject to Dutch dividend or foreign withholding tax. FBIs are entitled to credit the Dutch and foreign withholding tax against the obligation of withholding Dutch dividend withholding tax on outgoing dividend distributions. The credit is maximised to 15%.

Tax treatment at the investor level

Resident investors

Individual investors

Dutch resident individuals who own, alone or together with certain relatives, 5% or more of the shares in an FBI are considered the holder of a substantial interest for Dutch personal income tax purposes.

Dividends, profit rights and capital gains derived from the substantial interest by Dutch resident substantial interest holders are subject to a flat 25% tax rate. Note that under the Investor Restriction rules, no individual may hold a substantial interest in a Private FBI.

Dutch resident individuals who own less than 5% of the shares in an FBI are not considered holders of a substantial interest. Income derived from such a shareholding is subject to tax at a rate of 0.58% and 1.68% (2019). The rate is 30% calculated on the basis of three ascending fixed percentages. For 2019 these percentages are:

- 1.94% on assets with a total value of EUR 0 to EUR 102,010 (an exemption for capital to an amount of EUR 30,360 applies);
- 4.45% on assets with a total value of EUR 102,010 to EUR 1,020,096;
- 5.60% on assets with a total value exceeding EUR 1,020,096.

Individual taxpayers can credit the Dutch dividend withholding tax against their Dutch income tax liability.

Corporate investors

Dividends received and capital gains realised by Dutch resident corporate investors from an FBI are subject to Dutch corporate income tax at the standard rates (25% for 2019). An investment in an FBI will, in principle, not qualify for the participation exemption.

Corporate taxpayers can credit the Dutch dividend withholding tax against their Dutch corporate income tax liability.

Tax-exempt institutions

Dutch pension funds are exempt from corporate income tax and are entitled to a full refund of the Dutch dividend withholding tax.

Non-resident investors

Individual investors

Non-resident individuals who own 5% or more of the shares in an FBI will also be considered the holder of a substantial interest and will be considered a non-resident taxpayer for Dutch personal

The Netherlands

income tax purposes. Non-resident substantial interest holders are, in principle, subject to the tax rate of 25% applicable on dividends and capital gains on the FBI shares. Tax treaties may limit the right for the Netherlands to levy Dutch income tax on substantial interest income and gains.

Non-resident individuals who are not considered holders of a substantial interest are not subject to Dutch personal income tax.

Corporate investors

In general, Dutch (corporate) income taxation will only arise in case the non-resident investor holds a substantial interest (5% or more of the shares of an FBI) and the interest cannot be allocated to the active business of the foreign shareholder. The levy of this tax is furthermore subject to the additional condition that the shares in the Dutch company are held by the foreign shareholder with the main purpose (or one of the main purposes) to avoid the levy of Dutch personal income tax or dividend withholding tax against another party while an arrangement (or series of arrangements) has been applied which is not based on sound business motives reflecting the economic reality. As such the role of the foreign shareholder within the structure must be assessed. In principle the substantial interest rate is 25% (2019). The substantial interest rate is reduced to 15% in case only dividend withholding tax is avoided. Tax treaties may limit the right for the Netherlands to levy Dutch corporate income tax on substantial interest income and gains.

Furthermore, taxation may arise in cases where the FBI shares are attributable to a Dutch permanent establishment (PE) of the non-resident investor.

In case of substantial interest taxation or allocation to a Dutch PE, dividend income received and gains realised by a non-resident corporate investor on the shares of an FBI are subject to 25% Dutch corporate income tax (2019). The rate is reduced to 15% in case only dividend withholding tax is avoided.

Non-resident taxpayers can credit the Dutch withholding tax on dividends against Dutch (corporate) income tax levied.

Tax-exempt institutions

EU-resident pension funds that are tax-exempt and that are comparable with Dutch pension funds are under conditions entitled to a full refund of Dutch dividend withholding tax levied on dividend distributions made by the FBI.

