EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA-PACIFIC FLAGS LINKED TO CHAPTERS

- Australia
- Dubai
- Hong Kong
- India
- Japan
- Malaysia
- New Zealand
- Pakistan
- Philippines
- Singapore
- South Korea
- Taiwan
- Thailand

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

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Australia – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
Unit Trust (esp. listed Property Trust); Public Trading Trust.	1985	- (Public) Unit Trust and Equity law. - 'Trust Income', Division 6, ITAA 1936. - 'Public Trading Trusts' Regime, Division 6C, ITAA 1936. 'Managed investment trust', Subdivision 12-H of Schedule 1 of the Tax Administration Act 1953.	Trust type

Fixed trusts have traditionally been the preferred vehicle for holding real estate investments in Australia. They are typically set up as a listed (public) or unlisted fixed unit trust (i.e. investors subscribe for units). Unit trusts are generally treated as transparent for Australian tax purposes. One of the key tax benefits arising for the investor from a trust structure is that distributions from the trust retain their tax attributes ('flow through' entity), making an investment via a fixed trust generally comparable in most respects to a direct interest in the real estate. Unit trusts stapled to company structures are common in Australia.

Unit trusts are legally established under a Trust Deed pursuant to the general principles of the law of Equity. Certain public unit trusts may also qualify as Managed Investment Schemes regulated under Corporations Law. Division 6 of the ITAA 1936 (Trust Income rules) regulates the taxation of income derived by a trust (but not an 'attribution managed investment trust ("AMIT"), whilst Division 6C of the ITAA 1936 (Public Trading Trust Regime) assesses some trusts effectively as companies (depending on the type of activity undertaken by the trust) and Division 276 of the Income Tax Assessment Act 1997 ("ITAA 1997") regulates the taxation of AMITs. Distributions to non-Australian investors from a unit trust that is classified as 'managed investment trust' ("MIT") including the new AMIT are also taxed under the withholding tax rules contained in Subdivision 12-H of Schedule 1 of the Tax Administration Act 1953.

The application of certain tax law provisions for trusts (such as loss rules, scrip-for-scrip CGT rollover) varies depending upon whether a trust is classified as a 'fixed trust' or 'discretionary trust'. Subsequent to the Full Federal Court judgment in *Colonial First State Investments Ltd v Commissioner of Taxation*, there is uncertainty around the ability of a trust (and a unit trust in particular) that is not an AMIT to qualify as a fixed trust for Australian tax purposes without seeking confirmation from the Australian Taxation Office ("ATO"). Under current Australian tax law, where a trust does not meet the legislative definition of 'fixed trust', the Commissioner can exercise his own discretion to treat that trust as a fixed trust. Given the large number of tax provisions that rely on the concept of 'fixed trust' and the wide ranging impacts for business, it has been long standing industry practice (that applied before this decision) for most unit trusts (including property trusts) to be treated as if they qualify as a fixed trust (without seeking written confirmation from the ATO). This judgment highlights the weaknesses in the existing law that have been inherent since the concept of 'fixed trust' was first introduced and the need for trust law reform. On 5 May 2016, the Federal Government enacted the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act* 2016 ("AMIT Amendment") which introduced the long anticipated AMIT regime and other key changes to the taxation of trusts (discussed below), including but not limited to providing fixed trust treatment subject to certain conditions being satisfied.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Australia	61	13	€ 106.458	7.47%

Top five REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Scentre Group	€ 18.965	39.12%	3.94%	1.66%
Westfield Corporation	€ 15.408	8.98%	3.09%	1.30%
Vicinity Centres	€ 9.172	21.23%	5.12%	0.69%
Goodman Group	€ 9.102	18.96%	3.18%	0.83%
Stockland	€ 8.090	24.35%	4.86%	0.74%

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
No special legal or regulatory requirements. Certain requirements to benefit from withholding tax concessions and capital account election measures under the MIT rules.

A trust is established pursuant to a trust deed, which sets out the terms of the trust.

No special legal or regulatory requirements need to be satisfied in order for a property trust to be established. Property trusts whose units are offered to the public may be subject to regulatory requirements such as the Managed Investment Scheme rules under the Australian Corporations Law, which include that the trust must be managed by a corporate trustee/responsible entity/fund manager. However, these requirements do not impact on the tax treatment of the trust as a ‘flow through’ entity.

MIT requirement

Certain withholding tax concessions apply to distributions to non-Australian investors in a MIT (refer 4.2 below).

Under the MIT definition (applicable from July 01, 2010), the broad requirements to be satisfied for a trust to qualify as a MIT, include:

- it must have a relevant connection to Australia (i.e. Australian managed and controlled or have an Australian resident trustee);
- it must be a Managed Investment Scheme (“MIS”) within the meaning of the Corporations Act 2001 that is either:
  - a registered MIS under the Corporations Act 2001 (“registered MIS”); or
  - an unregistered MIS that satisfies a wholesale test (“wholesale trust”) as well as certain licensing requirements;
- carries out a substantial proportion of its investment management activities in Australia in respect of its Australian assets (refer below);
- is not a ‘trading trust’ (i.e. the trust must not carry on, or control, a trading business);
- satisfies the relevant ‘widely-held’ requirement (refer below);

- it is not closely held (that is, a 75% or greater interest is not held by 20 or fewer persons (retail trust) and ten or fewer person (wholesale trust), excluding interests held by specified 'eligible widely-held investors'. Also, a foreign individual cannot hold an interest of 10% or more).

At present, there is little guidance on what "substantial proportion" of investment activities in Australia means, however at a minimum, we would expect an Australian investment manager to be actively engaged in the management of the Australian assets such as identification and review of investments, due diligence as well as responsibility for undertaking the analysis for investment decisions being considered.

The widely-held requirement test is complex. The test will be easier to satisfy where ownership interests (even up to 100%) are held by 'eligible widely-held investors', which include:

- domestic and foreign life insurance companies;
- complying superannuation funds with at least 50 members;
- foreign superannuation funds (indefinitely continuing provident, benefit, retirement, or superannuation funds that are established outside Australia, managed and controlled outside Australia and have a majority of non-Australian resident members) with at least 50 members;
- pooled superannuation trusts that have at least 1 member which is a complying super fund that has at least 50 members;
- other managed investment trusts;
- foreign collective investment vehicles which have at least 50 members and are recognised under a foreign law as being used for collective investment where member contributions are pooled together and members do not have the day-to-day control over the operation of the entity
- certain tax-exempt foreign government pension funds (or their wholly-owned subsidiaries);
- certain sovereign wealth funds;
- entity wholly-owned by an Australian government agency; and
- entity of a kind listed in specified regulations.

The structure, by which otherwise eligible investors hold an interest in an Australian trust, will influence whether these widely held requirements can be satisfied.

In certain circumstances, trusts that satisfied the MIT definition up to June 30, 2010 may not satisfy the amended MIT definition (applying from July 01, 2010 and which is outlined above). As such, a transitional rule is proposed to provide transitional relief until 2017 for certain trusts that satisfy the existing MIT definition, but fail the proposed amended MIT definition.

As part of the AMIT Amendments, the Government has widened the list of 'widely-held' investors for the MIT regime to make it easier to satisfy the widely-held requirement test by including an ability to look through:

- wholly owned companies in a broad range of circumstances; and
- allow tracing through a Collective Investment Vehicle and a limited partnership in which at least 95% of the interests are held by other qualifying investors and the remaining interests are held by a general partner habitually exercising management powers.

Furthermore, the AMIT regime has also formally separated MITs into one of three classes. Each of these classes are required to fulfil the MIT requirements above noting the following exceptions:

- Capital election MIT – will be able to satisfy each the above requirements with the exception of not meeting the 'substantial proportion of investment management activities carried out in Australia with respect to the trust's Australian assets' requirement. Accordingly, a capital election MIT will be unable to access the MIT withholding tax regime or attribution rules. A Capital election MIT will be able to make an election to treat certain assets as being held on capital account.
- Withholding MIT – The same as a capital election MIT however, this MIT will also meet the requirements to have a substantial proportion of investment management activities carried out in Australia for the trust's Australian assets and can access the concessionary MIT withholding tax rates. Further, a withholding MIT will only be subject to the attribution rules where it meets the AMIT requirements and makes an election to apply the rules.

- AMIT – In addition to the above, an AMITs members must have a 'clearly defined interests' and make an irrevocable election to be an AMIT. Should these provisions be satisfied, an AMIT will be able to access the attribution regime as discussed below.

2.2 Legal form / minimum initial capital

Legal form	Minimum initial capital
Unit trust	$1

Legal form

A unit trust generally qualifies for the 'flow through' tax treatment and the 'flow through' treatment is not limited to resident trusts.

A non-resident entity will be treated as transparent for tax purposes provided it can be properly characterised as a trust for Australian tax purposes.

However, a trust which is treated as a public unit trust (e.g. listed or at least 50 investors or 20%-owned by Australian superannuation funds[1] and certain exempt entities) does not qualify for 'flow through' treatment if it is carrying on ineligible trading activities.

The term 'property trust' used with respect to Australia in the remainder of this report is a reference to such a fixed unit trust unless otherwise specified.

Minimum initial capital

Apart from the requirement that there must be at least nominal corpus of the trust estate, there is no minimum initial capital required.

2.3 Unit holder requirements / listing requirements

Unit holder requirements	Listing mandatory
No requirements	No

Unit holder requirements

No requirements exist with respect to the profile of the investor.

Listing requirements

Listing is not mandatory in Australia to obtain 'flow through' status. However, large property trusts (known as 'listed managed investment trusts' or "A-REITs") are typically listed in Australia for commercial purposes. It is also easier to qualify as a MIT if the trust is listed on Australian Stock Exchange.

A number of requirements must be met in order to be listed on the Australian stock exchange, including among others minimum net tangible assets or profit requirements and minimum unit-holders numbers and parcel value requirements.

[1] The Government has proposed to amend the public trading trust rules such that 20% or more ownership of a unit trust by Australian superannuation funds should not result in it being treated as a public unit trust.

2.4 Asset levels / activity test

Restrictions on activities / investments
- Public unit trusts and MITs investing in land, must do so for the purpose, or primarily for the purpose, of deriving rent (eligible investment business). - Public unit trusts that carry on a trading business (i.e. a business that does not wholly consist of eligible investment business) are not accorded 'flow through' treatment and unit trusts that carry on a trading business will not qualify as a MIT. - May invest in a single property.

There exist no restrictions on the type of activities that can be undertaken by a property trust, unless the trust qualifies as a public unit trust (broadly, unit trusts that are listed, have at least 50 unit holders or 20% of the units are held by superannuation funds[1] and certain exempt entities) or wishes to qualify as an MIT. Unit trusts, other than public unit trusts and MITs, can engage in trading activities, e.g. managing and developing real estate, without losing the benefits of 'flow though' treatment.

Public unit trusts and MITs must only carry on an 'eligible investment business' in order to be eligible for 'flow through' treatment. "Eligible investment business" covers investing in 'land' for the purpose (or primarily for the purpose) of deriving rent (except for profit-based rentals derived from land), and/or investing or trading in various financial instruments including units in unit trusts, shares in companies (including foreign hybrid companies), loans, and derivatives. The definition of 'land' has included fixtures on the land, and certain moveable property (e.g. chattels) customarily supplied, being property that is incidental and relevant to the renting of the land and ancillary to the ownership and utilisation of the land. Ineligible activities are regarded as trading activities.

A safe-harbour rule operates to broadly allow a trust to derive up to 25% of its income from investments in land (excluding capital gains from asset realisation) in the form of trading income (i.e. not rent) so long as it is incidental and relevant to the 'eligible investment business' being the leasing of land. Further, none of the rental income should be excluded rent i.e. rent intended to transfer all or substantially all of the profits of another person to the lessor.

Where a trust does not meet this safe-harbour test, it can assess whether it is investment in land for the purpose, or primarily for the purpose of deriving rent under the existing law. Furthermore, a 2% safe-harbour allowance for non-eligible investment business' income (at the whole of trust level) reduces the scope for inadvertent minor breaches of the 'eligible investment business'. The trustee of a unit trust is taken not to carry on a trading business in a year, if no more than 2% of the gross revenue of the unit trust is income other than from 'eligible investment business'.

In summary, provided the public unit trust, MIT or AMIT carries on primarily (i.e. predominantly) eligible passive land investment activities, and non-eligible activities are incidental and relatively insignificant, the public unit trust should retain the 'flow through' treatment for that income year and/or the trust will retain MIT status.

If the public unit trust carries on a trading business, it will be taxable as if it was a company (at the company rate of 30%) and its unit holders were shareholders. Alternatively, the trust will lose MIT status.

A public unit trust may not control or have the ability to control directly or indirectly, an entity that carries out ineligible trading activities. As a consequence, it is common for Australian property trusts to form part of a stapled security with a passive trust undertaking a range of activities relating to passive property holdings (i.e. management, redevelopment, funds management etc) and a stapled company or trading trust actively participating in property development activities. This effectively allows the management function to be 'internalised'.

A property trust may invest in a single real property asset.

A property trust can hold property investments offshore. Property trusts can hold investment properties indirectly through SPVs. However, the key benefits arising for an investor from a trust structure (i.e. where the benefits of direct ownership are replicated) may be lost where the interposed SPV does not qualify for look-through tax treatment.

2.5 Leverage

Leverage
Unlimited, but the extent to which interest is deductible is limited by the general thin capitalisation rules.

There are no specific gearing limits for unit trusts structure under Australian tax law. The general thin capitalisation rules may apply however, to effectively impose a gearing limit where the property trust is controlled by non-resident unit holders and/or if the property trust controls a foreign entity. Exemptions from the thin capitalisation rules apply where total debt deductions (including associates' deductions) are AUD 2m or less, or where an Australian outbound investor that is not foreign controlled has average Australian assets (including its associates' assets) that represents 90% or more of its average total assets (including its associates' assets).

Under the thin capitalisation rules, the safe harbour test broadly provides for a maximum gearing (both related and third party) of 60% of the gross assets based on the accounting balance sheet for income years commencing on or after 1 July 2014. The thin capitalisation rules also contain an arm's length debt test. This essentially looks at the amount that an independent commercial lending institution would reasonably be expected to lend as well as the amount of debt that the entity would reasonably be expected to have attributable to Australian business.

Subject to the thin capitalisation rules, a tax deduction should be available for interest expense incurred in connection with loans used to acquire the income yielding property. Breaches of thin capitalisation rules will result in a proportion of interest deductions being denied.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
Typical distribution of 100% of trust's income as defined in the trust's constitution.	To the extent included in the trust's income, any capital gains realised on disposal of property, including interests held in other sub-trusts or other entities.	Annually or semi annually

There are no prescribed minimum distribution rules. However, in order to ensure that the trustee is not subject to tax on the property trust's taxable income at the top marginal tax rate (currently 47% + 2% Medicare levy (if applicable)), the unit holders must be 'presently entitled' to all of the trust's trust law income at year end. Property trusts therefore typically distribute their trust income (including tax deferred amounts) on at least an annual basis, and listed trusts distribute generally on a quarterly or six monthly basis.

Under the new AMIT regime, the 'present entitlement' system of trust taxation is replaced by an 'attribution' system under which the trustee allocates all of the taxable income of the trust to the unit holders on a 'fair and reasonable basis'. The trustee will not be subject to tax on the trust's taxable income (rather, the unit holders will be assessed on the taxable income of the trust that is allocated by the trustee) and clearly defined rules to carry forward prior year under/over amounts. This attribution regime is only available for eligible MITs which have made an irrevocable election to apply the attribution rules.

2.7 Sanctions / Integrity provisions

Penalties / loss of status rules
As outlined above, Public unit trusts that carry on a trading business (i.e. a business that does not wholly consist of eligible investment business) are taxed as if they are a company and are not accorded 'flow through' treatment. In addition, MITs need to satisfy an arm's length income rule. To the extent to which the income derived exceeds an arm's length amount, the trustee will be subject to 30% on the income derived in excess of an arm's length amount.

A 'non-arm's length income rule' has been introduced which will apply to all MITs (i.e. whether or not the MIT is also an AMIT). Where a MIT is determined by the Commissioner to be in receipt of 'non-arm's length income' (e.g. interest), the trustee will be liable to taxation at 30% on the excess income above the arm's length amount. That is, the analysis is only of the income received by a MIT rather than expenses incurred. These rules apply to any arrangements entered on or after 1 July 2016 and in respect of existing arrangements from 1 July 2018.

Certain exceptions and a safe-harbour exist to protect against this rule.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Not taxable in the hands of the trustee provided the unit holders are presently entitled to the trust's income at the end of the income year, otherwise trustee taxed at highest marginal rate.	- Tax treatment of capital gains similar to that of ordinary income. - 50% CGT discount may be available for Australian resident unit holder; however, the 50% discount will not apply to non-resident unit holders on capital gains accrued after May 08, 2012.	N/A

Current income and capital gains

Provided the unit holders are presently entitled to the property trust's trust income (as calculated under the trust deed) at year end, the trustee is not liable to tax on the trust's taxable income, including capital gains. Income derived by the property trust will generally retain its character in the hands of the unit holders as it is the unit holders themselves that are subject to tax according to their own specific circumstances

If there is a portion of property trust's trust income to which unit holders are not presently entitled at year-end, then the trustee is subject to tax on the same proportion of the trust's taxable income at the top marginal tax rate (currently 47% + 2% Medicare levy (if applicable)). Where the taxable income includes capital gains, a resident trustee may be able to apply the 50% CGT (capital gains tax) discount. The 50% CGT discount was removed for non-residents on capital gains accrued after May 08, 2012. Similarly, a trustee with a non-Australian beneficiary may only apply the 50% CGT (capital gains tax) discount on capital gains accrued before May 09, 2012.

As outlined above, under the new 'attribution' system the taxable income of the AMIT will not be taxable in the hands of the trustee provided that the trustee has allocated all of the taxable income of the trust to the unit holders on a 'fair and reasonable basis'. More detailed comments on the tax treatment of an AMIT have been provided below.

Tax Losses

Tax losses are quarantined in the trust and cannot be distributed to unit holders. They can be carried forward to offset against future income and capital gains subject to satisfying the trust loss recoupment tests, the most important of which is a greater than 50% continuity of ownership test. A trust that does not satisfy the requisite trust loss tests cannot offset those income losses in future years. There is no loss carry-back. There is a business test but this is only available to trusts that have been listed at all times from the beginning of the loss year until the end of the year of recoupment.

Capital losses can only be offset against capital gains derived by the trust. There are no loss recoupment rules that need to be satisfied in order to utilise capital losses.

Withholding tax

An Australian resident property trust is generally not subject to any domestic withholding tax on income earned in Australia.

Tax offsets for foreign withholding tax deducted from foreign income derived by the property trust will attach to distributions of foreign income made by the trust to unit holders. The relevant portion of the foreign tax offsets will be available for offset against tax on foreign income of the property trust if the trustee is subject to tax on that amount as discussed above.

The property trust may have certain withholding tax and other tax obligations in respect of the net income distributed to unit holders. These are discussed in section 4 below.

Accounting

Australian LPTs are required to prepare accounts under IFRS.

Tax treatment of an AMIT

As noted above, the attribution regime replaces the existing Division 6 “present entitlement” provisions and each member is allocated a “determined member component” of assessable, exempt and, non-assessable, non-exempt characters. The trustee will attribute those amounts to members on a fair and reasonable basis, consistent with the trust documents, as if the members had derived, received or made the amounts in their own right.

Other features of the tax treatment of an AMIT include:

- **A formal introduction of an unders and overs system**
  This system allows a trustee to carry forward errors in calculations of taxable income to the year that the errors are discovered. Discovered unders and overs are included in the trust’s income components in the discovery year.
- **Fixed review periods**
  Income tax calculations for AMITs are subject to a four year discovery period after which they are no longer subject to ATO review. No time limits are applicable to other trusts
- **Cost base adjustments**
  Members of AMITs are now able to make an upward as well as downward cost base adjustment in the units they hold (for both capital and revenue account holders).
- **Tax deferred amounts not assessable**
  Under the previous law, uncertainty existed in connection to whether distributions of “tax deferred” income to certain investors could be considered to be ordinary income and taxable in the hands of the beneficiary. For AMITs, an amount of “tax deferred” income received by a member of an AMIT will be treated as non-assessable.
- **Fixed trust treatment**
  As noted above, AMITs are now deemed to be fixed trusts for tax purposes.
- **Units capable of being treated as debt interests**
  Certain debt-like interest in an AMIT are capable of being treated as a debt interest and distributions in relation to these instruments will be deductible to the AMIT and assessable to the members as interest for the purpose of interest withholding tax.
- **Multiple classes of units**

Where an AMIT has multiple classes of members, it will be able to make an irrevocable election to treat each class of units as separate AMIT classes. These AMITs would then be able to issue different classes of units to investors seeking exposure to different categories of assets.

Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
- No duty on capital contributions.

There is no duty on capital contributions.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- 30% tax on share of the trust's worldwide taxable income, including capital gains. - Capital gains on disposal of units taxed at 30% with no CGT discount available.	- Tax at rates of up to 49% (including medicare levy) on share of the trust's worldwide taxable income. - 50% CGT discount may be available to resident individuals on capital gains distributed and on disposal of units.	- There is no final withholding tax imposed. - Trustee pay tax on behalf of foreign resident beneficiary in certain circumstances. - Withholding at 49% is required where an Australian tax file or business -number is not quoted.

Corporate unit holder

A resident corporate unit holder is subject to tax on its share of the property trust's worldwide taxable income, including capital gains, at the current corporate tax rate of 30%.

'Tax deferred' distributions, being distributions in excess of the property trust's taxable income (e.g. an amount representing plant and equipment depreciation), are generally only taxable to the extent that the amount exceeds the cost base of the unit holder's investment. The unit holder's CGT cost base is otherwise reduced by the tax deferred amount, which effectively defers taxation until such time as the units are disposed of. For certain investors, such as those that hold their investment on revenue account, these tax deferred distributions may be assessable on receipt.

Capital/revenue gains realised on the disposal of units in the property trust are subject to tax at the current corporate tax rate of 30%.

Individual unit holder

An individual unit holder is subject to tax at the prevailing tax rate of up to 49% (including medicare levy) on its share of the property trust's worldwide taxable income. However, to the extent that the trust's taxable income is made up of capital gains, the domestic unit holder may be entitled to a 50% CGT discount.

'Tax deferred' distributions, being distributions in excess of the property trust's taxable income (e.g. an amount representing plant and equipment depreciation), are generally only taxable to the extent that the amount exceeds the cost base of the unit holder's investment. The unit holder's CGT cost base is otherwise reduced by the tax deferred amount, which effectively defers taxation (in the form of a higher capital gain) until such time as the units are disposed of.

Capital gains realised on the disposal of units in the property trust may also be eligible for the 50% CGT discount in the hands of the domestic unit holder. No discount is available for revenue gains. The trustee may pay tax on behalf of a beneficiary in certain limited circumstances.

Withholding tax

Withholding from property trust distributions or from a present entitlement to trust income is required at the rate of 49% where an Australian tax file number (TFN) or Australian business number (ABN) or other exception is not quoted to the property trust. Unit holders are entitled to a tax credit for the amount withheld.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
Trust is not a MIT.	- Non-resident unit holders are subject to Australian tax at corporate tax rate of currently 30% on their share of the trust's taxable income that is attributable to sources within Australia. - Capital gains on non real property are tax-exempt.	- Non-resident individual unit holders are subject to Australian tax on a progressive scale, starting at 32.5% on their share of the trust's taxable income that is attributable to sources within Australia. - Capital gains on non-real property are tax-exempt and taxable capital gains may be eligible for a 50% discount to the extent that the capital gain is accrued before May 08, 2012.	- Dividend and interest paid to non-resident unit holders is subject to a final withholding tax in accordance with domestic rules/treaty rules, on dividends or interest.

Trust is a MIT (including AMIT)	- Capital gains on non-real property are tax-exempt. - Dividend and interest distributed to non-resident unit holders is subject to a final withholding tax in accordance with domestic rules/treaty rules, on dividends or interest. - For other type of Australian source income, the rate of withholding tax depends on the country of residence of the foreign investor. - For foreign investors resident in a country with which Australia has an effective exchange of information (EOI) on tax matters[2] the income is subject to a final withholding tax for distributions of 15% from July 01,2012 and a 10% withholding for distributions from Green Building MITs (Withholding MITs and AMITs only) - For foreign investors in a country with which Australia does not have an effective EOI, the income is subject to a final withholding tax at the rate of 30%.

[2] The countries with which Australia has an effective EOI on tax matters that qualify for the lower MIT withholding rate are: Anguilla, Antigua and Barbuda, Aruba, Argentina, Bahamas, Belgium, Belize, Bermuda, British Virgin Islands, Canada, Cayman Islands, China, Cook Islands, Czech Republic, Denmark, Fiji, Finland, France, Germany, Gibraltar, Guernsey, Hungary, India, Indonesia, Ireland, Isle of Man, Italy, Japan, Jersey, Kiribati, Republic of Korea, Macau, Malaysia, Malta, Mauritius, Mexico, Monaco, Netherlands, Netherlands Antilles, New Zealand, Norway, Papua New Guinea, Poland, Romania, Russia, San Marino, Singapore, Slovakia, South Africa, Spain, Sri Lanka, St Kitts & Nevis, St Vincent & the Grenadines, Sweden, Taipei, Thailand, Turks and Caicos Islands, United Kingdom, United States of America, Vietnam.

