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Global REIT Survey 2016

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REITs are the guardians of many of the highest quality assets in our cities around the globe, from office complexes, to shopping centres and increasingly healthcare and retirement facilities. As societies are facing the challenge to provide for their rapidly greying populations during a time of particularly low interest rates and lacklustre investment returns, REITs appear to be the key part of the solution to this fundamental problem. Today, out of 28 EU Member States, 12 have a REIT regime. Those 12 countries represent 83% of the EU GDP. At EPRA we believe that the rise of REITs, which maximise the flow of long-term rental income streams to pension funds and private investors saving for retirement, will gather further momentum. EPRA's mission is to focus on education and to provide relevant materials to the investor community, not only in Europe but also at global level. I would like to thank the tax and consultant teams, whose valuable contribution continues to make the Global REIT Survey possible.

Philip Charls

EPRA CEO

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

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AMERICAS

Brazil – FII

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type	REIT market
FII	1993	Federal Law 8.668/93, amended by Federal Law 9.779/99, and regulated by Rulings (ICVM) 206/94 and 472/08	Fund type	- 198 FII (162 listed) - BRL 68 billion NAV (approx. EUR 19 billion as at June 2015)

In Brazil, an investment fund for real estate endeavours is called a '*Fundo de Investimento Imobiliário*' (FII). This vehicle was introduced in 1993.

The FII is governed by the Federal Law 8.668/93, amended by Federal Law 9.779/99, and regulated by Brazilian Securities Commission (CVM – Brazilian equivalent to US SEC) under Rulings (*Instrução CVM*) 206/94 and 472/08.

As at June 2016, there were 198 FIIs in operation in Brazil with net asset value in excess of BRL 68 billion, 162 of which are listed on the São Paulo Stock Exchange – Bovespa.

2 Requirements

2.1 Formalities / procedure

Key requirements
- Must be approved by the Brazilian Securities Commission (CVM) - Managed by a financial institution - Subscriptions for units must be registered with the CVM

The FII is regulated and supervised by the Brazilian Securities Commission – CVM.

The FII must be formed and managed by financial institutions duly authorized by the CVM. Only financial institutions with investment portfolios, real estate assets, credit portfolios or other financial instruments are authorised to manage an FII.

The fund manager should seek CVM approval before setting up the FII by providing the following:
i. request of the public offering of fund units or formal request to waiver such registration;
ii. fund by-laws and regulations;
iii. information on the fund's records with the Public Notary;
iv. appointment of an independent auditor and other service providers; and
v. appointment of a director employed by the fund manager.

The fund operation depends on prior registration with the CVM, which should be filed with the fund's tax reference number (CNPJ), along with the documents above.

2.2 Legal form / minimum initial capital

Legal form	Minimum initial capital
Fund (Contractual agreement between investors and fund manager)	No

Legal form

The FII is not a legal person but rather a contractual agreement between investors and a fund manager. The FII is close-ended with limited or unlimited duration.

Minimum initial capital

There is no minimum initial capital requirement. Investors will be issued with fund units which may be acquired with cash or in exchange for contributions of real estate or *in rem* rights.

2.3 Unit holder requirements / listing requirements

Unit holder requirements	Listing mandatory
Construction companies may not hold more than 25% interest in an FII	No

Unit holder requirements

Construction companies involved in the activities invested in by the FII may hold a maximum 25% interest in the FII. Where the 25% threshold is breached, the FII will lose its tax benefits and suffer tax as an ordinary corporation for income tax purposes.

Unit holders may be individuals or legal entities in Brazil or abroad and there is no discrimination between Brazilian and foreign investors.

Listing requirements

FII units are tradable securities and may be traded on the Stock Exchange or on the private 'over-the-counter' market.

The FII does not allow redemption of units, so units can only be sold in the open market through the Stock Exchange or over-the-counter.

Where the duration of the FII is not determined, capital can only be returned to unit holders through a unanimous decision of the unit holders.

2.4 Asset level / activity test

Restrictions on activities / investments
The minimum real estate investment was previously set at 75% of an FII's total assets, although this requirement has been revoked by ICVM 472/08 effective from December 03, 2008 New regulations set out a list of authorised investments

Under the regulatory rules applicable before ICVM 472/08 (which became effective on December 03, 2008), FIIs were required to invest at least 75% of their total assets in real estate. ICVM 472/08 has revoked all previous regulation applicable to FIIs. However, it has not introduced a new requirement of a minimum level of investment into real estate. Instead, it has introduced a comprehensive list of real-estate related assets in which an FII may invest (see below). Nevertheless, it is not entirely clear whether FIIs may invest into any type of non-real estate assets (e.g. bonds, fixed-income funds etc.) under the new regulations.

Under ICVM 472/08, an FII can hold the following assets:

I any rights *in rem* on real estate (e.g. freehold or leasehold);

II stock, debentures, subscription warrants, subscription receipts and similar securities, provided their issuance or trade was registered with or authorized by the CVM, as well as any other securities, whose issuers have activities predominantly allowed to the FII;

III shares in companies whose sole purpose fits into the activities allowed to the FII;
IV shares in private equity investment funds ('FIP') where the investment policy of the FIP relates only to activities allowed to the FII or shares in stock investment funds ('FIA') which are divided into sectors and exclusively undertakes property development or investment activities;
V some types of construction certificates;
VI units in other FIIs;
VII mortgage-backed securities and shares in CVM-registered investment funds in credit rights ('FIDC') where the investment policy of the FIDC relates only to activities allowed to an FII;
VIII mortgage bills; and
IX real estate credit bills.

A FII which predominantly invests in securities should observe the investment limits per issuer and type of financial assets set out in ICVM 409/2004.

2.5 Leverage

Leverage
No leverage restrictions applicable

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
At least 95% of income arising on a cash basis	At least 95% of capital gains arising on a cash basis	Every six months

Operative income

At least 95% of the net operating income must be distributed bi-annually (June 30 and December 31).

Capital gains

At least 95% of the capital gains must be distributed bi-annually (June 30 and December 31). This requirement only applies to capital gains recognised on a cash basis.

2.7 Sanctions

Penalties / loss of status rules
Loss of tax exemption

Construction companies involved in the projects invested in by the FII may not hold more than 25% interest in the FII. Where this condition is breached, the FII will be taxed as a corporation for income tax purposes (34%).

Further sanctions by the CVM may be applicable on a case-by-case basis.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
- Income from real estate activities is tax-exempt - Income from other activities is subject to withholding income tax	Capital gains are treated as income from real estate activities and therefore tax-exempt	Withholding tax suffered by the FII may be set against tax on distribution to investors

Current income
Income from real estate activities (e.g. rental income or income from certain real-estate related securities) is tax-exempt.

Income from fixed-income and variable-income investments is subject to withholding income tax. Exception is made to some particular securities such as Mortgage Notes (*Letras Hipotecárias*), Housing Financing (*Letras de Crédito Imobiliário*) and Agricultural Warrants (*Warrant Agropecuário*).

This withholding tax may be offset against the withholding tax payable on profits distribution to unit holders.

Capital gains
Capital gains are treated as income from real estate activities and therefore tax-exempt.

Withholding tax
Earnings from investments in fixed income are subject to withholding tax at a rate between 15% and 22.5%, depending on the length of the holding of the investment, and it can be set against tax payable on profits distribution from the FII.

Earnings from investments in variable income are taxed at a rate between 15% and 20% and can be offset against tax payable on profits distribution.

Other taxes
Transfers of real estate to an FII are subject to a real estate transfer tax (ITBI) imposed by the municipality in which the property is located. The rates vary according to the location and value of the property.

The ownership of property in Brazil is also subject to an annual property tax (IPTU) applied by the municipalities. Again in this case, the rates vary according to the municipality in which the property is located.

Accounting rules
The FII must produce its own financial statements, and its accounts should be segregated from the fund manager's. The financial statements should be produced under Brazilian GAAP which is entirely in line with IFRS for accounting periods ended after 2015.

The accounting period must have 12 months and the financial statements must be published within 90 days of the end of the accounting period.

The preparation of financial statements must:
- observe the specific rules provided by CVM;
- be audited annually by an independent auditor; and
- observe the rules governing the exercise of that activity.

3.2 Transition regulations

Conversion into REIT status
N/A

Existing entities cannot be converted into FIIs.

3.3 Registration duties

Registration duties
Municipal real estate transfer tax (ITBI) applicable

Transfers of real estate to an FII are subject to a real estate transfer tax (IBTI) imposed by the municipality in which the property is located. The rates vary according to the location and value of the property.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- Withholding income tax at 20% on distributions from the FII or capital gains on the disposals of units in the FII.	- Withholding income tax at 20% on distributions from the FII or capital gains on the disposals of units in the FII. Income may be exempt from withholding tax if special conditions are met.	- Corporate unit holders may credit for withholding tax applied by the FII on distributions.

Corporate unit holder
Withholding income tax at 20% applies to distributions made by the FII to companies resident in Brazil and on capital gains arising from the disposal of units in the FII. The withholding tax can be offset against the unit holder's own corporate income tax liability.

Individual unit holder
Final withholding income tax at 20% applies to distributions made by the FII to individuals resident in Brazil and on capital gains arising from the disposal of units in the FII.

The Law 11.033/2004 sets out that individuals may be exempt from withholding tax on income provided:

- Units are negotiated exclusively on the stock exchange or over-the-counter;
- The fund has at least 50 unit holders;
- The individual benefitting from the tax exemption does not hold 10% or more of the fund's units, or is entitled to more than 10% of the fund's earnings.

Withholding tax
Corporate unit holders may credit for withholding tax applied by the FII on distributions and capital gains. However, for individual unit holders who do suffer withholding tax (i.e. individual unit holders who are not compliant with Law 11.033/04) there is no tax credit and the withholding tax is final.

4.2 Foreign Unit holders

Corporate unit holder	Individual unit holder	Withholding tax
- Withholding tax at 20% as a general rule. - Withholding tax at 15% on income, providing some conditions are met. - Capital gains at 0%, providing some conditions are met.	- Withholding tax at 20% as a general rule. - Withholding tax at 15% on income, providing some conditions are met. - Capital gains at 0%, providing some conditions are met.	Questionable whether tax treaty relief available.

Corporate unit holder

A reduced withholding tax rate of 15% applies to income and capital distributions made by the FII where the foreign investment is registered with the Brazilian Central Bank (*Resolução 4.373*) and the beneficiary is not resident in a low-tax jurisdiction.