Non-EU resident pension funds that are tax exempt and that are comparable with Dutch pension funds are under conditions entitled to a full refund of Dutch dividend withholding tax levied on dividend distributions made by the FBI. However to be entitled for a refund, the investment in the FBI must qualify as a portfolio investment as defined under EU-law. Also a tax information exchange agreement must be in place.

Transition to and exit of REIT/Tax privileges

Transition to REIT regime/Tax privileges

There are no specific exit tax concessions for taxable entities opting for the FBI regime. At the end of the year prior to the year that the entity converted to FBI regime, all assets are restated at market value. The capital gain resulting from such restatement is subject to the regular corporate income tax rate (25%).

Exit REIT regime/Tax privileges

As from the moment the statutory requirements for the FBI regime are no longer fulfilled, an entity forfeits its qualification as FBI and would be subject to the regular Dutch tax regime. At the ending of the FBI regime it is compulsory to value the investments at the fair market value prior to exiting the FBI regime. As a result, hidden reserves (both positive and negative) included in the investments are materialised and taxed in accordance with the FBI regime.

Ersun Bayraktaroglu
PwC (Turkey)
Tel: +90 212 326-6098
ersun.bayraktaroglu@pwc.com

Baran Akan
PwC (Turkey)
Tel: +90 212 326-6534
baran.akan@pwc.com

A Turkish Real Estate Investment Company (REIC) is a capital market institution that can invest in real estate and capital market instruments based on real estate, real estate projects and rights based on real estate. Turkish REICs are corporate income tax-exempt stock companies that must be listed on an organised stock market in Istanbul. Currently, there are 33 REICs listed on the Borsa Istanbul.

The separate and significant regulation regarding Real Estate Investment Companies was published in the Communiqué number III-48.1 by the Capital Markets Board of Turkey (CMB) on 28 May 2013. After then, the Communiqué number III-48.1.a was published by the CMB on 23 January 2014, consisting of regulations regarding Infrastructure Real Estate Companies (IREICs) which were published at the beginning of 2009 but not implemented, were integrated to the Communiqué III-48.1 as a type of REIC. Therefore, REICs which are incorporated to manage portfolios composed of infrastructure investment and services and other infrastructure related market instruments under the provisions of Communiqué can operate as IREIC. Please note that, in accordance with Corporate Income Tax Communiqué number 13, IREICs cannot benefit from the Corporate Income Tax exemption. The latest major amendment of the Communiqué consisting of the IREICs amendments mostly, was published and enforced in the Official Gazette on 17 January 2017. Furthermore, an amendment to extend the period of the temporary clause was published on 10 May 2018.

On 2 January 2019, the 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 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 to other companies expanded. The provision regarding determination of real estate appraisal companies has been amended.

That being said, significant provisions of REICs and IREICs are elaborated into the scope of this article as follows:

Legal form

The REIC must be a joint stock corporation. A REIC can be established by immediate establishment, i.e. by establishment of a new joint stock company following the approval of CMB. Moreover, an existing company can be converted into a REIC by amending its articles of association.

Since IREICs are a specific type of the REICs, same general rules given in this article is also applicable to the IREICs, unless otherwise stated.

Capital requirements

The minimum capital requirement for a REIC is TRY 36m for the year 2019. If it will manage a portfolio consisting of exclusive infrastructure investment and services, initial capital is required to be at least TRY 120m. If the initial capital is less than TRY 72 million, at least 10% of the shares representing the initial capital have to be issued for cash. If the initial capital is TRY 72m or more, at least TRY 7.2m of the shares, and if it will manage a portfolio consisting of exclusive infrastructure investment and services at least TRY 12m of the shares have to be issued for cash. These shares can only be issued in registered or bearer form.

Listing requirements

At least 25% of the REIC's shares should be offered to the public. REICs are obligated to offer share certificates representing 25% of their capital to the public within three months following the registration of incorporation or amendment of the articles of association with the Trade Registry.