General position

In general, for non-resident beneficiaries that are presently entitled to the property trust's trust income (or have been allocated a direct member component by an AMIT), the trustee will be required to deduct tax on Australian-sourced income distributed, other than income which is subject to a final withholding tax (e.g. interest/dividend and MIT withholding tax, as withholding tax is a final tax). This tax deducted is not a final tax.

Non-MITs

Tax is deducted in accordance with the type of unit holder – companies at 30%, individuals on a progressive scale starting at 32.5%, and non-resident trustee beneficiaries at 47%. The unit holder is required to lodge a tax return in respect of these trust distributions (for corporate and individual unit holders, but not non-resident beneficiaries that are trusts) and can claim a deduction for certain costs incurred in deriving this income. The tax deducted by the trustee may be claimed as a tax credit with any excess tax deducted by the trustee refunded to the unit holder.

Managed Investment Trusts

A concessional withholding tax regime applies to distributions made by withholding MITs and AMITs of taxable income attributable to Australian sources to all types of non-residents including trustees. The new regime replaces the non-final 30% withholding regime that formerly applied.

For Australian source income, the rate of withholding tax on distributions by a withholding MIT and AMIT depends on the country in which the foreign investor is resident:

- For foreign investors residing in a country with which Australia has an effective exchange of information (EOI) on tax matters[3], the income is subject to a final withholding tax of 15% for distributions from July 01, 2012 and 10% for distributions from Green Building MITs.

- For foreign investors in a country with which Australia does not have an effective EOI, the income is subject to a final withholding tax at the rate of 30%.

- Where a foreign investor is a trust that is resident in a country with which Australia has an effective EOI and has a beneficiary resident in a country with which Australia does not have an effective EOI, the beneficiary is required to top up the 15% withholding tax deducted on the distribution to the Trust to reflect the 30% withholding tax rate applicable for distributions to beneficiaries resident in a non-EOI country.

For capital account MITs, no concessionary MIT withholding rates will apply bur rather distributions to non-residents will be subject to the same withholding rates as if it were a non-MIT.

In addition, different rates of withholding apply to distributions by a withholding MIT and AMIT that qualifies as a Clean Building MIT. This is an MIT that only holds 'clean buildings' that commenced construction on or after July 01, 2012. For such Clean Building MITs, the rate of withholding on distributions to foreign investors that are resident in countries with which Australia has an effective EOI is 10% rather than 15%.

For foreign investors that are trusts (other than non-Australian Pension Funds that are constituted by way of a trust), higher rates of tax may be applicable if MIT distributions derived by such trusts are not subsequently distributed to their beneficiaries.

[3] The countries with which Australia has an effective EOI on tax matters that qualify for the lower MIT withholding rate are: Anguilla, Antigua and Barbuda, Aruba, Argentina, Bahamas, Belgium, Belize, Bermuda, British Virgin Islands, Canada, Cayman Islands, China, Cook Islands, Czech Republic, Denmark, Fiji, Finland, France, Germany, Gibraltar, Guernsey, Hungary, India, Indonesia, Ireland, Isle of Man, Italy, Japan, Jersey, Kiribati, Republic of Korea, Macau, Malaysia, Malta, Mauritius, Mexico, Monaco, Netherlands, Netherlands Antilles, New Zealand, Norway, Papua New Guinea, Poland, Romania, Russia, San Marino, Singapore, Slovakia, South Africa, Spain, Sri Lanka, St Kitts & Nevis, St Vincent & the Grenadines, Sweden, Taipei, Thailand, Turks and Caicos Islands, United Kingdom, United States of America, Vietnam.

Dividend, interest and royalty income will generally continue to be excluded from MIT withholding tax and are subject to the specific withholding tax rules. Capital gains on assets other than 'taxable Australian property' will also continue to be generally excluded (discussed below).

Tax deferred distribution

'Tax deferred' distributions, being distributions in excess of the property trust's taxable income (e.g. an amount representing plant and equipment depreciation), are generally only be taxable to the extent that the amount exceeds the cost base of the unit holder's investment. The unit holder's CGT cost base is otherwise reduced by the tax deferred amount, which effectively defers any taxation (in the form of a higher capital gain) until such time as the units are disposed of. For certain investors, such as those that hold their investment on revenue account, these tax deferred distributions may be assessable on receipt.

As noted above, an AMIT has additional flexibility with the ability to adjust its cost base upwards. This situation is likely to arise where a member has been attributed and taxed on a 'direct member component' that is in excess of the amount actually being paid.

Distributions of capital gains

Trustees of property trusts that distribute capital gains on assets that are not 'taxable Australian property' are not required to withhold tax from that amount as foreign resident beneficiaries will not be taxable on the gains distributed. Gains from investments held by the trust in other trusts are eligible for the exemption provided at least 50% of the market value of CGT assets of the other trust (or trusts in which the other trust has an interest), are not 'taxable Australian property' at the relevant CGT event time. Taxable Australian property includes real property held directly or indirectly that is situated in Australia, therefore it usually follows that capital gains distributions from Australian property trusts remain taxable.

Non-residents will only be taxable on capital gains realised on the disposal of units in an Australian resident property trust if the unit holder held at least 10% of the units in the trust, and more than 50% of the market value of the assets of the trust comprises Australian real property or interests in other entities whose assets are principally Australian real property.

Capital election requirement

Certain MITs can elect for capital account treatment for certain of its investments. Broadly, under the new deemed capital rules, Australian MITs (this definition is broadly the same as the MIT definition for MIT withholding tax purposes with a few exceptions) will be entitled to make an irrevocable election to apply the CGT treatment to eligible assets disposals from the first income year commencing on or after the 2008/09 year. If the trust makes a valid election, certain assets (broadly, land, shares in companies and units in unit trusts) are deemed to be held on capital account and therefore disposal of these assets may be eligible for the capital gains tax discount and exemption for non-residents (where assets are 'non-taxable Australian property'). If no election is made, the assets will be deemed to be held on revenue account (with the exception of real estate which will be taxed according to the ordinary capital/revenue distinction). The new concessions will also apply to unit trusts 100% owned and controlled by MITs if the trust are eligible for 'flow through' treatment (i.e. carry on only an 'eligible investment business').

Other Withholding Taxes

Dividend and interest income paid to non-resident unit holders is subject to a final withholding tax in accordance with domestic rules/treaty rules. To the extent that the income has been subject to final Australian withholding tax or would have been subject to withholding tax had an exemption not applied, no further tax is levied.

Withholding from other property trust distributions (or from a present entitlement to other trust income) is required at the rate of 47% where an Australian tax file number (TFN) or Australian business number (ABN) or other exception is not quoted to the fund. Unit holders are entitled to a tax credit for the amount withheld. Amounts that have tax withheld under the "managed investment trust" withholding tax provisions discussed above are exempted from this requirement.

4.3 Australian Stamp Duty

Landholder duty

All states and territories impose landholder duty on certain acquisitions of interests in trusts with interests in land (held directly or indirectly) valued above a landholdings threshold at rates of up to 5.75%. The quantum of duty is based on the value of all land holdings and in New South Wales, Western Australia and South Australia also on value of goods.

New South Wales, Queensland, Western Australia, the Northern Territory, South Australia and Victoria impose landholder duty on acquisitions of 90% or more in a listed trust. Generally, all states and territories (except as noted below in respect of Queensland and South Australia) impose landholder duty on acquisitions of 50% or more in an unlisted trust, except in Victoria where the threshold is 20% (other than registered wholesale trusts as defined where the threshold is 50%).

Trust acquisition duty

Queensland and South Australia separately impose duty on changes of interests in certain private trusts with interests in 'dutiable property', including land, at rates of up to 5.75% of the greater of the unencumbered market value and the consideration paid. Unlike landholder duty, there is no requirement that the interest acquired in the trust be above a certain percentage interest. There are limited exceptions where a threshold is applicable.

5 Tax treatment of foreign REIT and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Similar to Australian Trust however with modifications.	Like corporate unit holder of Australian trust.	Like individual unit holder of Australian trust.

Foreign REIT

Foreign REITs are taxed on Australian sourced income and capital gains on taxable Australian property. The taxation of a foreign REIT will depend on the type of entity the REIT is for Australian tax purposes and the investments structure adapted. If the foreign REIT is a trust, the tax implications will broadly be in accordance with 3.1 and 4.2 above. Such foreign REITs may qualify as an eligible widely held investor for MIT purposes (depending upon the structure used to invest into Australia).

Corporate unit holder

Corporate unit holders of a foreign trust are taxed on income broadly as above with a tax offset for foreign tax paid (subject to an offset cap amount).

Individual unit holder

Individual unit holders of a foreign trust are taxed on income broadly as above with a tax offset for foreign tax paid (subject to an offset cap amount). ■

Author contacts | Australia

Scott Farrell
Tel. +61 2 9335 7366
spfarrell@kpmg.com.au

KPMG
cutting through complexity™

EPRA

Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Dubai – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction / history / REIT type

	Enacted year	Citation	REIT type	REIT market
REIT	2006	The Investment Trust Law No. 5.	Trust type.	To be established.

The REIT was introduced with the REIT law, which is part of The Investment Trust Law No. 5 that went into effect as of August 06, 2006.

The REIT market is still in its infancy, and as of July 30, 2016 there is one publicly listed REIT in Dubai.

Dubai Islamic Bank, in partnership with France's Eiffel Management Limited, launched the first Islamic REIT in Dubai as of December 2010. The venture, by the name of Emirates REIT was listed on NASDAQ Dubai on April 8th, 2014 and raised USD 201 million through the IPO process.

On 1 March 2015 Eiffel Management Limited acquired the remaining 25% of Emirates REIT Management's share capital from Dubai Islamic Bank for an undisclosed sum. Dubai Islamic Bank no longer holds an interest in the trust manager; however, the Bank maintains an interest in the REIT itself.

The REIT is set up as a close ended investment company (CEIC) in accordance with the DIFC company regulations and operates under the Dubai Financial Services Authority's (DFSA). The REIT will also include a Shari'a board to advise on Sharia-related matters such as Fatwas, rulings and regulations to ensure the entire operation is in accordance with the Sharia law.

Although not listed on the Dubai NASDAQ, a USD 200 million Cayman Island-organised Arabian Real Estate Investment Trust (AREIT), Private REIT, was jointly developed and launched by HSBC Bank Middle East and asset management company Daman. AREIT is managed by AREIT Investment Holdings Limited.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
United Arab Emirates	1	0	€ 333	0.00%

*Market cap rebased in EUR and is 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
- Required to use a closed-ended legal structure for the investment vehicle - For property funds which intend to be Public Funds, the Fund Manager may only use either an Investment Company or Investment Trust as the investment vehicle of the Fund; must ensure that it is listed and traded on an Authorised Market Institution within 6 months from the date on which the Units of the Fund are first Offered to the public; and, must ensure that the Constitution of the Fund includes provisions that address the issuance, redemption and private placement of units

Legislation for the REIT structure was approved on August 06, 2006. Due to limited information available, comments on the key requirements for the REIT must be subject to a future detailed analysis.

2.2 Legal form / minimum initial capital

Legal form	Minimum initial capital
Public Property Fund.	No

Legal form
The REIT is a Public Property Fund that is constituted as either an Investment Trust or an Investment Company (which is the same as for other Public Property Funds).

Minimum initial capital
There are no minimum initial capital requirements existing.

2.3 Unit holder requirements / Listing requirements

Unit holder requirements	Listing mandatory
Detailed information not yet available.	Yes

Unit holder requirements
Due to limited information available, comments on unit holder requirements must be subject to a future detailed analysis.

Listing requirements
Listing is mandatory. No regulations pertaining to private REIT has been instituted.

2.4 Asset level / activity test

Restrictions on activities / investments

- REITs with 100% foreign share ownership are restricted to investing in freehold areas as the non-freehold areas are available only to UAE and GCC nationals.
- REITs which have majority (51%) or more by UAE/GCC ownership are exempt from any restrictions in freehold and non freehold areas.
- REIT is primarily aimed at investments in income generating real property.
- REITs are permitted to invest directly into real property.
- REITs are permitted to develop real estate; property under development must not exceed 30% of the net assets value of the Fund Property of the REIT.
- REITs must derive income from two tenants or lessees.
- REITs must distribute to unit holders at least 80% of its audited annual net income.
- The persons providing oversight functions in respect of the fund must determine if any:
  - Revaluation surplus credited to income, or
  - Gains on disposal of Real Property shall form part of the net income for distribution to unit holders.
- REITs can only invest up to 40% of its total assets in cash and government securities while the remaining balance of the fund is to be invested in real property, property related assets, or units in another property fund.
- REITs may hold real property via an SPV (Special Purpose Vehicle) and should receive the total income generated by the SPV.
- REITs should own and control a minimum 50% shareholder stake if entered into a joint property ownership arrangement.
- REITs ownership of property outside Dubai and other GCC countries is bound by the same ownership restrictions mentioned above.

A REIT is permitted to develop real estate for its own account, to trade with real estate or to own residential and/or commercial real estate. The development of real estate is restricted as follows:

1. An Operator of a REIT must ensure, subject to (2), that any investment made in respect of property under development whether on its own or in a joint venture is undertaken only where the REIT intends to hold the developed property upon completion.
2. The total contract value of the property under development in (1) must not exceed 30% of the net asset value of the Fund Property of the REIT. Property development activities do not include refurbishment, retrofitting and renovation.

A REIT in Dubai is permitted to invest in the following assets:

- Real property which consists of land and/or buildings, whether freehold or leasehold
- Income producing property such as schools, residential buildings, office buildings, warehouses, car parks, and hospitals.
- Property related assets such as: shares, debentures, or warrants which are issued by a body corporate, substantial activity which are related to investments in real property and certificates which confer rights with respect to such investments.
- Units in another property fund.
- Cash, government and public securities of up to 40% of its total investments.

2.5 Leverage

Leverage
Limited to 70% of the total net asset value.

In Dubai, an operator of a REIT may borrow either directly or through its SPV up to 70% of the total net asset value of the fund.
On 3 May 2015 the DFSA published a modification notice to Emirates REIT permitting the Fund Manager, in respect of the Fund, to borrow either directly or through its Special Purpose Vehicle up to 50% of the total gross asset value of the Fund. The modification also specified a Fund Manager of an Islamic REIT, in respect of the Fund, may borrow either directly or through hits Special Purpose Vehicle up to 50% of the total gross asset value of the Fund and such borrowings are Shari'a compliant. The modification was published without conditions and effective until further notice.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
80% of annual net income.	Included in net income.	Annually.

Operative income

REITs in Dubai are required to distribute an amount not less than 80% of audited annual net income to the unit holders.

Capital gains

Capital gains are included in the annual net income of the REIT. For profit distribution purposes, the inclusion of capital gains is at the sole discretion of the overseeing body of the fund.

2.7 Sanctions

Penalties / loss of status rules
Detailed information not yet available.

Legislation for the REIT structure has been approved. Because of limited information available possible sanctions must be subject to a future detailed analysis.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
N/A	N/A	N/A

Current income

There are no personal taxes in Dubai. The only entities that are taxed in Dubai are companies involved in the oil & gas industry and branches of foreign banks operating in Dubai (at a rate of 20%). Consequently, rental income of a REIT is not taxable (except where the investor is a branch of a foreign bank). Other types of business income if allowed to be generated are also not taxable.

Capital gains

Not taxable except where the above applies.

Withholding tax

N/A

Accounting rules

IFRS rules are applicable.

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
Land Registration Fees Real Estate Transfer Fees

There is no stamp duty or transfer tax levied on acquisition of freehold property in Dubai. However there are land registration fees and transfer fees of 4% paid by the property developer and purchaser. There is no regulation as to which party bears the expense.

The general RETF rate is 4% in Dubai (and may vary for other Emirates), applied on the value of the relevant immovable property.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

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

Corporate unit holder
No taxation for domestic corporate unit holders.

Individual unit holder
No taxation for domestic individual unit holders.

Withholding Tax
Dubai does not levy withholding taxes.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding Tax
Detailed information not yet available.	N/A	N/A

Corporate unit holder
Due to limited information available, comments on taxation for foreign corporate unit holder requirements must be subject to a future analysis with regards to nature of business of foreign corporate unit holders (subject to the comments in Part 3 above).

Individual unit holder
No taxation for foreign individual unit holders.

Withholding Tax
Dubai does not levy withholding taxes.

5 Tax treatment of foreign REIT and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Detailed information not yet available.	Detailed information not yet available.	Detailed information not yet available.

Foreign REIT
Due to limited information available, comments on taxation for a foreign REIT on income from Dubai must be subject to a future analysis with respect to applicability of double tax treaties between U.A.E. and the foreign REIT's country of residence.

Corporate shareholder

Due to limited information available, comments on taxation for domestic corporate unit holders from income of a foreign REIT must be subject to a future analysis with respect to applicability of double tax treaties between U.A.E. and the foreign REIT's country of residence.

Individual shareholder

Due to limited information available, comments on taxation for domestic individual unit holders from income of a foreign REIT must be subject to a future analysis with respect to applicability of double tax treaties between U.A.E. and the foreign REIT's country of residence. ■

Authors contact | Dubai

Yousef Wahbah
Tel. +971 4 312 9113
yousef.wahbah@ae.ey.com

EY Building a better working world

EPRA

Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Hong Kong – HK REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
HK – REIT	2003	Code on Real Estate Investment Trusts	Trust type

The Code on Real Estate Investment Trusts (Code on REITs) was first introduced in July 2003 and revised in June 2005, June 2010, April 2013 and July 2014. REITs in Hong Kong are structured as trusts. They have to comply with the Code on REITs issued by the Securities and Futures Commission (SFC) for authorisation.

There are currently ten REITs with a total market capitalisation of approximately EUR 17.697 billion as at July 10, 2014 (to be supplied by Consilla Capital).

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of global REIT Index
Hong Kong	13	3	€ 28.828	1.58%

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield %	% of Global REIT Index
Link Real Estate Investment Trust	€ 14.608	29.14%	3.56%	1.33%
Champion REIT	€ 3.146	8.80%	4.43%	0.12%
Fortune Real Estate Investment Trust	€ 2.084	17.75%	4.71%	0.13%

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
- To be authorised by the SFC of Hong Kong. - Appointment of a trustee. - Appointment of a management company.

REITs have to be in the legal form of a trust and governed by the Code on REITs. They also need to be authorised by the SFC of Hong Kong.

One trustee that is functionally independent of the management company of the REIT must be appointed, but may be part of the same corporate group if certain requirements are met. The REITs listed in Hong Kong have all appointed independent trustees.

Furthermore, a management company that is acceptable to the SFC has to be appointed. An independent property appraiser has to also be appointed. An annual valuation of the REIT's assets must take place. In the case of a transaction (not defined in the Code on REITs, but generally understood to refer to significant transactions such as an acquisition or a disposal of property etc), the management company shall, where necessary or required by the Code, engage a financial adviser.

The management company may choose to itself perform all the functions required of it under the Code on REITs or delegate or contract out to one or more outside entities one or more of these functions.

Certain transactions with connected parties, such as the management company, the trustee, a significant unit holder of 10% or more, the property-valuer or transactions between trusts which are managed by the same management company, are subject to approval by the unit holders.

2.2 Legal form /minimum initial capital

Legal form	Minimum initial capital
Unit trust	No

Legal form

REITs have to be in the legal form of a trust. A REIT may hold real estate directly or indirectly through special purpose vehicles that are legally and beneficially owned by the REIT.

Minimum initial capital

No formal minimum capital requirements exist in the Code on REITs.

2.3 Unit holder requirements / listing requirements

Unit holder requirements	Listing mandatory
No requirements.	Yes

Unit holder requirements

All REITs in Hong Kong are in the form of a trust, and investors are the unit holders of the trust. There are no specific unit holder conditions that have to be fulfilled for REITs to be authorised in Hong Kong. Also there are no restrictions on foreign unit holders.

Listing requirements

All REITs in Hong Kong have to be listed on the Stock Exchange of Hong Kong Limited ('SEHK') within a period acceptable to the SFC. The REITs in Hong Kong are subject to the listing rules of SEHK.

2.4 Asset levels / activity test

Restrictions on activities / investments
- Must primarily invest in real estate. - Must hold the real estate for at least two years. - Prohibited from investing in vacant land with exception, or engage in property development activities with

exception. - Must not acquire any asset that involves the assumption of any unlimited liability. - May invest in real estate located in Hong Kong or overseas.

REITs must invest primarily in real estate that generates recurring rental income. The REIT may not acquire non-income generating real estate in excess of 10% of the total net asset value of the REIT at the time of acquisition.

A REIT must hold its real estate for a period of at least two years, unless consent is obtained from its unit holders by way of a special resolution at a general meeting.

A REIT is permitted to establish and own special purpose vehicle companies (SPVs) to hold its real estate investments. Under the Code on REITs, SPVs must be legally and beneficially owned by the REIT, and the REIT must have majority ownership and control of the SPVs. Generally, no more than two layers of SPVs are allowed unless specifically approved by the SFC. Where the REIT invests in hotel, recreation parks or serviced apartments, such investments shall be held by SPVs.

REITs are prohibited from investing in vacant land unless the management company has demonstrated that such investment is part-and-parcel of a permitted property development (see below).

In engaging or participating in property development activities (refurbishment, retro-fittings and renovation excepted), the aggregate investments in all property developments undertaken, together with the aggregate contract value of the uncompleted units of real estate acquired, shall not exceed 10% of the gross asset value of the REIT.

A REIT must not acquire any asset that involves the assumption of any liability that is unlimited.

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

There is no limitation to the holding of units in a REIT in Hong Kong.

REITs may invest in foreign assets.

2.5 Leverage

Leverage
Limitation to 45% of total gross asset value.

The gearing ratio limit is 45% of total gross asset value of the REIT.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of audited annual net income after tax.	Specified in the trust deed.	Annually.

Operative income

A REIT shall distribute not less than 90% of its audited annual net income after tax in the form of dividends to its unit holders each year.

Capital gains
Whether any capital gains on disposal of real estate could be distributed is generally specified in the trust deed when a REIT is launched for sale to the public.

2.7 Sanctions

Penalties / loss of status rules
- De-listing. - Loss of authorisation by the SFC.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
- REIT is exempt from profits tax. - REIT may be subject to property tax. - SPV is subject to profits tax. - Dividends from SPV tax-exempt. - Foreign sourced income tax-exempt.	N/A	N/A

Current income
A REIT is exempt from Hong Kong profits tax under the Inland Revenue Ordinance of Hong Kong. However, where the REIT holds real estate in Hong Kong directly and derives rental income thereon, such rental income will be subject to Hong Kong property tax at the prevailing rate of 15%.

Where the REIT holds real estate in Hong Kong indirectly via SPVs, such SPVs will be subject to profits tax at the prevailing rate of 16.5% in respect of the profits derived from the real estate. Such SPVs would generally be exempt from property tax.

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

Dividends paid by a SPV to another SPV are generally exempt from profits tax.

Capital gains
There is no capital gains tax in Hong Kong.

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

Hong Kong has a territorial tax system and does not tax foreign-sourced income. There is therefore no question of any entitlement to a refund of a tax credit for foreign taxes withheld on the foreign-sourced income of a REIT.

Other taxes
There is no special tax treatment applicable to REITs in Hong Kong.

Accounting rules
REITs in Hong Kong are required to comply with the local GAAP, which is in line with IFRS.

3.2 Transition regulations

Conversion into REIT status
N/A

There are no specific tax privileges and concessions when converting into REIT status.

3.3 Registration duties

Registration duties
Stamp duties.

The transfer of Hong Kong real estate or shares of Hong Kong incorporated SPVs would be subject to stamp duty in Hong Kong. On February 22, 2013, the Financial Secretary announced that the Government would amend the Stamp Duty Ordinance to adjust the ad valorem stamp duty (AVD) rates. Unless specifically exempted from the new AVD, any residential property (except that acquired by a Hong Kong permanent resident who does not own any other residential property in Hong Kong at the time of acquisition) and non-residential property acquired on or after February 23, 2013, either by an individual or a company, will be subject to the new AVD rates. Transactions took place before February 23, 2013 will be subject to the original stamp duty regime. Stamp duty on sale of immovable property in Hong Kong is charged at rates which vary with the amount or value of the consideration. Under the new stamp duty regime, the maximum rate of 8.5% applies where the transfer consideration or value of real estate is above HKD 21,739,130. Where shares in a Hong Kong company are transferred, Hong Kong Stamp Duty at the rate of 0.2% applies to the higher of the transfer consideration or the value of the shares.

Hong Kong Stamp Duty also applies to a lease of real estate in Hong Kong, generally at a rate of 0.25% to 1% of the average yearly rent, depending on the term of the lease.

Hong Kong introduced a Special Stamp Duty (SDD) with effect from November 20, 2010. Unless specifically exempted, any residential property acquired on or after November 20, 2010, either by an individual or a company (regardless of where it is incorporated), and resold or transferred within a specified period of time after acquisition, would be subject to SDD. The SDD payable is calculated by reference to the stated consideration or the market value, whichever is higher, at the following regressive rates for the different holding periods by the vendor or transferor before the disposal. The SDD rates were revised for any residential property acquired on or after October 27, 2012. All parties to a contract are liable to the SSD.