Capital gains arising to the foreign unit holder from the disposal of units in the FII are not subject to tax in Brazil provided:

i. the unit is traded on the stock exchange;
ii. the investment is registered with the Brazilian Central Bank; and
iii. the beneficiary is not resident in a low-tax jurisdiction.

If either of the conditions above are not met, withholding tax will apply at 20%.

Individual unit holder

The same beneficial tax rates as described above (corporate unit holder) apply to individuals providing the conditions are met.

Withholding tax

It is still not clear whether non-resident unit holders in a Brazilian FII may be able to rely on double tax treaties to further reduce the rate of withholding tax on distributions made by the FII. As the legal nature of the FII is a contractual relationship between the fund manager and the investors, the Brazilian tax authorities may argue that the FII is not a 'person' for the purposes of applying double tax treaties.

5 Tax treatment of foreign REIT and its domestic unit holders

Foreign REIT	Corporate unit holder	Individual unit holder
Taxed with 15% withholding tax on income and capital gains.	Income and capital gains arising to a corporate unit holder taxed at 34% (40%-45% if the beneficiary is a financial institution, insurance or related company).	Income and capital gains arising to an individual unit holder taxed at rates from 7.5% to 27.5%.

Foreign REIT

A foreign REIT is only taxable in Brazil in respect of its income arising from a Brazilian source (e.g. rental income or capital gains related to a Brazilian property). Such income will be subject to 15% withholding tax in Brazil.

Corporate unit holder

Income (including capital gains) arising from a foreign REIT to a corporate unit holder resident in Brazil is subject to Brazilian tax at a combined rate of 34% (40%-45% if the beneficiary is a financial institution, insurance or related company). Any withholding tax suffered by the Brazilian unit holder on the distribution from the foreign REIT may be set against the Brazilian unit holder's own tax liability in Brazil, limited to the amount of Brazilian tax due on such distribution.

It is not clear whether the Brazilian resident investor may also claim a credit for any other underlying taxes suffered by the foreign REIT (e.g. withholding tax on rental income).

Individual unit holder

Income (including capital gains) arising from a foreign REIT to an individual unit holder resident in Brazil is subject to Brazilian tax at rates varying from 7.5% to 27.5% (in practice, individual investors in foreign REITs are likely to be higher-rate taxpayers so the 27.5% should apply). Any withholding tax suffered by the Brazilian unit holder on the distribution from the foreign REIT may be set against the Brazilian unit holder's own tax liability in Brazil.

It is not clear whether the Brazilian resident investor may also claim a credit for any other underlying taxes suffered by the foreign REIT (e.g. withholding tax on rental income). ■

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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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AMERICAS

Costa Rica – REIF

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
REIF	1997 and 2009, respectively.	Securities Market Regulation Act (Num. 7732) and the General Regulations of Fund Management Companies and Investment Funds.	Fund type (Showing some characteristics of a REIT).

In general, investment funds are treated as independent estates owned by plural investors. Only authorised investment fund management companies (IFMC) can manage an investment fund. The participation units of the investors are represented by participation certificates (participations), issued with the same characteristics and under the same conditions for each investor. Only investment funds authorised by the National Securities Commission (*Superintendencia General de Valores* – SUGEVAL) may conduct a public offering of its participation units, or be quoted on a local securities exchange.

Costa Rican legislation establishes two types of REIFs: a) Real Estate Investment Funds (REIF) and b) Real Estate Development Investment Funds (REDIF). These investment funds differ by the type of assets in which they are allowed to invest.

REIFs should only be organised as closed-ended funds and can only assume risks related to real estate activity. These invest mainly in real estate for leasing and eventually, selling. The real estate must include facilities already built. The assets in which the REIF invest could be located within Costa Rica or abroad. In the former case, the minimum amount for participation is of USD 1,000 and when the investment is in real estate assets located abroad, the investment must be at least of USD 5,000. The minimum number of investors is of 50. For SUGEVAL to authorise a REIF it must have minimum net assets of USD 5 million and the diversification of assets is subject to the following rules: 80% annual average of monthly balances of the fund assets must be invested in real estate assets and 20% must be kept in cash in a current account to attend cash needs or in securities publicly traded, Participants or related entities or individuals, could not act as lessees of the assets of the fund. However, the IFMC or related entities could act as lessees of the fund, provided that the total monthly income these produced do not exceed 5% of the total monthly revenues of the fund. The assets must be assessed annually and could be sold only after three years of acquisition; exceptions under specific circumstances are allowed.

REDIFs should only be organised as closed-ended funds and its public trade is restricted. These must invest in real estate development projects which may be in different stages of development, whether these are in a design or in a construction stage. Once the construction is finished, the real estate must be sold or leased. Complementarily, REDIFs could purchase real estate to let it increase its value with time (*appreciation*) or for leasing. The assets could be located within Costa Rica or abroad. The minimum amount for participation is of USD 1,000. However, different from REIFs, the minimum investment for participant is of 50 participations for investor. For SUGEVAL to authorise a REDIF it must has minimum net assets of USD 5 million. The minimum number of investors is of 25. The IFMC or related entities could act as lessees of the fund, provided that the total monthly income these produced do not exceed 5% of the total monthly revenues of the fund.

The investment funds are governed by the Securities Market Regulation Act (Law Num. 7732 dated December 17, 1997 and published in La Gaceta No. 18 on January 22, 1998) and the General Regulations of Fund Management Companies and Investment Funds (issued by the Financial System Oversight National Board, on December 19, 2008 and published in La Gaceta No. 10 on January 15, 2009).

2 Requirements

2.1 Formalities / procedure

Key requirements
- Licence from the National Securities Commission (SUGEVAL) for the investment fund management company (IFMC). - Registration on the REIF list. - Fund must be authorised by SUGEVAL. - Approved prospectus by SUGEVAL.

The Investment Fund Management Company (IFMC) could be a local entity or a branch from a foreign entity, but their exclusive business purpose must be to act as investment fund management entity and as a complementary purpose these could have the trading of local or foreign investment funds. These must obtain authorisation to operate within the local market from the National Securities Commission (SUGEVAL). Among other requirements: the request must be filed by the person who will act as legal representative of the company, and a draft of the incorporation deed must be attached to the request, along with the shareholders, directors and legal representatives' résumé and a sworn statement indicating that none of the them has been convicted of a crime during the previous five years.

Other requirements include: (i) Capital stock must be paid and subscribed. (ii) A description of the Integrated Risk Management Unit which should be structured to comply with the regulations rules. (iii) Manual including policies and procedures of the IFMC. This manual should include selling and marketing rules.

The license to operate granted by SUGEVAL to an IFMC is conditioned to the filing of the original documents within a six month period after the authorisation date. Therefore, the IFMC has a six-month period to register the original documents of incorporation before the Mercantile Section of the Public Registry. The IFMC has a one year term to begin operations as of the date of communication that final requirements have been completed. If the IFMC fails to begin operating during that year, the licence will be cancelled. It is understood that an IFMC has began operations if it registers at least one Investment fund.

As per the investment funds, the authorisation process is performed on-line. Once the authorisation is obtained the original documentation should be filed within a three-month period.

After obtaining the authorisation the Investment Fund will be registered before the Securities and Intermediaries National Registry.

The requirements to register a fund include:

a. Request filed and signed by the legal representative of the IFMC before the SUGEVAL.
b. Board of directors agreement in which said Board agreed the organisation of the fund. This agreement should comply with the requirements specified by SUGEVAL.
c. Investment Fund Prospectus.
d. Code ISIN issued by the authorised codified entity.
e. Procedures Manual.
f. When the fund would be publicly traded it must comply with additional requirements established in the Securities Public Trade Regulations.

The prospectus should include the relevant information of the investment fund that would allow the investors to make an informed investment decision. Therefore, the Investment fund Prospectus should contain the following information:

a. Purpose of the fund.
b. Main characteristics of the fund (i.e. characteristics of the participation units and of the issuance and redemption of units procedures, term of the fund; mechanisms for estimating returns and distributions to investors; commissions payable to the IFMC; among others).
c. Terms of investment policy.
d. Description, policies and warnings in relation to the risks associated with the investment.
e. General description of the entity responsible for the management of the fund (IFMC).
f. Legal declarations indicating that all information is reliable.

Investment funds must start operations within a nine-month period following the notification from SUGEVAL that all requirements have been completed. This term may be extended upon request for an additional nine-month period. If they do not start operations during this time, the authorisation to operate the fund would become invalid. However, regarding REDIFs the term to start operations is extended to 18 months.

2.2 Legal form / minimum initial capital

Legal form	Minimum initial capital
- The IFMC must be a corporation or a branch of a foreign fund manager company.	- The IFMC must have a minimum share capital of CRC 131 Million[1] (approx. USD 235,370.21)[2], as of July 22,2015

Legal form

The fund management company could be a Costa Rican corporation or a branch of a foreign fund management entity, incorporated before the Mercantile Section of the Public Registry as established by the Commerce Code.

If a foreign management company is interested in trading a foreign REIF in Costa Rica, the Regulations allow the local trading of authorised REIF from the following countries: United States, Spain, Mexico, Colombia, Chile, Canada, Brazil, United Kingdom, France, The Netherlands, Australia, Germany, Ireland, Italy, Luxemburg, Switzerland, Portugal, Japan and Hong-Kong.

Minimum initial capital

The IFMC must have a minimum share capital of CRC 131,000,000 (approx. USD 235.370).[3] However, this amount is updated every year by a resolution from SUGEVAL.

REIFs and REDIFs: The real estate investment fund must have USD 5 million in net assets.

The participation value of REIFs that only invest in assets located in Costa Rica is a minimum of USD 1,000, and if the REIF invests in assets located outside of Costa Rica, the minimum amount of participation is USD 5,000.

2.3 Unit holder requirements / listing requirements

Unit holder requirements	Listing mandatory
Minimum 50 participants – REIF Minimum 25 participants – REDIF	Yes

1 In accordance with the Financial Entities' Superintendent General's decree SGV-A-205, , in effect as of June 30th of 2016.

2 US$ 1 = CR₵ 556.57 on August 18th of 2016 Source: Costa Rica Central Bank, Website: www.bccr.fi.cr,

Unit holder requirements

The minimum number of participants in a CR for REIFs is 50 and REDIFs is 25. However, the general rule for investment funds is 50. If the fund does not comply with the minimum investors' requirement for a period exceeding the six months, the fund would be deregistered.