Restrictions on investors

It is required for real estate investment companies that real or legal person founders:

- Must not have any payable tax debt;
- Must not be bankrupt, go bankrupt, or have any postponement of bankruptcy;
- Must not have any responsibility for actions those cause cancellation of an enterprise's activity permits by CMB;
- Must not be condemned;
- Real or legal person founders or the corporations that they are shareholders of must not be subject of a liquidation decision;
- Real or legal persons must have obtained the resources needed for foundation from its own commercial, industrial and other legal activities free from any kind of collusion, and must have financial power to fund the subscribed capital amount (not applicable for the conversion applications);
- Real or legal persons must have honesty and 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 on trading pursuant to the investigations of insider trading and manipulation under Capital Markets Law (CML).

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

If 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 and real estate projects at a minimum rate of 51% of their portfolio values. 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 investment and services.

REICs can invest in 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, which have not been subject to any project development, should not exceed 20% of the portfolio value.

REIC's cannot:

- Engage in capital market activities other than portfolio management for its own portfolio limited to the investment areas;
- Be involved in construction of real estate as a constructor;
- Commercially operate any hotel, hospital, shopping centre, business centre, commercial parks, commercial warehouses, residential sites, supermarkets and similar types of real estate, or 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 a loan or commit into any debit/credit transaction with their subsidiaries, which is not related to the purchase and sale of goods or services;
- Make any expense or commission payment which is not documented or which materially differs from the market value; and
- Sell or purchase real estate for short-term consistently.

Restrictions on foreign assets

REICs can invest in foreign real estate and capital market instruments backed by real estate up to a maximum of 49% of the portfolio value. This rule cannot be applied to the companies which manage a portfolio consisting of exclusive infrastructure investment and services.

Distribution requirements

As REICs are public companies, profit distributions of REICs are subject to the general regulations of the CMB. The distributable profit is calculated in line with both CMB and Turkish Commercial Code regulations. In order to secure the capital position of the REIC, the lesser of the net distributable profit calculated in line with the Turkish Commercial Code or in line with CMB regulations should be distributed. Under either calculation, net profit is generally the gross income of the REIC minus taxes, legal reserves, accumulated losses and donations within the year. In addition to above-mentioned provisions, a temporary clause concerning profit distribution is stipulated for the IREICs under the Communiqué number III-48.1.b (and amended by Communiqué number III-48.1.c to extend the period). Article 45 of the Communiqué regulating prohibition of the cash profit distribution before the public offering of shares or sales to qualified investors, will not be applicable for the IREICs until 31 December 2019.

Tax treatment at REIC level

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 and dividend withholding tax rate is determined to be 0% for REICs. The transactions of REICs are subject to VAT and most other transfer taxes.

Withholding tax on distributions

Taxation of investors receiving dividends from a REIC

Although dividend distributions to individual and non-resident shareholders of Turkish companies are currently subject to a 15% dividend withholding tax in Turkey (double tax treaty provisions are reserved), since the withholding tax rate is determined as 0% for REICs by the Council of Ministers, dividend distributions to individual and non-resident shareholders of the REICs currently have no dividend withholding tax burden.

Dividends received by resident corporations

Since REICs are exempt from corporate tax, 'participation exemption' is not applicable for dividends received from REICs. So, dividends received by corporations in Turkey from REICs are subject to corporate income tax at the rate of 20% (22% for the years 2018, 2019 and 2020). And then, if distributed to non-resident companies or individuals, those distributions are also subject to dividend withholding tax in line with local regulations.

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, taxation of dividends in the hands of a non-resident corporation depends on the tax treatment of the country of residence.

Dividends received by resident individuals

Resident individual shareholders of REICs are obliged to declare half the dividends received from REICs if half of the dividends received exceed the declaration limit (approximately EUR 5,400 for 2019). Declared income will be subject to income tax at the progressive rate between 15% and 35%.

Dividends received by non-resident individuals

Dividends that are distributed by REIC will be subject to a 0% dividend withholding tax in Turkey. On the other hand, taxation of dividends in the hands of non-resident individuals depends on the tax treatment of the country of residence.