Period within which the residential property is resold or transferred after its acquisition	**SSD Rates** (for residential property acquired between November 20, 2010 and October 26, 2012)	**SSD Rates** (for residential property acquired on or afterOctober 27, 2012)
6 months or less	15%	20%
More than six months but for 12 months or less	10%	15%
More than 12 months but for 24 months or less	5%	10%
More than 24 months but for 36 months or less	Not applicable	10%

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

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

Corporate unit holder
While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether they are received by individual or non-individual unit holders.

Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if such gains are capital gains. A unit holder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of the units in Hong Kong.

Individual unit holder
While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether they are received by individual or non-individual unit holders.

Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if such gains are capital gains. A unit holder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of units in Hong Kong.

Withholding tax
There is no withholding tax in Hong Kong on the distribution of profits.

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

4.2 Foreign unit holder

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

Corporate unit holder
While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether they are received by individual or non-individual unit holders.

Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if the foreign unit holder is not carrying on any trade, profession or business in Hong Kong or such gains are capital gains. A unit holder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of units in Hong Kong.

In addition, certain transactions undertaken by genuine foreign funds are exempt from Hong Kong tax.

Individual unit holder

While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether they are received by individual or non-individual unit holders.

Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if the foreign unit holder is not carrying on any trade, profession or business in Hong Kong or such gains are capital gains. A unit holder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of units in Hong Kong.

In addition, certain transactions undertaken by genuine foreign funds are exempt from Hong Kong tax.

Withholding tax

There is no withholding tax in Hong Kong on distribution of profits.

Stamp duty

Hong Kong stamp duty is chargeable in respect of the transfer of the REIT units at 0.2% of the transfer consideration (payable by the transferor and transferee at 0.1% each). In addition, a fixed duty of HKD 5 is currently payable on any instrument of transfer of units.

5 Tax treatment of foreign REITs and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Local tax rules apply.	No taxation.	No taxation.

Foreign REIT

Local tax rules apply. Rental income derived from properties in Hong Kong is subject to either Hong Kong profits tax or property tax.

Corporate unit holder

No Hong Kong tax if no business consisting of the acquisition and disposal of investment in REITs is carried on in Hong Kong.

Individual unit holder

No Hong Kong tax if no business consisting of the acquisition and disposal of investment in REITs is carried on in Hong Kong. ■

Authors contact | Hong Kong

KK So
Tel. +852 2289 3789
kk.so@hk.pwc.com

EPRA

Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

India – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

Year	Citation	REIT type	REIT market
September 26, 2014	Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 ('REIT Regulations') – certain modifications/ amendments are made from time-to-time via press release and notifications	Trust	At initial development stage, as of date no REIT registered with SEBI

On October 10, 2013, Securities and Exchange Board of India ('SEBI') released a consultation paper along with Draft REIT Regulations. After considerable modifications, REIT Regulations were finally enacted on September 26, 2014. Over the years, the regulators partnered with relevant stake-holders in the country including government bodies, investors and real estate developers to bring these regulations in line with globally recognised norms.

On May 6, 2015, the Union Cabinet approved inclusion of REIT as an eligible financial instrument under the exchange control regulations. The Reserve Bank of India ('RBI') vide notifications dated November 16, 2015 and February 15, 2016 notified the regulatory policy enabling foreign investments under the automatic route in REITs regulated by SEBI. The taxation regime for REITs has further been rationalised by Finance Act, 2016, and there is an effective pass through.

With a view to smoothen the process of registration of REITs with SEBI and also the process of launching of the offer, SEBI, in its Press Release dated June 17, 2016, has approved bringing out a consultation paper proposing certain changes such as removing the restriction on the SPV to invest in other SPVs holding the assets, change in the number of sponsors, rationalisation of compliance with respect to Related Party Transactions requirements. The consultation papers are not yet out and would be placed on SEBI website seeking public comments shortly. This could herald the launch of a successful REIT listing in India.

2 Requirements

2.1 Formalities/procedure

Key requirements
- REIT is launched by a Sponsor in the form of a trust duly registered with SEBI. - Trustees, Asset Management Company ('AMC') and valuers are to be appointed for the REIT. - Eligibility conditions have been specified for REIT, Sponsor and AMC.

A REIT should be registered with SEBI and should be constituted as a trust with its trust deed having the main objective of undertaking activity of REIT in accordance with the Regulations. REIT should have a Sponsor, AMC, Trustee and valuers.

Conditions for eligibility of **Sponsor** are as under:

- Maximum 3 Sponsors allowed for setting up REITs.
- Sponsors to have consolidated net worth of at least INR 100 crore. Further, each Sponsor's net worth to be at least INR 20 crore.
- A Sponsor to have not less than 5 years of real estate development or real estate fund management experience.

- In case the Sponsor is a developer, then a track record of at least 2 completed projects for the developer Sponsor.
- Sponsor/s to be a 'fit and proper person' based on the criteria specified by SEBI.
- Sponsor/s is/are responsible for setting up the REIT and appointing the Trustee of the REIT.
- Sponsor/s is/are responsible for transferring or undertaking to transfer assets and interest in the Special Purpose Vehicles ('SPVs') to REIT prior to the allotment of units to the applicants.
- Sponsor/s to hold not less than 25% of the total units of the REIT after initial offer on a post issue basis of which:
  - 25% of the units shall be held for a period of not less than 3 years from the date of the listing of such units;
  - Units exceeding 25% shall be held for a period of not less than 1 year from the date of listing of such units;
  - Sponsors to have consolidated holding of not less than 15% and individually not less than 5% of the outstanding units of the REIT at all times;

  If a Sponsor proposes to sell its units below the limit prescribed at individual and consolidated level, then such units shall be sold only after a period of 3 years from the listing date and to another Sponsor acquiring the same. In case of sale by an existing Sponsor to another person/entity, who is not an existing Sponsor, then the Sponsor shall arrange for such another person/entity to act as the re-designated Sponsor and obtain approval of the unit holders or provide option to exit to the unit holders as per prescribed guidelines. Re-designated Sponsors shall satisfy the eligibility norms specified for the Sponsor prior to purchase of units from the existing Sponsor.

Conditions for eligibility of **AMC** are as under:

- AMC should have a net worth of not less than INR 10 crore.
- AMC should have not less than 5 years' experience in fund management/advisory services/property management in the real estate industry or in development of real estate.
- AMC should be a 'fit and proper' person based on the criteria specified by SEBI.
- AMC to have at least two key personnel having not less than 5 years' experience in real estate industry or in development of real estate.
- At least half of the directors (in case the AMC is a company) or members of the governing board [in case the AMC is a Limited Liability Partnership ('LLP')] to be independent and not related parties of REIT
- AMC to maintain adequate controls to ensure segregation of its activities as AMC of the REIT from its other activities.
- AMC to be responsible for appointment of auditors, ensure valuation of real estate assets by the valuers, computation of Net Asset Value ('NAV'), filing of offer documents, etc.

2.2 Legal form and minimum initial capital

Legal form	Minimum asset size
Trust	INR 500 crore

Legal form

REITs are required to be set up as a trust.

REITs raise funds through sale of units to the public.

Minimum asset size

INR 500 crore.

2.3 Unit holder requirements and listing requirements

Unit holder requirements	Listing mandatory
- Mandatory listing of units of REIT, with a minimum initial offer size of INR 250 crore and minimum public float of 25% - Minimum unit size of INR 1 lakh and minimum subscription of INR 2 lakh - Minimum number of subscribers to the initial public offer should be 200 - Non-residents permitted to invest in REIT as per the REIT Regulations. Foreign investments in REIT regulated by SEBI is permissible under the automatic route per the exchange control regulations, subject to certain conditions	Yes

2.4 Asset levels/activity test

Restrictions on activities/investments
Investment permitted in: (1) Real estate assets in India (other than vacant land, agricultural land, etc.) (2) Securities of SPVs holding permissible real estate assets in India

Investment by REIT is permitted in:
- Real estate assets in India (other than vacant land, agricultural land, etc.)
- Securities of SPVs holding permissible real estate assets in India

REITs are not allowed to invest in mortgages.

Investment in SPVs, subject to:
- SPVs holding at least 80% of assets directly
  - SPVs to not invest in other SPVs
  - REIT to hold controlling interest and at least 50% of equity share capital of the SPVs
- At least 80% of REIT assets/proportionate SPV assets to be completed and rent generating with a lock-in of three years from the purchase date.
- Not more than 20% of REIT assets to be:
  - Under-construction properties with a lock-in of three years post completion (sub-cap of 10%)
  - Listed or unlisted Debt of real estate companies
  - Listed shares of companies earning at least 75% revenues from real estate activity
  - Unutilised floor space index (‘FSI’) and transferable development rights (‘TDR’) with respect to existing investments
  - Government securities, money market instruments, mortgage-backed securities, etc.
- Minimum 2 projects to be held by REIT directly or indirectly through SPVs with an investment cap of 60% of the value of assets in a single project.
- Investments in other REITs or lending to any other person are not permitted.
- Disposal of REIT assets or interest in SPV if it exceeds 10% of REIT’s assets value in a financial year will require unit holder approval. At least 75% of the revenues of the REIT (other than gains arising from disposal of properties) to be from rental/leasing of real estate assets.
- Co-investment is permitted subject to conditions.

In case of breach of investment conditions on account of market movements of the price of the underlying assets/securities, the breach to be rectified within 6 months and which can be extended by another six months subject to approval from investors.

2.5 Leverage

Leverage
Up to 25% of the asset size, no specific conditions From 25% up to 49%, credit rating and unit holders approval required

Aggregate consolidated net borrowings (i.e. net of cash and cash equivalents) and deferred payments not to exceed 49% of the value of the REIT assets. If such borrowings exceed 25% of the value of the REIT assets:

- Credit rating to be obtained from a credit rating agency registered with SEBI.
- Approval of the unit holders (where number of votes cast in favour are at least 1.5 times the number of votes cast against).

2.6 Profit distribution obligations

Dividend	Timing
Not less than 90% of net distributable cash flows	At least once every six months

Unrealised gains arising from the appreciation in the value of real estate asset or investments should not be required to distributed. However, at least 90% of sale proceeds of real estate asset to be distributed unless re-investment is proposed.

2.7 Sanctions

Penalties/loss of status rules
In case of any default by REIT or parties to the REIT or any other person involved in the activity of the REIT, the same is dealt with in the manner provided in SEBI (Intermediaries) Regulations, 2008.

2.8 Other aspects

- AMC, Trustees and valuers are required to comply with various conditions in relation to REIT.
- Related party transactions to be at arm's length and subject to specific conditions (i.e. two valuation reports, purchase/sale of assets to be at average of the valuations[1], etc.).
- Full valuation of real estate assets to be done by principal valuer at least once every year and half yearly valuation to incorporate any key changes.
- In a transaction with unrelated party, purchase price of asset not to exceed 110% of the assessed value and sale price should not be lower than 90% of the assessed value. However, on obtaining the unit-holder's approval, the sale or purchase price of asset can be lower or higher than the limits prescribed for sale or purchase, respectively.
- NAV to be computed once every six months, not later than 15 days from the date of valuation.
- Change in AMC/valuer/auditor/investment strategy to require approval of 75% of unit holders in number.
- Trustee to be registered with SEBI and to be independent of Sponsor and AMC.
- In the event of de-listing of units of REIT, REIT shall no longer undertake activity of REIT.
- No separate schemes to be launched under a REIT.

1 Purchase price of assets shall be at a price not greater than the average valuation and the sale price of assets shall not be less than the average valuation

3 Tax treatment at REIT level

3.1 Income tax

Capital gains from sale of securities of SPV	Dividend income from SPV	Interest income from SPV	Rental income from property held directly by REIT	Any other income
Income of REIT is taxable at the applicable rates.	Income of REIT is exempt.	Income of REIT is not taxable	Income of REIT is not taxable	30%

Capital gains from sale of securities of SPVs:

- Listed equity shares[2]
  - Long-term capital gains are exempt
  - Short-term capital gains are taxable at 15[3]%
- Others
  - Long-term capital gains[4] taxable at 20% (with indexation[5])
  - Short-term capital gains[6] taxable at 30%

Dividend income from SPV:

Dividend income received by the REIT from the SPV should be exempt in the hands of the REIT. In order to further rationalise the taxation regime for REITs, Finance Act, 2016 provides an exemption from the levy of DDT in respect of dividend declared, distributed or paid by the SPV to the business trust, subject to prescribed conditions.

Interest income from SPV:

Interest income received by the REIT from the SPV should be exempt in the hands of the REIT. However, the REIT is required to withhold tax at the rate of 5% on distribution of such income to a foreign unit holder and at the rate of 10% on distribution of such income to a domestic unit holder.

Rental income from property held directly by REIT:

Rental income received by the REIT should be exempt in the hands of the REIT. Tenants are not liable to withhold taxes on rental income paid to REIT on the property held directly by the REIT. However, the REIT would be required to withhold tax at the rate of 10% on distribution of such income to a domestic unit holder and in case of distribution of such income to a non-resident unit-holder the withholding shall be at the rates in force.

Other income of the REIT:

Any other income, including income from the assets held directly by the REIT, should be taxable at 30%.

2 Subject to payment of Securities Transaction Tax ('STT')
3 The income-tax rates in this report are exclusive of applicable surcharge and education cess
4 If held for more than 24 months
5 Indexation is not applicable on sale of debt securities
6 If held for up to 24 months

3.2 Registration duties

Registration duties
Stamp duty and registration costs on real estate range between 5%-15%. Stamp duty on transfer of shares is up to 0.25%

There are no specific exemptions available to REITs.

Stamp duty is levied at the time of registration of the purchase transaction. Rates for stamp duty vary between 5%-15% on real estate transactions, depending upon the state in which the instrument for transfer is executed. Stamp duty is levied on sale price or value of the asset as per circle rates, whichever is higher.

Registration of documents recording the transfer of real estate asset in the name of purchaser attracts registration fee. Registration fee is a state levy and varies across states in India.

The following fee structure is applicable to the REIT under the REIT Regulations:

Fees	REIT
Application Fees	INR 0.1 million
Registration Fees	INR 1 million
Issue filing fees	0.1% in case of initial and follow-on offer and 0.05% in case of rights issue

4 Tax treatment at the unit holder’s level

Income-tax on units received in exchange of shares of the SPV

- Units received in exchange of shares of the SPV should not be taxable in the hands of the unit holder at the time of such exchange. However, at the time of disposal of such units by the unit holder, the unit holder would be liable to pay the applicable capital gains tax (the preferential capital gains regime, explained below under the heading “Income-tax on sale of units by the unit holder”, would be applicable for such units held by the unit holder).
- The cost of acquisition of the shares of the SPV should be considered to be the cost of acquisition for the purposes of computing the capital gains in the hands of the unit holder. The period of holding of the units should be computed from the date of acquisition of the shares of the SPV.

Income-tax on units received in exchange of assets (other than shares of the SPV)

- Units received in exchange of assets (other than shares of the SPV) shall be taxable at the time of swap. Long term capital gains[7] on swap of assets shall be taxable at the rate of 20% and short term capital gains shall be taxable at the rate of 30%.

7 If held for more than 36 months

Income-tax on sale of units by the unit holder

- Long term capital gains[8] on sale of units of a REIT by the unit holder should be exempt from income-tax in the hands of the unit holder, subject to payment of STT.
- Short-term capital gains[9] on sale of units of a REIT by the unit holder should be chargeable to tax at the rate of 15%.
- Securities transaction tax, at the rate of 0.2%, should be leviable on the transaction value of the sale.
- Minimum Alternative tax ('MAT') at the rate of 18.5% shall be payable on profits arising (as per books of account) from sale of units. In case of Sponsors, a separate computation mechanism is prescribed for calculation of MAT.

Income-tax on distributions received from the REIT

- Income received by the investors as distributions from the REIT is exempt in the hands of the investors. However, such distributions received from the REIT, which are attributable to the interest income accrued to/received by the REIT and rental income received from the tenants with respect to the property held directly by the REIT are as follows:
  - Interest income should be chargeable to income-tax in the hands of the unit holder at the rates applicable to such unit holder (a non-resident unit holder should be taxable at the rate of 5% in respect of such income). Taxes withheld by the REIT as discussed above should be available as credit.
  - Rental income should be chargeable to income-tax in the hands of the unit holder at the rates applicable to such unit holder (a non-resident unit holder may be allowed to take treaty benefits if available on such income). Taxes withheld by the REIT as discussed above shall be available as credit.

5 Exchange Control Regulations

Foreign investment permitted in REIT

- Persons resident outside India, including Registered Foreign Portfolio Investor ('RFPI') and Non-resident Indian (NRI), have now been permitted to invest in units of REIT.

Sale/transfer/pledge of units in REIT

- Such investments can be transferred or sold in any manner or redeemed as per SEBI regulations/RBI directions.
- However, the non-resident unitholder may not be able to exit investments in units of REITs by exercising an option/right to exit.
- Further, these units could be pledged by the non-resident unitholder to secure credit facilities.

Are investments by REIT treated as a foreign investment?

- Investments by a REIT shall be regarded as foreign investment only if either the Sponsor, or the Manager, or the Investment Manager[10], is not Indian 'owned and controlled'. If such investments

8 If held for more than 36 months
9 If held for up to 36 months
10 Sponsor, Manager, Investment Manager can be organized in the form of a LLP

are treated as foreign owned, they would need to comply with the applicable sectoral caps and other restrictions.
- For this purpose, ownership and control of companies and LLP are to be determined in accordance with the regulations prescribed. For entities other than companies or LLPs, SEBI shall determine whether or not the entity is foreign owned and controlled.

Procedural conditions

- The payment for the units of REIT are to be made by an inward remittance through normal banking channels, including by debit to an Non Resident Rupee ('NRE') or an Foreign Currency Non Resident ('FCNR') account. REIT will have to report to RBI or SEBI in the prescribed format.

Definition of 'real estate business'

- In the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, 'real estate business' has been regarded as a prohibited sector for foreign investment.
- These regulations have now been amended to exclude REITs registered and regulated under the extant SEBI regulations, from the ambit of 'real estate business'. This potentially enables the REITs from directly buying (and selling) real estate.

Authors contact | India

Abhishek Goenka
Tel. +91 080 4079 6279
abhishek.goenka@in.pwc.com

Anish Sanghvi
Tel. +91 22 6689 1133
anish.sanghvi@in.pwc.com

Bhairav Dalal
Tel. +91 22 6689 1130
bhairav.dalal@in.pwc.com

pwc

EPRA
Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Japan – J-REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
J-REIT	2000	Investment Trust and Investment Corporation Law.	Trust or corporate type (in practice, corporate type).

History

A REIT in Japan is known as a Japanese Real Estate Investment Trust (J-REIT). It was introduced with the amendment to the Investment Trust and Investment Corporation Law in November 2000 (Investment Trust Law or 'ITL'). The ITL provides for two different types of investment vehicle: 'investment trusts' and 'investment corporations *(toshi hojin)*'. To date, all J-REITs have been formed as investment corporations and therefore, only this type of structure will be discussed below. The ITL adopts an external management structure for J-REITs, whereby the relevant investment corporation does not have employees and must enter into contracts with a registered asset management company.

Under tax law, a corporate type J-REIT is subject to Japanese corporate tax at an effective tax rate of around 35%. However, a J-REIT can deduct dividends distributed to its shareholders from its taxable income if the J-REIT complies with certain tax law requirements, as discussed further below.

The first two J-REITs were listed on the Tokyo Stock Exchange ("TSE") in September 2001, sponsored by two of the largest real estate corporations in Japan. The number of listed J-REITs increased and the J-REIT market expanded significantly until the 2007 financial crisis. The Tokyo Stock Exchange REIT INDEX ('TSE REIT INDEX') peaked at 2,612.98 on May 01, 2007 and fell to its lowest level at 704.46 on October 01, 2008. As of July 15, 2016, TSE REIT INDEX was at 1849.16 points.

In the second half of year 2015, three new REITs have been listed on the TSE. Japan Senior Living Investment Corporation was listed on July 29, 2015, Nomura Real Estate Master Fund, Inc. was listed on October 2, 2015 and Ichigo Hotel REIT Investment Corporation was listed on November 30, 2015.

In 2016, four more new REITs have been listed on the TSE. LaSalle LOGIPORT REIT was listed on February 17, 2016, Star Asia Investment Corporation was listed on April 20, 2016, Marimo Regional Revitalization REIT Inc. was listed on July 29, 2016 and Mitsui Fudosan Logistics Park Inc. was listed on August 2, 2016. As a result, 56 J-REITs are now listed on the TSE. As of July 15, 2015, the total market capitalisation of J-REITs was JPY 11,639 billion.

In 2015, the total amount of assets acquired by all J-REITs amounted to JPY 1,589 billion (2,233 billion in 2013 and 1,575 billion in 2014).

Furthermore, the total amount of new J-REIT unit offerings in 2015 was JPY 763 billion (1,107 billion in 2013 and 778 billion in 2014).

Sector summary (FTSE EPRA/NAREIT Developed REITs)*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Japan	56	33	€ 102.695	7.43%

Top five REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield %	% of Global REIT Index
Nippon Building Fund Inc	€ 7.844	16.68%	2.59%	0.68%
Japan Real Estate Investment Corporation	€ 6.892	12.82%	2.60%	0.59%
Nomura Real Estate Master Fund	€ 5.607	16.06%	0.58%	0.48%
Japan Retail Fund Investment	€ 5.416	7.16%	3.33%	0.49%
United Urban Investment	€ 4.525	9.58%	3.11%	0.39%

* 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
- Building Lots and Building Transactions Agent Licence. - Discretionary Transaction Agent Licence. - Registration of the Asset management company with the Financial Services Agency. - Registration of the J-REIT with the Financial Services Agency.

As stated above, J-REITs are typically investment corporations that must be managed by a registered asset management company. As of September 2007, new comprehensive regulations in the form of the Financial Instruments and Exchange Law ('FIEL') came into effect to regulate financial services. Although the regulations under the ITL continue to apply to J-REITs, the FIEL supersedes a part of the ITL with respect to regulating the asset management company of an investment corporation.

Under the FIEL, an asset management company must be registered as an investment manager. As such, the FIEL replaced the previous approval process with a new registration process. However, this process is relatively similar to the former approval procedures.

The first step for a sponsor of the J-REIT is establishing an asset management company and acquiring a 'Building Lots and Building Transactions Agent Licence' and a 'Discretionary Transaction Agent Licence' from the Ministry of Land, Infrastructure, Transport and Tourism (MLIT). After these licences are obtained, the asset management company may apply for registration as an investment manager with the FSA. The requirements for the investment manager registration include a minimum paid-in-capital/net assets of JPY 50 million and sufficiently experienced personnel. Once the registration is completed, the registered Asset Management Company can begin incorporating a J-REIT as a promoter of the investment corporation and register a new company on the commercial register.

After the J-REIT is set up, it must be registered with the FSA in order to commence its business as a J-REIT. The J-REIT will be subject to the reporting and inspection requirements of the FSA, Securities and Exchange Surveillance Commission and the local finance bureau.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Corporation (in practice)	JPY 100 million

Legal form

A J-REIT must be established as a domestic corporation in compliance with the ITL. As previously stated, a J-REIT can either be a 'trust type' or a 'corporate type' under the ITL. When the first J-REITs were formed, the trust type was administratively cumbersome and more expensive to establish. In addition, the corporate governance rules applicable to the corporate type were considered to be more attractive to investors. As a result as of July 15, 2016, all current publicly listed J-REITs are corporations.

Minimum share capital

J-REIT shares have only one class with voting rights. The minimum share capital for a J-REIT is JPY 100 million under the ITL.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
- No requirements under the Investment Trust Law (ITL). - Special shareholder conditions in order to deduct dividend distribution under the tax law.	No

Shareholder requirements

There are no shareholder requirements under the ITL. However, in order to benefit from the J-REIT privilege of deducting distributed dividends for tax purposes, specific shareholder conditions must be met.

Listing requirements

As there is no requirement for a J-REIT to be listed on a stock exchange, under the ITL and tax rules, it is possible to have a private J-REIT.

After J-REITs were introduced under the ITL in 2000, the Tokyo Stock Exchange established the infrastructure for a J-REIT market in March 2001. The listing requirements for J-REITs include the following:

1. The J-REIT under the ITL must be a close-ended fund;
2. At least 70% of the J-REIT's investment assets must be invested in, or expected to be invested in, real estate assets, including (1) real estate, (2) leasehold rights in real estate, (3) surface rights, (4) easement, and (5) trust beneficiary interest and in the case of items (1) – (4) for three months after its listing; provided that the J-REIT submits prior to approval of listing certain documents such as a copy of an sale and purchase agreement under which the J-REIT would acquire real estate assets;
3. At least 95% of the J-REIT's total assets must be invested, or expected to be invested, in real estate assets, assets relating to real estate assets (e.g. a share in an investment corporation who invests more than half of its assets in real estate assets), cash and cash equivalents;
4. Net assets and total assets must exceed JPY 1 billion and JPY 5 billion, respectively;
5. Minimum free-float requirements (at the time of the initial listing):
   (1) The number of outstanding shares should be 4,000 shares or more
   (2) The total number of shares held by the "10 largest J-REIT shareholders" should be 75% or less of the total outstanding shares.
   (3) The number of shareholders other than the "10 largest J-REIT shareholders" should be 1,000 or more.