Listing requirements

Closed-end investment funds are required by law to be registered for trading on an organised local exchange market.

If the investor decides to sell his/her participation interest, the participations could not be redeemed directly by the Fund except in the circumstances established by law. The latter include for example: when the investors execute their appraisal, which can be executed when they do not agree with the amendments made to the fund's investment policies.

Therefore, when selling a participation in a REIF, the participant would have to trade them in a stock exchange. The participation value will be determined both by the valuation of the assets and by its fair market value according to the stock exchange.

The IFMC must be registered before SUGEVAL. However, the IFMC is not a listed company on the Costa Rican Stock Exchange, only the fund is listed.

2.4 Asset level / activity test

Restrictions on activities / investments
- The main activity must be the acquisition and/or leasing of real estate. - 80% of property in real estate assets. - The remaining percentage could be invested in other financial investments such as publicly traded securities. - No more than 25% of the REIF's income can derive from one individual or corporation that belongs to the same economic unit. - There are some limitations regarding the sale of the REIF's asset.

At least 80% of the annual average remaining balance of assets must be invested in real estate. The remaining 20% must be kept in a checking account or invested in publicly traded securities. The 80/20 percentages apply to both CR funds investing in Costa Rican assets as well as CR funds investing in non-Costa Rican assets. However, these percentages should not apply to foreign funds registered with SUGEVAL, since foreign funds must comply with the regulations of their country of incorporation.

REIFs have three years to fulfil these investment percentage requirements.

No more than 25% of the REIF's income can be derived from one individual or corporation that belongs to the same economic unit.

Real estate assets may not be sold by the REIFs until three years after the acquisition and registration under the REIF's property.

Neither investors, individuals nor companies related to the fund, may lease real estate belonging to the fund. The IFMC manager, or companies integrated to its economic group may lease real estate from the fund as long as it does not represent more than 5% on the REIF's monthly income.

2.5 Leverage

Leverage
- Loans for IFMC are limited to a 20% of their assets. - Loans for REIFs and REDIFs are limited to 60% of their real estate property and 10% of any other securities owned by the fund (this 10% cap is the same that applies to financial funds).

Loans for IFMC are limited to 25% of their assets[4]. Loans for financial funds are limited to 10% of their assets. In exceptional cases, SUGEVAL may authorise a 30% limit on loans for financial funds, however, the investors' assembly must agree on this.

Non-financial investment funds may have a leverage of up to 60% on their assets. This cap applies to REIFs and REDIFs.

In general, with the exception of specific situations described above, an investment fund may not encumber or lien its assets to obtain debt.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
No requirement.	No requirement.	No requirement.

Operative income

The law does not establish a mandatory percentage to be distributed, or a specific timing. This will be established in the fund's prospectus. In practice, Costa Rican Funds substantially distribute all of their income to their investors.

Capital gains

The law does not establish a mandatory percentage to be distributed, or a specific timing. This will be established in the fund's prospectus.

2.7 Sanctions

Penalties / loss of status rules
Determined by SUGEVAL.

If the CR fund fails to comply with regulatory requirements, SUGEVAL could take control of the REIF or liquidate the fund.

In the case of closed-end funds, such as REIFs, SUGEVAL may call for an investors' assembly to determine if the fund must be liquidated or not. Also, the investors' assembly may decide to liquidate the fund and the Superintendent from SUGEVAL will ratify the decision.

[4] Amended by Art. 19 of the Regulations of Risk Management issued by the Financial System Oversight National Board, February 13, 2009 and published in La Gaceta No. 41 on February 27, 2009.

3 Tax treatment at the level of REIF

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
5% on gross income.	5% on net amount.	N/A

Investment Funds enjoy a preferential tax treatment. Therefore, REIFs and REDIFs benefit from this System. Article 100 of the Stock Market Regulatory Act (*Ley Reguladora del Mercado de Valores*, or its Spanish Acronym LRMV),[5] establishes that investment funds are subject to taxation under a special system.

Revenues received by investment funds are divided into three groups with a different tax treatment for each one:

- Income derived from bonds subject to withholding taxes or exempt from withholding taxes is not taxable in addition to the ordinary 8% withholding tax on interests generated from financial investments (with the exception of bonds issued in local currency by the Popular and Communal Development Bank). However, jurisprudence states that capital gains derived from the sale of such securities are subject to the fixed rate of 5% mentioned below.
- Income derived from other types of assets and not subject to withholding taxes (such as dividends, offshore investments, exchange currency differences, and leases received by real estate investment funds) is subject to a 5% tax rate on the gross amount.
- Capital gains are subject to a fixed tax rate of 5%. The tax base is the difference between the sale price and the value of the asset in the accounting records on the date of the transaction.

In Costa Rica, there is no registration duty or capital duty on the fund or transfer duty on the transfer of the investor's interests on the fund.

Distributions of yields from a fund are not subject to withholding taxes. Yields, dividends and capital gains derived from the fund are not considered taxable income for the investor. Roll-up is in fact permitted without adverse tax consequences.

Investment funds are exempt from transfer taxes applicable to the acquisition or sale of assets.

Interest income, dividends, capital gains, and any other income derived from pension funds created and operating under the terms of the Law for the Protection of Workers, are exempt from the tax established under article 100 of the LRMV and are also exempt from income tax and the withholding tax on dividends and interests.

Other taxes

No other taxes apply.

Accounting rules

SUGEVAL has a series of regulations that REIFs must comply with for accounting purposes. Also REIFs have special rules for the appraisal of assets. Assets must be appraised at least once a year by a registered appraiser and by a financial professional. IFRS 40 is also applicable.

5 Stock Market Regulatory Act, Num. 7732 dated December 17, 1997 and published in the Official Gazette Num. 28 of January 27, 1998.

3.2 Transition regulations

Conversion into REIT status
N/A

Not applicable under Costa Rican legislation.

3.3 Registration duties

Registration duties
Transfer tax exemption.

The transfer tax applicable upon the transfer of real estate is levied at 1.5%. However, according to the Securities Market Regulation Act, the sale of real estate from or to a fund will be exempt from the transfer tax. Stamp tax and registration fees of approximately 1% should apply.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
Tax-exempt.	Tax-exempt.	N/A

Article 100 of the Securities Market Regulatory Act establishes that profits, dividends and capital gains generated by participations of investment funds will be exempt from any tax.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding tax
Tax-exempt	Tax-exempt	N/A

Article 100 subsection (d) of the LRMV states that yields, dividends, and capital gains generated by investments in investment funds are exempt from all taxes. This exemption refers to investments made by the unit holders, not by the investment fund itself.

5 Treatment of foreign REITs and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Taxed under normal Costa Rica tax rules whether as a non-domiciled taxpayer (subject to WHT) or as a PE subject to ordinary income tax.	Non-subject to tax	Non-subject to tax

Foreign REIT

Article 100 subsection (d) of the LRMV states that yields, dividends, and capital gains generated by investments in investment funds are exempt from all taxes. This exemption refers to investments made by the unit holders, not by the investment fund itself. As a result, the Fund will be subject to ordinary taxation in this country and if it is a foreign entity, it will be subject to a withholding tax. This means that if the foreign REIT is not registered in Costa Rica it does not enjoy the special treatment applicable to investment funds. Consequently, any Costa Rica source income it may obtain will be subject to an 8% WHT rate that is established under article 23, c) paragraph 1 of the Income Tax Law for all interests and yields generated in financial investments. Consequently, such investments of the fund will be subject to this particular rate, which according to the said provision is the final tax liability without distinguishing between local and foreign investors. However, any other Costa Rica source income will be levied with a WHT determined under article 59 of the Income Tax Law. According to this provision the rate may range from 5% to 30% depending on the characterization of the income.

However, if the REIT actually owns and rents or develops real estate within the country it should be considered a permanent establishment (PE) in Costa Rica. In effect, according to article 2 of the Income Tax Law there is a PE in the country if a foreign entity has a fixed place of business where it conducts for-profit activities. According to said article, a fixed place can be any factory, building or real-estate used for that purpose. A PE is considered an ordinary taxpayer that in the case of a legal entity is subject to a 30% corporate income tax rate computed on net income. Consequently, it would be required to prove the existence of deductible expenses by complying with a number of tax obligations, including bookkeeping, filing of tax returns, issuance of invoices, etc.

However, if a foreign REIF wants to be registered before SUGEVAL, it must comply with certain requirements established by SUGEVAL, such as being authorised by a regulatory entity that is member of IOSCO; the fund should at least have one year of operation behind it; it must have an equity of at least USD 20 million; the fund manager should have a minimum of three years experience, and should have an independent custodian entity, among others. However, only the commercialisation of real estate investment funds duly authorised in United States, Spain, Mexico, Colombia, Chile, Canada, Brazil, United Kingdom, France, The Netherlands, Australia, Germany, Ireland, Italy, Luxemburg, Switzerland, Portugal, Japan and Hong-Kong, is permitted.

Domestic corporate unit holder

A foreign REIT with assets in Costa Rica may be deemed to have a permanent establishment in Costa Rica, and therefore it will be subject to the 30% corporate income tax. Once the REIT transfers its profits out of Costa Rica, such distribution will be subject to a 15% withholding tax. Furthermore, the distribution of dividends from the foreign REIT to its corporate unit holders in Costa Rica should not be subject to taxation according to the territoriality principle, if they are also registered as income taxpayers.

Please note that Section 19 paragraph c) of the CR Income Tax Law establishes that 100% of the net income of permanent establishments, of non-domiciled entities, will be also subject to a 15% withholding tax over the amount credited or remitted to its parent company, Distribution of dividends to foreign unit holders will be subject to a 15% WHT disregarding if the beneficiary is a legal entity or an individual.

Domestic individual unit holder

As previously mentioned, a foreign REIT with assets in Costa Rica will be deemed to have a permanent establishment in Costa Rica, and therefore it will be subject to the 30% corporate income tax. Once the REIT transfers its profits out of Costa Rica, such distribution will be subject to a 15% withholding tax.

Please note that Section 19 paragraph c) of the CR Income Tax Law establishes that 100% of the net income of permanent establishments, of non-domiciled entities, will be subject to a 15% withholding tax over the amount credited or remitted to its parent company.