Tax treatment at the investor level

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% (22% for the years 2018, 2019 and 2020). However, there is a special partial exemption method that can be used to minimise tax burden which 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.

Capital gains received by non-resident corporations

Since REICs are public companies, capital gains derived from the sale of shares in the Borsa Istanbul by non-resident legal entities that do not have a permanent establishment (PE) in Turkey will be subject to taxation via a withholding tax. The current rate of 0% withholding tax is applicable for the capital gains 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 unlisted Turkish company shares by non-resident corporations that do not have a PE in Turkey should be declared after the application of a cost adjustment. This declaration should be made within 15 days after the sale of shares, through a special corporate tax return, and be taxed at the standard corporation tax rate. (For the cost adjustment, the original cost is adjusted relative to the wholesale price index (WPI), except for the month the shares are disposed of, if the total increase in WPI is more than 10%.)

Additionally, a 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 the double tax treaties are examined before these transactions.

Capital gains received by resident individuals

Since REICs are public companies, capital gains derived from the sale of shares in 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.

Capital gains received by non-resident individuals

Since REICs are public companies, capital gains derived from the sale of shares in the 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.

Transition to REIT/Tax privileges

There is no exit tax or any other major tax to be applied upon transformation from a regular company into a REIC.

United Kingdom

Robert Walker

PwC (UK)

Tel: +44 20 7212-2324

robert.j.walker@pwc.com

Tim Jones

PwC (UK)

Tel: +44 20 7212-5450

tim.j.jones@pwc.com

Fiona Gaskell

PwC (UK)

Tel: +44 20 7804-2356

fiona.gaskell@pwc.com

The UK REIT was introduced by provisions in the Finance Act 2006 and came into force on 1 January 2007.

A UK REIT comprises a company or group of companies carrying on a property investment business, with property let to third-party tenants. The parent company can be incorporated anywhere but must be a UK tax resident company whose shares are either listed on the London Stock Exchange (or foreign equivalent main market exchange) or traded on a recognised stock exchange (including AIM – see further comments below). A UK REIT benefits from an exemption from UK tax on both rental income and gains relating to its qualifying property rental business, and, since 6 April 2019, on the sale of shares in qualifying UK property rich companies. On an on-going basis, the REIT business has to meet certain tests (detailed below) and the REIT is required to distribute 90% of its exempt rental income in respect of each accounting period.

Since REITs have been introduced in the UK there have been a number of developments.

The ability to pay rental income distributions as stock dividends was introduced in 2010.

The Government has also made the REIT regime more attractive with the changes which came into effect in Finance Act (FA) 2012. Entry to the REIT regime is now cheaper – the entry charge has been abolished, new REITs can list on AIM and there is a three year grace period for REITs to become widely held/not 'close' (see below for a definition of 'close').

Furthermore, certain institutional investors (including UK REITs and overseas equivalents) are now able to own substantial shareholdings or indeed 100% of the shareholdings in a REIT without causing this widely held/not 'close' test to be breached.

REITs do not pay tax on rental distributions from other REITs provided they distribute it to their investors.

Further amendments have been made in 2019 to exempt REITs from corporation tax on sales of shares in qualifying UK property rich companies (i.e., which derive at least 75% of their value from UK land).

Legal form

A UK REIT can be a single company or a group of companies. The parent or single company (as appropriate) must be listed and be UK tax resident. It cannot be dual resident nor be an open-ended investment company. Broadly, in order for a company to be treated as a member of a group, at least 75% of its shares (by nominal value) must be held by the parent company or another member of the group and the parent company must directly or indirectly have more than a 50% economic interest in the company. Additionally, it may be possible to elect for a company in which the parent company has at least a 40% economic interest to be part of the REIT group.

In order to become a UK REIT, the parent company must file a notice specifying when the REIT rules will apply from and this must be accepted by the tax authorities. There is no entry charge.