*The listing rule previously required the real estate, described in point 2 above, to be located in Japan. However, such restrictions were removed due to amendments to the TSE listing rules as of May 2008. As such, J-REITs are allowed to invest in foreign real estate.

2.4 Asset level / activity test

Restrictions on activities / investments
- Merely an asset holding vehicle. - Investment primarily in 'Qualified Assets'.

Under the ITL, a J-REIT is established for investments primarily in 'Qualified Assets'. In principle, a J-REIT is merely an asset holding vehicle; it is not allowed to hire employees and it is required to delegate asset management, asset custody and general administrative functions to independent professionals.

'Qualified Assets' include (1) securities (including trust beneficiary interests), (2) derivatives rights, (3) real estate, (4) leasehold rights in real estate, (5) surface rights, (6) promissory notes, (7) monetary claims, (8) interests in a *tokumei kumiai* (TK) partnership which are not securities, (9) commodities, (10) certain commodities derivatives, (11) renewable energy generating plants and (12) public facility operation rights. "Primarily" means more than 50% of the total assets.

Renewable energy generating facilities and rights to operate public facilities were included in "Qualified Assets" in 2014 in order to facilitate investments in infrastructure assets.

Under the ITL, a J-REIT cannot own more than 50% of the voting shares of another corporation. However, an amendment to the ITL was enacted in 2013 and became effective in 2014, making this restriction inapplicable where a J-REIT acquires more than 50% of the voting shares in a company located in a foreign jurisdiction whose sole purpose is to acquire, lease and dispose of real estate in that jurisdiction as long as such company pays the J-REIT certain dividends which are distributable to the J-REIT under the laws or customs of the jurisdiction within six months of the end of each fiscal year of the company. This is provided that the laws of the jurisdiction or customs where the real estate is located or other unavoidable circumstances prohibit the J-REIT from conducting such transactions itself.

Furthermore, in order to deduct distributed dividends for tax purposes (see no. 3.1 B f and g below) there is a restriction (i) on owning an interest of 50% or more in another corporation and (ii) on owning certain assets, such as renewable energy generating facilities and concessions to operate public facilities, in an amout of 50% or more of the total book value of assets on the J-REIT's balance sheet as of the end of the fiscal period. However, as a result of the amendment to the ITL enacted in 2013, certain foreign corporations held by a J-REIT for the limited purposes of acquiring, leasing and disposing of foreign real estate will be excluded from this restriction for fiscal years ending after the amendment of the ITL comes into force.

As discussed under paragraph 2.3 above, the listing rules of the Tokyo Stock Exchange also have asset holding requirements (See paragraph 2.3, points 2 and 3).

2.5 Finance

Finance
J-REITs can issue shares and bonds and borrow funds from financial institutions

Under the ITL, there are three methods for J-REITs to procure finance: (1) issuing shares, (2) issuing bonds and (3) borrowing from financial institutions. As the framework of J-REITs is primarily intended to enable equity investors to invest in real estate through them, (1) is the fundamental financing method and (2) and (3) supplement it, in particular by improving the capital efficiency through leverage effects.

In order to diversify the financing methods and capital policy of J-REITs and eventually to enhance their financial bases, the ITL amendment introduced frameworks such as "Rights offering" and "Repurchase by a J-REIT of its own shares".

- Rights offering
- Rights offering is a financing method whereby (i) a J-REIT issues share acquisition rights to existing shareholders for no consideration and (ii) the shareholders subscribe for such shares in the J-REIT by exercising their rights. The advantages of a rights offering includes:
  - J-REIT being able to raise capital without diluting existing shareholders' shares; and
  - it can be a relatively feasible financing option under severe economic conditions (e.g., prevailing shrinking of credit).
- Repurchase by a J-REIT of its own shares

Although under the original ITL a repurchase by a J-REIT of its own shares was prohibited, the amendment to the ITL removed this restriction in respect of a J-REIT which primarily invests in real estate, leasehold rights in real estate, surface rights, trust beneficiary interests in these assets or more than 50% of the shares in a company located in a foreign jurisdiction whose sole purpose is to acquire, lease and dispose of real estate in that jurisdiction. Share repurchase is thought to be an effective measure for enhancing J-REIT's financial base by improving the capital efficiency, among other things.

2.6 Leverage

Leverage
No gearing (LTV) limit under the law. May only receive loans from qualified institutional investors.

Under the ITL, there is no restriction concerning borrowings or gearing ratio. Typically, the J-REIT provides a limitation on the gearing ratio (LTV ratio) of approximately 55% to 60% of loan to total assets ratio, in its financial policy disclosed in the annual securities report.

In order to deduct distributed dividends under Japanese tax law, J-REITs may not receive loans from lenders other than institutional investors. The institutional investors for this purpose generally include securities companies, banks, insurance companies, pension funds, etc. However, the scope of such “institutional investors” is narrower than as provided in the FIEL.

2.7 Profit distribution obligations

Ordinary income	Capital gains	Timing
Greater than 90% of “distributable profits”.	Same as ordinary income.	In relation to the same taxable period.

Under the Japanese Special Taxation Measures Law, in order to deduct distributed dividends in a specific taxable period a J-REIT is required to comply with a number of conditions. One such condition is that a J-REIT is required to make a distribution to its investors in relation to the same taxable period of more than 90% of its distributable profits, which is an amount based on accounting profits with certain adjustments. Capital gains are not distinguished from ordinary income and therefore form part of taxable income which can be mitigated through a deduction for dividends. Although there is no minimum distribution requirement under the ITL, as a procedural issue, the ITL requires that a distribution only be made based on the approval of a Directors' meeting of its audited financial statements for each relevant fiscal period. A fiscal period of a J-REIT is generally six months and the taxable period of a J-REIT is ordinarily consistent with its fiscal period. No advance distribution is allowed under the ITL.

2.8 Sanctions

Penalties / loss of status rules
- Regulatory action. - Cannot deduct dividend distribution.

In principle, a J-REIT is created under the ITL and is required to register with the FSA in order to operate its business as a J-REIT. If a J-REIT does not comply with the ITL, a J-REIT may ultimately be disallowed. All activities of a J-REIT are subject to regulatory scrutiny, and any deviation may result in regulatory action including an order to improve or withdrawal of the licence.

Even if the listing requirements or the dividend deduction requirements are not met, the J-REIT status can remain. However, a J-REIT properly operated under the ITL should comply with all listing requirements on the Tokyo Stock Exchange (see 2.3) in order to continue being listed, in addition to all dividend deduction requirements under tax law in order to deduct its distributed dividends for each relevant taxable period.

3 Tax treatment at the REIT level

3.1 Corporate tax / withholding tax

Ordinary income	Capital gains	Withholding tax
- Corporate tax at an effective rate of approximately 35% - Dividends are deductible from taxable income under certain conditions.	- Not distinguished from ordinary income.	- Varies depending on the specific circumstances of the shareholder.

Ordinary income

Japanese corporations are subject to corporate income taxes at an effective rate of approximately 35%. Rental income, business income and capital gains are not distinguished from ordinary income for Japanese corporate tax purposes and are taxed aggregately at the effective tax rates discussed above.

Under the Special Taxation Measures Law, however, a J-REIT is allowed to deduct distributed dividends from its taxable income if all of the following requirements are met. Any remaining taxable income after the deduction of distributed dividends will be subject to regular corporate taxes in Japan.

The requirements for deducting dividend distributions are as follows[1]:

A. Requirements for an eligible J-REIT:

a. The J-REIT must be registered under Article 187 of the ITL;

b. Either of the following conditions must be met:

   i. There must be a public offering of the J-REIT shares with a total issue price of JPY 100 million or more at the time the J-REIT is established;

   ii. The outstanding shares must be owned by at least 50 shareholders or exclusively by qualified institutional investors at the end of the relevant fiscal period;

c. The articles of incorporation provide that more than 50% of the shares must be offered domestically (this requirement is calculated on an aggregated basis for all issuances, including past issuances); and

d. The J-REIT must have a fiscal period of one year or less.

B. Requirements relating to the applicable fiscal year:

a. The J-REIT must not engage in any business other than asset management, open any place of business other than its head office, or hire any employees;

b. The asset management function must be outsourced to a qualified asset manager as defined in Article 198 of the ITL;

c. The custody function for the assets owned by the J-REIT must be outsourced to a qualified custodian as defined in Article 208 of the ITL;

d. None of the shareholders or its affiliates must collectively hold more than 50% of the outstanding shares or voting rights at the end of the relevant fiscal period;

e. More than 90% of its “distributable profits” as defined in the Special Taxation Measures Law must be distributed in respect of the same fiscal period (in determining whether this requirement is met, adjustments to the calculation basis can be made in respect of changes (increases or decreases) to a reserve for temporary differences arising between tax and accounting treatments as well as in respect of a reserve for negative net asset item adjustments (e.g. deferred hedging losses); these adjustments mitigate risk of a failure to meet this distribution requirement due to differences between the tax and accouting treatment of income or expenses);

f. The J-REIT must not hold 50% or more of the equity of another corporation (including another J-REIT), except for certain foreign corporations held for the limited purpose of acquiring, leasing and disposing of foreign real estate;

g. As of the end of the fiscal period, the amount of certain assets as specified under the Enforcement Order of the ITA, such as real estate and related trust certificates except certain renewable energy generating facilities and concessions to operate public facilities, is in excess of 50% of the book-value of total assets on the J-REIT’s balance sheet; and

h. The J-REIT must not have borrowings from parties other than “institutional investors”, as defined in the Special Taxation Measures Law.

Accounting rules

A J-REIT must comply with Japanese accounting rules (J-GAAP) and, as a general principle, can only make a dividend distribution from profits calculated based on J-GAAP, although in certain circumstances a J-REIT may be permitted to make an excess distribution of profits in accordance with special provisions of the ITL.

Neither US-GAAP nor IFRS is allowed for a J-REIT. A J-REIT’s financial statements are prepared on a single-entity basis only since it generally cannot own subsidiaries.

3.2 Transition regulations

Conversion into REIT status
N/A

[1] Article 67-15, the Special Taxation Measurement Law

3.3 Registration duties (and other key taxes)

Registration duties (and other key taxes)
- Real property acquisition tax (favourable rate can be applied). - Registration tax (favourable rate can be applied). - Consumption tax. - Fixed asset tax and city planning tax.

Real property acquisition tax and registration tax are levied on an acquisition of real estate. Such taxes can be reduced under special treatment applicable to J-REITs that can satisfy certain requirements.

The sale of a building is a taxable transaction for Japanese consumption tax purposes, but the sale of land is not. Additionally, leasing of real estate for commercial purposes is a consumption taxable transaction, whilst leasing of residential purpose real estate is not.

Fixed asset tax is levied based upon the government assessed values of land and buildings owned at January 01 each year. City planning tax may similarly be levied depending upon location. Separately identified depreciable assets within a building should also be subject to fixed asset tax.

4 Tax treatment at the shareholder level

The tax treatments in the Domestic shareholder and Foreign shareholder sections below relate to listed J-REITs.

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
Dividends	- Included in taxable income subject to the standard effective corporate tax rate. - Dividend received deduction (DRD) not applicable. - Credit should ordinarily be available for withholding tax suffered on the dividend against the corporate tax liability, with any excess refunded.	- In principle subject to inclusion in taxable income subject to progressive income tax rates, however taxpayers typically elect to be separately taxed through withholding tax only.	Corporate shareholder - 15.315% withholding tax (to 2037, and 15% thereafter). Individual shareholder - 20.315% withholding tax (to 2037, and 20% thereafter).
Capital gains from share disposition.	- Included in taxable income subject to the standard effective corporate tax rate.	- Subject to taxation separately from other income, to which progressive income tax rates apply, at 20.315% until 2037 (and 20% thereafter).	- N/A

Corporate shareholder
Dividends
For corporate shareholders, dividends from a listed J-REIT are subject to Japanese withholding tax at a tax rate of 15.315% (until 2037 when the rate becomes 15%). Dividend income is aggregated with other income and is subject to tax at the normal effective corporate tax rate of approximately 35%. The withholding tax can typically be credited against corporate income tax liability, with any excess amount to be refunded. Unlike dividends from ordinary Japanese companies, dividends from a J-

REIT do not qualify for the dividend received deduction since they are tax deductible in the hands of the J-REIT.

Capital gains

Capital gains are not distinguished from ordinary income and are subject to corporate tax at the normal effective corporate tax rate. There is no withholding tax on capital gains arising from the disposition of J-REIT shares.

Individual shareholder

Dividends

Although the basic principle is that dividends from a listed J-REIT must be reported in a tax return and aggregated with other types of taxable income, most taxpayers choose to have them taxed separately from ordinary income. As such, standard progressive tax rates will be applicable, by way of a final flat rate withholding tax, as described below.

For individual shareholders, dividends from a listed J-REIT are subject to Japanese withholding tax at a rate of 20.315% (until 2037 when the rate becomes 20%). Individual shareholders can elect to have the dividends taxed separately from ordinary income, typically with the final tax liability constituting the withholding tax incurred by the shareholder. However, individual shareholders owning 3% or more of the total outstanding shares of a J-REIT as of the record date must be taxed on the dividends through aggregation with ordinary income based on the standard progressive tax rates. On the other hand, the withholding tax rate for such taxpayers, which is generally creditable against the final income tax liability, should be 20.42% (until 2037, and 20% thereafter).

Capital gains

Capital gains from a disposition of listed J-REIT shares through a securities company is subject to individual income tax separately from ordinary income. The standard progressive tax rates will apply at the rate of 20.315% (until 2037 from when the tax rate becomes 20%). This tax is usually paid by filing a tax return, with certain exceptions for qualified securities account holders, who pay the tax through withholding from the qualified account.

Withholding tax

For corporate shareholders, dividends from a listed J-REIT are subject to withholding tax at the rate of 15.315% (until 2037 when the rate becomes 15%). The withholding tax can typically be credited against the corporate income tax liability, with any excess amount to be refunded.

For individual shareholders, dividends from a listed J-REIT are subject to withholding tax at the rate of 20.315% (until 2037 when the rate becomes 20%). However, individual shareholders owning 3% or more of the total outstanding shares of a J-REIT as of the record date are subject to withholding tax at 20.42% until 2037, and 20% thereafter.

4.2 Foreign shareholder

This section relates to shareholders who are not tax residents in Japan and who have no taxable permanent establishment (PE) in Japan. Foreign shareholders with a Japanese PE should generally be taxed in a similar manner as discussed in the Domestic shareholder section above.

	Corporate shareholder	Individual shareholder	Withholding tax
Dividends	- Withholding tax is the final levy for foreign corporate shareholders.	- Withholding tax is the final levy for foreign individual shareholders.	Corporate shareholder - 15.315% withholding tax (to 2037, and 15% thereafter). - May benefit from tax treaties. Individual shareholder - 15.315% withholding tax (to 2037, and 15% thereafter). - May benefit from tax treaties.
Capital gains from share disposition	- Taxed in limited cases only for foreign corporate shareholders. - Subject to national corporation taxes only at a rate of approximately 25% (see detail below). - May benefit from tax treaties.	- Taxed in limited cases only for foreign individual shareholders. - Taxed at 15.315% (until 2037, and 15% thereafter). - May benefit from tax treaties.	- N/A

Corporate shareholder

Dividends

For foreign corporate shareholders without a PE in Japan, dividends from a listed J-REIT are subject to a final withholding tax at a tax rate of 15.315% (until 2037 when the rate becomes 15%). Such shareholders are not subject to Japanese corporate income tax on dividend income. The rate of withholding tax could be reduced or exempted by application of a relevant double tax treaty.

Capital gains

Capital gains arising from a disposition of J-REIT shares are not subject to withholding tax. A J-REIT is treated as a Japanese Real Property Holding Corporation (JRPHC) if at least 50% of its total assets consist of real estate located in Japan, which is typically expected to be the case with a J-REIT. Foreign corporate shareholders without a PE in Japan are only subject to Japanese corporate tax on the capital gain arising from a disposition of shares of a J-REIT that is a JRPHC if on the day immediately preceding the first day of the taxable year during which the disposition takes place the disposing shareholder, together with its affiliates (including a partnership in which the investor is a partner) owned more than a certain percentage of the total outstanding shares of the J-REIT. The threshold percentage for listed J-REIT shares is 5%. The disposing shareholder, if taxed, must file a corporation tax return and the rate of tax is approximately 24.95%, changing to 24.43% for fiscal periods commencing on or after 1 April 2016, to 25.81% for fiscal periods commencing on or after 1 April 2017 and then to 25.59% for fiscal periods commencing on or after 1 April 2018.

Tax on capital gains arising from a disposition of J-REIT shares may be exempted from tax by application of a relevant double tax treaty.

Individual shareholder

Dividends

For foreign individual shareholders without a PE in Japan, dividends from a listed J-REIT are subject to a final withholding tax at the rate of 15.315% (until 2037 when the rate becomes 15%). However, such shareholders who own 3% or more of the total outstanding shares of a listed J-REIT are subject to a final 20.42% withholding tax (up until 2037 and 20% thereafter). The rate of withholding tax could be reduced or exempted by application of a relevant double tax treaty.

Capital gains
Foreign individual shareholders without a PE in Japan are subject to tax on capital gains arising from a disposition of J-REIT shares only in limited circumstances, similar to foreign corporate shareholders (see above). Relevant gains should be subject to individual income tax at the rate of 15.315% (until 2037 and 15% thereafter) and would necessitate the filing of a related income tax return.

Tax on capital gains arising from a disposition of J-REIT shares may be exempted from tax by application of a relevant double tax treaty. ■

Authors contact

For legal/regulatory sections: Clifford Chance Tokyo

Eiichi Kanda
Tel. +81 3 5561 6643
eiichi.kanda@cliffordchance.com

Satoshi Nomura
Tel. +81 3 5561 6312
satoshi.nomura@cliffordchance.com

For tax sections: KPMG Tax Corporation

Yuji Takemiya
Tel. +81 3 6229 8288
yuji.takemiya@jp.kpmg.com

Duncan Adrain
Tel. +81 3 6299 8133
duncan.adrain@jp.kpmg.com

EPRA
Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Malaysia – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
Unit trust	The Securities Commission (SC) had issued Guidelines on 'Property Trust Funds' in 2002, which were superseded by the issuance of REIT Guidelines in January 2005. Further updates were issued by way of Guidance Notes issued in 2005, 2006 and 2007. All of the above were further superseded by the revised Guidelines on REITs issued by the SC on August 21, 2008 with subsequent amendments made in 2012.	- Capital Markets and Services Act, 2007 (CMSA). - SC Guidelines on REITs of 2012. - Malaysia Income Tax Act, 1967 (MITA). - SC Guidelines for Islamic REITs of 2005.	Trust type.

The Real Estate Investment Trust is a part of Malaysian law. Specific REIT guidelines have been issued and REIT-specific tax provisions have been introduced. The REIT guidelines were amended in 2005, 2006, 2007, 2008, 2011 and 2012.

Malaysian Islamic REIT:
The Islamic REIT is a collective investment scheme in real estate, by which the unit holders conduct permissible activities according to Sharia Law. Specific Islamic REIT guidelines were issued in 2005.

Currently there are 16 REITs operating. Market capitalisation is approximately RM 33 billion (approximately USD 8.64 billion) at an exchange rate of RM 3.9739 per USD 1 in July 2016.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Malaysia	16	4	€ 6.381	0.18%

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield %	% of Global REIT Index
IGB Real Estate Investment Trust	€ 1.266	25.19%	3.82%	0.06%
Pavilion Real Estate Investment Trust	€ 1.212	19.35%	3.51%	0.03%
Sunway Real Estate Investment Trust	€ 1.108	N/A	4.47%	0.06%
CapitaLand Malaysia Mall Trust	€ 711	-2.52%	3.96%	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 Requirements

2.1 Formalities / procedure

Key requirements
- Registered trust. - Trustees must be approved by the SC. - Management company. - Real estate held by the trust must be managed by a qualified property manager. - Appoint a Sharia committee or a Sharia advisor (for Islamic REITs only).

In Malaysia, the establishment and registration of a trust requires the approval of the SC. A trustee must be appointed for a REIT and the appointment of the trustee must also be approved by the SC. Furthermore, the trustee must also be registered with the SC.

The trust must be managed and administered by a management company approved by the SC. The management company (except where the management company is licensed by the SC) must be a subsidiary of (a) a company involved in the financial services industry in Malaysia, (b) a property development company, (c) a property investment holding company or (d) any other institution which the SC may permit.

Foreigners can hold up to 70% of the equity of the management company. At least 30% of the equity of the management company must be held by local (i.e. Malaysian resident) shareholders. As in previous years, a minimum shareholders' reserve of RM 1 million (approximately USD 0.25 million, based on an exchange rate of RM 3.9739 to USD 1 in July 2016) must be maintained by the management company at all times.

Real estate held by the REIT must be managed by a qualified property manager who has been approved by the trustees.

Malaysian Islamic REIT:
Same requirements as above and additionally a Sharia committee or a Sharia advisor must be appointed to ensure that any property acquired by an Islamic REIT is Sharia-compatible.

2.2 Legal form / minimum initial capital

Legal form	Minimum initial capital
Unit trust	RM 100 million (approx. USD 25 million in July 2016)

Legal form
A REIT takes the form of a unit trust fund. It must be registered in Malaysia and approved by the SC.

Minimum initial capital
The minimum fund size is RM 100 million (approximately USD 26 million, based on an exchange rate of RM 3.9739 to USD 1 in July 2016).

If any trustee member of the REIT is a tax resident in Malaysia in the basis period for a tax year, the REIT will be a tax-resident person for Double Taxation Treaty purposes. There is uncertainty as to whether a distribution from a REIT would fall under the dividend article, business profit article, or the other income article. Pending the amendment to existing Double Taxation Treaty to be in line with OECD's proposal on REIT's distribution, the REIT's distribution is likely to be categorised as "other income" unless the non-resident recipient can demonstrate otherwise (e.g. business profits).

2.3 Unit holder requirements / Listing requirements

Unit holder requirements	Listing mandatory
No requirements	No

Unit holder requirements

There are no requirements.

There is no restriction on foreign unit holders in the REIT, but foreigners cannot hold more than 70% of the equity in the REIT's management company.

Listing requirements

A REIT can be either listed or unlisted. A REIT seeking to list its units must comply with the listing requirements, as detailed in chapter 4 of the Bursa Malaysia Securities Berhad (LR) and in chapter 13 of the REIT guidelines. These requirements include the following:

- the applicant must have at least 25% of the total number of units for which listing is sought in the hands of a minimum number of 1,000 public unit holders holding not less than 100 units each;
- for the purpose of calculating the required minimum public holding, holdings by the management company, its directors and any person connected with such management company or directors shall be disregarded;
- the applicant must ensure that at least two directors or 1/3 (or the nearest number) of the board of directors of the applicant, whichever is higher, are independent directors; and
- the management company of the REIT is subject to the SC's approval and a prospectus of the public offering is to be issued and registered with the SC. Subsequently, an application is to be made with Bursa (the Malaysian Stock Exchange) for listing of and quotation for the units.

2.4 Asset levels / activity test

Restrictions on activities / investments
- Restriction applies on the level of investments. - Additional restrictions for Islamic REITs.

A REIT may only invest in the following:

a. Real estate;
b. Single-purpose asset owning companies (a 'single purpose company' means an unlisted company whose principal assets comprise of real estate);
c. Real estate related assets;
d. Non real estate related assets; and
e. Cash, deposits, and money market instruments.

At least 50% of the REIT's total asset value must be invested in real estate and/or single-purpose companies investing into real estate at all times.

A REIT's investment in non real estate-related assets and/or cash, deposits and money market instruments must not exceed 25% of a REIT's total asset value.

The above applies to both listed and unlisted REITs.

All REITs may acquire real estate located outside Malaysia where the real estate is viewed as a viable investment. The management company must ensure that the relevant rules, guidelines and laws are complied with and that approval / authorisation from the relevant authorities (domestic and foreign) has been obtained prior to acquisition.

All REITs may invest in real estate-related assets and non real estate-related assets, and these assets may consist of foreign investments traded in or under the rules of a foreign market (a market where the regulatory authority is a member of the International Organisation of Securities Commissions (IOSCO)).

REITs are not permitted to conduct the following activities:
a. extension of loans or any other credit facility;
b. property development; and
c. acquisition of vacant land.

REITs may acquire property that is under construction or uncompleted real estates of up to 10% of its total asset value, provided that certain criteria listed in the SC Guidelines are met.

The REIT's investment may consist of placement of deposits provided it is with a licensed institution.

A REIT may not invest in any other companies apart from single-purpose companies.

Malaysian Islamic REIT:
Further restrictions apply to the Islamic REIT. Islamic REITs are permitted to acquire real estate for the purpose of various activities. However, the fund manager must ensure that the rental income from non-permissible activities under Sharia Law does not exceed 20% of the total turnover of the Islamic REIT.

The Islamic REIT cannot accept new projects which are composed of fully non-permissible activities or purchase existing projects which are composed of non-permissible activities.

Non-qualifying/permissible rental activities are financial services which are based on riba (interest). Such activities include gambling/gaming, the manufacture or sales of non-halal products or related products, conventional insurance, entertainment activities that are non-permissible according to the Sharia, the manufacture or sale of tobacco-based products or related products, stock brokerage or share trading in Sharia non-compatible securities and hotels and resorts.