If the foreign REIT has only investments abroad, with no connection to Costa Rica other than the local domicile of the unit holders (individuals or legal entities), such income is not subject to taxation neither for the REIT nor for the unit holders.

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Global REIT Survey 2016

AMERICAS

Mexico – FIBRAS

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type	REIT market
FIBRAS	2004 Last amended in 2014.	Mexican Income Tax Law.	Trust	Currently, there are ten FIBRAS listed in the Mexican Stock Exchange.

”FIBRAS” (*Fideicomisos de Inversión de Bienes Raíces*) were introduced in Mexico in 2004 to encourage real-estate investment following the same model of the U.S. REITs (Real Estate Investment Trust). Basically, FIBRAS afford a special tax treatment to trusts, whose purpose is to acquire or construct real properties to be leased, or those whose purpose is to acquire the right to receive income from leasing such properties, as well as those whose purpose is to grant financing for such objectives.

During its first stage (2004-2006) tax incentives were not sufficient to attract investors so additional amendments were introduced in 2007 to attract small and institutional investors to a portfolio of real properties in a diversified array of real property products, such as shopping centers, industrial facilities, office buildings, apartment complexes and hotels, through the issuance of publicly traded securities or real property participation certificates. A New MITL was enacted in December 2013 and became effective on January 1, 2014, pursuant to which some minor aspects are to be considered in FIBRAS.

Recently the FIBRAS have become much more attractive as investment real estate vehicles for both Mexican and non-Mexican investors.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Mexico	13	5	€ 14.261	0.65%

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Fibra Uno Administracion S.A. de C.V.	€ 6.016	-1.11%	517%	0.46%
Administradora Fibra Danhos S.A. de C.V.	€ 2.464	-5.00%	5.44%	0.04%
Macquarie Mexico Real Estate Management S.A. de C.V.	€ 938	-2.96%	7.45%	0.09%
Prologis Property Mexico	€ 896	N/A	6.55%	0.04%
Concentradora Fibra Hotelera Mexicana	€ 342	N/A	5.08%	0.03%

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 Formation of FIBRAS

2.1 Formalities

Key requirements
Incorporation under Mexican Law. Mexican trustee. FIBRAS: Listed and Private.

First, the trust must be created or established in accordance with Mexican law and the trustee must be a Mexican banking institution authorized to act as such in Mexico.

The primary objective of the trust must be to acquire or construct real properties in order to lease them, or to acquire the right to receive income from leasing such properties, or to grant financing for such purposes backed by a mortgage security on the leased assets.

Although in theory there could be Listed FIBRAS and Private FIBRAS, in practice only listed FIBRAS have been incorporated:

a. Listed FIBRAS whose trust certificates for the assets that make up trust property are placed in Mexico among the general investing public; and
b. Private FIBRAS are those formed with at least ten non-related investors, who individually may not own more than 20% of all of the investment certificates issued. Mexican law provides that two or more individuals are considered to be related parties when one of them participates, directly or indirectly, in the administration, control or equity of the other, or when an individual or group of persons participates, directly or indirectly, in the administration, control, or equity of said persons. Members of partnerships are considered to be related, as are the persons who in accordance with this paragraph are considered related parties of said members.

2.2 Legal form / Minimum Initial Capital

Legal Form	Minimum Initial Capital
Trust	No

Legal form

The legal form to establish a FIBRA is through a trust.

Trusts in Mexico are governed by the Mexican General Law of Negotiable Instruments and Credit Operations, and are entered into with an authorized Mexican financial institution, which acts as trustee. The settlor in the trust is the investor who contributes real property, funds, or both to the trust and the beneficiaries are the parties that are entitled to receive the benefits from the gains or income of the trust.

According to the Mexican Income Tax Law (“MITL”), real property trusts are considered as FIBRAS provided they meet the following requirements:

a. The purpose of the trust must be: (i) the acquisition or the construction of real estate property intended for lease; or (ii) the acquisition of the right to receive income from the leasing of such assets; in addition to (iii) grant financing for such purposes backed by a mortgage security on the leased assets.
b. At least 70% of the funds of the trusts are invested in real estate properties, or in the rights or credits referred to above, and the remainder is invested in Federal Government Securities registered in the National Securities Registry, or in shares of debt-instrument mutual funds.

c. The real estate properties that are constructed or acquired must be leased and not be sold for at least four years as of the conclusion of their construction or their acquisition. Real properties that are sold before said term has ended will not receive the preferential tax treatment at hand.
d. Trust shall be enrolled at the Registry of Trusts engaged in the acquisition and construction of real estate, pursuant to the general rules, issued by the Mexican Tax Administration Service. This requirement is deemed to be met when the relevant trust obtains a favorable ruling issued by the Mexican Tax Authorities, concerning the tax treatment applicable to such Trust, among others requirements.

Minimum Initial Capital

Mexican legal and tax provisions do not establish any limits relating to the initial capital of FIBRAS but it is natural that a substantial amount of capital will be required for its operation. It is also important to note that Mexico has enacted thin capitalization rules which will be explained hereinafter.

2.3 Certificate Holder Requirements / Listing Requirement

Certificate Holder Requirements	Listing Requirement
Solely for Private FIBRAS. At least ten investors who are unrelated parties. Each investor may not hold more than 20% of the certificates.	None

Certificate Holder requirements

The trustee in a FIBRA is required to issue certificates to the investors for the assets in the trust which must be placed in Mexico either among general investing public; or in the alternative be acquired by at least ten non-related investors, none of which may individually own more than 20% of all of the investment certificates issued.

Listing requirement

Listed FIBRAS certificates required to be listed in the Stock Exchange in order to receive the preferential tax treatment as well as incorporated in accordance with Mexican Law.

2.4 Patrimony of FIBRAS

Restrictions on Activities / Investments
70% : 30% ratio

At least 70% of the patrimony of FIBRAS must be invested in real estate property or rights to receive income from leasing or acquisition of real estate properties and the remainder must be invested in securities issued by the Federal Government registered at the National Registry of Securities or in shares of debt-instrument mutual funds.

In general, there are no restrictions regarding real property developments. Please take into consideration that only in case of lodging properties is required by Mexican tax regulations to meet some additional requirements.

2.5 Leverage

Leverage
Thin Capitalization Rules.

Interest payments made to foreign-related parties are subject to thin capitalisation regulations, which provide that interest payments made to foreign-related parties arising from foreign related debt exceeding three times the average equity of the company ("3-to-1 debt/equity ratio") will not be deductible. Nevertheless, in certain cases, taxpayers may seek a ruling from Mexican tax authorities in order to exceed the 3-to-1 debt/equity ratio mentioned above.

2.6 Taxable Income Distribution / Obligations of Trustee

Taxable Income Distribution	Timing
95% of taxable income.	Annually

Taxable income

At least once a year, no later than March 15, the trustee must distribute, to the holders of the investment certificates, at least 95% of the taxable income of the immediately preceding fiscal year generated by the assets that make up the trust property.

2.7 Sanctions

Penalties / Loss of Status Rules
Tax incentives do not apply. May lose status as FIBRA.

In the event of non-compliance with organizational and asset rules, the trust may lose its status as a FIBRA. The sale of real property prior to the four-year holding period does not constitute "non-compliance". In this case, the tax benefit is lost only for the property that is sold.

3 Tax treatment at the Level of FIBRAS

3.1 Corporate Taxes / Tax withholding

In general terms, Income tax is levied at a rate of 30% on taxable income (taxable revenues minus authorized deductions) calculated on an accrual basis.

Operating income

Mexican tax regulations provide that a trustee of a FIBRA is required to determine, on behalf of the beneficiaries, the Income Tax arising from the activities of the FIBRA as any corporation or company would, i.e. it will be entitled to deduct any expense that complies with Mexican tax requirements. Once the net gain or taxable income is determined, upon distribution, trustee will be required to make a tax withholding, unless the beneficiary of the income is exempt from paying such tax (i.e. registered pension or retirement funds). Any distribution made by trustee to the beneficiaries during the tax year will be creditable against the annual tax liability of the beneficiary.

Mexican tax residents are required to add any distribution made by FIBRAS to other income they receive during the tax year and they will be entitled to credit the tax withholding made by the FIBRAS.

FIBRAS have no obligation to make estimated payments of Income Tax. This allows the trust to allocate cash to project financing rather than paying estimated taxes. However, the trust has the obligation to file and pay Income Tax, as applicable, on an annual basis.

Mexican tax provisions establish that the net operating losses for Income Tax purposes (NOL's) may be carried forward ten years and that the trust may use its losses sustained in prior taxable years to offset taxable income for the year.

Capital gains

Upon disposition of any portion to the estate of the FIBRAS, Income Tax will apply. Please note that the tax must be updated for inflation from the month when the real property was contributed into the trust, and up to the month in which the transfer takes place.

Other taxes

Local land taxes (property tax and transfer tax) will apply to the real property owned by the FIBRAS.

Accounting rules

In Mexico, the Federal Fiscal Code (FFC) lists the requirements with which the books and records must comply among which we find the following:

a. The accounting systems and records must comply with the requirements listed in the Regulations of the Federal Fiscal Code (RFFC) (i.e. preparing financial statements, linking the financial statements with accounts, identifying transactions, and preparing transaction vouchers as evidence of transactions);
b. The accounting records must be analytical and must be registered within two months following the date on which the respective transactions were performed;
c. The accounting books must be kept at the tax domicile of the taxpayer;
d. The books and records must follow the Mexican Financial Information Norms and be kept in Mexican Pesos.

3.2 Transition regulations

Conversion into FIBRA Status
Deferred Taxation of Contributions to the Trust.

A contribution of real property is deemed a taxable event. Nevertheless, persons who, in their capacity as settlors, contribute real properties to the trust and receive investment certificates for the total or partial value of said properties may defer the payment of the income tax liability on the gain obtained on the sale of such properties until they sell each such certificate. The tax liability corresponding to each certificate sold for the period from the month of the contribution of the real properties to the trust until the month in which the certificates are sold will be updated by inflation.

The tax will be calculated by applying the 30% rate to the amount of the gain obtained in the sale of the real properties and must be paid within fifteen days following the sale of the corresponding investment certificates.

The gain will be calculated in accordance with this MITL. For this purpose, the sale price of said properties will be considered to be the value assigned to them in the indenture of the aforementioned certificates, and the resulting gain will be divided by the number of investment certificates, which is determined by dividing the aforementioned value by the par value of the individual investment certificate.