Capital requirements

There are no capital requirements (other than those relating to the relevant stock exchange), but there is a limitation on the type of shares that the parent company of a UK REIT can issue, being ordinary shares (limited to one class) and non-voting preference shares, including convertible non-voting preference shares.

Listing requirements

A UK REIT must be admitted to trading on a recognised stock exchange (which includes AIM and similar markets) and either listed on the London Stock Exchange (LSE), or foreign equivalent, or traded on a recognised stock exchange.

United Kingdom

For a new REIT there is a grace period of three accounting periods (up to three years) for the second part of the above (rules of the relevant exchange permitting).

If the company or group is not so listed/traded at the end of the third accounting period it is deemed to have left the REIT regime at the end of the second accounting period.

Restrictions on investors

Minimum number of investors

There is no minimum number of investors but a UK REIT cannot be close (broadly a company that is under the control of only five or fewer investors) unless at least 35% of the shares are freely available to the public (free float) and certain other conditions are met.

Where a new REIT is formed it can be 'close' for the first three years. If it remains close at the end of three years it leaves the REIT regime at the end of year three.

The shares held by qualifying institutional investors will not count toward those shares held by five or fewer investors for the purposes of the close test. Qualifying institutional investors include charities, registered providers of social housing, sovereign wealth funds, pension funds, managers/trustees of authorised unit trusts and OEICs, certain investment partnerships, REITs and overseas equivalents of UK REITs.

Special provisions apply where a corporate shareholder owns 10% or more of the economic or voting rights in a REIT, which in practice limits the ability of non-UK corporate shareholders to access reduced dividend withholding tax under double tax treaties. A UK REIT is penalised if it makes distributions to such a shareholder (including a UK resident corporate shareholder). To prevent such penalties arising UK REITs can amend their articles of association to prevent payments of such dividends.

Restrictions on non-resident investors

There are no restrictions specifically applicable to non-resident investors.

Asset/income/financing/activity tests

It is possible for a UK REIT to have both a property rental business and other activities. At least 75% of profits and 75% of the total value of assets must relate to the property rental business. For the purpose of the assets test, cash (and certain cash equivalents, e.g. gilts) is a good asset following FA 2012.

Such tests are carried out by consolidating the results of each company in the group as set out in financial statements produced using International Financial Reporting Standards (IFRS) with adjustments for non-recurring or distortive items, e.g. movement on hedging, one-off transactions, etc.

There must be at least three properties with no one "property" accounting for more than 40% of the value of the REIT assets.

There are financing requirements. Any loans to the UK REIT should be on normal commercial terms and not provide for an interest rate that increases with improved performance (disguised dividend).

Additionally, there are ongoing requirements in respect of the profit financing ratio. The REIT must have a profit financing ratio where the profits are at least 1.25 times the finance costs. 'Finance costs' for the purposes of this test used to include all debt costs including swap break costs. Following several amendments finance costs are now limited to interest, and amortisation of discounts relating to financing. There is an exemption where the REIT is suffering unexpected financial difficulties. A tax charge is levied on the REIT where there is excess interest (subject to relief under the hardship provisions).

United Kingdom

Where more than 30% of the value of a property (at the later of acquisition and entry) is spent on developing the property which is then sold within three years of completion of the development, the sale of the property is deemed to be outside the regime and any gain on sale is taxable. Similar provisions apply where a property is developed in a company and the shares in the company are sold.

Restrictions on foreign assets

There are no additional restrictions on foreign assets. Non-UK investment properties and the rental income arising from those properties are included in the assets/income in the aforementioned tests provided they are held by group companies/certain joint venture companies.

Distribution requirements

The UK REIT is required to distribute at least 90% of its exempt rental profits (being rental income after deducting finance costs, overheads and tax depreciation) as a Property Income Dividend unless it has insufficient reserves. The distribution requirement can be met using stock dividends. 100% of the Property Income Dividends received from other REITs must be distributed. There is no requirement to distribute exempt gains.