2.5 Leverage

Leverage
Borrowing may not exceed 50% of the total asset value.

The basic rule is that the total borrowings may not exceed 50% of the total asset value of the fund unless authorised by the unit holders by way of an ordinary resolution.

A Malaysian REIT can only borrow from institutions that are licensed (or deemed to be licensed) under the Financial Services Act 2013 and Islamic Financial Services Act 2013. It can also issue debentures.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of total income	N/A	Annually

Operative income
Malaysian REITs are not required to make any minimum distribution of income but REITs will only benefit from a tax exemption provided at least 90% of their total income for the year of assessment is distributed to its investors.

Capital gains

There is no requirement in the MITA for capital gains to be distributed every year. The 90% threshold applies to total income of the REIT. Total income refers to income of a REIT that would ordinarily be chargeable to tax. It should be noted that there is no capital gains tax in Malaysia, except for real property gains tax (RPGT) for disposal of real properties and shares in real property companies. With effect from January 01, 2014, the RPGT rates for disposals by a REIT are between 5% and 30% depending on the length of the holding period of the real properties or shares in real property companies as follows:

Date of disposal	RPGT rates
Within 3 years from the date of acquisition	- 30%
In the 4th year	- 20%
In the 5th year	- 15%
In the 6th year and subsequent years	- 5%

2.7 Sanctions

Penalties / loss of status rules
Various sanctions possible, including revocation of approval.

Where a person breaches the provisions of the CMSA or fails to comply with, observe, enforce or give effect to any written notice, guidelines issued or conditions imposed by the SC, the SC may take one or more of the following actions:

- direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline;
- impose a penalty in proportion to the severity or gravity of the breach, but in any event not exceeding RM 500,000 (approx. USD 126,000 in July 2016);
- reprimand the person in breach; and
- require the person in breach to take such steps as the SC may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach; or any other actions in accordance with the CMSA.

3 Tax treatment at the level of REIT

3.1 Corporate tax / GST/WHT

Current income	Capital gains	Withholding tax (“WHT”)	Goods & Services Tax (“GST”)
Tax-exempt if 90% of total income is distributed.	Not taxable except for RPGT for disposal of real properties and shares in real property companies.	- Creditable for taxable income. - Not refundable for non-taxable income.	- Input tax credit is subject to apportionment.

Current Income

REITs will not be taxed on their income, provided that at least 90% of their total income for the year of assessment is distributed to its unit holders. For Malaysian WHT purposes, it is a requirement for the REIT to withhold a portion of the distribution at the applicable rate (see below) and distribute the net amount to the unit holder. If the REIT is subject to income taxes on its total income, the amount distributed is taxable in the hands of unit holders as if it was received gross. However, the investors are eligible to claim tax credits.

A corporate tax deduction on start-up expenses incurred during REIT establishment (e.g. consultancy, legal and valuation fees) is available.

With effect from 2008, the year of assessment[1], a company disposing of an industrial building (on which capital allowances have been claimed previously) to REITs will not be subject to balancing adjustments while REITs would continue to claim capital allowances on such buildings based on the residual expenditure of the building in the tax returns of the seller. With effect from the 2013 year of assessment, these rules will only be applicable to a company which holds greater than the 50% of the residual profits (i.e. profits after tax depreciation) of the REITs available for distribution, or greater than 50% of any residual assets (assets after depreciation) of the REITs available for distribution on a winding up.

Capital gains

With effect from January 01, 2014, gains from the disposal of real properties and shares in real property companies by a REIT are subject to RPGT between 5% and 30% depending on the holding period of the real properties or shares in real property companies as follows:

Date of disposal	RPGT rates
Within 3 years from the date of acquisition	- 30%
In the 4th year	- 20%
In the 5th year	- 15%
In the 6th year and subsequent years	- 5%

Tax suffered at source on dividend income

Malaysia does not levy dividend withholding taxes.

With effect from January 01, 2014, all companies are on the single-tier tax system. Under this system, tax paid on profits of a company is a final tax and dividends distributed by a company into which the REIT invests (usually a minority interest) are exempt in the hands of the REIT.

If an overseas jurisdiction levies a withholding tax, the REIT will not be able to obtain a credit for such tax if the income is exempt in Malaysia. If, however, the income is taxable it may be possible for the REIT to claim a credit in respect of the foreign tax suffered.

Accounting rules

The financial statement of a REIT shall be prepared in accordance with applicable approved accounting standards (FRS), applicable statutory requirements, the deed and any regulatory requirements.

Indirect taxes

GST at 6% was implemented in Malaysia on April 01, 2015. GST is charged on the taxable supply of goods and services made in the course or furtherance of business in Malaysia by a taxable person.

1 The year of assessment or effective year of assessment refers to the tax year. The tax year follows the company's or REIT's accounting period.

GST is also charged on the importation of goods and services. GST replaced the sales tax and service tax.

A taxable supply is a supply which is either standard rated (6%) or zero rated. Exempt and out of scope supplies are not taxable supplies. GST is to be levied and charged on the value of the taxable supplies. GST can only be levied and charged if the business is registered under the GST Act 2014.

All businesses that have an estimated total value of taxable supplies of RM 500,000 or more will have to register for GST. Nevertheless, businesses that do not exceed the above registration threshold can apply to be registered voluntarily.

Even though GST is imposed at each level of the supply chain, generally the tax element does not become part of the cost of the product/service for a taxable supplier because GST paid on the business inputs for making taxable supplies is claimable as an input tax credit at each level of the supply chain. Thus GST incurred on costs of those business inputs may be offset against the GST collected on taxable supplies.

However, if the GST incurred relates to both taxable and exempt supplies, input tax credit may only be claimable (using the partial exemption apportionment method) for the portion which is attributable to taxable supplies. Effectively this should mean that where a business makes taxable supplies, the GST to be paid to the Royal Malaysian Customs Department (“Customs Department”) should amount to a tax on the value that has been added by the business in that period.

As a REIT generates its income principally from rental of real property (commercial) which is a taxable supply and proceeds from issuance of the REIT units to investors, an exempt supply, the REIT is required to register with the Customs Department for Malaysian GST.

As a GST registrant, the REIT will be required to charge GST at the rate of 6% on the taxable supplies (e.g. rental of real property (commercial) to its tenants) and remit to the Customs Department after deducting allowable input tax credits incurred on its costs. The issuance of the REIT units to investors/unit holders is an exempt supply and therefore no GST is applicable as will be the case for any distributions paid out to those investors.

As the issuance of the REIT units is not an incidental exempt financial supply, any input tax incurred on common expenses for taxable and exempt supplies should be subject to the partial exemption method of apportionment. It should be noted that no input tax credits may be claimed on expenses incurred specifically for the purpose of making the exempt supplies of issuance of the REIT units. Any GST on expenses directly incurred in respect of the acquisition, operation and maintenance of the rental buildings acquired by REITs for the specific purpose of the REIT’s taxable (commercial) rental business should be able to be claimed in full as input tax credit.

3.2 Transition regulations

Conversion to REIT status
N/A

3.3 Registration duties

Registration duties
Stamp duty exemption.

There is a stamp duty exemption on the transfer of properties to an approved REIT. Other than stamp duty, there are currently no other duties / taxes imposed on the transfer of properties in Malaysia to a REIT.

4 Tax treatment of the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax	GST
- Income not taxed at REIT level: 19% / 24%* income tax on distributions. No tax credit is available. - Income taxed at REIT level: 19% / 24%* income tax on distributions. However, tax credits are available. - No capital gains tax.	- Income not taxed at REIT level: Withholding tax final levy at a rate of 10% applies from January 01, 2016 to December 31 2019. No tax credit is available. - Income taxed at REIT level: 0-28%** income tax (prevailing rates for year of assessment 2016) on gross income from REIT distributions in the hands of individual unit holders. Such income carries a tax credit. - No capital gains tax.	- No withholding tax levied on distributions to Malaysian resident corporate unit holders. - Withholding tax applies to Malaysian resident individual unit holders at 10% if income not previously taxed at the REIT level.	- Distribution received from REIT is not subject to GST.

Corporate unit holder

Distribution from income on which the REIT is exempt from tax:

Income distributed from the REIT will be taxed at the prevailing corporate tax rate of 24%. A preferential tax rate of 19% on the first RM 500,000 of chargeable income will apply if the corporate unit holder is a "Small and Medium Enterprise" ("SME") for the purposes of the MITA.

With effect from the year of assessment 2009, the definition of a SME has been re-defined as a company resident in Malaysia which has paid up ordinary share capital of RM 2.5 million or less at the beginning of the basis period of a year of assessment provided:

(i) not more than 50% of the paid up ordinary share capital of the corporate unit holder is directly or indirectly owned by a non SME;
(ii) the corporate unit holder does not own directly or indirectly more than 50% of the paid up ordinary share capital of a non-SME;
(iii) not more than 50% of the paid up ordinary share capital of the corporate unit holder is owned by a company that also owns more than 50% of the ordinary share capital of a non-SME.

No tax credit is available to the unit holder where the distribution of income from the REIT is exempt from tax.

Distribution from income on which the REIT has been taxed (i.e. where the relevant conditions have not been met):

The amount distributed from the REIT will be grossed up to take into account the tax already paid at the REIT level and the corporate unit holder will be taxed on the gross distribution at the prevailing corporate tax rate of 24%.

However, such distributions carry a tax credit in respect of tax chargeable to the REIT in relation to the distributed income, which is available to be offset against the income tax chargeable to the corporate unit holder on the grossed-up amount of the distributed income.

Capital gains tax
There is no capital gains tax in Malaysia, except for RPGT for disposals of real properties or shares in real property companies. Disposal of REIT units, however, will not be subject to RPGT.

Individual unit holder
Distribution from income on which the REIT is exempt from tax:
Distributions made by a REIT to individual unit holders are subject to a final withholding tax of 10% (this rate applies to the period from January 01, 2016 to December 31, 2019). Individual unit holders who receive the net amount distributed need not account for any further income tax liability.

Distribution from income on which the REIT has been taxed:
The amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT and the individual unit holder will be taxed on the gross distribution at progressive tax rates ranging from 0% to 28% (prevailing rate for year of assessment 2016).

Such distributions carry a tax credit, which will be available to offset against the tax chargeable on the individual unit holder.

Capital gains tax
There is no capital gains tax in Malaysia, except for RPGT for disposals of real properties or shares in real property companies. Disposal of REIT units, however, will not be subject to RPGT.

Withholding tax
A REIT does not need to withhold tax when making distributions to a resident company – such companies would need to declare the REIT distributions as taxable income and the income will be taxed at the prevailing corporate tax rate of 24%.

For resident individuals, a 10% withholding tax is applicable if the amount distributed was tax exempt at the REIT level.

Indirect taxes
The investor/unit holder is entitled to receive distributions from their investment in the REIT. The distribution income is not subject to GST.

The issue, holding and redemption of units under a trust fund, and, the transfer of ownership of securities is an exempt supply under the GST (Exempt Supplies) Order. However, any brokerage commission or clearing fee on the trading of the REIT through a GST- registered broker is subject to GST at 6%.

4.2 Foreign unit holder

- Withholding tax at 24% effective from January 01, 2016. - Withholding tax at 10% for institutional investors from January 01, 2016 to December 31, 2019 if distribution from income on which the REIT is exempt from tax.	- Withholding tax at 10% from January 01, 2016 to December 31, 2019 if distribution from income on which the REIT is exempt from tax.	- No specific relief available.

Corporate unit holder

Distribution from income on which the REIT is exempt from tax:
Distributions to non-resident companies are subject to withholding tax of 24% from January 01, 2016 onwards.

Distributions to non-resident institutional unit holders are subject to a final withholding tax of 10% (this rate applies to the period from January 01, 2016 to December 31, 2019).

Distribution from income on which the REIT has been taxed:
Non-resident companies – A non-resident company would only be required to file a tax return in Malaysia if the company has a taxable presence / permanent establishment (as defined under the relevant double tax treaty) in Malaysia. Where the non-resident company is obligated to file a Malaysian tax return, the amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident company will be taxed on the gross distribution at the prevailing corporate tax rate of 24%, with a tax credit given on the underlying tax of the REIT.

If the non-resident company has no obligation to file a Malaysian tax return (i.e. there is no permanent establishment / taxable presence), the non-resident company would receive any distributions net of the tax suffered by the REIT. The non-resident company will also not be entitled to the tax credit from the income distributed from the REIT.

No withholding tax would be imposed on the non-resident company on income from the REIT which has been taxed previously.

Non-resident institutional unit holders – An institutional investor is defined as “a pension fund, collective investment scheme or other such persons approved by the Minister”. A non-resident institutional unit holder would only be required to file a tax return in Malaysia if the unit holder has a taxable presence / permanent establishment (as defined under the relevant double tax treaty) in Malaysia. Where the non-resident institutional unit holder is required to file a Malaysian tax return, the amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident institutional unit holder will be taxed on the gross distribution at the appropriate tax rate, with a tax credit given on the underlying tax of the REIT.

If the non-resident institutional unit holder has no obligation to file a Malaysian tax return, the non-resident institutional unit holders would receive any distributions net of the 24% corporate tax. The non-resident will also not be entitled to the tax credit from the income distributed from the REIT.

No withholding tax would be imposed on the non-resident institutional unit holder on income from the REIT which has been taxed previously.

Individual unit holder

Distribution from income on which the REIT is exempt from tax:
Distributions to non-resident individuals are subject to a final withholding tax of 10% (this rate applies to the period from January 01, 2016 to December 31, 2019).

Distribution from income on which the REIT has been taxed:
The amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident individual unit holder will be taxed on the gross distribution at 28% (prevailing rate for year of assessment 2016) if their tax returns are filed in Malaysia. Where the non-resident individual does not file a tax return, he will not be entitled to the tax credit from the income distributed from the REIT.

Withholding tax

If withholding tax is levied, such tax will be a final tax for Malaysian purposes. As such, unit holders receiving the net amount distributed need not account for any further income tax liability in Malaysia.

No specific relief available under tax treaties. However depending on the practice of the receiving country treaty protection may be sought under general unilateral double-taxation elimination rules.

5 Tax treatment of foreign REIT and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Taxation subject to Double Tax Treaty	Tax-exempt.	Tax-exempt.

Foreign REIT
Income of the foreign REIT will only be taxed in Malaysia if it is accrued in or derived from Malaysia, subject to the provisions of the relevant double tax treaties between Malaysia and the jurisdictions in which the foreign REIT is established.

Corporate unit holder
Distributions received from foreign REITs would be regarded as foreign-sourced income and exempt from Malaysian tax pursuant to Paragraph 28, Schedule 6 of the Malaysian Income Tax Act, 1967 unless the recipient is a resident company carrying on the business of banking, insurance, or sea or air transport.

Individual unit holder
Same as corporate unit holders. ■

Authors contact | Malaysia

Tan Hooi Beng
Tel. +60 3 7610 8843
hooitan@deloitte.com

Deloitte.

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

New Zealand – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
Unit trust Portfolio Investment Entity ('PIE')	1960 2007	- The Trustee Act 1956 - Unit Trusts Act 1960 - Companies Act 1993 - Income Tax Act 2007	- Trust type - Corporate type (Shows some characteristics of a REIT)

New Zealand does not have any specific REIT regime and it is not expected that any such specific regime will be introduced in the near future. Some unit trusts and companies investing in real property interests and meeting the eligibility criteria may elect to enter the 'Portfolio Investment Entity' (PIE) regime. As noted below, income derived by a PIE may be able to be allocated to individuals and taxed once at the PIE level for some New Zealand resident individual investors, at a prescribed investor rate between 10.5% and 28%, with no further New Zealand tax on distribution.

The primary aim of the PIE regime is to provide an income tax treatment for New Zealand resident individuals investing through collective investment vehicles, which is similar to the treatment which would apply if they invested directly. To this end, PIEs disposing of certain Australasian shares will not be taxed on those proceeds, and net taxable income allocated to New Zealand resident individual investors will generally be taxed at the PIE level at rates reflecting, or lower, than their marginal personal tax rates with no further tax on allocation of other gains or on distribution.

Unlisted PIEs can also elect to be 'foreign investment PIEs'. The aim of these rules is to achieve New Zealand tax costs for non-resident investors in unlisted PIEs that would not exceed the New Zealand tax costs if they invested directly, including a possible zero tax cost in respect of a PIE's foreign-sourced income. To qualify for these rules, elections must be made by PIEs to be 'foreign investment PIEs' and by investors to be 'notified foreign investors'. Both types of 'foreign investment PIE' may invest in overseas land, but not in New Zealand land, although 'foreign investment variable-rate PIEs' may hold limited interests in New Zealand companies which own New Zealand land.

Unit trusts are sometimes used for investing in real property (as well as for other investments), particularly (but not necessarily) where funding is sought from the public. There is no minimum or maximum limitation on the type of asset held by a unit trust or on the amount invested. Discretionary trusts may be used but are more appropriate for private investments and would not be used where funds are sought from the public.

Trusts are created under New Zealand's trust law and are generally regulated by the terms of the trust deed. The Trustee Act 1956 applies to all trusts, while the Unit Trusts Act 1960 applies where units in a unit trust are offered to the public.

Overseas Investment Office consent may be required for overseas investors in New Zealand land or other assets. Overseas companies carrying on business in New Zealand are required to register with the New Zealand Companies Office and must comply with annual return filing and financial statement and audit requirements.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR€m)	% of Global REIT Index
New Zealand	6	1	€ 3.973	0.12%

Top REIT*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Kiwi Property Group	€ 1.279	18.62%	4.93%	0.12%

* 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
- Registration of the trust with the Registrar of Companies. - Issue of a registered prospectus.

Unit trusts are generally established by means of an initial settlement on terms expressed in a trust deed. Where units in a unit trust are offered to the public, the Unit Trusts Act 1960 requires registration of the trust deed with the Registrar of Companies and issue of a registered investment statement and prospectus. The trust must have a corporate manager, which deals with investors and manages the trust's investments, and a trustee, who must not be under the same control as the manager. The trustee and manager may also be subject to Financial Markets Authority oversight and may need to register and comply with other legislation affecting financial advisers and service providers.

Some companies and unit trusts investing in real property interests and meeting the eligibility criteria are able to elect to enter the PIE regime. No specific licence or approval is required to enter the PIE regime, but the entity must meet the various statutory criteria as to investors' rights to investment proceeds, the number and type of investors, the extent of each investor's interests, and the types of investment and income.

2.2 Legal form / minimum initial capital

Legal form	Minimum initial capital
- Unit trust or company. - Portfolio Investment Entity (PIEs).	No

Legal Form

Unit trusts or companies investing in real property interests.

PIEs may be New Zealand resident companies or unit trusts, superannuation funds (superannuation schemes registered with the Government Actuary under the Superannuation Schemes Act 1989 or under the KiwiSaver legislation), group investment funds (established under the Public Trustee or Trustee Companies legislation) or certain life insurance funds.

Minimum share Capital

There is no minimum or maximum limitation on the amount of capital for a company, unit trust or a PIE.

2.3 Unit holder requirements / listing requirements

Unit holder requirements	Listing mandatory
- No restrictions for unit trusts or companies which are not PIEs. - Restrictions apply to the number and type of investor/unit holder in a PIE.	No

No restrictions apply for unit trusts or companies which are not PIEs.

Unit holder requirements for PIEs

If the entity is not listed on the NZ Stock Exchange, the portfolio investor class must generally include one or more of the following:

- at least 20 non-associated persons, none of whom holds more than 20% of the total portfolio investor interests in the class;
- a PIE or a foreign PIE equivalent investment vehicle;
- an entity which would meet the PIE criteria but has not elected to become a PIE;
- a life insurer;
- the NZ Superannuation Fund;
- the Accident Compensation Corporation or a Crown entity subsidiary of same;
- the Earthquake Commission;
- a 'public unit trust' if it has at least 100 unit holders (whose interests do not exceed 25% each or who are unit trust managers) or if it can otherwise be regarded as 'widely held' or if its units are held by widely-held investment vehicles.

Unlisted unit trusts with at least 100 members, which meet certain 'public unit trust' criteria or are otherwise considered to be 'widely held', and certain superannuation funds may not need to meet the above specific criteria.

If the entity is listed on the NZ Stock Exchange, all the following investor criteria must be met:

- the entity must not have more than one portfolio investor class; and
- each investor must be a member of that class; and
- each portfolio investor interest must be a share/unit traded on the stock exchange.

The general 20% maximum holding for investors was initially extended to 40% for certain institutional investors where the entity was a listed company or unit trust and no maximum limit applied to such investors where the entity was not a listed company or unit trust. A transitional provision protected PIE eligibility where interests of between 20% and 40% in a listed company or unit trust had been held since May 17, 2006. Subsequent amendments have removed the 40% maximum limit for those institutional investors with retrospective effect from the 2008-09 income year. Further amendments also allow tax-exempt charities to hold more than 20% interests (from August 29, 2011).

Listing requirements

The NZ Stock Exchange Listing requirements apply if shares or units are to be traded on the stock exchange.

Some PIE eligibility criteria vary according to whether or not the entity is listed. The taxation of income allocated to NZ resident individual investors at the investors' prescribed investor rates applies only where the PIE is not a NZ-listed company or unit trust.

2.4 Asset level / activity test

Restrictions on activities / investments
- No limitations if not PIEs - Diverse thresholds for PIEs

No limits apply to the activities or investments of unit trusts or companies which are not PIEs.

At least 90% of the value of a PIE's assets must be one or more of the following:
- land;
- financial arrangements (such as debts and debt-type instruments);
- excepted financial arrangements (such as shares and units in unit trusts);
- rights or options over the above types of assets.

At least 90% of the income derived by a PIE must be derived from the above types of property and must consist of any one or more of the following:
- dividends (or equivalent payments under certain share-lending arrangements);
- financial arrangement accrual income (including interest and related premiums and foreign exchange variations);
- rent (from non-associated parties);
- property disposal proceeds;
- income under the 'foreign investment fund' (FIF) rules;
- allocated PIE income;
- distributions from superannuation funds.

The above rules are modified for 'foreign investment PIEs' to the effect that neither 'foreign investment zero-rate PIEs' nor 'foreign investment variable-rate PIEs' may invest in, or derive income from, interests in New Zealand land, although 'foreign investment variable-rate PIEs' may hold limited interests in New Zealand companies which own New Zealand land. Virtually all income of 'foreign investment zero-rate PIEs' must be sourced outside New Zealand, with only minimal amounts of certain types of New Zealand-sourced income allowed.

Investments by the PIE in shares in a company or units in a unit trust must generally:
- carry voting interests of no more than 20% in a company or have a market value of no more than 20% of the total market value of the units in a unit trust; or
- where the PIE's interest exceeds 20%, the total market value of that and all the PIE's other investments of more than 20% in companies or unit trusts must not exceed 10% of the total market value of all the PIE's investments.

The 20% interest or 10% investment value limitation does not apply to investments by the PIE in any of the following:
- another PIE;
- a foreign PIE equivalent investment vehicle;
- an entity that meets the PIE criteria but has not elected PIE status;
- a land investment company (a company or unit trust which is not a PIE and which owns land (directly or indirectly through another company) representing at least 90% of the market value of all the land investment company's property for certain periods during the relevant income year).

An entity carrying on a business of life insurance is not eligible to be a PIE except in respect of separate identifiable funds holding investments which are subject to life insurance policies where the policy benefits are directly linked to the value of the funds' investments.

An entity will not be eligible to be a PIE if it is NZ resident under New Zealand's domestic income tax legislation but is regarded as not being NZ resident under the provisions of a double tax treaty.

Where a listed company or unit trust is a PIE, it must apply the maximum imputation (franking) credits available to all distributions.

If an entity has previously ceased being a PIE, it cannot elect to be a PIE again until at least five years have passed.

2.5 Leverage

Leverage
No specific restriction.

There are generally no restrictions on debt levels for entities investing in real property, other than:

- The need for arm's length terms where any related party debt is provided; and
- Possible thin capitalisation limitations for interest (and related foreign exchange) deductions if a single overseas person (together with associates) holds (directly or indirectly) or controls at least 50% of the New Zealand company or unit trust (for these purposes, the 'safe harbour' New Zealand group debt percentage is 60%)[1]; and
- For trusts other than unit trusts, there must be sufficient connection between the borrowings and the derivation or possible derivation of New Zealand taxable income.
- There are also possible thin capitalisation limitations for interest (and related foreign exchange) deductions for New Zealand resident entities which hold (directly or indirectly) or control an income interest of at least 10% in a 'controlled foreign company' (which may include a foreign unit trust). These thin capitalisation limitations extend to New Zealand residents with income interests of at least 10% in certain 'foreign investment funds' (foreign companies or unit trusts) which are subject to the active income or Australian exemptions from attribution of their income.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
No requirement, but taxation of income not allocated.	No requirement.	Annually.

Operative income

Unlisted PIEs will allocate taxable income to investors. If taxable income is not allocated to investors for each period, it will be taxed at the PIE's tax rate. Distributions of income by unlisted PIEs are not taxable to investors while distributions by listed PIEs may be fully or partly taxable to some investors.