The deferral of the tax payment will end when the trustee sells the real properties. The settlor who has contributed said properties must pay this tax within fifteen days after the day on which said properties are sold.

3.3 Other fees

Other Fees
Local Property Transfer Tax. Public Registry fees. Notary Public fess. Trustee fees. Other local fees.

In Mexico, the transfer of real property is subject to a real property transfer tax at a local level. Generally, property transfer tax is triggered when the trustee receives the certificates, but if dealing with a FIBRA, the property transfer tax may be deferred up to the moment the certificate is sold or when the real property is sold by the trust depending on local Laws. The transfer tax rate varies depending on the State where the real property is located.

With regard to the fees of the Public Registry, the Notary Public, the Trustee, and any other local fees that may apply depending on local Laws, please note that the amount to be paid for same vary depending on the State where the FIBRA is formed, but it is important to take such fees into consideration since such can amount to a considerable sum.

4 Tax treatment at the Certificate Holder level

4.1 Domestic Holder

Corporate Certificate Holder	Individual Certificate Holder	Tax Withholding
30% income tax on the taxable income resulting from the sale of the certificates. Sale of certificates through an authorized Stock Exchange are tax-exempt for income tax, in some cases.	30% income tax on the taxable income resulting from the sale of the certificates. Sale of certificates through an authorized Stock Exchange are tax-exempt for income tax.	Trust must withhold income tax on the taxable income distributed to the holders of the investment certificates, by applying the 30% rate to the distributed amount of said taxable income, unless the holders that receive the income are exempt from paying income tax on such amounts. The purchaser of the investment certificates must withhold, from the seller, 10% income tax on the gross income that the seller receives for such certificates, without any deductions, unless the seller is a legal entity residing in Mexico for tax purposes or is income tax exempt for the item of income earn form the goods, rights credits or securities that compose the trust estate

Corporate Certificate Holder

The distributions paid by the trust to Mexican entities are considered taxable income and are subject to Income Tax at a rate of 30%. The income that derives from the sale of certificates is considered to be taxable income for Income Tax purposes, and is taxed at a 30% tax rate. Please take into consideration that the Trust will carry out a withholding tax at the rate of 30%.

Individual Certificate Holder

The distributions paid by the trust as well as income earned for the disposition of the certificates by Mexican individuals are considered taxable income and is subject to Income Tax at variable rates depends on the amount of the income. The top rate for individuals in Mexico pursuant to MITL is 35% rate. Please take into consideration that the Trust will carry out a withholding tax at the rate of 30%.

Finally, the income from the sale of participant certificates through an authorized Stock Exchange, received by Mexican individuals' resident in Mexico, is exempt for Income Tax.

Tax Withholding

The distributions paid by the trust to Mexican entities and individuals is subject to a tax withholding made by the trustee or by the financial broker who has the certificates in deposit unless such entities or individuals are exempt from such payment. Further, the tax so withheld is a tax credit for Mexican entities or individuals.

The purchaser of the investment certificates must withhold, from the seller, 10% income tax on the gross income that the seller receives for such certificates, without any deductions, unless the seller is a Mexican resident individual and the transaction is undertaken in the stock exchange.

4.2 Foreign Certificate Holder

Corporate Certificate Holder	Individual Certificate Holder	Tax Withholding
Final Income Tax withholding.	Final Income Tax withholding.	10% tax withholding made by the purchaser of the certificates, unless the transaction is undertaken in a recognized the stock exchange. Tax withholding of 30% on distribution of profits.

Corporate Certificate Holder

Amounts withheld from corporate holders of certificates who are foreign residents are deemed as a final tax payment.

If the owner of the certificate is a foreign pension and retirement fund, Trust distributions and the transfer of certificates is exempt for Income Tax purposes. Certain requirements must be met in order to be considered a foreign pension and retirement fund for Mexican tax purposes.

Individual Certificate Holder

Amounts withheld from individual holders of certificates who are foreign residents shall be deemed in Mexico as a final tax payment.

Tax withholding

Distributions paid by the trust to foreign entities and individuals is subject to a tax withholding made by trustee or by the financial broker who has the certificates in deposit at a rate of 30%, unless such entities or individuals are exempt from such payment, and is considered a final tax payment.

The purchaser of the investment certificates must withhold, from the seller, 10% income tax on the gross income that the seller receives for such certificates, without any deductions, unless the seller is a foreign resident and the transaction is undertaken in the stock market.

Finally, it is important to point out, that the foreign shareholders may take advantage of the benefits afforded by the Tax Treaties entered by Mexico.

5 Treatment of Foreign trust

Foreign Trust
Income Tax if the foreign trust is considered a resident in Mexico. Otherwise -taxation depends on tax treaty.

Foreign Trusts

The benefit of the special tax regime applicable to FIBRAS will not be applicable to a foreign trust because in order to obtain the special tax regime granted to FIBRAS, the trust must be incorporated under Mexican Law. In this case the activities of the foreign trust in Mexico will determine the applicable tax regime. It is possible that the foreign trust would be treated in Mexico as a permanent establishment. In this case, it would be subject to Income Tax.

It is possible that it would be treated as a foreign resident with revenues from a source of wealth located in Mexico; accordingly, the Income Tax treatment will depend on the type of Mexican source income obtained by the non-resident, and whether the non-resident resides in a country with which Mexico has a tax treaty.

SIBRAS

Until 2014, investors could also incorporate Mexican entities commonly referred to as SIBRAS (Sociedades Inmobiliarias de Bienes Raices. However, as we mentioned before, a new MITL was enacted in December 2013 and became effective on January 1, 2014, pursuant to which such possibility is now repealed.

Please take into consideration that pursuant to the New MITL commercial corporations that took the tax incentive for SIBRAS, shall abide by the following:

1. Shareholders that contributed real estate to the corporation shall include in gross income the gain from the disposition of the goods so contributed, when any of the following situations takes place:

   a. They dispose of the shares of such corporation, in the proportion that such shares represent with regard to all the shares received by the shareholder for the contribution of the real property to the corporation, provided that such gain was not included in gross income previously; and
   b. The corporation disposes of the contributed goods, in the proportion that the part being transferred represents of such goods, provided that such gain was not included in gross income previously.

   If any of the situations described in the two preceding subsections has not taken place through December 31 2016, the shareholders of the SIBRAS shall include in gross income the full amount of the gains from the disposition of the contributed goods that were not included in gross income previously.

2. The gains that are included in gross income described shall be updated from the month in which they were earned through the month in which they are included in gross income.

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Global REIT Survey 2016

AMERICAS

Puerto Rico – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type	REIT market
REIT	- Enacted in 1972 - Amended in 2000, 2006, 2011 and 2014	Internal Revenue Code for a New Puerto Rico, as amended (IRCNPR) IRCNPR §1082.01 to §1082.03 and §1101.01(a)(8)(F) (previously PRIRC of 1994 1500 to §1502 and §1101(18))	In principle, corporate type (election for tax status)	Significant improvements were expected from the 2006 changes in the PRIRC. However, no statistics are available which evidence such improvement. Amendments made during 2014 change certain requirements to increase investment in REITs and the creation of new REITs.

The law that established Real Estate Investment Trusts ("REITs") in Puerto Rico was enacted in 1972 and amended in 2000, 2006, 2011 and 2014. The REIT provisions are found in the Internal Revenue Code for a New Puerto Rico (IRCNPR)[1], Sections 1082.01 to 1082.03, and Section 1101.01(a)(8)(F) (previously PRIRC of 1994, Sections 1500 to 1502, and Section 1101(18)).

REIT legislation prior to the 2006 amendments was very restrictive and did not result in the expected investment and development that was contemplated when originally enacted. The 2006 amendments liberalised certain requirements to promote REIT market activity in Puerto Rico. However, the Puerto Rico Commissioner of Financial Institutions does not maintain separate statistics for REITs in Puerto Rico. Therefore, there is no public data available to assess any changes to REIT market activity as a result of the 2006 amendments.

During 2014, the REIT legislation was further amended to liberalise certain requirements and include, as an eligible activity, the income from the purchase of real property to be remodeled and rented. The intention for this amendment is to promote the purchase of redeveloped properties by the REITs and help to reduce large inventories held by local banks. In addition, during 2014 the IRCNPR was amended to defer the gain realized on certain assets when the total proceeds from the sale of such assets are invested in a REIT. The purpose of this amendment is to promote the investment of local capital into REITs.

The REIT regime is principally a tax regime; corporations, trusts, certain partnerships and associations can elect for REIT status. However, the entity must be created or organized in the Commonwealth of Puerto Rico. In this survey, we refer to the corporate REIT type.

[1] On January 31, 2011, the Governor of the Commonwealth of Puerto Rico signed into law a new Puerto Rico internal revenue code, to be known as the "Internal Revenue Code for a New Puerto Rico" (hereinafter referred to as the "IRCNPR" or the "2011 Code"). The 2011 Code repealed almost in its entirety the Puerto Rico Internal Revenue Code of 1994, as amended. However, the new code incorporates many of the provisions of the 1994 PR Code, including the REITs provisions. There are no substantive changes to such provisions in the 2011 PR Code. The 2011 Code also provides further guidance to US REITs that may qualify for tax exemption.

2 Requirements

2.1 Formalities / procedure

Key requirements
- Election with the income tax return - REITs are regulated by the Puerto Rico Commissioner of Financial Institutions - Managed by one or more trustees or directors

Once the legal structure is created, in order to operate as a REIT for tax purposes, an election is required. The election is made together with the filing of the income tax return for the year in which the tax regime is intended to be effective.

The Commissioner of Financial Institutions will oversee the operations of the REIT as regulator. Pursuant to the Puerto Rico Uniform Securities Act, all stocks or shares in a REIT will be considered "Securities".

In order to comply with federal laws:

1. Investor must register issuance of securities as part of the "full and fair disclosure" policy stated by the Securities Act of 1933
2. Sales could be regulated by the Securities Exchange Act of 1934
3. The REIT must also comply with the Uniform Securities Act of Puerto Rico[2].

The guidelines established by the North American Securities Administration Association (NASAA) will apply until otherwise modified by the Commissioner of Financial Institutions of Puerto Rico via regulations.

REITs shall present audited financial statements together with the corporate income tax return if their gross income for the year is in excess of $3,000,000.

