EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

AMERICAS

Canada – MFT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
MFT	1994	Income Tax Act	Trust type

The specified investment flow-through rules ('SIFT Rules'), enacted in 2007 and amended in 2009, have had a significant negative impact on non-qualifying REITs and their unit holders, by making them subject to entity-level tax. However, 'real estate investment trusts' (as specifically defined for this purpose) are exempted from the SIFT Rules.

Canadian REITs may qualify as 'mutual fund trusts' (MFTs) under the Canadian Income Tax Act ("ITA") for which there are comprehensive and detailed rules. A MFT provides for a flow through of income, dividends and capital gains and, in addition, has many tax benefits associated with vehicles that are qualified for distribution to the public, which are not available to trusts that do not qualify as MFTs.

The MFT regime is governed by the ITA and is subject to provincial securities legislation. Generally, a MFT that is a REIT is not a mutual fund under applicable securities legislation.

The SIFT Rules generally do not apply to a publicly traded trust that qualifies as a 'real estate investment trust' (as defined in the SIFT Rules) throughout a taxation year (the 'REIT Exception'). For purposes of the SIFT Rules, a trust will be a 'real estate investment trust' for a particular taxation year if:

a. the trust is resident in Canada throughout the taxation year;
b. at each time in the taxation year, at least 90% of the total fair market value of the trust's 'non-portfolio property' is 'qualified REIT properties'. In general, non-portfolio property includes (a) securities of a 'subject entity' (other than a 'portfolio investment entity') that have a total fair market value that is greater than 10% of the equity value of the 'subject entity' or have a total fair market value that is greater than 50% of the equity value of the trust; (b) a Canadian real, immovable or resource property, if at any time in the taxation year the fair market value of all such properties held by the trust is greater than 50% of the equity value of the trust; or (c) a property that the trust, or a person or partnership with whom the trust does not deal at arm's length, uses in the course of carrying on a business in Canada;
c. not less than 90% of the trust's 'gross REIT revenue' for the taxation year is from one or more of the following: (i) 'rent from real or immovable properties' (as defined in the SIFT Rules), (ii) interest, (iii) dispositions of 'real or immovable properties' (as defined in the SIFT Rules) that are capital properties (as defined in the ITA), (iv) dividends, (v) royalties, and (vi) dispositions of 'eligible resale properties' (as defined in the SIFT Rules) (the "revenue test");
d. not less than 75% of the trust's 'gross REIT revenue' for the taxation year is from one or more of the following: (i) 'rent from real or immovable properties', (ii) interest from mortgages, or hypothecs, on 'real or immovable properties', and (iii) dispositions of 'real or immovable properties' that are capital properties;
e. at all times in the taxation year an amount, that is equal to 75% or more of the equity value of the trust at that time, is the amount that is the total fair market value of all properties held by the trust each of which is 'real or immovable property' that is a capital property, 'eligible resale property', indebtedness of a Canadian corporation represented by a bankers' acceptance, property described by either paragraph (a) or (b) of the definition 'qualified investment' in section 204 (i.e. generally, certain deposits with financial institutions or certain government debt), or a deposit with a credit union; and
f. at any time in the taxation year, investments in the trusts are listed or traded on a stock exchange or other public market.

For purposes of the REIT Exception, 'qualified REIT property' of a trust means a property held by the trust that is:

a. a 'real or immovable property' that is capital property, an 'eligible resale property', an indebtedness of a Canadian corporation represented by a bankers' acceptance, property described by either paragraph (a) or (b) of the definition 'qualified investment' in section 204 (i.e. generally, certain deposits with financial institutions or certain government debt), or a deposit with a credit union;
b. a security of a 'subject entity', where all, or substantially all, of the 'gross REIT revenue' is from maintaining, improving, leasing or managing real or immovable properties that are capital properties of the trust, or of an entity of which the trust holds a share or interest, including real or immoveable properties that the trust, or of an entity of which the trust holds a share or interest, holds together with one or more other persons or partnerships;
c. a security of a 'subject entity' if the entity holds no property other than;
   i. legal title to 'real or immovable property' of the trust or of another subject entity all of the securities of which are held by the trust (including 'real or immovable property' that the trust or the other subject entity holds together with one or more other persons or partnerships), and
   ii. property described in paragraph (d); or
d. ancillary to the earning by the trust of rent from, and capital gains from the disposition of, 'real or immovable property', other than equity of an entity or a mortgage, hypothecary claim, mezzanine loan or similar obligation.