Capital gains

Unlisted PIEs are able to allocate capital gains to investors without a tax cost on allocation or subsequent distribution. Distributions of capital gains by listed PIEs may be fully or partly taxable to some investors to the extent any imputation credits are attached.

2.7 Sanctions

Penalties / loss of status rules
Loss of PIE status and loss of PIE tax treatment.

If an entity loses PIE status, the income tax treatment of its disposals of certain Australasian shares would generally become taxable again, income would initially be taxed at the company or unit trust level and rate, distributions to New Zealand resident individual investors would revert to being fully

1 Recently enacted legislation extends the scope of the thin capitalisation rules from 1 April 2015.

taxable at their marginal tax rates and distributions to non-residents could be subject to non-resident withholding tax.

3 Unit Trust tax treatment

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Subject to standard corporate tax rate (28%).	Gains may be taxable depending on circumstances.	Generally subject to resident withholding tax of 33%, reduced by the amount of imputation (franking) -credits attached.

Current income

Unit trusts treated as companies for income tax purposes are subject to income tax at the standard corporate rate (28%) and, if solely tax resident in New Zealand, are subject to the imputation (franking) regime, whereby they can pass the benefit of income tax paid to unit holders by attaching imputation credits to distributions.

For trusts other than unit trusts, the trustees are subject to tax at 33% on income that is not paid, applied to or vested in beneficiaries on a current year basis. The extent to which income from non-New Zealand sources is taxable in New Zealand generally depends on complex rules relating to the residence of settlors or deemed settlors of such trusts. Where trusts meet certain ('complying trust') criteria (including being liable to full New Zealand income tax on all income flowing through the trust which is not treated as current year beneficiary income), no further New Zealand income tax or withholding tax will apply to subsequent distributions of retained earnings or capital gains.

PIEs which are listed companies or unit trusts will be taxed on all taxable income at 28%.

PIEs (other than listed companies or unit trusts) will allocate their taxable income to investors and account for tax at an investor's elected rate of either 28%, 17.5%, 10.5% or 0%. For investors who have notified the correct tax rate to the PIE, the tax paid by the PIE on their behalf will be a final tax and represents a favourable tax treatment for New Zealand resident individual investors with a marginal personal tax rate of 33%. The PIE regime is also intended to remove effective over taxation for individuals investing through companies or unit trusts where their marginal personal tax rate is less than the current corporate or unit trust tax rate of 28%.

As noted above, reduced tax rates (between 28% and 0%) may apply to income attributed to non-resident investors who are 'notified foreign investors' in unlisted PIEs which elect to be 'foreign investment PIEs (see section 1).

For New Zealand income tax purposes, companies, unit trusts and PIEs generally recognise rental or other business income on an accrual basis and dividends on a cash basis. Income (and expenditure) relating to debt instruments and other debt-type financial arrangements is subject to specific rules which generally require recognition on an accrual basis and treat all related gains (whether of an income or capital nature) as taxable although not all losses on such financial arrangements may be deductible.

No tax depreciation can be claimed on most buildings from the beginning of taxpayers' 2011-2012 income years. Tax depreciation can continue to be claimed on commercial building "fit out" items (but not on dwelling 'fit out' that is part of a building).

New Zealand resident entities may generally claim credits against their New Zealand income tax liabilities for foreign income taxes paid on foreign-sourced income up to the amount of New Zealand income tax payable on the particular income. Excess foreign tax credits cannot be refunded or carried forward or back to any other income year. Unlisted PIEs may utilise foreign tax credits in determining the tax payable at the PIE level on income allocated to investors. Investors in such PIEs may be able to utilise foreign tax credits allocated to them if they are directly taxable on their allocated PIE income (see section 4).

Capital gains

While New Zealand has no specific capital gains tax, gains on disposal of property interests can be taxable in a number of situations specified in the income tax legislation. The circumstances when personal property interests, such as shares or units in unit trusts, may be treated as 'revenue account property' for income tax purposes, with disposal proceeds treated as taxable income, are outlined in section 4 below. Disposals of direct interests in land can be taxable in a wider range of circumstances, also including, for example, certain situations where subdivisions or other developments are carried out, or where zoning or resource management matters arising since acquisition contribute to profit, or where the vendor was associated with entities carrying on business as land dealers, developers or builders at the time the land was acquired.

Withholding tax

Distributions received by New Zealand resident companies or unit trusts from other New Zealand resident companies or unit trusts are generally subject to resident withholding tax of 33%, reduced by the amount of imputation (franking) credits attached. Such withholding tax is deducted on account of the recipient's annual income tax liability and is not a final tax. It may be refunded if there is an excess of tax paid over the recipient's net income tax liability on an annual return basis. Imputation (franking) credits cannot be refunded in cash, however.

In certain circumstances, taxpayers may obtain resident withholding tax exemption certificates from Inland Revenue so that no withholding tax needs to be deducted, although the dividends may still be taxable on an annual return basis.

No resident withholding tax would apply to dividends where the New Zealand companies or unit trusts are regarded as tax group companies, that is, broadly, where they are at least 66% commonly owned, although the dividends would still be taxable on an annual return basis unless the companies or unit trusts are 100% commonly owned.

Where the New Zealand companies or unit trusts are 100% commonly owned, dividends between them will generally be totally exempt from income tax and no withholding tax will apply.

Where PIEs receive dividends from other New Zealand companies or unit trusts, credits for resident withholding tax deducted and imputation credits may be utilised in determining the tax payable at the PIE level or, in certain circumstances relating to unlisted PIEs, may be allocated to investors or rebated to the PIE.

For dividends received by foreign entities from New Zealand companies or unit trusts, please refer to the comments in section 4.2.

For dividends received by New Zealand resident companies or unit trusts from foreign REITs, please refer to the comments under the 'Corporate shareholders' heading in section 5.

Other taxes

The Goods and Services Tax (GST) treatment of investment trusts and related costs needs to be considered and managed. This tax is a VAT. GST may apply to transfers or other supplies of goods (which may include land) and services in New Zealand at the standard rate of 15%, although sales of tenanted commercial properties may be zero-rated in certain circumstances and supplies of domestic dwellings may be exempt from GST. Certain supplies between GST-registered parties , which consist wholly or partly of land, are generally zero-rated for GST purposes if the recipients are acquiring the land for use in making GST-taxable supplies and not for use as their (or certain relatives') principal place of residence. In such circumstances, the recipients (rather than the suppliers) will generally be liable to account for any GST at the standard 15% rate if it turns out that the supplies should not have been zero-rated.

Initial GST input tax claims must generally be based on the proportion of a taxpayer's estimated GST-taxable use compared with GST-exempt or other use, rather than on the previous principal purpose basis.

GST issues should be considered before any structures are established or land transactions are entered into in order to ensure that they can be managed appropriately.

Accounting Rules

Companies and unit trusts which offer units to the public are generally subject to the accounting requirements of the Financial Reporting Act 1993 and are generally required to apply NZ International Financial Reporting Standards (NZ IFRS).

Tax residence and double tax treaties

Companies, unit trusts and PIEs which are New Zealand tax resident under domestic law will generally be regarded as New Zealand residents under New Zealand's double tax treaties. The ability of non-resident REITs to invoke and apply New Zealand's double tax treaties in respect of any New Zealand-sourced income may depend on their legal structure, their tax status in their home jurisdictions and the wording of particular treaties.

3.2 Transition regulations

Conversion to PIE status
Deemed disposal and re-acquisition of certain Australasian share investments at market value immediately before PIE election is effective.

A PIE will be taxable at the general corporate/unit trust rate of 28% on taxable gains arising from the deemed disposal of certain Australasian share investments at market value immediately before its election to become a PIE is effective. The PIE may spread the resulting tax liability evenly over three years, and will not be liable for provisional tax penalties or tax interest charges in respect of that liability.

3.3 Registration duties

Registration duties
None.

No stamp duties, transfer taxes or other levies apply on the acquisition of land in New Zealand or where an entity elects to become a PIE.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- Distributions of companies and unit trusts taxed at normal income tax rate. - Distribution of a PIE: allocated PIE income taxed at normal income tax rate, with no tax on distributions from unlisted PIEs. - Distributions from listed company or unit trust PIEs may be taxable dividends to the extent imputation or foreign dividend payment credits are attached. - Disposals not taxable unless units held on revenue account. - Taxable disposals taxed at normal income tax rate.	- Distributions of companies and unit trusts taxed at normal income tax rate. - Distribution of an unlisted PIE: allocated PIE income taxed at 10.5%, 17.5% or 28% final tax with no tax on distributions. Distributions from listed PIEs are not taxable unless NZ resident individual or trustee taxpayers elect to treat as taxable. - Disposals not taxable unless units held on revenue account. - Taxable disposals taxed at normal income tax rate.	Up to 33% on distributions, reduced by imputation credits attached.

Corporate unit holder

Distributions from companies and unit trusts are generally treated as dividends for New Zealand income tax purposes, with no distinction between distributions representing current income and distributions representing capital gains. On liquidation, certain distributions of realised and unrealised capital gains to resident corporate unit holders may be excluded from being dividends.

In certain circumstances, amounts distributed as returns of share or unit capital or on buy backs of shares or units may be excluded from treatment as dividends, and thus be free of New Zealand income tax.

Corporate investors in unlisted PIEs will be required to include their allocated PIE income in their own returns and account for tax themselves at the relevant rate applicable to their net taxable income from all sources. PIE distributions will not be taxed to New Zealand corporate investors except to the extent that the distributions are fully imputed or foreign dividend payment credited dividends from NZ-listed companies or unit trusts. Corporate PIE investors may offset taxable PIE income allocations or distributions against tax losses from other sources.

Disposals of units held in companies, unit trusts or PIEs by resident corporates are not taxable unless they constitute 'revenue account property'. Shares or units may be 'revenue account property' if the holder is a trader or dealer in such types of property, if the holder has acquired the specific shares or units for the dominant purpose of disposal, or if acquisition and disposal of the shares or units is part of carrying on or carrying out a profit-making undertaking or scheme. Any gains which are taxable on this basis are taxed at the standard corporate rate (28%).

Individual unit holder

Distributions from companies and unit trusts are generally treated as dividends for New Zealand income tax purposes, with no distinction between distributions representing current income and distributions representing capital gains. On liquidation, certain distributions of realised and unrealised capital gains to individual unit holders may be excluded from being dividends.

In certain circumstances, amounts distributed as returns of share or unit capital or on buy backs of shares or units may be excluded from treatment as dividends and thus be free of New Zealand income tax.

Distributions from listed PIEs to New Zealand resident individual or trustee holders are not taxable unless those holders choose to treat them as taxable dividends (for example, if the imputation or foreign dividend payment credits attached would exceed their personal income tax liability). Allocations of income by unlisted PIEs to New Zealand resident individual holders will not be taxed further where the PIE income has been allocated and taxed at the appropriate prescribed investor rate at the PIE level. Distributions from unlisted PIEs are not taxable.

As described above, disposals of units held in companies, unit trusts or PIEs by resident individuals are not taxable unless they constitute 'revenue account property'. Any gains which are taxable on this basis are taxed at individuals' normal income tax rates.

Withholding tax

Dividend distributions from New Zealand companies or unit trusts to resident investors are generally subject to 33% withholding tax, reduced to the extent imputation (franking) credits are attached. Such withholding tax (but not the imputation credits) may be refunded if the recipient's annual tax liability is less than the tax deducted on their behalf. No withholding tax applies to dividends from PIEs to resident investors.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- 28% tax rate on unlisted PIE allocations. - 0% tax rate on allocations to 'notified foreign investors' by 'foreign investment zero-rate PIEs. - Tax rates between 28% and 0% on allocations to 'notified foreign investors' by 'foreign investment variable-rate PIEs'. - 28% tax rate on taxable disposals - Disposals not taxable unless units held on revenue account.	- 28% tax rate on unlisted PIE allocations. - 0% tax rate on allocations to 'notified foreign investors' by 'foreign investment zero-rate PIEs . - Tax rates between 28% and 0% on allocations to 'notified foreign investors' by 'foreign investment variable-rate PIEs'. - Disposals not taxable unless units held on revenue account. - Taxable disposals taxed at normal individual income tax rates.	- In principle 30% withholding tax on distributions, reduced to 15% to the extent imputation (franking) or similar credits are attached. - 0% if fully imputed distributions paid to foreign unit holder who holds at least 10% voting interest or who holds lesser interest but tax treaty reduces New Zealand tax rate below 15%. Tax treaty relief may be available for distributions and disposals.

Corporate unit holder

Distributions from New Zealand companies and unit trusts to non-resident corporate investors are generally treated as dividends for New Zealand income tax purposes and subject to non-resident withholding tax (NRWT), regardless of whether the distributions represent current income or capital gains. On liquidation, certain distributions of realised and unrealised capital gains to non-resident corporate holders may be excluded from being dividends unless they hold or can acquire or control at least 50% of the company or unit trust.

In certain circumstances, amounts distributed as returns of share or unit capital or on buy backs of shares or units may be excluded from treatment as dividends and may thus be free of New Zealand income tax for all non-resident corporate holders.

Where an unlisted company or unit trust is eligible for and elects to be a PIE, as noted above, non-resident investors will have a 28% tax rate applied by such PIEs to their allocated income. Actual distributions by unlisted PIEs will not generally be taxed further.

Lower tax rates (between 28% and 0%) may apply to income allocated by 'foreign variable-rate PIEs' to 'notified foreign investors', the rates depending on the combination of types and sources of the PIE's income for the period. A zero tax rate may apply to income allocated by 'foreign investment zero-rate PIEs' to 'notified foreign investors'. If 'foreign investment PIEs' derive partly imputed (franked) dividends from New Zealand resident companies, they may choose to deduct NRWT on distributions to 'notified foreign investors' which represent the unimputed (unfranked) amounts, instead of paying tax for them on an attributed income basis.

Distributions by New Zealand listed PIEs to non-resident corporate investors are intended to be treated as dividends, subject to withholding tax and potentially supplemented under the supplementary dividend tax credit (SDTC) regime to the extent imputation or foreign dividend payment credits are attached. The SDTC provisions do not apply if dividends are paid to non-residents with voting interests of at least 10% or if a tax treaty reduces the New Zealand tax rate below 15%. No further New Zealand income tax or withholding tax applies to any excesses over the dividend amounts which are distributed by New Zealand listed PIEs.

As described above, disposals of units held in New Zealand companies, unit trusts or PIEs by non-resident corporate holders are not taxable unless they constitute 'revenue account property'. Any New Zealand-sourced gains which are taxable on this basis are taxed at the standard corporate rate (28%, unless an applicable double tax treaty provides relief from New Zealand income tax.

Investments in companies or unit trusts holding real property interests may be treated as real property interests themselves under some of New Zealand's double tax treaties.

Income tax exemptions for overseas venture capital investors on the sale of units do not apply where the underlying New Zealand investments involve owning or developing real property.

Individual unit holder

Distributions from New Zealand companies and unit trusts to non-resident individual investors are generally treated as dividends for New Zealand income tax purposes and subject to non-resident withholding tax. No distinction is drawn between distributions representing current income and distributions representing capital gains. On liquidation, certain distributions of realised and unrealised capital gains to non-resident individuals may be excluded from being dividends, regardless of their level of ownership or control.

In certain circumstances, amounts distributed as returns of share or unit capital or on buy backs of shares or units may be excluded from treatment as dividends and may thus be free of New Zealand income tax for all non-resident individual holders.

Where an unlisted company or unit trust is eligible for and elects to be a PIE, as noted above, non-resident investors will have a 28% tax rate applied by such PIEs to their allocated income. Actual distributions by unlisted PIEs will not generally be taxed further.

Lower tax rates may apply to income allocated by 'foreign variable-rate PIEs' to 'notified foreign investors', the rates depending on the combination of types and sources of the PIE's income for the period. A zero tax rate may apply to income allocated by 'foreign investment zero-rate PIEs' to 'notified foreign investors'. If 'foreign investment PIEs' derive partly imputed (franked) dividends from New Zealand resident companies, they may choose to deduct NRWT on distributions to 'notified foreign investors' which represent the unimputed (unfranked) amounts, instead of paying tax for them on an attributed income basis.

Distributions by New Zealand listed PIEs to non-resident individual investors are intended to be treated as dividends, subject to withholding tax and potentially supplemented under the SDTC regime, to the extent imputation or foreign dividend payment credits are attached. No further New Zealand income tax or withholding tax applies to any excesses over the dividend amounts which are distributed by New Zealand listed PIEs.

As described above, disposals of units held in New Zealand companies, unit trusts or PIEs by non-resident individuals are not taxable unless they constitute 'revenue account property'. Any New Zealand-sourced gains which are taxable on this basis are taxed at normal individual income tax rates, unless an applicable double tax treaty provides relief from New Zealand income tax.

Investments in companies or unit trusts holding real property interests may be treated as real property interests themselves under some of New Zealand's double tax treaties.

Withholding tax

'Non-resident withholding tax' (NRWT) is deductible from dividends (including distributions from unit trusts) at 30%, unless:

- Limited by an applicable double tax treaty, (typically to 15% or potentially to 0% in some situations); or
- Imputation (franking) or similar credits are attached to the dividend, in which case the NRWT rate is reduced to 15% to the extent the dividend is so credited.

NRWT may be at a zero rate if fully imputed (franked) non-cash dividends, such as certain bonus issues (if allowed by the terms of the trust deed), are made. A 0% NRWT rate also applies to fully imputed cash dividends paid to non-residents who hold voting interests of at least 10% or who hold lesser interests but a tax treaty reduces the New Zealand tax rate below 15%. The cost of NRWT can be offset by credits arising under New Zealand's SDTC regime.

Non-resident investors need to consider their ability to claim foreign tax credits in their home jurisdiction for NRWT deducted, particularly where a New Zealand company or unit trust pays supplementary dividends to non-residents under the SDTC regime.

Where an unlisted company or unit trust is eligible for and elects to be a PIE, as noted above, non-resident investors will have a 28% tax rate applied by such PIEs to their allocated income and no withholding or other income tax will generally apply to distributions from such PIEs to non-residents. As noted above, 'foreign investment PIEs' which derive partly imputed (franked) dividends from New Zealand resident companies may elect to apply NRWT to distributions to 'notified foreign investors' which represent the unimputed (unfranked) amounts, instead of paying tax on an attributed income basis.

Any actual distributions to non-resident investors by listed PIEs are intended to be subject to NRWT only to the extent imputation (franking) or similar credits are attached.

5 Tax treatment of foreign REITs and their domestic unit holders

Foreign REITs	Corporate unit holder	Individual unit holder
- 28% Corporate tax. - Treaty relief might apply.	- May be taxable under CFC or FIF regime.	- May be taxable under CFC or FIF regime.

Foreign REITs

Overseas Investment Office consent may be required for overseas investors in New Zealand for purchase of land or other assets. Overseas companies carrying on business in New Zealand are required to register with the New Zealand Companies Office and must comply with annual return filing and financial statement and audit requirements. These may vary based on the size of the company's operations overseas and in New Zealand.

Where units in a unit trust are offered to the public:

- The Unit Trusts Act 1960 regulates structural matters and requires (i) a management company to manage the investments and issue units and (ii) a trustee company (which is not controlled by the same persons who control the management company) to hold legal title to the assets;
- Specific legislation regulates the offering of units to the public, prospectus and related requirements;

- The Financial Reporting Act 1993 regulates accounting and audit requirements;
- The NZ Stock Exchange Listing requirements apply if units are to be traded on the stock exchange;

The trustee and manager may also be subject to Financial Markets Authority oversight and may need to register and comply with other legislation affecting financial advisers and service providers
New Zealand sourced rentals or business income will be taxable under New Zealand domestic law at the basic corporate income tax rate of 28%, subject to any limitation by an applicable double tax treaty.

Subject to any double tax treaty limitations, New Zealand sourced dividends, interest or royalties paid to non-residents are generally subject to non-resident withholding tax at the basic rates of 30% for dividends (reduced to 15% to the extent imputed (franked), to 0% if the dividend is a fully imputed non-cash dividend or a fully imputed cash dividend paid to non-residents with at least 10% voting interest or to those with lesser interests if a tax treaty reduces their New Zealand tax rate below 15%), 15% for interest (a minimum tax unless the parties are not associated) and royalties (a minimum tax).

Corporate unit holder

Depending on the extent of New Zealand ownership of a non-resident REIT which is a company or unit trust, New Zealand corporate holders may be taxable on attributed income under New Zealand's 'controlled foreign company' (CFC) or 'foreign investment fund' (FIF) regimes.

New Zealand resident corporate unit holders are generally exempt from New Zealand income tax on distributions received from non-resident companies or unit trusts if they hold at least 10% income interests and the distributions do not relate to fixed-rate foreign equity and are not deductible (directly or indirectly) outside New Zealand, apart from certain Australian investments. Investments in non-resident companies or unit trusts of greater than 10% may potentially be taxable under the FIF or CFC regimes depending on the underlying activity of the non-resident company. Fixed-rate foreign equity and deductible foreign distributions are taxable on receipt or crediting. If the income interests held by a New Zealand resident corporate are less than 10%, distributions will be taxable on receipt or crediting if the interests fall within certain FIF regime exemptions.

Individual unit holder

If the non-resident REIT falls within New Zealand's definition of a company or unit trust for tax purposes, individual New Zealand resident holders would generally be taxable on any distributions at their marginal personal tax rates, regardless of the source of the REIT's income.

Depending on the extent of New Zealand ownership of the non-resident REIT, individual New Zealand holders may be taxable on attributed income under New Zealand's CFC or FIF regimes. Where the individual is taxable in respect of the investment under the FIF regime, the treatment of distributions and any foreign withholding tax will depend on the particular method applied to calculate the FIF income. ■

Authors contact | New Zealand

Matthew Hanley
Tel. +64 9 300 8008
matthew.hanley@nz.ey.com

Michael Clark
Tel. +64 9 377 4790
michael.clark@nz.ey.com

EPRA

Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA | REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Pakistan – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type	REIT market
Pakistan REITs	September 12, 2007 and then April16, 2015	Pakistan - Companies Ordinance, 1984 ["Co Ord."] Real Estate Investment Trust Regulations, 2015	Developmental; Rental RIET; Hybrid	Two (2) Real Estate Investment Trust Management Companies have already been established

The Federal Government issued a notification vide SRO 1073(I)/2007 dated September 12, 2007 ["Notification"], under sub-clause (viii) of clause (a) of section 282A of the Co Ord, notifying that real estate investment trust management services to be carried-out by non-banking finance companies ["NBFC"].

NBFCs, including Real Estate Investment Trust ["REIT"] is regulated directly by Securities and Exchange Commission of Pakistan ["SECP"] under Part VIII A of the Companies Ordinance, 1984 for the promotion of real estate sector.

As a consequence of the Notification read with sub-section (2) of section 282B of the Co Ord, SECP had promulgated the Real Estate Investment Trust Regulations 2008 [" 2008 Regulations"] vide S.R.O. 94(I)/2008 dated January 31, 2008, in 2015 SECP has introduced a new regulatory framework thus repealing 2008 Regulations replacing it by notifying Real Estate Investment Trust Regulations 2015 vide S.R.O. 328(I)/2015 dated April 16, 2015 ["**Regulations**"] for the regulation of REIT Management Companies ["RMC"]; and registration and regulation of Real Estate Investment Trust Schemes ["REIT Scheme"] and matters connected thereto.

The salient features of the Regulations are:

- The paid up capital requirement of REIT Management Companies (RMCs) has been brought down from Rs. 200 million to Rs. 50 million.
- The minimum fund size requirement of Rs. 2 billion has been reduced to bring it in-line with the listing regulations of stock exchanges[1].
- The minimum stake of RMC in a REIT Scheme has been reduced from 20% to 5%.
- Concept of strategic investor has been incorporated who will hold 20% stake in a REIT Scheme.
- Simplification of approval process and allowing performance fee for REIT managers.
- A criteria for rental track record has been prescribed for REIT eligible properties.