The REIT must be managed by one or more trustees or directors.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Corporation, partnership, trust or association	No minimum capital

Legal form

REITs may be organized as corporations, certain types of partnerships, trusts, or associations. These entities must be domestic entities, organised or created under the laws of the Commonwealth of Puerto Rico. The entity must be one that would be taxable as a domestic corporation if it were not for the tax exemption provided for by the Puerto Rican REIT legislation. As a grandfathering provision, any partnerships in existence as of January 01, 2011, the effective date of the 2011 Code, can remain in the REIT regime to the extent they have filed an election to be treated as a corporation. Partnerships created on or after January 01, 2011 cannot be REITs.

[2] Act 20 of 2014 clarifies that REITs must comply with the provisions established by the Uniform Securities Act of Puerto Rico.

The REIT cannot be a financial institution as defined under Section 1033.17(f) of the IRCNPR (previously Section 1024(f) of the 1994 PRIRC) or an insurance company subject to taxation under Subchapter A of Chapter 11 of the IRCNPR.

Minimum share capital

There are no minimum capital requirements in Puerto Rico. Transferable capital must be represented by stocks or participation certificates.

All of its stocks, shares or interests must be transferable and issued exclusively in exchange for cash.

2.3 Shareholders requirements / listing requirements

Shareholder requirements	Listing mandatory
At least 20[3] (50 shareholders prior to January 24, 2014) shareholders or partners	No

Shareholder requirements

A REIT has to be composed of at least 20[3] shareholders or partners (50 shareholders prior to January 24, 2014). For this purposes, the shareholder of an exempt investment trust[4] shall be classed as shareholders of the REIT.

At no time during the last half of its taxable year should more than 50% of the total value of outstanding shares be owned by less than six individuals, based on the attribution rules of Section 1033.17(b)(2) of the IRCNPR (previously Section 1024(b)(2) of the 1994 PRIRC). In order to comply with these provisions, the REIT must maintain records that demonstrate the actual ownership of its outstanding shares or interests.

At present there are no distinctions between resident and non-resident shareholders.

Listing requirements

Listing of a REIT is not mandatory.

2.4 Asset level / activity test

Restrictions on activities / investments
- At least 95% of gross income must be qualifying investment income. - At least 75% of gross income must be qualifying real estate investment income. - At least 75% of the value of total assets must be represented by real estate assets, cash or equivalents, and securities and obligations of Puerto Rico. - Not more than 25% of the value of total assets is represented by securities other than those mentioned above.

At least 95% of gross income must be derived from dividends, interest, rents from real property, gain from the sale of stocks, securities, real property and rights to real property, net gain from the sale of certain real estate assets and payments received or accrued for entering into agreements to execute loans guaranteed with mortgages on real property, or acquire or lease real property.

At least 75% of gross income must be derived from (i) rents derived from real property located in Puerto Rico, (ii) interest on obligations secured by mortgage on real property or rights to real property located in Puerto Rico, (iii) gain from the sale or other disposition of real property that is not of the type of property that qualifies as inventory, (iv) dividends or other distributions and gains

[3] Act 20 of 2014 reduced the amount of shareholders from 50 to 20 effective after January 24, 2014.
[4] An exempt investment trust is an entity that avails to the tax treatment under Section 1112.02 of the IRCNPR.

derived from the sale or other disposition of shares of transferable stock, certificates, or participation in another REIT, (v) income from the purchase of real property to be redeveloped and rented, (vi) amounts received or accrued as consideration for entering into agreements to make loans secured by mortgages on real property and/or rights to real property located in Puerto Rico, and/or to buy or lease real property and/or rights to real property located in Puerto Rico.

At the end of each quarter of each taxable year, at least 75% of the value of total assets must be represented by real estate assets, cash or equivalents, and securities and obligations of Puerto Rico and/or of the US (and whichever instrumentality or political subdivision thereof); and not more than 25% of the value of total assets must be represented by securities other than those mentioned above. For the purpose of these sections, real property means land located in Puerto Rico or improvements thereon used as: hospitals, schools, universities, public or private housing, transportation facilities and/or public or private roads, office buildings, governmental facilities, facilities of the manufacturing industry, recreational centers, parking facilities, residential properties, shopping centers, hotels and buildings or structures acquired from the government of Puerto Rico, its agencies, and instrumentalities.

Subsidiaries of a REIT will not be treated as a separate entity, and all its assets, liabilities, income items, deductions and credits will be considered as belonging to the REIT. Subsidiary means a corporation, company, or partnership wholly owned, directly or indirectly, by a REIT.

Starting January 01, 2007 the acquisition of real property must be made through the purchase of assets, stocks or participations in a transaction that generates Puerto Rican source income subject to tax in Puerto Rico, except for assets bought from the government of Puerto Rico. This acquisition of real property can be either directly or through related companies.

2.5 Leverage

Leverage
No restrictions.

There are no leverage restrictions. Only for purposes of determining the compliance with the 95% qualifying gross income requirement, the IRCNPR provides a special rule for the income (interest and gain) generated by the REIT with respect to certain hedging instruments.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of net taxable income must be distributed as taxable dividend and 90% of its exempt income must be distributed as an exempt dividend.	Included in net income.	Annually

Operative income

At least 90% of the net taxable income and exempt net income of a REIT must be distributed annually as taxable and exempt dividends, respectively. If the REIT does not distribute such net income, it will be taxable as a regular corporation at a maximum tax rate of 39%[5].

[5] Act 40 of 2013 increased the maximum corporate tax rate from 30% to 39%, effective for taxable years commencing after December 31, 2012.

Capital gains

Gains from sale of capital assets are part of a REITs gross income computation and therefore part of its net income determination. Also, certain net gains from sale or disposition of real property that does not constitute a prohibited transaction are part of the net income determination of the REIT.

2.7 Sanctions

Penalties / Loss of status rules
- Loss of REIT tax exemption. - Loss of REIT status.

The election to operate as a REIT could be terminated if the provisions and requirements under the IRCNPR are not satisfied for the taxable year for which the election is made or for any succeeding taxable year. The loss of REIT status requires a five-year waiting period to re-elect unless waived by the Puerto Rico Secretary of Treasury for reasonable cause.

A REIT that fails the gross income tests above, one or both, may be treated as satisfying those tests to maintain its election if: (1) certain disclosures are made with the income tax return for such taxable year, (2) the inclusion of any incorrect information on those disclosures is not due to fraud with the intent to evade taxes, and (3) the failure to meet the test or tests is due to reasonable cause and not to gross negligence[6].

However, if a REIT fails to comply with the gross income tests above to operate as such during the taxable year but its election is not deemed terminated, the imposition of taxes will be applicable. The penalty is calculated as a tax charge of 100% on the greater of:

i. the excess of:
   a. 95% of the gross income (excluding gross income from prohibited transactions) of the REIT, less
   b. the amount of such gross income derived from the dividends, interest, rents from rental property and other qualified income, or

ii. the excess of:
   a. 75% of the gross income (excluding the gross income from prohibited transactions) of the REIT, less
   b. the amount of such gross income derived from qualified domestic income; multiplied by a fraction the numerator of which is the taxable income of the REIT for the taxable year (without taking into account any deduction for net operating loss) and the denominator of which is the gross income for the taxable year (excluding gross income from prohibited transactions).

In addition, the REIT is subject to a 100% tax on prohibited transactions, as discussed below.

3 Tax treatment at the level of REIT

3.1 Corporate tax / Withholding tax

Current Income	Capital gains	Withholding tax
Eligible income is tax-exempt.	Eligible capital gains are tax-	Eligible income received by the REIT

[6] Act 20 of 2014 substituted the term “willful neglect” for “gross negligence” effective January 24, 2014.

	exempt.	is not subject to withholding tax.

Current income

The eligible income is not taxed at the level of the REIT to the extent that the distribution requirements are met.

Income from prohibited transactions is subject to tax at a rate of 100%. This tax is levied upon the net income from prohibited transactions, excluding prohibited transactions for which there was a loss. A prohibited transaction is the sale or disposition of property primarily held for sale to customers in the ordinary course of a trade or business (inventory). The sale of certain real property shall not be treated as a prohibited transaction if certain requirements are met and the property is held for 1 year or more.

In the case that the REIT is not in compliance with distribution requirements it will be taxable as a regular corporation.

Capital gains

Eligible capital gains are not taxed at the level of the REIT.

Withholding tax

No withholding tax is levied on eligible income received by the REIT. As an otherwise taxable corporation, it would be subject to any other income tax withholding rules on income from prohibited transactions and other related income.

Other taxes

The REIT is subject to other taxes like municipal license taxes (similar to a gross receipt tax) and real and personal property taxes. For property tax purposes, the REIT may avail to other tax exemptions which might be available under the Municipal Property Tax Act depending on the type of activity or industry in which the property is used.

Accounting rules

There are no special accounting rules existing for a REIT. Generally, the REIT will follow US GAAP.

3.2 Transition regulations

Conversion into REIT status
No regulations.

3.3 Registration duties

Registration duties
Stamp duties and register fees.

The acquisition of real estate by the REIT will be subject to various kinds of stamp duties and registration and notary fees. These stamp duties and notary fees depend on the value of the property and vary from transaction to transaction.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Final withholding tax on distributions. - Capital gains are taxable.	- Final withholding tax on distributions. - Capital gains are taxable.	Withholding tax of 10% on distributions.

Corporate shareholder
Dividends are subject to a final withholding tax of 10%.

If the shareholder is a resident entity, gain from the sale of the shares in a REIT would be taxable at special rates if considered long-term capital gains (corporations will be taxed at 15% or 20% for transactions after June 30, 2014[7] rather than at a maximum tax rate of 39%).

Individual shareholder
Dividends are subject to a final withholding tax of 10%.

Residents of Puerto Rico would be subject to taxation on capital gains from the sale of the shares in a REIT. Special rate is available if the gain is considered a long-term capital gain (individuals and trusts will be taxed at 10%, or 15% for transactions after June 30, 2014[8] , rather than at a maximum tax rate of 33%).

Withholding tax
Taxable distributions are subject to withholding tax at the rate of 10%, as defined in Section 1082.02 of the IRCNPR (previously Section 1501 of the 1994 PRIRC). The trustees or directors to whom the management of the REIT has been delegated are responsible for deducting and withholding the required tax rate on the taxable distributions.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Withholding tax on distributions. - Potentially withholding tax on capital gains.	- Withholding tax on distributions. - Potentially withholding tax on capital gains.	- Withholding tax of 10% on distributions. - Puerto Rico has not entered into any Tax Treaties.