'Rent from real or immovable properties' includes:

(a) rent or similar payments for the use of, or right to use, 'real or immovable properties'; and
(b) payment for services ancillary to the rental of 'real or immovable properties' and customarily supplied or rendered in connection with the rental of 'real or immovable properties'.

But does not include:

(a) Management fees;
(b) Payments for hotel rooms or similar lodging facilities; or
(c) Rent based on profits.

'Real or immovable property' includes a security of an entity held by the taxpayer that would itself satisfy conditions (b) through (e) of the REIT Exception listed above if such entity were a trust, or an interest in real property or a right in immovable property, but does not include any depreciable property, other than (i) a property included, otherwise than by an election permitted by regulation, in Class 1, 3 or 31 of Schedule II to the Income Tax Regulations (generally buildings), (ii) a property ancillary to the ownership or utilisation of a property described in (i), or (iii) a lease in, or a leasehold interest in respect of, land or property described in (i).

'Eligible resale property' includes 'real or immovable property' that is not capital property, is contiguous to a particular 'real or immovable property' that is either capital or 'eligible resale property' of the entity or an affiliated entity, and is ancillary to the holding of that particular property.

For purposes of the REIT Exception, 'gross REIT revenue' of a trust means the total of all amounts received or receivable in the year by the entity in excess of total amounts each of which is the cost of property disposed of in the year.

Canadian hotel and seniors living REITs generally do not qualify for the REIT Exception due to their operations being active rather than passive in nature, and, accordingly, such REITs are generally subject to entity-level tax.

The REIT Exception includes look through rules for certain trust revenues, and the inclusion of foreign currency gains as well as hedging income from interest rate swaps and foreign currency hedges, in 'gross REIT revenue'. Generally these amounts can be included in 'gross REIT revenue' to the extent they were realised on revenue in respect of 'real or immovable properties' or on debt incurred for the purpose of earning revenue from 'real or immovable properties'. For example:

- Amounts of income payable by a subsidiary entity to its parent, or an affiliated entity, will generally be deemed to maintain their source character for the parent or affiliated entity where it is included in the parent's 'gross REIT revenue';
- Foreign currency gains included in the trust's 'gross REIT revenue' and realised in respect of 'real or immovable property' situated in a foreign country will be treated as having the same character as 'gross REIT revenue' in respect of the 'real or immoveable property';
- Foreign currency gains from debt incurred for the purpose of earning revenue from a qualifying source of REIT revenue (e.g. Euro-denominated debt incurred by the REIT to acquire real or immovable property in a European country from which the REIT earns rental revenue) will be deemed to have the same character as the 'gross REIT revenue' to which it relates; and
- Amounts included in the trust's 'gross REIT revenue' and received under, or as a result of, an arrangement that hedges risk stemming from fluctuations in foreign currency related to sources of revenue in respect of 'real or immoveable property' situated outside Canada would also be treated as qualifying REIT revenue.

Amendments to the SIFT Rules were enacted on December 12, 2013, in response to the government's concern over certain transactions involving publicly-traded stapled securities (i.e. securities which are legally separate but which must be bought and sold together). With respect to stapled securities to which the rules apply that involve debt stapled to equity, the rules deny a deduction in computing income of the payer for interest that is paid or payable on the debt. In addition, where, for example, units of a REIT can only be transferred together with an interest in another entity, the rules would cause any amount (including, but not limited to rent) that is paid or payable by the other entity (or its subsidiaries) to the REIT (or its subsidiaries) on or after July 20, 2011 to be non-deductible in computing the income of the payer for income tax purposes. In both of these cases, there does not appear to be any offsetting adjustment with respect to the income earned by the REIT or its subsidiaries which could result in double taxation of the earnings represented by the non-deductible payments.

The legislation included a transitional period for the application of the rules which, in general terms, delayed their application until January 01, 2016, where the stapled securities were issued at October 31, 2006 (when the SIFT Rules were announced), or before July 20, 2012 for other stapled securities which were issued at the date of the announcement of the rules of July 20, 2011. This legislation applies, in particular, to those REITs that attempted to qualify for REIT status by issuing stapled securities. The rules meant that stapled restructurings used by some Canadian hotel and senior living REITs to remain in the REIT regime are no longer effective. Therefore, relevant REITs that have not already reorganized can now no longer do so in order to avoid the application of these rules.