Distributions paid out of taxed income/ gains or other non-taxed income/gains are treated as a normal distribution and are not generally subject to further tax when received by a UK corporate.

Tax treatment at REIT level

A UK REIT is not subject to tax in respect of either rental income earned, capital gains realised in respect of its qualifying rental business assets, or, since April 2019, on sales of shares in qualifying UK property rich companies (i.e. which derive at least 75% of their value from UK land). It is subject to corporation tax on all other income and gains under the usual taxation rules.

There is no special exemption for UK REITs from value added tax, uniform business rates, employment taxes or transaction taxes (Stamp Duty Land Tax ("SDLT"), Scottish Land and Buildings Transaction Tax ("LBTT") or Welsh Land Transaction Tax ("LTT").

Where a REIT holds 40% or more of the economic rights in a company or group that owns investment property (a "JV company"), then it can also elect its share of that company/group's income and gains into the REIT regime. The JV company does not pay UK tax on the REIT's share of income and gains arising from its UK property investments (and non-UK investment property if the JV company/ group is a UK tax resident).

Withholding tax on distributions

Dividend distributions out of exempt rental income and exempt gains (if distributed) by the UK REIT are generally subject to a withholding tax of 20%; however, payments can be made gross to UK corporates, UK pension funds and UK charities.

Most UK double tax treaties provide for a reduced withholding tax rate of 15% for distributions to non-UK tax resident investors. The REIT must however withhold 20% on relevant distributions to overseas investors and a refund claimed from HMRC where a treaty rate applies.

The ability to access lower treaty withholding tax rates where a corporate shareholder owns 10% or more of the REITs shares are subject to restrictions (see comments above). Moreover, the EU Parent Subsidiary Directive does not apply, due to the UK REITs tax exemption.

Distributions out of other income or gains are treated as ordinary dividends which are not subject to any withholding. Special rules apply to determine out of which profits distributions are made.

United Kingdom

Tax treatment at the investor level

UK resident investors

Individual investors

Capital gains realised on the disposal of UK REIT shares held by individuals are subject to capital gains tax at the individual's marginal rate (10 or 20%). Rental income and capital gains that result from the rental business and which are distributed to UK tax resident individuals are subject to income tax at the marginal rate (up to 45%) with credit for the withholding tax of 20% which has been suffered.

Distribution of other income is subject to UK tax as ordinary dividend income. The individual would be subject to tax at their highest dividend rate on this income (up to 38.1%).

REIT shares can however be held in an Individual Savings account (ISA).

Corporate investors

Distributions of exempt rental income and exempt capital gains derived from the disposal of rental property are subject to corporate tax at the relevant corporation tax rate – currently 19% – but dropping to 17% by 2020. Gains on the sale of shares disposed of by corporate shareholders are subject to tax at the relevant corporation tax rate.

Non-resident investors

Individual investors

Distributions of exempt rental income and capital gains derived from the disposal of rental property are subject to withholding tax of 20% (subject to any claim for a refund under the terms of the relevant double tax treaty – see above).

Other distributions are not subject to withholding tax.

Capital gains realised by individuals resident outside the UK from the disposal of shares (including shares in UK REITs) have until April 2019 been outside the scope of UK tax. However, since April 2019 the disposal of any shares in a UK REIT which is UK property rich by a non-UK resident individual investor is within the scope of UK capital gains tax. As a UK REIT falls within the definition of 'Collective Investment Vehicle', the minimum 25% holding requirement for companies which are not collective investment vehicles does not apply.

Existing capital gains reliefs and exemptions are however available to non-UK residents, with modifications where necessary. In addition, the provisions of any relevant double tax treaty however need to be considered.

Corporate investors

Distributions of rental income and capital gains derived from the disposal of rental property are subject to withholding tax of 20% (subject to treaty relief – see above).

Distributions of taxed income are not subject to withholding tax.