Corporate shareholder
Dividends will be subject to a 10% withholding tax.

Taxation of capital gain income in the case of a foreign shareholder will depend on the source of the gain and the residency status of the shareholder. If the shareholder is a non-resident entity, income tax withholding at source would be applicable only if the gain is considered from sources within Puerto Rico. Generally, the rule to determine the source of the gain in the case of personal property (shares) is the residence of the seller, with the exception of property that constitutes inventories, depreciable property, and intangible property, each of which are subject to specific rules.

[7] Act 77 of 2014 increased the special tax rate on long term capital gains applicable to corporations from 15% to 20% for transactions executed after June 30, 2014.
[8] Act 77 of 2014 increased the special tax rate on long term capital gains applicable to individuals from 10% to 15% for transactions executed after June 30, 2014.

Individual shareholder

The foreign individual shareholder is subject to a 10% withholding tax.

Taxation of capital gain income in the case of a foreign shareholder will depend on the source of the gain and the residency status of the shareholder. The rules to determine the source are the same that we indicated above under corporate shareholder.

Withholding tax

Taxable dividends, as defined in Section 1082.02 of the IRCNPR (previously Section 1501 of the 1994 PRIRC), are subject to withholding tax at the rate of 10% as provided by Sections 1062.08 and 1062.11 of the IRCNPR (previously Sections 1147 and 1150 of the 1994 PRIRC) related to income tax withholding at source on payments to non-resident persons. Treaty relief is not available.

5 Treatment of foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Foreign REIT cannot qualify for REIT status. US REIT may qualify as a tax exempt organisation.	No specific tax privilege for corporate shareholders of foreign REIT.	No specific tax privilege for individual shareholders of foreign REIT.

Foreign REIT

A foreign REIT will not qualify as a REIT in Puerto Rico since the entity must be created or organized under the laws of Puerto Rico. However, an entity organised or created under the laws of any state of the United States of America qualifying during the taxable year as a real estate investment trust under the United States Internal Revenue Code of 1986, as amended, may qualify as a tax exempt organisation in Puerto Rico to the extent that certain investment requirements are met. This exemption may be extended to related persons of the US REIT.

Corporate shareholder

No specific tax privilege. Distributions from a foreign REIT to a Puerto Rican corporate shareholder will be subject to tax as any other income at the regular rates.

Individual shareholder

No specific tax privilege. Distributions from a foreign REIT to a Puerto Rican individual shareholder will be generally subject to tax as any other income at the regular rates. ■

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European Public Real Estate Association

Global REIT Survey 2016

AMERICAS

USA – US-REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
US-REIT	1960	Internal Revenue Code	Corporate type

The US Congress created the Real Estate Investment Trust (US-REIT) in 1960 in order to make large-scale, income-producing real estate investments accessible to smaller investors. Congress reasoned that the average investor should be able to invest in large-scale commercial properties just as if it were any other kind of investment, that is, through the purchase of equity. Similar to shareholders benefiting from the ownership of stocks in other corporations, the stockholders of a REIT also receive economic benefits from the production of income through commercial real estate ownership. REITs offer distinct advantages for investors. Firstly, greater diversification is achieved by investing in a portfolio of properties rather than just in a single property. Second, the managerial activities are performed by experienced real estate professionals. Also, in order not to be subject to a corporate-level tax REITs are required to distribute all of their taxable income to shareholders, who benefit from this stream of cash distributions.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
United States	220	130	€ 986.770	65.19%

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
Simon Property Group	€ 60.966	24.66%	2.82%	5.54%
Public Storage	€ 35.921	19.81%	3.01%	2.74%
Prologis	€ 25.538	38.22%	3.08%	2.32%
Welltower Inc.	€ 25.101	19.22%	4.34%	2.28%
General Growth Properties	€ 24.318	20.49%	2.38%	1.26%

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.*

The US REIT regime, which is governed by tax laws, has been modified on several occasions since its inception, most recently in the PATH Act as signed into law on Dec. 18, 2015. The essential rules for the US REIT can be found in section 856 and 857 of the Internal Revenue Code.

2 Requirements

2.1 Formalities / procedure

Key requirements
Entities must file Form 1120-REIT with the Internal Revenue Service.

To elect REIT status in the US, a company must file a special tax return (Form 1120-REIT) for the year in which the company wishes to become an REIT. There is no requirement to request prior approval or to submit prior notification of regime election. Furthermore, the REIT must annually send letters of record to its shareholders requesting the details of the beneficial share ownership. Modest monetary penalties may be imposed on a REIT that fails to send these letters unless it is shown that a failure is due reasonable cause and not willful neglect.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Any legal US entity taxable as a domestic corporation.	No

Legal form

A US REIT can have the form of any legal US entity (corporation, partnership, business trust, limited liability company, etc), which is taxable as a domestic corporation. This status can be achieved by a 'check the box' election with the IRS. As a result, the entity would be treated as a corporation for tax purposes. However, the company cannot qualify for this option if it is a financial institution such as a bank or an insurance company.

Further requirements are that the REIT has to be managed by one or more trustees or directors, and that the shares of a US REIT must be transferable.

A taxable REIT subsidiary is permitted to be located or organised abroad.

Minimum share capital

There is no minimum share capital requirement for a REIT.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
- At least 100 shareholders. - Five or fewer individuals or foundations may not hold more than 50% of the shares. - No restriction on foreign shareholders.	No

Shareholder requirements

Firstly, REIT shares must be transferable. Beginning with the REIT's second taxable year, the REIT is required to have a minimum of 100 shareholders. Also, no more than 50% of its shares may be held by five or fewer individuals or private foundations during the last half of the taxable year. A number of 'look through' rules can determine whether the latter criterion is met.

Various stock classifications (i.e. different classes of shares such as common stock and preferred stock) are allowed. However, all shareholders within the same class of stock must be treated equally. Otherwise, dividends from such classes of stock would no longer be considered eligible for the dividends paid deduction. In December 2015, legislation was enacted (effective January 1, 2015) that repealed these so-called “preferential dividend” rules for all “publicly offered” REITs (REITs whose securities are registered with the SEC) US REITs. Further, the legislation provided the Treasury Department with the express authority to cure inadvertent failures of the preferential rules by non-publicly offered REITs.

No restriction on foreign shareholders other than possible ‘FIRPTA’ consequences, under which foreign shareholders are treated as doing business in the US, unless certain exceptions apply.

Listing requirements

Listing is not mandatory to obtain REIT status. A private REIT is allowed.

2.4 Asset level / activity test

Restrictions on activities / investments
- At least 75% of its assets must be real estate, government securities or cash - 75% asset test and 75% and 95% income tests. - Cannot own more than 10% of another corporation’s stock, other than in another REIT or a taxable REIT subsidiary (ownership of a 100% owned ‘qualified REIT’ subsidiary is ignored). - No more than 5% of the value of its assets can be represented by securities of any one issuer, other than another REIT or a taxable REIT subsidiary (ownership of a 100% owned ‘qualified REIT’ subsidiary is ignored). - Cannot own more 25% (20% starting in 2018) of its assets in securities of one or more taxable REIT subsidiaries.

75% of a REIT’s assets must be comprised of real estate (including mortgages), government securities or cash items (including money market funds). In 2014, the IRS issued proposed regulations concerning the definition of real estate. In general, these regulations attempt to clarify the appropriate analysis for determining whether an asset is real estate. They would provide that land, inherently permanent structures, and structural components are real estate for purposes of this 75% asset test rule. In addition, they provide a set of *per se* examples of assets that are considered real estate, and they set forth a facts and circumstances test as well as a set of examples for assets that are not *per se* real property.

In particular, parking facilities; bridges; tunnels; roadbeds; railroad tracks; transmission lines; pipelines; and fences would be considered inherently permanent structures that are real estate, and wiring; plumbing systems; central heating and air conditioning systems; elevators or escalators; walls; floors; ceilings; permanent coverings of walls, floors, and ceilings; windows; doors; insulation; chimneys; fire suppression systems, such as sprinkler systems and fire alarms; fire escapes; central refrigeration systems; integrated security systems; and humidity control systems would be considered structural components that are real property.

At least 75% of the gross income must be derived from real estate property rental or from interest on mortgages on real estate property. Furthermore, at least 95% of the gross income must come from a combination of real estate related sources and passive sources, such as dividends and interest. No more than 5% of a REIT’s income may come from non-qualifying sources.

At the end of each quarter, the REIT may not have securities of taxable REIT subsidiaries that represent more than 25% (20% starting in 2018) of the REIT’s total asset value. Further restrictions apply. As part of renting real estate, a REIT is allowed to provide all kinds of tenant services expected in the real estate rental business. Services are broad and extensive, e.g. providing utilities (sub-metering), security services, cleaning services in common areas, internet and cable TV, etc.

A US REIT is allowed to own, operate, manage and develop real estate for its own portfolio. If it develops real estate for third parties, the resulting income is disqualified and must fit under the 5%

'bad income' allowance. US REITs may develop real estate for third parties or trade real estate through their taxable REIT subsidiaries (TRS).

A REIT is allowed to invest in non-US real estate assets, which are considered real estate under the 75% asset test.

A REIT's ownership interests in a partnership are ignored. Instead, the REIT is considered an owner of the partnership's assets to the extent of the REIT's capital interest in the partnership. Also, the ownership of one REIT by another REIT is considered the ownership of real estate, i.e. a good asset. If the REIT is a shareholder of a company other than another REIT or a TRS, then the REIT cannot own more than 10% of the shares. Further, the REIT may have no more than 5% of its total assets represented by securities of any one issuer other than another REIT or a TRS.

2.5 Leverage

Leverage
No legal restrictions.

There are no statutory or regulatory leverage limits for US REITs.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
At least 90% of its taxable ordinary income.	Not required to distribute.	Annually.

Operative income

US law requires the REIT to annually distribute at least 90% of its ordinary taxable income in form of dividends. If an REIT declares a dividend in the last quarter of the year, but pays it by the end of January, the dividend distribution is treated as if it had occurred the previous December. These "relationship back-rules" apply if the REIT makes the actual distribution the following year. However, a 4% excise tax is imposed if the REIT fails to distribute at least 85% of its income within the year the income is generated.