Despite the various amendments to the rules, a number of Canadian publicly-traded REITs have been able to meet the REIT Exception criteria either through purification of operations or through restructuring. Recently, certain newly formed qualifying Canadian REITs have been created based on the sizeable real property holdings of large publicly traded Canadian retail companies. Such companies have decided to transfer their real property to a Canadian REIT in order to monetise some of the inherent value in their property portfolio which may be undervalued within their operating businesses. Those trusts that are impacted by the SIFT rules who fail to meet the REIT Exception criteria, will be subject to the entity level SIFT tax.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Canada	46	17	€ 41.180	2.95%

NAREIT *Data provided by NAREIT (converted to EUR)

Top five REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
RioCan REIT	€ 6.150	13.00%	4.87%	0.56%
H&R REIT	€ 4.472	10.17%	5.81%	0.41%
SmartREIT	€ 3.145	32.08%	4.28%	0.25%
Canadian Apartment Properties REIT	€ 2.685	20.49%	3.83%	0.24%
Canadian REIT	€ 2.484	21.61%	3.66%	0.23%

EPRA * All market caps and returns are rebased in EUR and are correct as at 29 July 2016. The Global REIT Index is the FTSE EPRA/NAREIT Global REITs Index. *EPRA, August 2016.*

2 Requirements

2.1 Formalities / procedure

Key requirements
Election in tax return.

Generally, a trust will not meet the requirements of a MFT at the time of its formation because of the distribution requirements discussed below. If a trust qualifies as a MFT before the 91st day after the end of its first taxation year, and elects in its tax return for that year, the trust will be deemed to be a MFT from the beginning of its first taxation year.

2.2 Legal form / minimum initial capital

Legal form	Minimum initial capital
Unit trust	No

Legal form
In Canada, the MFT has developed into the most popular publicly traded investment vehicle for Canadian real estate investment. While other tax-efficient vehicles have been considered, the MFT provides the most favourable tax treatment. All Canadian provincial jurisdictions with the exception of the Maritimes, Nunavut, Northwest Territories and the Yukon have enacted statutes providing a statutory limitation on the liability of unit holders of MFTs (including REITs), as discussed below.

The trust indenture or agreement for a REIT will generally provide that no unit holder will be subject to any liability in connection with the REIT or its obligations and affairs and, in the event that a court determines unit holders are subject to any such liabilities, the liabilities will be enforceable only against, and will be satisfied only out of the REIT's assets.

The *Income Trusts Liability Act* (Alberta) came into force on July 01, 2004. The legislation provides that a unit holder of a trust created by a trust instrument governed by the laws of Alberta, and that is a ‘reporting issuer’ under the *Securities Act* (Alberta) will not be, as a beneficiary, liable for any act, default, obligation or liability of the Trustee that arises after the legislation came into force. The *Investment Trust Unitholders’ Protection Act* (Manitoba), which came into force on June 16, 2005, the *Income Trust Liability Act* (British Columbia), which came into force on March 30, 2006 and the *Income Trust Liability Act* (Saskatchewan), which came into force on May 19, 2006, contain similar provisions. Ontario’s *Trust Beneficiaries’ Liability Act,* which came into force on December 16, 2004, has a substantially identical provision.

The *Quebec Civil Code* also provides for the limitation of beneficiary liability for the acts of the trustees of a trust in absence of fraud.

Minimum initial capital
No minimum initial capital required.

2.3 Unit holder requirements / listing requirements

Unit holder requirements	Listing mandatory
- Minimum of 150 unit holders each of whom holds not less than one ‘block of units’ and having an aggregate fair market value of not less than CAN$ 500. - Generally, MFTs cannot be established or maintained primarily for the benefit of non-residents of Canada.	- Required to avoid redemption right of unit holders.

Unit holder requirements
The Canadian rules applicable to MFTs require that there be at least 150 unit holders each of whom holds not less than one ‘block of units’ which have a fair market value of not less than CAN$ 500. The number of units required in a block will depend on its fair market value (e.g. 100 units, if the fair market value of one unit is less than CAN$ 25). There are rules which deem a ‘group’ of persons holding units to be one person for purposes of determining whether there are 150 unit holders. In addition, a class of units of the trust must be “qualified for distribution to the public”, which is defined to include a lawful distribution in a province to the public of units of the trust in accordance with a prospectus or similar document.