Capital gains realised by companies resident outside the UK from the disposal of UK shares (including REITs) have until April 2019 been outside the scope of UK tax. However, since April 2019 the disposal of any shares in a UK REIT which is UK property rich by a non-UK resident corporate investor is within the scope of UK capital gains tax. As a UK REIT falls within the definition of 'Collective Investment Vehicle', the minimum 25% holding requirement for companies which are not collective investment vehicles does not apply.

Existing capital gains reliefs and exemptions are however available to non-UK residents, with modifications where necessary. In addition, the provisions of any relevant double tax treaty however need to be considered.

United States of America

Adam Feuerstein

PwC (USA)

Tel: +1 703 918-6802

adam.s.feuerstein@pwc.com

Julanne Allen

PwC (USA)

Tel: +1 571 235-7837

julanne.allen@pwc.com

The US REIT regime was first enacted in 1960 and effective in 1961.

The market value of publicly traded US REITs was USD 1.121 tn as of July 2019. Public listed REITs paid out approximately USD 65.3bn in dividends during 2018, while public non-listed REITs paid out approximately USD 4.9bn.

The number of US publicly held REITs totals 191.

Legal form

A US REIT may be formed as a corporation, trust or an association taxable as a corporation, or an entity that may elect to be treated as an association, such as a limited partnership or limited liability company. REIT status is principally a creation of the tax law rather than commercial law.

Capital requirements

A REIT is not limited with respect to the amount of its borrowings although the deduction of interest may be limited unless the REIT is eligible to make, and makes, an election for its interest expenses to not be so limited. Additionally, there are debt/equity considerations that generally apply to corporations.

Listing requirements

There is no requirement to be listed; both public and private REITs exist in the US.

Restrictions on investors**Minimum number of investors**

A REIT must have at least 100 shareholders, but no minimum value for each shareholder is specified. Generally, five or fewer individuals cannot own more than 50% of the value of the REIT's stock – applying broad attribution rules – during the last half of its taxable year. Certain entities are treated as individuals for this purpose.

Restrictions on foreign investors

There is no restriction on ownership by foreign persons.

Asset/income/activity tests

- Annually, at least 75% of the REITs gross taxable income must be from real estate-related income such as rents from real property, interest on obligations secured by mortgages on real property, gain on sale of real property and mortgage loans, and dividends and gains from other US REITs.
- Annually, at least 95% of the REITs gross taxable income must be from sources including those qualifying for the 75% income test described above, other interest and dividend income, and gains on securities.
- Quarterly, at least 75% of the value of the REITs gross assets must consist of real estate assets (interests in real property, mortgages secured by real property and shares in other REITs), cash and cash items (including receivables), and US Government securities.
- Quarterly, a REIT cannot own more than 10% of the vote or value of the securities of another person, and these securities cannot comprise more than 5% of the value of the REITs gross assets. Shares in other REITs, 100%-owned subsidiaries (which are disregarded entities) and securities of taxable REIT subsidiaries are not subject to these restrictions.
- Quarterly, the value of all securities of taxable REIT subsidiaries owned by the REIT cannot be more than 20% of the value of the REITs gross assets.
- A taxable REIT subsidiary can undertake activities that the REIT cannot and its status is obtained by filing a joint election with the REIT.
- A REIT is subject to a penalty tax of 100% on the gain from the sale of 'dealer property' (property held primarily for sale to customers in the ordinary course of a trade or business).

United States of America

- A REIT may operate or manage its own properties and provide 'customary' services to tenants. Special rules apply to 'non-customary' services, rental income from related parties and rents based upon net income rather than gross income of a tenant.
- A REIT must adopt the calendar year as its taxable year.

Restrictions on foreign assets

There is no limitation on ownership of foreign assets, but the REIT must meet the income and asset tests described above with special rules for currency gains.

Distribution requirements

The REIT must distribute at least 90% of its ordinary taxable income of each year. Distributions made after year-end may be applied to satisfy this requirement under certain circumstances.

Tax treatment at REIT level

The REIT must be formed in one of the 50 states or the District of Columbia. There is no residency requirement based upon place of management.