RMC launches REIT Schemes, which are registered under scheme of these Regulations. These REIT Schemes are close-ended trusts with tax treatment similar to that of mutual funds in Pakistan in terms of tax exemptions.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Pakistan	1	0	€ 196	0.00%

EPRA *Market cap rebased in EUR and correct as at 29 July 2016. The Global REIT Index is the FTSE EPRA/NAREIT Global REITs Index. *EPRA, August 2016*

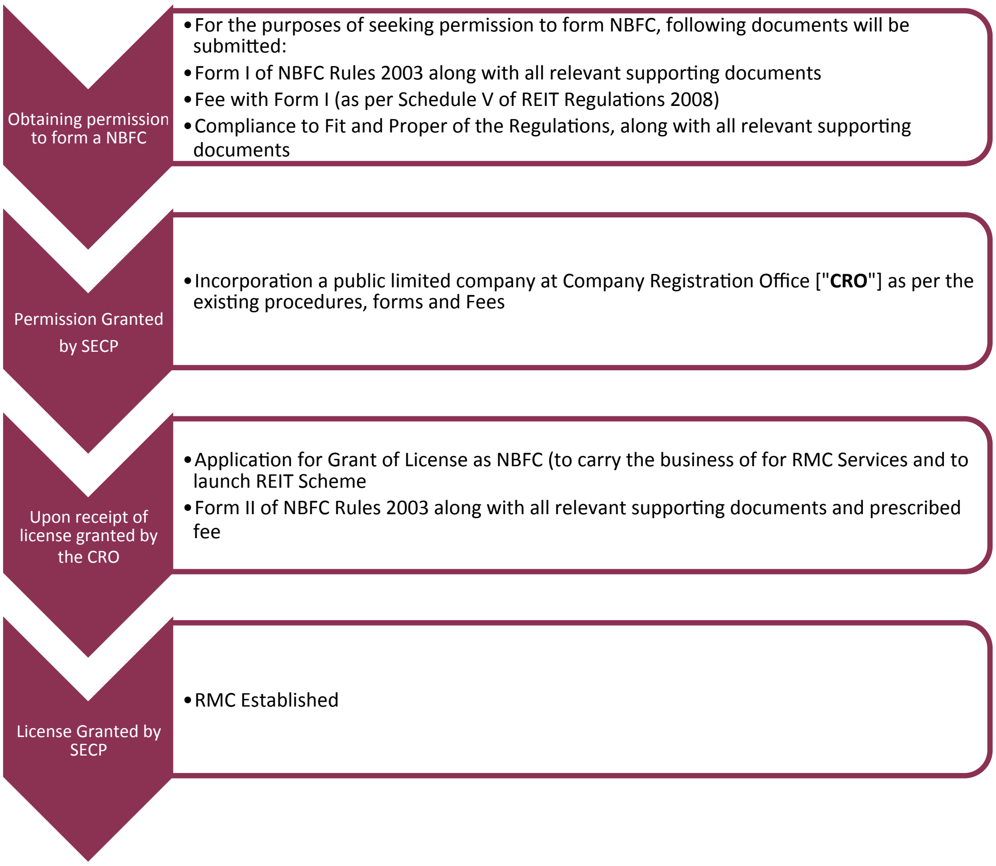
[1] Presently under chapter IV regulation 7(1) of the Karachi Stock Exchange's Listing Regulations, the minimum capital requirement for getting company listed is 200 million. Other stock exchanges in the country may have different threshold.

2 Requirements

2.1 Formalities / procedure

Key requirements
- Licence application to the SECP. - Incorporation of NBFC - Appointment of a trustee & property valuer in accordance with the Regulations.

The following is the graphical summary of events for incorporation of NBFC leading to establishment of RMC and registration of REIT Scheme.



2.2 The RMC

Subsequent to obtaining license, REIT management company is incorporated as a public limited company under the Co Ord.

NBFC/RMC must commence its business within one year from the date of issuance of the licence – as is specified in sub-rule (3) of rule 6 of NBFC (Establishment and Regulations) Rules 2003.

RMC must maintain adequate financial, technical, procedural, organisational, human resources, internal controls, compliance procedures and prepare accounts in conformity with the International Accounting Standards (IAS).

RMC shall make a public offering of at least 25% of units of the REITs scheme.

The promoters[2] of a RMC must have at least 25% of the paid-up share capital, and should not withdraw their investment without prior approval of SECP and must be kept unencumbered.

2.3 Conditions applicable to RMC

- The conditions which are applicable to RMC, *inter alia*, are: The minimum paid-up capital, at the time of applying for a licence as a NBFC, should at least be 50 million rupees and submit evidence that it has equity of at least fifty (50) million rupees.
- Promoters, proposed directors and Key Executives satisfy the prescribed Fit and Proper Criteria;
- In case of Developmental REIT, the proposed construction period should not be more than 5 years and the same shall be part of the business plan, offering document and all relevant marketing material.
- The RMC shall:

  (i) obtain and submit to the SECP, a due diligence certificate, from a lawyer who is amongst the panel of lawyers approved for the said purposes by the Commission, expressly confirming that:
  (a) the title of the Real Estate which is the subject matter of the REIT Scheme is free from all legal disputes with respect to title and no case is pending on any account including outstanding dues, duties, taxes, or permissible use before any court or authority;
  (b) the Real Estate is not in conflict with any applicable environmental laws and all approvals/No objection etc. in this respect is duly procured and the Real Estate is not protected as a special and heritage property;
  (c) Real Estate is free from all encroachments and encumbrances except for charges created by any Financial Institution(s) as defined in the Ordinance.
  Provided that the outstanding amount of loan against Real Estate including principle and interest does not exceed forty (40) per cent of the value of Real Estate as determined by the concerned Financial Institution(s);
  (d) legal opinion with respect to the validity and legitimacy of terms and conditions governing the transferability, duration, continuation, cancelation of the underlying lease arrangement and legitimacy of the lease agreements with tenants of the Real Estate, wherever relevant; and
  (e) all necessary approvals, permissions, NOCs of the concerned local authorities required as per applicable general, special and local laws have been obtained, as specifically may apply to a REIT Scheme.

  (ii) provide affidavit on a stamp paper confirming that RMC has reviewed land record with the relevant custodian of land and that the title of the Real Estate is clear, no dues are outstanding with respect to the Real Estate, that no injunction orders have been passed against the proposed Real Estate by any legal forum;

  (iii) provide, for lease hold Real Estate, documentary proof confirming that the remaining validity of the lease period is not be less than 15 years over and above the life of the proposed REIT Scheme and where life of the Scheme has not been proposed the remaining lease period shall not be less than 30 years;

  (iv) submit an undertaking confirming that there is no litigation and encroachment related to the Real Estate;

  (v) submit the confirmation issued by the concerned authorities including the revenue authorities that no injunction orders have been passed against the proposed Real Estate;

  (vi) submit an undertaking to retire the full outstanding debt against the Real Estate before transferring Real Estate in the name of the Trustee of the REIT Scheme;

  (vii) Submit to the Commission the details of charges created by Financial Institution(s) against Real Estate along with loan repayment schedule as agreed with the lenders

2 refers to a person (as defined by the NBFC's Rules) who has made an application to the SECP to form a REIT management company under the proposed Rule-4.

(viii) submit copies of title documents, permissions, NOCs of the concerned local authorities required as per applicable general, special and local laws;

(ix) submit to the Commission, such other documents or information as may be required by the Commission, on a case to case basis;

(x) propose trustee of the REIT Scheme who fulfils eligibility criteria as specified in these Regulations along with its consent.

2.4 Registration of REIT Scheme

After RMC is established, SECP may on an application, if it is satisfied, register the proposed REIT Scheme, the prerequisites to the application are:

- Obtain a approval from SECP in respect of:
  - the Real Estate which is to be transferred to the proposed REIT Scheme;
  - a) name of the REIT Scheme; b) appointment of Trustee; c) Valuation Report of the Real Estate; d) business plan of the REIT Scheme; e) the draft Trust Deed;
  - The REIT Scheme should at least have a fund size of in line with listing requirements of stock exchange which is presently under chapter IV regulation 7(1) of the Karachi Stock Exchange's Listing Regulations, the minimum capital requirement for getting company listed is 200 million. Other stock exchanges in the country may have different threshold.
  - in the case of a Developmental REIT Scheme:
    - ensure that a binding purchase agreement has been executed for transfer of title of the Real Estate in the name of the Trustee of a REIT Scheme.
    - have obtained all requisite approvals from the concerned authorities to carry out the Project and the Lawyer's opinion, who is amongst the panel of lawyers approved by the Commission, shall confirm the same.
- in the case of a Rental REIT Scheme:
    - ensure that a binding purchase agreement has been executed for transfer of title of the Real Estate in the name of the Trustee of a REIT Scheme
    - ensure that all requisite approvals from the concerned authorities including the completion certificate have been obtained, all dues are clear and the Real Estate does not have any defect which may render it ineligible for rent or subsequent
    - sale by the REIT Scheme and the Lawyer's opinion, who is amongst the panel of lawyers approved by the commission, shall confirm the same;
    - ensure that the Real Estate; (i) has at least last twelve months' successful tenant occupancy record, backed by signed lease agreements and verifiable from a bank statement and books of accounts wherever applicable (ii) has at least 80 per cent tenant occupancy at the time of application, (iii) provision of all relevant documents including tenant lease agreements, if required by SECP.
- If the RMC intends to convert a Developmental REIT Scheme into a Rental REIT Scheme, the RMC shall submit revised Business Plan duly approved by the unit-holders through a special resolution as defined in the Ordinance. obtain a due diligence certificate from a lawyer that the Real Estate is vested in the Trustee free from defects and encumbrances.

Upon complying with the prerequisites, *supra*, RMC will submit an application for the registration of a proposed REIT Scheme to SECP along with prerequisite documents, named-above and other appendages referred to in regulation 9 of the Regulations.

SECP may register the proposed REIT Scheme if it is satisfied that prescribed conditions in the Regulations have duly been fulfilled.

2.5 Legal form – REIT Scheme

REIT Scheme is a closed-end trust, trustees whereof should not be connected persons, associated companies or associated undertakings of RMC.

All REIT assets are to be held by the trustee on behalf of the unit holders. All real estate and other assets of the REIT scheme should be acquired in the name of the trustee. A trustee and property valuer must be appointed with the prior approval of SECP for every REIT scheme.

A trustee of a REIT Scheme may be a scheduled bank, development financial institution having a long-term rating of 'AA' by a credit rating agency, a subsidiary of a scheduled bank, a foreign bank, central depository company or any other person as the SECP may notify from time-to-time.

Trust Deeds should be in accordance with Schedule II of the Regulations, and provide for the time and modality of the extinguishment of the REIT scheme and the manner in which proportionate shares of the sale proceeds shall be transferred to its unit holders.

2.6 The Fees

2.6.1 Management fee

RMC will be entitled to receive an annual management fee:

	Annual Management Fee not exceeding
• Development REIT Schemes,	1% to 3% of the initial REIT Fund based on fund size
• Rental REIT Scheme	3% of the annual operating income of the REIT Scheme
• Hybrid REIT Scheme,	Combination of Development and Rental portions proportionally

2.6.2 Annual monitoring fee

Annual Monitoring Fee to be paid annually to the SECP for the life of the REIT scheme as under:

	Annual Monitoring Fee not exceeding
• Development REIT Schemes,	0.2% of the initial REIT fund
• Rental REIT Scheme	0.1% of the initial REIT Fund
• Hybrid REIT Scheme,	Combination of Development and Rental portions proportionally

2.6.3 Trustee fee

	Trustee's Fee not exceeding
• For Development REIT Schemes,	0.2% of the initial REIT fund
• Rental REIT Scheme	0.6% of the annual operating income of the REIT Scheme
• Hybrid REIT Scheme,	Combination of Development and Rental portions proportionally

2.6.4 Fee to quality assurance manager or property manager.

Fee as negotiated by RMC.

2.7 Unit holder requirements / listing requirements

Unit holder requirements	Listing mandatory
None	Yes

The maximum number of units that may be subscribed by investors through the Initial Public Offering [IPO] shall not exceed 5% of the REIT fund.

Listing requirements

The RMC must apply to list units of the REIT fund on the stock exchange(s). The units of the REIT fund should be listed in accordance with the listing regulations of the relevant stock exchange(s) and should be freely tradable.

- The units of REIT Scheme shall be listed on stock exchange(s);
- No units can offered to public unless offering document has been cleared by stock exchange(s) and approved by SECP;
- RMC shall hold minimum 5% and Strategic Investor, collectively or individually, shall hold minimum 20% cent units of the REIT Scheme in an account marked as blocked throughout the life of the REIT Scheme till its winding up and these units shall not be sold, transferred or encumbered.
- The RMC after publication of three (3) audited financial statements of the REIT Scheme demonstrating acceptable performance may apply to the Commission for transfer of its holdings to a Strategic Investor.
- In case, there are more than one Strategic Investors, each one of them shall hold not less than 5% units of the REIT Scheme at all times. Provided that the strategic investor may, after five years of launch of REIT Scheme, transfer their holding of the REIT Scheme to another Strategic Investor with the approval of the Commission. ; and
- The par value of each unit shall be Rs. 10.

2.8 Asset level / activity test

Restrictions on activities / investments
- Investments should only be made in real estate. - Restriction on transferring ownership of controlling shares, merger and take-over. - Restriction on obtaining management of another REIT scheme. - Investment in vacant land for development purposes is allowed. - Restriction on investing in unlisted securities and commodities.

Restriction on activities

A REIT Management Company – which manages the assets of a trust – shall only invest in real estate however; it may invest any surplus funds in government securities or keep such funds as deposit with scheduled commercial banks having not less than ‘AA (double A)’ Long term rating with stable outlook.

A REIT Management Company is not allowed to acquire management of another REIT scheme without prior approval from SECP. Similarly, it is not allowed to transfer ownership of controlling shares, merge with, acquire or take-over any other company unless received prior approval from the SECP.

The REIT Funds or REIT Assets shall not be used directly or indirectly for:

- Lending or making an advance not connected to objects or furtherance of the REIT Scheme.
- Acquiring any asset that involves the assumption of any liability that is unlimited.
- Affecting a short sale in any security.
- Purchasing any asset in a forward contract.
- Purchasing any asset on margin.
- Participating in a joint account with others in any transaction.
- Trading in commodities or becoming involved in commodity contracts.
- Acquiring any security of which another REIT Fund.

2.9 Leverage

Leverage
- A REIT Management Company shall not borrow against any REIT Assets. - REIT Management Company may arrange unsecured borrowing not exceeding 30%of the value at which the land has been transferred to a Developmental REIT Scheme or 30% of the value of the Real Estate in case of Rental REIT to meet the shortfall arising out of, cost overruns in case of Developmental REIT and for Capex to keep the real estate in working condition in case of a Rental REIT.

2.10 Profit distribution obligations

Operative income	Capital gains	Timing
90% of the annual income.	90% of the annual income.	Annually

A REIT Management Company shall distribute not less than 90% of the profits arising out of the REIT Scheme to the unit holders as dividend in each financial year.

Dividend shall be paid in cash, or through the issuance of bonus units if allowed by the SECP, on a reasonable request made by the REIT Management Company.

2.11 Sanctions

Upon observing that the REIT Management Company is not pursuing its business according to the laws, rules and guidelines of SECP, the SECP may:

Penalties / loss of status rules
- Cancel or suspend the registration of the REIT scheme. - Remove the trustee in the circumstances as stipulated in the Regulation. - Remove the valuer in the circumstances as stipulated in the Regulation. - Impose a fine.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt, if 90% of net income distributed other than bonus shares and capital gains.	Capital gains arising to a person on sale of immovable property to REIT Development Scheme are tax-exempt.	- No tax withholding on receipt of dividend income, profit on debt (interest), commission or capital gains on listed securities. - Other withholding tax due can be avoided by the exemption certificate.

Current income

Income of a duly registered REIT scheme is exempt from tax subject to distribution of a minimum of 90% of its accounting income of that year, reduced by capital gains whether realised or unrealised, among the unit holders. For the purposes of determining distribution at least 90% of accounting income, bonus shares or units or certificates shall not be taken into account.

Taxable at corporate tax rate if profit distribution of at least 90% as stated above is not made.

Capital gains

Generally, capital gains on moveable assets held for 12 months or less are taxable at full corporate tax rate. Capital gains on sale of moveable assets held for more that 12 months is exempt from tax up to 25% of the total gain. The remaining 75% gain is taxable at corporate tax rate. The effective tax rate works out to be 23.25 % [31 X 75%] in this case.

Capital gains on the sale of immovable property are subject to tax at the following reduced rate:

S. No.	Holding Period	Rate
1.	Where holding period of immovable property is upto one year	10%
2.	Where holding period of immovable property is more than one year but not more than five years	10%
3.	Where holding period of immovable property is more than five years	0%

Gain arising on disposal of immovable property to a Rental REIT Scheme made taxable at 5% upto 30 June 2019 irrespective of the holding period. Capital gains to a person on sale of immovable property to REIT Development scheme only is exempt up to June 30, 2020.

If the immovable property is purchased and sold for business purpose, the gains would be liable to corporate income tax at 31% for tax year 2017.

Stamp duty is charged based on a schedule of charges, at the time of the transfer of the property.

Withholding tax

No withholding is required to be made on payments to the registered REIT companies on account of any dividend, profit on debt (interest), commission or capital gains on listed securities. Other withholding obligations would be applicable on payments received by registered REIT companies. However, based on the general exemption from tax (subject to 90% distribution of profits) an exemption certificate from withholding of tax can be obtained from the tax authorities by the registered REIT company. A refund of excess tax payment is possible.

Accounting Rules
No accounting rules prescribed.

3.2 Transition regulations

Conversion into REIT status
N/A

No rules prescribed.

3.3 Registration fees/ Stamp duties

The registration charges and stamp duties in the provinces of Sindh and Punjab are as under:

Registration duties			
		Sindh	**Punjab**
a)	Registration on purchase by REIT Scheme	Nil	Nil
b)	Registration on Sale by REIT Scheme	0.5%	0.5%
c)	Stamp Duty on REIT property purchases	0.5%	0.5%
d)	Stamp Duty on REIT property sales	1%	1%

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- 12.5% tax on dividend from stock fund, however, in case of other funds 25%. – final levy. - tax on capital gains – see below table which ranges from 0% to 15%.	- 12.5% tax on dividend – final levy. - tax on capital gains – see below table which ranges from 0% to 15%.	- For company 10% withholding tax on dividend from stock fund, however, in case of other funds 25%. - For individual 10% withholding tax on dividend. - tax on capital gains – see below table which ranges from 0% to 15%.

4.1.2 Capital gain tax for both company and individual unit holder [Domestic and Foreign]

Holding period [in months]	Tax rate
12	15
12 to 24	12.5
24 to 48	7.5
More than 48 [securities purchased on or after 1 July 2012]	7.5
More than 48 [securities purchased before 1 July 2012]	0%

Corporate unit holder

Subject to tax on dividend received at 12.5% from stock fund, however, in case of other funds 25%. Tax withholding on Capital gains on redemption of securities ranges from 0% to 15% (see above table) which will be final discharge of tax liability.

Individual unit holder

Subject to tax on dividend received at 12.5%.
Tax withholding on Capital gains on redemption of securities ranges from 0% to 15% (see above table) which will be final discharge of tax liability.

Withholding tax

The registered REIT company would be required to withhold tax at the rate of tax at 10% to the individual unit holder, however, tax liability will be 12.5%. In case of corporate unit holder 10% withholding tax on dividend from stock fund, however, in case of other funds 25%. Tax withholding on Capital gains on redemption of securities ranges from 0% to 15% (see above table) which will be final discharge of tax liability. Please note that an exemption has been provided for person receiving dividend at 50% from Development REIT for three years from 30 June 2018.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- 12.5% tax on dividend from stock fund, however, in case of other funds 25%. – final levy. - tax on capital gains – see below table which ranges from 0% to 15%.	- 12.5% tax on dividend – final levy. - tax on capital gains – see below table which ranges from 0% to 15%.	- For company 10% withholding tax on dividend from stock fund, however, in case of other funds 25%. - For individual 10% withholding tax on dividend. - tax on capital gains – see below table which ranges from 0% to 15%. - Tax treaty relief is available under various tax treaties Pakistan have with other countries.

4.2.2 Capital gain tax for both company and individual unit holder

Holding period [in months]	Tax rate
12	15
12 to 24	12.5
24 to 48	7.5
More than 48 [securities purchased on or after 1 July 2012]	7.5
More than 48 [securities purchased before 1 July 2012]	0%

Corporate unit holder

Subject to tax on dividend received at 12.5% from stock fund, however, in case of other funds 25%. Tax withholding on Capital gains on redemption of securities ranges from 0% to 15% (see above table) which will be final discharge of tax liability.

Individual unit holder

Subject to tax on dividend received at 12.5%. Tax withholding on Capital gains on redemption of securities ranges from 0% to 15% (see above table) which will be final discharge of tax liability.

Withholding tax

The registered REIT company would be required to withhold tax at the rate of tax at 10% to the individual unit holder, however, tax liability will be 12.5%. In case of corporate unit holder 10% withholding tax on dividend from stock fund, however, in case of other funds 25%. Tax withholding on Capital gains on redemption of securities ranges from 0% to 15% (see above table) which will be final discharge of tax liability. Please note that an exemption has been provided for person receiving dividend at 50% from Development REIT for three years from 30 June 2018.

Tax treaty relief is not possible as the tax rate is already quite low.

5 Tax treatment of foreign REITs and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
31% corporate tax on Pakistan source income.	- 12.5% tax on dividend, – final levy. - Tax on capital gains will be at 31% and 23.25% if holding period is more than 1 year.	- 12.5% tax on dividend, – final levy. - Tax on capital gains will be at normal rate (maximum rate is 31% and 3/4 portion will be only be taxed if holding period is more than 1 year

Foreign REIT

Foreign REITs would not be liable to the tax benefits prescribed in the tax law as they are restricted to REIT companies registered in Pakistan.

A foreign REIT would be taxed on its Pakistan source income at a tax rate of 31% for tax year 2017.

Corporate unit holder

Subject to tax on dividend received at 12.5%.
Any capital gains will be taxed as discussed in paragraph 3.1 above.

Individual unit holder

Subject to tax on dividend received at 12.5%.

Any capital gains in the hands of individual unit holder will be taxed as discussed for corporate unit holder in paragraph 3.1 above. ■

Authors contact | Pakistan

Abdul Rauf
Executive Director
Tel. +92 21 3568 5847
abdulrauf@kpmg.com.pk

KPMG
cutting through complexity™

EPRA

Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Phillipines – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

Enacted year	Citation	REIT type	REIT market
2009	Republic Act 9856.	Corporate type.	No REITs established as of June 2016.

The Real Estate Investment Trust (REIT) Act of 2009, otherwise known as Republic Act 9856, was enacted on December 17, 2009, without the signature of the President of the Philippines, in accordance with Article VI, Section 27(1) of the Philippine Constitution. The REIT Act is a synthesis of Senate Bill No. 2639 and House Bill No. 6379 which were approved by the Senate and the House of Representatives on September 29, 2009, and September 30, 2009, respectively.

The REIT Act became effective on February 09, 2010. On May 13, 2010, the Securities and Exchange Commission (SEC) approved the Implementing Rules and Regulations (IRR) in relation to the REIT Act.

2 Requirements

2.1 Formalities / procedure

Key requirements
Registration with the Securities and Exchange Commission (SEC).

The shares of the REIT must be registered with the Securities and Exchange Commission (SEC) and listed in accordance with the rules of the Stock Exchange.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Stock Corporation	PHP 300 million

A REIT shall be set up as a stock corporation, i.e. as a Real Estate Investment Company (REIC). The stock corporation should be established in accordance with the Corporation Code of the Philippines and the rules and regulations promulgated by the Securities and Exchange Commission of the Philippines, or organised under the laws of a foreign country, principally for the purpose of owning income-generating real estate assets and real estate securities.

The majority of the members of the board of directors must be residents of the Philippines. At least two directors (or 33.3% of the total number of directors in the case that the REIT has more than six directors) on the board of directors of a REIT shall be independent directors.

A REIT established under Philippine laws is deemed to be tax resident in the Philippines and will be able to benefit from any Double Taxation Treaties that the Philippines may have in place.

A REIT formed under the laws of a foreign country will likewise be deemed a Filipino tax resident if it is engaged in trade or business within the Philippines. Under Philippine laws “doing business” includes, among others: participation in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to and in progressive prosecution of commercial gain or of the purpose and object of the business organisation. If the above criteria are met then the foreign REIT will be able to benefit from Double Taxation Treaties that the Philippines may have in place.

A REIT must have a minimum paid-up capital of PHP 300 million. In order to prevent companies from using REITS merely to convert ownership in existing infrastructure to liquid assets, there is an existing proposal to restrict payment of existing debts being made out of paid up capital (i.e. these debts must be paid out of income generated by the business), thereby preventing companies from deleveraging by using REITs to pay off existing debts.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
- At least 1,000 shareholders with at least 50 shares each (who in aggregate own at least 40% of share capital in the year of listing, and should be increased to 67% within 3 years of listing).	Yes

A REIT must be listed in accordance with the rules and regulations of a Stock Exchange and must be regulated as a public company. To qualify as a public company, the REIT must, upon and after listing have at least 1,000 shareholders, each owning at least 50 shares of a class of shares and who in the aggregate own at least 40% of the share capital of the REIT in the year of listing provided, that the minimum ownership is increased to 67% within three years of listing.

Compliance with the minimum public ownership requirement must be duly certified by the Public Registrar upon listing, on the date of any dividend declaration, on the date of any corporate action requiring shareholder approval and other relevant times as may be required by the SEC.

In order for a REIT to be allowed to own land located in the Philippines, it must comply with foreign ownership limitations imposed under Philippine laws, that is: such ownership is restricted to persons or entities considered as Filipino citizens (individuals) or Philippine nationals (which stretches to include Filipino citizens, domestic partnerships or associations wholly owned by Filipino citizens and corporations organised under the laws of the Philippines of which at least 60% of the share capital is owned by Filipino citizens). For land ownership purposes, a corporation shall be deemed as a Philippine national if 60% of its share capital and vote entitlement are owned by Filipino citizens.

2.4 Asset level / activity test

Restrictions on activities / investments
- In the case of investment in income-generating real estate outside the Philippines, the investment does not exceed 40% of the deposited property. - At least 75% income producing real property in the Philippines required. - Must not undertake property development. - May hold real estate through unlisted special purpose vehicle (SPV).