Listing requirements
Units must be listed on a designated stock exchange in Canada to avoid the requirement that the units be redeemable at the demand of the holder.

In general, to qualify as a ‘unit trust’ (where the units are not redeemable on demand by the holder), the following requirements in respect of property ownership and income must be satisfied:

- At least 80% of its property consisted of any combination of:
  a. shares,
  b. any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,
  c. cash,
  d. bonds, debentures, mortgages, hypothecary claims, notes and other similar obligations,
  e. marketable securities,
  f. real property situated in Canada and interests in real property situated in Canada (which would include leasehold interests),
  g. rights to and interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada,
- not less than 95% of its income was derived from, or from the disposition of, investments described in (a) through (g) above; and

- not more than 10% of its property consisted of bonds, securities or shares in the capital stock of any one corporation or debtor other than Her Majesty in right of Canada or a province or a Canadian municipality.

2.4 Asset level / activity test

Restrictions on activities / investments
- The investing in property (other than real property or an interest in real property) is allowed. - The acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real - property) that is capital property of the trust is allowed. - Any combination of the foregoing activities.

To qualify as a MFT, the only undertaking of a trust must be:

- the investing of its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable);
- the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) or of any immovable (or real right in immovables) that is capital property of the trust; or
- any combination of the foregoing activities.

A MFT generally may not carry on a business. Consequently, a MFT may not engage in trading in real estate and may not directly operate hotels or nursing homes, which are considered businesses.

2.5 Leverage

Leverage
N/A

The ITA does not impose limits on leverage of a MFT. It is common for there to be limitations as a matter of investment policy set out in the declaration of trust establishing the MFT, and disclosed in the prospectus.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
All income of the MFT for a taxation year is paid or payable to unit holders in the year so that MFT does not incur tax.	All capital gains are paid out and retain their character as such in the hands of unit holders, provided a designation is made by the MFT.	All income must be paid or recognised as a payable in the taxation year of the MFT. If it is payable then the amount can be paid out later.

Operative income

A MFT is not required by the ITA to pay out all of its income and capital gains. However, this is the invariable practice, as a trust may deduct in computing its income for a taxation year all income paid or payable to unit holders in such year with any remaining income being subject to income tax at the highest marginal personal income tax rate at the trust level. An amount will be ‘payable’ to a unit holder in a taxation year if the unit holder was entitled in the year to enforce payment. The declaration of trust establishing a MFT normally includes provisions ensuring that the income is ‘payable’ so the MFT may deduct amounts of income it has not actually paid out by the end of its taxation year.

Capital gains

See above.

2.7 Sanctions

Penalties / loss of status rules
Loss of MFT status.

If a REIT loses its MFT status, there will be several negative consequences including the following:

a. The REIT will be subject to a special 36% tax on its ‘designated income’, which includes income from real property in Canada and taxable capital gains from dispositions of real property in Canada and any other ‘taxable Canadian property’;
b. Units of the REIT will become ‘taxable Canadian property’, with the result that non-residents would generally be taxable in Canada on any gain from disposition of such units, and such dispositions by non-residents would become subject to reporting and withholding requirements;
c. Units of the REIT may cease to be qualified investments for certain deferred income plans, such as ‘registered retirement savings plans’; and
d. Transfers of REIT units may give rise to land transfer taxes if the REIT owns real property in certain provinces such as Ontario.

For these reasons, it is considered critical for a REIT to maintain its MFT status. There are special rules that may deem a REIT to retain its MFT status for the balance of the year where such status is lost midway through the year.

3 Tax treatment at level of the REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
A MFT is entitled to deduct in a year all income determined for purposes of the ITA paid or payable to unit holders in the year so it may reduce its net taxable income to nil.	Capital gains follow the same system for income, except only 50% of a capital gain (a ‘taxable capital gain’) is included in income and 50% of a capital loss can be applied to offset taxable capital gains.	Credit or refund of foreign withholding tax possible.

Current income

A MFT is not exempt from income tax under the ITA. Rather, a MFT computes its income in the same manner as any other resident of Canada, and is entitled to deduct in computing its income for a taxation year all income paid or payable to a unit holder in such taxation year. Consequently, distributions by a MFT are effected on a pre-tax basis. A MFT cannot flow through any losses to unit holders.