Capital gains

US REITs are not required to distribute capital gains. Capital gains not distributed are subject to corporate income tax, but then the shareholders get an increased tax basis for their pro rata share of the tax.

2.7 Sanctions

Penalties / loss of status rules
- Various penalties. - Possible loss of REIT status.

Various penalties may occur. If insufficient income was distributed, the REIT may compensate with taxable deficiency dividends. If the REIT fails a *de minimus* amount of the asset test, it must fix the failure within six months of discovery. If the REIT fails the asset test by more than a *de minimus* amount, the REIT must pay corporate taxes on all income from non-qualified assets. In this case, it must also show reasonable cause for the failure. A USD 50,000 penalty is imposed for failures other than the asset test failures. Reasonable cause must also be proven in such cases. If there is no reasonable cause, then the REIT may technically lose its REIT status. Usually, however, the IRS will consider a closing agreement for some lesser amount.

If the REIT fails either the 75% or 95% gross income tests, it is subject to a penalty essentially equal to 100% of the amount by which it failed the respective tests, less allocable deductions.

After the loss of REIT status, the entity must observe a five-year waiting period before it can re-apply. The government may waive this penalty, depending on the reasonable cause.

A USD 50,000 penalty is imposed if the REIT shareholder limitations are disregarded.

3 Tax treatment at level of the REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt to extent distributed.	Tax-exempt to extent distributed.	- No refund of foreign withholding tax. - It can use a foreign tax as deduction.

Current income
Distributed dividends are deducted in calculating a REIT's taxable income. Retained income is subject to ordinary corporate income tax, but tax depreciation deductions are made in calculating taxable income. Dividends from ordinary income are generally taxed as ordinary dividends. The profits of a taxable subsidiary are subject to corporate income tax.

A REIT that acts as a dealer, as contrasted with an investor, is subject to a 100% excise tax on the profit from dealer sales. There is a safe harbor under which a REIT can be certain it will not be subject to the 100% excise tax if it complies with multiple objective tests.

Non arms-length transactions conducted with a taxable REIT subsidiary (as well as non-arm's length transactions between a TRS and a REIT's tenants) are 100% taxable.

Capital gains
Retained capital gains are subject to corporate income tax.

Withholding tax
A US REIT is not entitled to obtain a refund for its foreign withholding tax credit. The credit applies to its foreign source income. However, it can use a foreign tax as a deduction.

Other taxes
State income tax regimes virtually always follow the federal income tax rules.

Accounting rules
US GAAP rules apply. A US REIT and its subsidiaries must file a consolidated financial statement.

3.2 Transition regulations

Conversion into REIT status
- 'Built-in gains' are taxable. - Exemption is possible if assets held for ten years.

By the end of the REIT's first taxable year, the REIT must distribute all the earnings and profits for years before it became an REIT. Also, the REIT must pay a corporate tax on 'built-in gains' (the value of its assets at the time of REIT conversion minus the assets' tax basis). The taxes may be excused only if the REIT does not sell or exchange those assets in a taxable transaction for five years (but temporary regulations raise this to 10 years after August 2016), and it does not enter into any taxable transactions with respect to these assets during the ten-year period. 'Like kind' exchanges in which no built in gain occurs are permitted.

Many REITs use an UPREIT structure, which means 'Umbrella Partnership'. Under this structure, the REIT's sole asset is its interest in a partnership called the 'Operating Partnership' (OP). The REIT almost always has the general partner interest and typically owns more than half of the partnership interests. Property owners transfer either their assets or partnership interests to the OP in exchange for limited partnership interests (LP Units). As with any other transfer to a partnership, the contribution of these assets, or other partnership interests, is a tax-deferred transaction in which gain is not realised until the transferor's debt obligations shift or the transferor disposes the partnership interest in a taxable transaction. Usually after a year, the OP limited partners may exchange their OP Units either to the REIT or the OP (depending on the particular transaction), and then the REIT or the OP, as the case may be, has the option of either transferring to the LP Unit holder REIT stock on a one-for-one basis with each Unit the LP Unit owner exchanges, or cash equal to the fair market value of such stock. The exchange of the LP Units for REIT stock or cash is a taxable transaction.

3.3 Registration duties

Registration duties
Transfer tax.

Real estate acquisition is usually subject to transfer taxes in most states.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Income, capital gains, and return of capital distributions are taxed at a rate of 35%.	- Capital gain dividends are taxed at the maximum 23.8% rate. - Return of capital is tax-deferred.	N/A

Corporate shareholder
US corporations pay the same 35% rate on REIT capital gains and REIT ordinary income distributions. Corporate shareholders do not receive typical dividends received deduction with respect to REIT dividends. The return of capital distribution reduces the shareholder's tax basis in its shares of the REIT.

Individual shareholder

An individual US shareholder is subject to an income tax of up to 39.6%. An additional 3.8% surtax on investment income for taxpayers with adjusted gross income in excess of USD 200,000 (USD 250,000 for taxpayers who file a tax return as a married couple) also is applicable.

REIT ordinary dividends qualify for the lower 20% rate on “qualified dividends” (plus the 3.8% surtax, if applicable) only if they are paid out of income that has already been subject to corporate taxes, e.g. dividends attributable to distributions from a taxable REIT subsidiary. The top marginal rate on dividends other than “qualified dividends” is 43.4%.

Shareholders are taxed on capital gain distributions from assets the REIT held for at least one year at a 23.8% rate (including the 3.8% surtax). However, if the gain is attributable to the recapture of depreciation, the tax burden is 28.8%, including the surtax.

Return of capital distributions reduce the shareholder’s tax basis and are therefore tax-deferred. To the extent a return of capital distribution exceeds tax basis, it is treated as sale of the stock and the gain is taxable at the 23.8% maximum rate (including the 3.8% surtax). (The return of capital rules for a REIT are the same as for non-REIT corporations).

Withholding tax

No withholding tax is levied on distributions to US shareholders.

4.2 Foreign shareholders

Corporate shareholders	Individual shareholders	Withholding tax
- 30% on income dividends. - 35% on capital gain dividends. - 10% on return of capital.	- 30% on income dividends. - 35% on capital gain dividends. - 10% on return of capital.	Tax treaty relief available.

Corporate shareholders

Final withholding tax.

Individual shareholders

Final withholding tax.

Withholding tax

A withholding tax of 30% is levied on income dividends. This rate may be reduced by a double tax treaty. The US usually imposes a 15% tax on dividends paid by REITs in countries with which the US has a valid double tax treaty. The amount of the repayment of capital which is not subject to a withholding tax is taxed at a rate of 10%. The rate returns to 30% in most treaties for foreign shareholders who own more than 10% of a REIT. Non-US pension funds and certain governmental entities such as sovereign wealth funds might benefit from a tax exemption.

Capital gain dividends attributable to the sale of US real property are subject to the Foreign Investment in Real Property Tax Act (FIRPTA). According to FIRPTA, foreign shareholders are treated as if they were US taxpayers. Unless the shareholder owns 5% (10% after Dec. 18, 2015) or less of a listed REIT, the capital gain dividends are subject to a 35% (plus branch profit tax) withholding tax. If the shareholder does own 5%/10% or less of the REIT shares, then the treatment of capital gain dividends is similar to the treatment of ordinary dividends. Legislation enacted on Dec. 18,2015exempts foreign pension plans from FIRPTA, although there are a number of interpretative issues that remain to apply this exemption that should be addressed by regulatory guidance.

A return of capital distribution is subject to 10% withholding tax. If a withholding certificate is obtained, 0%.

Sales of stock of a listed US real estate company (if the non-US shareholder owns 5%/10% or less of the REIT) or of any domestically controlled REIT are not subject to FIRPTA or any US tax.

5 Treatment of foreign REITs and their domestic shareholders

Foreign REIT	Corporate shareholder	Individual shareholder
Generally 30% withholding tax.	- Dividend distributions are taxed at a rate of 35%. - Return of capital is tax deferred.	- Dividends are generally taxed at a maximum 23.8% rate if foreign REIT is not a 'PFIC'. - Return of capital is tax-deferred.

Foreign REIT

Unless the foreign REIT elects to be taxed on a net basis, or is actively operating rental property so that it is considered doing business in the US, there is a 30% withholding tax on gross rental income. Most non-US investors filing as a US business heavily leverage to reduce US taxable income.

Corporate shareholder

US corporate shareholders generally are taxable at a 35% rate on distributions from foreign REITs. The return of capital distribution reduces the shareholder's tax basis in its shares of the REIT. Furthermore, there is no credit available to US corporate shareholders for US withholding taxes paid by the foreign REIT with respect to US source income. Generally, these dividends are not eligible for the dividends received deduction applicable to dividends from US corporations.

Finally, if the foreign REIT is considered a 'passive foreign investment company' (PFIC), which may be the case if the rental income of the foreign REIT is not attributable to the activities of its own employees, a US shareholder either is subject to tax and substantial interest charges upon receipt of a distribution from the PFIC (or disposition of the PFIC stock), or may elect instead to be taxed on the PFIC investment on a current basis using an earnings flow-through approach or a mark-to-market approach.

Individual shareholder

An individual US shareholder is generally subject to an income tax at the maximum rate of 23.8% (including the 3.8% surtax noted above) on dividends distributed by a foreign REIT if the foreign REIT is both eligible for treaty benefits under a US tax treaty and is not a PFIC, as described above (although the maximum withholding tax rate with respect to REIT dividends under most treaties is 15%). Return of capital distributions reduce the shareholder's tax basis and are therefore tax-deferred. To the extent a return of capital distribution exceeds tax basis, it is treated as sale of the stock and the gain is taxable at the 23.8% maximum rate (including the 3.8% surtax). The return of capital rules for a REIT are the same as for non-REIT corporations. Furthermore, there is no credit available to a US individual shareholder for US withholding taxes paid by the foreign REIT with respect to US source income.

If the foreign REIT is considered a PFIC, which may be the case if the rental income of the foreign REIT is not attributable to the activities of its own employees, an individual US shareholder either is subject to tax at rates of up to 43.4% (including the 3.8% surtax noted above) and substantial interest charges upon receipt of a distribution from the PFIC (or disposition of the PFIC stock), or may elect instead to be taxed on the PFIC investment on a current basis using an earnings flow-through approach or a mark-to-market approach. ■

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