- A deduction generally is allowed for dividends paid to shareholders.
- Corporate level tax applies on any taxable income that is not distributed.
- An excise tax of 4% applies to the extent that the REIT fails to distribute at least 85% of its ordinary income and 95% of its net capital gain within the tax year.
- Most states follow the federal treatment; however, some have enacted laws to restrict the ability to take the dividends paid deduction under certain circumstances.
- States may also impose a variety of non-income taxes on REITs and their operations.

Withholding on distributions and sales

Domestic shareholders are not generally subject to withholding.

Generally, foreign shareholders are subject to 30% withholding on dividends but the withholding may be 35% for capital gain dividends and non-capital gain distributions attributable to the gain from the disposition of a US real property interest. Additionally, return of capital distributions to a foreign shareholder from a REIT that holds primarily US real property interests (which generally would not include mortgage loans) may be subject to 15% withholding.

In addition, the sale by a foreign shareholder of REIT stock is subject to 15% withholding on the gross proceeds unless the REIT is domestically controlled, the REIT holds primarily interests that are not US real property interests (such as mortgage loans), a withholding certificate is obtained from the Internal Revenue Service (IRS) reducing the amount of withholding or the stock is publicly traded (unless the seller owns more than 10% of the class of stock of the REIT).

Governmental entities and pension funds may be exempt from withholding.

Treaty access

If a treaty rate applies, ordinary dividends are subject to withholding tax at reduced rates (generally from 10% to 25%, depending on the investor type, treaty country and ownership percentage in the REIT). Benefits are often limited to investors who have 5% or less ownership of a public REIT and 10% or less if non-public, provided that the non-public REIT is 'diversified'. A diversified REIT generally must hold no interest in US real property that is more than 10% of all its real property holdings. Zero withholding tax is possible for pension funds or tax-exempt entities in certain treaty countries, generally if ownership is below a certain percentage.

United States of America

Tax treatment at the investor level

Domestic investors

Distributions from a REIT, other than capital gain distributions are, to the extent of earnings and profits, taxable as ordinary income to individuals up to 37% (although the tax on dividends may be reduced to 20% in certain cases to the extent that the distribution has already been subject to a corporate level tax) and are subject to an additional 3.8% Medicare Contribution Tax.

An individual shareholder of a REIT may be eligible to take a 20% deduction on certain qualifying REIT dividends, which are not capital gain dividends or are otherwise taxed at capital gains rates.

Individuals are generally subject to tax on dividends attributable to capital gain at a 20% rate (25% on gains attributable to accumulated depreciation) provided the REIT elects to treat the dividends as capital gain dividends.

Corporations are generally subject to a tax of up to 21% on dividends from REITs and the dividends are not eligible for the dividends received deduction.

Foreign investors

A foreign shareholder that is subject to tax on capital gain dividends or from a sale of shares must file a US tax return, even if its tax liability is fully withheld upon at source.

For foreign corporations, withholding tax on capital gain dividends or the sale of shares is credited against their substantive US tax of 21% plus any branch profits tax.

Foreign corporations may be subject to the branch profits tax at 30%, which is applied to gains less the regular income tax resulting in an effective rate of up to 44.7%. Many treaties provide for a reduction in rate on the branch profits tax. Branch profits tax generally does not apply to the sale of shares.

Individuals, estates and trusts (determined under US tax principles) are generally subject to tax on capital gain dividends up to a 20% rate (25% on gains attributable to accumulated depreciation).

A tax-free exit may be available upon sale of shares in publicly traded REITs (if less than 10% ownership limitation is met) and domestically controlled REITs.

Transition to REIT/Tax privileges

A REIT election is made by filing its corporate income tax return on Form 1120-REIT. A regular corporation that elects REIT status is required to distribute its accumulated tax earnings and profits before the end of its first year as a REIT. Any net built-in gain in assets at the date of the election is subject to corporate level tax on gain recognised within the next five years. This tax can often be deferred by acquiring replacement property in a 'like-kind exchange'.

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