The tax treatment of distributions to unit holders of a MFT will generally depend on their characterisation for purposes of the ITA and the residency of the unit holder. As noted above, the SIFT Rules may apply an entity level corporate-style tax on certain REITs that do not qualify for the REIT Exception.

Capital gains

Only 50% of a capital gain realised is, in principle, taxed as a taxable capital gain, unless this income is distributed to unit holders during that taxation year, in which case the value of the distribution is deducted from taxable profits (as described above). The other 50% is completely exempt from income tax, whether distributed or not. 50% of a capital loss can be applied as an allowable capital loss to reduce or eliminate taxable capital gains in any of the three years preceding the year or any year following the year in which the taxable gains were realised. The other 50% cannot be applied as an allowable capital loss.

Withholding tax
If a REIT invests outside Canada, it may be subject to foreign income and withholding taxes. Provided the REIT makes the appropriate designation, investors in the REIT can generally claim a foreign tax credit for the foreign taxes when the related foreign source income is distributed by the REIT. Alternatively, the REIT may deduct such foreign taxes in computing its own income in some circumstances.

Other taxes
All provinces eliminated capital taxes effective July 01, 2012. In any case, as legal entities that are organised as trusts, REITs were generally not subject to provincial capital taxes.

REITs or their unit holders may be subject to provincial and municipal land transfer taxes in respect of acquisitions of real property. For instance, the highest provincial rate in Ontario is 1.5% for commercial property calculated on the value of the consideration and payable by the purchaser. Ontario taxes both registered and unregistered conveyances of land. There is limited relief from the tax. The City of Toronto imposes a similar land transfer tax.

Canada has both a federal Good and Services Tax (GST) and provincial sales tax regime. The current federal GST rate is 5%. Canadian REITs are subject to normal Canadian rules which vary depending on the province in which the services are provided.

Accounting rules
All publicly-accountable entities, as defined by the Canadian Accounting Standards Board (AcSB), are required to report financial statements in accordance with International Financial Reporting Standards (IFRS). Therefore, all publicly traded REITs in Canada are required to report under IFRS.

Provided a REIT does not meet the broadly worded definition for a publicly-accountable entity, as defined by the AcSB, it can choose to follow the Accounting Standards for Private Enterprises (ASPE).

3.2 Transition regulations

Conversion into REIT status
N/A

Where a trust owning property commences to qualify as a MFT, there is no deemed or actual disposition of property and therefore no tax payable under the ITA. There are not any rules permitting a tax-deferred transfer of property to a MFT except if there is a qualifying transfer of property to the MFT by another MFT or by a ‘mutual fund corporation’, and other conditions are satisfied. These latter provisions, in effect, provide for a tax-free merger of MFTs.

Some REITs have established Canadian subsidiaries (or indirectly held partnerships) so that transfers thereto can qualify for a tax deferral. The vendor of property cannot receive non-share (or non-partnership interest) consideration (e.g. cash, debt) which exceeds the tax cost of the transferred property; otherwise, recapture and gain will be triggered. The shares or partnership interests acquired by the vendor are typically exchangeable for units of the MFT. The exercise of such exchangeable shares or partnership units would generally be a taxable event. Care must be taken to avoid the newly enacted “character conversion transaction” rules in such arrangements which could convert a capital gain, only 50% of which is included in income, into a fully taxable gain.

3.3 Registration duties

Registration duties
Real estate transfer tax.

Some provinces impose a transfer tax on the acquisition of real estate payable by the purchaser. For instance, Ontario calculates the tax based on graduated rates applied to the value of the consideration for the land. The highest rate for commercial property is 1.5%. See above discussion in section 3.1 under the heading “Other Taxes”.

4 Tax treatment at the unit holder level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
Taxable.	Taxable.	N/A

Corporate unit holder/individual unit holder

Income (including the taxable portion of capital gains and dividends) paid or payable by a MFT to unit holders will be included in the income of unit holders resident in Canada (whether individuals or corporations), and will be subject to the normal rules of taxation. The rates of taxation will depend on whether the unit holder is an individual or a corporation and the province of residency. For example, in Ontario, the generally prevailing combined federal-provincial income tax rate for 2016 is 26.5% for corporations, and the top combined rate for individuals is 53.53% on taxable income exceeding CAN$ 220,000.

If a REIT earns taxable dividends from Canadian corporations, provided the REIT makes the appropriate designation, those amounts will retain their character as such when distributed. Unit holders that are corporations will generally be entitled to a full dividends received deduction in respect of such dividends, but may in certain cases be subject to a refundable Part IV tax on the dividends. Unit holders that are individuals will generally be entitled to preferential tax treatment by claiming a dividend tax credit. Distributions of income which are subject to the new entity level SIFT tax discussed above will be considered to be dividends to unit holders.

If a REIT realises capital gains, provided the REIT makes the appropriate designation, those amounts will retain their character as such when distributed. One-half of capital gains are included in income as ‘taxable capital gains’.

Distributions by a MFT in excess of income may arise because of non-cash deductions such as capital cost allowance. These distributions provide a form of tax deferral because they reduce the tax cost of the units without immediate taxation unless the tax cost becomes negative.

As noted above, capital gains, dividends and foreign source income will retain their character in the hands of unit holders if appropriate designations are filed. Otherwise, the ‘source’ of income is treated as income from a trust.

On the disposition of a unit of a MFT, the unit holder will realise a capital gain (or a capital loss) to the extent the proceeds of disposition exceed (or are exceeded by) the aggregate of the tax cost of a unit and any disposition costs.

Withholding tax
There is no withholding on distributions made to residents of Canada.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding tax
To the extent the distribution is made out of the REIT's income, the withholding tax is imposed at a statutory rate of 25%. Tax exemption for capital gains.	To the extent the distribution is made out of the REIT's income, the withholding tax is imposed at a statutory rate of 25%. Tax exemption for capital gains.	Tax treaty relief available.

Corporate unit holder/individual unit holder
Distributions
A foreign unit holder (whether a corporation or an individual) will generally be subject to withholding tax on distributions from a REIT.

To the extent the distribution is made out of the REIT's income, the withholding tax is imposed at a statutory rate of 25%. However, under many treaties, the rate is reduced to 15%.

To the extent the distribution exceeds the REIT's income, the ITA provides for a 15% tax if the REIT is a 'Canadian property mutual fund investment' – which essentially means that more than 50% of the value of the REIT's units is attributable to Canadian real property or resource property.

All MFTs, including REITs, are required to keep track of their net capital gains from disposals of 'taxable Canadian property' in a 'TCP gains distributions account'. For example, if the REIT realises a gain on disposal of a Canadian real property investment, the full amount of that capital gain will be added to the TCP gains distribution account (despite the fact that only one-half of the capital gain is included in taxable income of the REIT). When the REIT makes a distribution to a foreign investor, the distribution is treated as coming out of the balance, if any, in the TCP gains distribution account, and any portion of the distribution that would otherwise have escaped Canadian withholding tax is subject to a 15% withholding tax.

Capital gains
Foreign unit holders (whether corporations or individuals) will generally not be subject to Canadian tax on gains from disposals of REIT units provided an ownership test is met. In particular, the unit holder must not own 25% or more of the REIT's outstanding units at any time during the 60 months preceding the disposal.

5 Tax treatment of foreign REIT and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Taxed on Rental income and Gains.	Fully taxable.	Fully taxable.

Foreign REIT
A foreign REIT generally will be subject to the normal Canadian tax rules applicable to other foreign investors in Canada, including the following:

- rental income earned by a foreign REIT from Canadian real estate will generally be subject to a 25% withholding tax, levied on gross rentals;
- gains realised from a disposal of Canadian real estate by a foreign REIT will be subject to Canadian tax.

In many cases, foreign REITs acquire Canadian properties through special purpose corporations, unlimited liability companies or trusts. Through the use of leverage, both internal and external, it is normally possible to reduce or, in some cases, eliminate Canadian tax on rental income. Canada's tax treaties generally permit Canada to tax capital gains realised by foreign investors, including REITs, from disposals of real property in Canada or shares of Canadian companies whose value is derived principally from real property in Canada, although certain treaties provide an exemption in the case where the real property is used in a business of the company.

Corporate unit holder

A corporate unit holder of a foreign REIT will generally be required to include in income any distributions received, whether or not those distributions were sourced from income generated in Canada.

Individual unit holder

An individual unit holder of a foreign REIT will generally be required to include in income any distributions received, whether or not those distributions were sourced from income generated in Canada. ■

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