A REIT may only invest in:

a. Real estate, whether freehold or leasehold, in or outside the Philippines. A REIT can invest in income-generating real estate outside the Philippines to the extent that this investment does not exceed 40% of the REIT's Deposited Property and that special permission is obtained from the SEC. An investment in real estate may be by way of direct ownership or a shareholding in an unlisted special purpose vehicle (SPV) incorporated to hold or own real estate.

b. Real estate related assets, wherever the issuers, assets, or securities are incorporated, located, issued, or traded.
c. Managed funds, debt securities, and shares issued by listed local or foreign non-property corporations.
d. Government securities issued on behalf of the Philippine Government, governments of other countries, and securities issued by supra-national agencies.
e. Cash and cash-equivalents.
f. Such other similar investment outlets as the SEC may allow.

Republic Act 9856 likewise provides that:
a. At least 75% of the Deposited Property of the REIT must be invested in, or consist of, income-generating real estate.
b. A REIT must not undertake property development activities whether on its own, in a joint venture with others, or by investing in unlisted property development companies, unless it intends to hold the developed property upon completion. The total contract value of property development activities undertaken and investments in uncompleted property developments should not exceed 10% of the Deposited Property.
c. Not more than 15% of investable funds of the REIT may be invested in any one issuer's securities or any one managed fund, except with respect to government securities where the limit is 25%.
d. A REIT may invest not more than 5% of its investable funds in certain financial products, such as, but not limited to, credit default swaps, credit-linked notes, collateralised debt obligations, total return swaps, credit spread options, and credit default options, and only upon special authority from the SEC.
e. A REIT may invest in local or foreign assets, subject to the terms of its articles of incorporation. Where an investment in foreign real estate assets is made, the REIT should ensure compliance with the applicable laws and requirements in that foreign country.
f. When investing as a joint owner, the REIT should make such an investment by acquiring shares or interests in an unlisted SPV set up to hold/own real estate and the REIT should have freedom to dispose of its interest in such an investment.

2.5 Leverage

Leverage
Shall not exceed 35% of market value of Deposited Property.

The total borrowings and deferred payments of a REIT shall not exceed 35% of the market value of its Deposited Property. Provided, however, that the REIT has publicly disclosed its investment grade credit rating by a duly accredited or internationally recognised rating agency, its total borrowings and deferred tax payments may exceed 35%, but not more than 70% of the market value of its Deposited Property. Note that it is necessary to undergo a full valuation of the REIT's assets using an SEC-accredited independent appraisal company at least once a year.

There is currently no distinction between domestic and cross-border situations for leverage purposes.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of its Distributable Income.	Capital gains from the sale of stock of domestic corporations are not included in Distributable Income since they have already been subjected to final tax. Other types of capital gains are included in Distributable Income if they have been realised and have not been reinvested by the REIT within one year from the date of sale.	Annually

Operative income

A REIT must distribute annually as dividends at least 90% of its Distributable Income to its shareholders not later than the last day of the fifth month following the close of the fiscal year of the REIT.

'Distributable Income' is defined as "Net Income as adjusted for unrealised gains and losses/expenses, impairment losses and other items in accordance with internationally accepted accounting standards". Distributable income excludes proceeds from the sale of the REIT's assets that are re-invested by the REIT within one year of the date of the sale.

Capital gains

To the extent that the gains are realised, they are included in Distributable Income as determined by the SEC. This is not the case if the gain on the sale of REIT assets is re-invested by the REIT within one year of the date of sale.

Unrealised gains are not included in the Distributable Income. Also capital gains realised from the disposal of shares in domestic corporations are not included in Distributable Income since they have already been subjected to final tax (see section 3.1).

There is currently no distinction between domestic and cross-border profit distribution requirements.

2.7 Sanctions

Penalties / loss of status rules
- Revocation of tax incentives. - Liability for surcharges and penalties under the Tax Code.

Delisting of REITs:

a. If the REIT is delisted from the local exchange, whether voluntarily or involuntarily, for failure to comply with the provisions of the REIT Act or rules of the Stock Exchange its tax incentives shall be *ipso facto* revoked and withdrawn as of the date the delisting becomes final;
b. Any tax incentives that may have been availed of by the REIT after the delisting shall immediately be refunded to the Government, together with a fine of between PHP 200,000 and PHP 5 million; and
c. If the delisting is highly prejudicial to the interest of the investing public, the REIT and/or responsible persons shall refund to its investors at the time of delisting the value of their shares.

Revocation of registration of REITs:

a. If the SEC discovers that the REIT was established so as to seek the benefits of the REIT Act without a true intention to carry out its provisions and/or adhere to the rules of the REIT Act, the SEC shall revoke or cancel the registration of the shares of the REIT;
b. The REIT shall pay the applicable taxes to a non-REIT retrospectively, plus interests and surcharges prescribed under the Tax Code.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Only non-distributed current income subject to taxation.	Transfer of shares in a domestic corporation subject to special rates of capital gains tax. Other types of capital gains are included in gross income.	Foreign withholding tax deductible or creditable. Local withholding tax creditable.

Current income

The Taxable Net Income of a REIT refers to the pertinent items of 'Gross Income' as defined in the Tax Code minus the following deductions: (a) those deductions enumerated in the Tax Code; and (b) the dividends distributed by a REIT out of its Distributable Income as of the end of the taxable year.

The Taxable Net Income is subject to regular corporate income tax (RCIT), at the rate of 30% beginning January 01, 2009. A REIT shall not be subject to the minimum corporate income tax (MCIT).

Capital gains

Only retained capital gains which have been realised and which have not been subjected to final tax (see below) are included in the Gross Income of a REIT, which after the allowable deductions (see above) are subject to the RCIT.

A REIT shall be subject to capital gains tax (CGT) at the rate of 5% for the first PHP 100,000, and 10% for net capital gains in excess of PHP 100,000, realised from the disposal (by the REIT) of shares of a domestic corporation, if such domestic corporation is not listed on the local stock exchange, or even if listed, if the transfer takes place through trades outside the local stock exchange.

Withholding tax

Any foreign withholding tax may be utilised as either a deduction from gross income or a tax credit (subject to the applicable limitations). Local income payments to a REIT shall be subject to a lower creditable withholding tax of 1%.

Other taxes

1. The gross sale of properties and services (e.g. rental receipts) of a REIT will be subject to value added tax (VAT) at the rate of 12% ('Output VAT'), the amount of which is passed on to the buyers/lessees of the REIT. The REIT can claim, as credit against its Output VAT, the amount of the VAT passed on to it by its local suppliers of goods and services ('Input VAT'). The REIT's VAT Payable is the excess of its Output VAT over its Input VAT. A REIT shall not be considered as a dealer in securities and shall not be subject to VAT on its sale, exchange or transfer of securities as part of its real estate-related business.
2. A REIT will be subject to the stock transaction tax (STT) on its transfers of shares of stock listed and traded at the local stock exchange, at the rate of 0.5% of the gross selling price or the gross value in money of the shares of stock. If the REIT transfers the listed shares outside the stock exchange, then it will be subject to capital gains tax at the rate of 5% for the first PHP 100,000 of net capital gains and 10% for net capital gains in excess of PHP 100,000.
3. The sale or transfer of any property to REITs, which includes the sale or transfer of security over the asset, shall be subject to 50% of the applicable documentary stamp tax (DST) imposed under the Tax Code.
4. Any sale, barter, exchange or other disposition of listed shares in the REIT by its investors does not give rise to a DST at the level of the REIT.
5. A REIT will be subject to local business tax at the rates provided in the Revenue Code of the province/city/municipality where the principal office of the REIT is located.

6. A REIT will be subject to local transfer tax on its transfers or real property, at the rate provided in the Revenue Code of the province/city/municipality where the real property is located.

Accounting rules

The Philippines has adopted International Financial Reporting Standards.

3.2 Transition regulations

Conversion into REIT status
'Conversion' may be through a transfer of existing REIT-eligible assets to a REIT.

Any gain realised from the transfer of properties to a REIT are not exempted from capital gains tax or regular income tax although the transferor may opt to structure the sale as a tax-deferred exchange pursuant to the provisions of the Tax Code. A REIT must be a newly incorporated entity. An existing property company is not allowed to merely amend its Articles of Incorporation in order to achieve REIT status.

3.3 Registration duties

Registration duties
Registration fees, VAT, DST, local withholding tax, and local transfer taxes.

The transfer of properties to a REIT, unless structured as a tax-deferred exchange under such conditions specified in the Tax Code, will give rise to liability for VAT and local transfer taxes. The registration of the deed of sale with the Register of Deeds requires the payment of registration fees. As discussed above, the transfer of properties to a REIT will be subject to 50% of the applicable DST imposed under the Tax Code. Local income payments to a REIT shall be subject to a lower creditable withholding tax of 1%.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Distributions tax-exempt.	- Final 10% withholding tax on dividends received.	- Final withholding tax for individual shareholders.

Corporate shareholder

Dividends paid by a REIT to a domestic corporation or a resident foreign corporation are tax-exempt.

Since the REIT's shares are listed on the local stock exchange, the disposal of the REIT shares by a corporate shareholder (i.e. a domestic corporation or a resident foreign corporation) shall be subject to the following taxes:

a. Stock transaction tax of 0.5% of the gross selling price or the gross value in money of the shares of stock transferred, if the REIT shares are transferred through trades on the stock exchange; or
b. Capital gains tax of 5% (on the first PHP 100,000 of net capital gains) or 10% (on net capital gains exceeding PHP 100,000), if the REIT shares are transferred outside the stock exchange.

Individual shareholder

The 10% tax on dividends received by a Filipino citizen or a foreigner resident in the Philippines from a REIT is a final tax, withheld and remitted to the Bureau of Internal Revenue (BIR) by the REIT.

The tax treatment of the transfer of the REIT shares by a Filipino citizen or a foreigner resident in the Philippines are the same as for Corporate shareholders (as set out above).

Dividends received by Filipino investors currently resident overseas from a Philippine REIT are exempt from Philippine income tax for seven years from August 11, 2011, which is the date that the tax-specific IRR was passed, bringing into force the tax provisions of the 2009 REIT Act.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
10%	10%	Tax treaty relief available.

Corporate shareholder

Unless a foreign corporation is entitled to claim a preferential withholding tax rate of less than 10% pursuant to an applicable tax treaty, a 10% final withholding tax on dividends to foreign corporate shareholders shall be levied. The default rate under the Tax Code is 35%, reduced to 15% under a tax sparing provision of the Tax Code, and to 10% under certain tax treaties. It should be noted that there are currently no tax treaties with the Philippines in force that reduce withholding tax to below 10%.

The tax treatment of the disposal of the REIT shares by a foreign corporate shareholder is the same as for a corporate shareholder as per Section 4.1 above.

Individual shareholders

A 10% final withholding tax shall be levied on dividends paid by REITs to foreign individual shareholders. The default rate under the Tax Code is 20% for non-residents engaged in trade or business in the Philippines, and 25% for non-residents not engaged in trade or business in the Philippines. Most tax treaties reduce these rates to 10% or 15%.

The tax treatment of the disposal of the REIT shares by a foreign individual shareholder is the same as for a corporate shareholder as per Section 4.1 above.

Withholding tax

Tax treaty relief is available, although in practice this is unlikely to apply as the rates under domestic legislation are lower than treaty rates.

5 Tax treatment of foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Subject to taxation, unless there are applicable preferential rates or exemptions under tax treaties.	Subject to taxation.	Subject to taxation.

Foreign REIT
If the Philippine source income of a foreign REIT is not derived from a Philippine REIT, then it will be subject to Philippine tax in the same manner as any non-resident, subject to preferential treaty rates or exemptions applicable to foreign trusts or corporations, depending on how the foreign REIT is organised.

Corporate shareholder
Dividends received by a local corporation from a Foreign REIT are included in its Gross Income which after allowable deductions, is subject to the RCIT.

Individual shareholder
Dividends received by a local individual (Filipino resident citizen or foreigner resident in the Philippines) from a Foreign REIT are included in Gross Income which after allowable deductions, is subject to regular income tax at the rate applicable to such individual. n

Authors contact | Philippines

Fredieric B. Landicho
Tel. +63 2 581 9043
flandicho@deloitte.com

Deloitte.

EPRA
Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Singapore – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
S-REIT	1999	- Securities and Futures Act - Code on Collective Investment Schemes - Property Fund Guidelines - Income Tax Act	Trust

The REIT regime in Singapore is principally regulated by the Securities and Futures Act (Cap. 289), the Code on Collective Investment Schemes (the "Code") issued by the Monetary Authority of Singapore (MAS), the Property Fund Guidelines appended to the Code and the Income Tax Act.

The Property Fund Guidelines apply to a collective investment scheme that invests or proposes to invest primarily in real estate and real estate-related assets. The scheme may or may not be listed on the Singapore Exchange.

The first set of regulatory guidelines for property funds was issued by the Monetary Authority of Singapore in May 1999.

The first Singapore REIT was listed on the Singapore Exchange in July 2002. To date, there are 32 REITs listed on the Singapore Exchange with a market capitalisation of approximately SGD 79 billion.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Singapore	44	9	€ 51.236	1.68%

Top five S-REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield %	% of Global REIT Index
CapitaLand Mall Trust	€ 5.159	12.67%	5.29%	0.35%
Ascendas Real Estate Investment Trust	€ 4.377	7.69%	4.90%	0.33%
CapitaLand Commercial Trust	€ 3.093	11.72%	5.78%	0.19%
Suntec REIT	€ 2.960	3.90%	6.07%	0.26%
Mapletree Commercial Trust	€ 2.511	24.21%	6.16%	0.14%

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
- Formal advance ruling and/or tax exemption application has to be submitted. - Listing on the Singapore Exchange is necessary to qualify for tax exemption.

All Singapore REITs (S-REIT) are listed on the Singapore Exchange and are eligible for favourable tax treatment, subject to certain conditions. To be listed on the Singapore Exchange, a REIT must comply with the applicable rules, regulations and guidelines set out in Securities and Futures Act (Cap. 289), the Code (including the Property Fund Guidelines) and the Singapore Exchange Listing Manual.

Some of the favourable tax treatments are granted on application. In other words, a formal advance ruling and/or tax exemption application has to be submitted to the Singapore tax authorities and/or the Singapore Ministry of Finance. In recent years, certain application procedures are simplified.

2.2 Legal form / minimum initial capital

Legal form	Minimum initial capital
Trust	SGD 300 million

Legal form
A S-REIT must be constituted as a trust.

A S-REIT may be managed externally or internally.

Minimum initial capital
For listing on the Singapore Exchange, a REIT, if it is denominated in Singapore Dollars (SGD), must have a minimum asset size of at least SGD 300 million.

2.3 Unit holders requirements / listing requirements

Unit holder requirements	Listing mandatory
At least 25% of the REIT's capital has to be held by at least 500 public unit holders (SGD-denominated REITs) / Spread of holders required (non-SGD denominated REITs).	In principle, not required but necessary for the various tax concessions.

Unit holder requirements
For Singapore Dollar-denominated REITs listed on the Singapore Exchange, at least 25% of its capital must be held by at least 500 public unit holders. In the case of foreign currency-denominated REITs listed on the Singapore Exchange, a spread of holders necessary for an orderly market is required.

There is no distinction between resident and non-resident unit holders in respect of ownership. There are no restrictions on foreign unit holders.

Listing requirements
REITs need not be listed, but only a REIT that is listed on the Singapore Exchange is eligible for tax concessions. A REIT listed on a foreign exchange will not be eligible for the various tax concessions.

2.4 Asset level / activity test

Restrictions on activities / investments
- At least 75% of the REIT's deposited property should be invested in income-producing real estate. - No property development activities are allowed unless the REIT intends to hold the developed property upon completion. - Investments in vacant land and mortgages (except for mortgage-backed securities) are prohibited unless the vacant land has been approved for development or other uncompleted property developments. - Investments in property development activities and uncompleted property development (local and foreign) must not exceed 10% of its assets. This limit is can be increased to 25%, subject to the REIT meeting certain conditions. - Investments in permissible investments must not exceed 5% of its assets in any one issuer's securities or any one manager's funds. - Should not derive more than 10% of its revenue from sources other than rental and other specified sources (e.g. interest, dividends, other permissible investments of the REIT etc).

The Property Fund Guidelines state that a REIT may invest in:

a. real estate, whether freehold or leasehold, in or outside Singapore;
b. real estate-related assets;
c. listed or unlisted debt securities and listed shares of or issued by non-property corporations;
d. government securities and securities issued by a supra-national agency or a Singapore statutory board; and
e. cash and cash-equivalent items.

A REIT is also subject to restrictions on its investment activities, such as:

a. at least 75% of its deposited property should be invested in income-producing real estate;
b. not undertaking property development activities nor investing in unlisted property development companies, unless the REIT intends to hold the developed property upon completion;
c. not investing in vacant land or mortgages (except for mortgage-backed securities);
d. the total contract value of property development activities and investments in uncompleted property developments should not exceed 10% of the REIT's deposited property (this limit can be increased to 25%, subject to the REIT meeting certain conditions);
e. not more than 5% of the REIT's deposited property should be invested in permissible investments (c), (d) and (e) listed above issued by any one issuer's securities or any one manager's funds;
f. not deriving more than 10% of its revenue from sources other than rental payment from the tenants of the real estate held by the REIT or interest, dividends, and other similar payments from special purpose vehicles and other permissible investments of the REIT.

A REIT may invest in real estate by way of direct ownership or a shareholding in an unlisted special purpose vehicle (SPV) constituted to hold/own real estate. When investing in real estate as a joint owner, the REIT should make its investment by investing directly in the real estate as a tenant-in-common, or by acquiring the shares or interests in an unlisted SPV constituted to hold/own real estate. The SPV can take the form of a company, trust or partnership, etc.

2.5 Leverage

Leverage
Single-tier leverage limit of 45%.

A single-tier leverage limit of 45% of a S-REITs' deposited property has been introduced. There is no longer a requirement for the REIT to obtain a credit rating (a 60% leverage limit was previously allowed if a credit rating was obtained whilst only a 35% leverage limit was allowed if there was no credit rating.)

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
At least 90% of tax transparent income.	Not required.	- Annually or - Semi-annually or - Quarterly

Operative income

Strictly, there are no legal or regulatory requirements for a REIT to distribute any pre-determined percentage of its income as distributions for a given financial year. However, for investment in Singapore properties, in order to enjoy tax transparency treatment, a REIT is required to distribute at least 90% of its 'tax transparent income' in cash (or, for distributions from July 01, 2009, to December 31, 2010, and subject to certain conditions, in the form of units of the REIT) in a financial year. With effect from April 01, 2012, REIT distributions made to unit holders in the form of units in the REIT will also be accorded tax transparency, subject to meeting certain conditions.

'Tax transparent income' refers to the following:

a. rental income or income from the management or holding of immovable property but not including gains from the disposal of immovable property;
b. income that is ancillary to the management or holding of immovable property but not including gains from the disposal of immovable property and Singapore dividends;
c. income (excluding Singapore dividends) that is payable out of rental income or income from the management or holding of immovable property in Singapore, but not out of gains from the disposal of such immovable property; and
d. distributions from an approved sub-trust of the real estate investment trust out of income referred to in (a) and (b) above.

For investment in overseas properties, there is generally no such requirement as tax transparency is not applicable. Instead, the REIT may qualify for tax exemption on certain foreign-sourced income that is remitted into Singapore.

Capital gains

Not required.

2.7 Sanctions

Penalties / loss of status rules
Loss of tax concession if S-REIT is de-listed.

If less than 100% but more than 90% of a REIT's tax transparent income is distributed in the same year in which the income is derived, then the amount of the tax transparent income that is not distributed will be subject to tax at the corporate tax rate (currently 17%) in the hands of the trustee. If less than 90% of the REIT's tax transparent income is distributed in the same year in which the income is derived, all of its tax transparent income will be subject to tax.

If the required asset level is not met and this leads to a de-listing of the REIT from the Singapore Exchange, then all tax concessions granted will cease to apply.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Eligible rental income-exempt from tax.	No tax imposed on -capital gains.	No foreign withholding tax refunds in respect of tax-exempted income.

Current income

As noted above, for rental and property related income (e.g. car park charges, service fees) no tax is imposed at the REIT level if it has been accorded tax transparency treatment. If tax transparent income is not distributed however, then the consequence noted above will ensue (i.e. tax transparent income that is not distributed will be subject to tax at the corporate tax rate of 17% in the hands of the trustee).

Foreign dividends, interest and trust distributions received in respect of investment in foreign properties may be exempt from Singapore income tax if certain conditions are met.

Capital gains

Singapore does not impose tax on capital gains. However, gains that are of an income or trading nature will be taxed at the prevailing corporate tax rate, currently 17%.

Gains or losses (unless the REIT's activities are such that it can be said to be carrying on a business of dealing in properties) from the sale of property are likely to be treated as capital gains or losses. If the REIT is indeed dealing in properties, then the gains would be taxed at the REIT level at the prevailing corporate tax rate, currently 17%.

Withholding tax

Foreign-sourced income of the S-REIT may qualify for tax exemption under general tax rules. Foreign withholding tax on such income (if exempted from tax) will not be credited or refunded.

Other taxes

See under no. 3.3 below.

Accounting rules

Local GAAP, which closely mirrors IFRS, apply. The income will be determined on accrual basis.

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
- Stamp duties from 0.2-15%, remission if certain requirements are met and depending on the types of properties [With effect from April 01, 2015, these stamp duty remissions have been withdrawn]. - Goods and Services Tax may be applicable. - No capital duty.

The sale or transfer of immovable property located in Singapore is usually subject to 3% Singapore stamp duty. This stamp duty is generally referred to as Buyer's Stamp Duty ("BSD") because the buyer is liable to pay the stamp duty unless otherwise agreed between the buyer and the seller. In addition to BSD, Additional Buyer's Stamp Duty ("ABSD") and Seller's Stamp Duty (introduced as measures to cool the Singapore property market) may also apply to certain types of immovable properties.

ABSD is imposed in addition to the BSD that a buyer of residential property has to pay. It applies to direct purchases of Singapore residential property and is payable by property buyers. ABSD for entities (i.e. non-individuals) is imposed at 10% (for Contracts, Agreements, or Documents of Transfer dated between December 08, 2011 to January 11, 2013) or 15% (for Contracts, Agreements, or Documents of Transfer dated on or after January 12, 2013).

SSD is payable by the seller of a property and may apply to the transfer of residential and industrial property located in Singapore. SSD is imposed at 5% to 15% (depending on how long the seller has held the property for) for transfers of Singapore industrial property, which were acquired by the seller on or after January 12, 2013, and sold/disposed within three years. For transfers of Singapore residential property, SSD of between 0.67% to 16% (depending on when the seller acquired the property and how long the seller held it for) generally applies if a property is held by the seller for four years or less. It is important to ensure that the seller has paid any applicable SSD. This is because, if the seller is liable but did not pay the SSD, the Agreement between buyer and the seller for the purchase of the property would not be considered as duly stamped (i.e. the Agreement cannot not be admitted as evidence in court in the event of disputes) even if buyer paid the BSD and applicable ABSD.

Remission from stamp duty (except seller stamp duties) was granted on the transfer of Singapore properties to an S-REIT or a REIT that was to be listed within six months from the transfer, or such longer period as may be allowed. This remission was applicable to transfers executed between February 18, 2005, and March 31, 2015. The S-REIT could also apply for a remission from stamp duty payable (0.2%) on the transfer of shares in Singapore companies that directly or indirectly owned foreign properties.

However, with effect from April 01, 2015, such stamp duty remissions have been withdrawn.

The transfer of Singapore properties may qualify as a transfer of a going concern and hence will not be subject to Goods and Services Tax (GST) which is currently 7%, or the S-REIT may avail itself of a concession that allows it to self-account for the Goods and Services Tax otherwise payable on the acquisition.

S-REITs that derive primarily dividend income or distributions (which are not taxable supplies for GST purposes) can claim input tax on business expenses incurred between February 17, 2006, and March 31, 2020. To facilitate fundraising by REITs through the use of SPVs, the GST concession has been enhanced to include SPVs set up solely to raise funds for the REITs and that do not hold qualifying assets of the REITs whether directly or indirectly. The enhanced concession will apply to GST on the expenses incurred to set up the SPVs as well as the GST on the business expenses of such SPVs.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- 17% corporate tax on tax transparent income. - Distributions out of capital gains and income taxed at REIT's level are not taxable. - Gains on disposal of units are not taxable if capital in nature.	- All distributions are generally not taxable. - Gains on disposal of units are not taxable if capital in nature.	- No withholding tax is imposed on domestic distributions.

Corporate unit holder

Distributions out of tax transparent income are taxed at the prevailing corporate tax rate of 17%. Distributions made to corporate unit holders out of income previously taxed at the REIT level will be exempt from Singapore tax. However, no tax credit will be available for tax paid by the REIT.

If disposal gains are determined to be 'capital' and hence not taxed at the REIT level, the distribution should also not be taxed in the hands of corporate domestic unit holders unless they hold the units in the REIT as trading assets. If the gains are determined to be of an income nature or 'trading gains' and hence taxed at the REIT level, the distribution is exempt from tax.

A return of capital is not taxed but will go towards reducing the cost base of units. For unit holders who hold the units as trading assets, the gains on disposal will be calculated using the reduced cost base.

Singapore does not impose tax on capital gains. Gains realised on the sale of the REIT units are not taxable unless the gains are considered to be trading gains or gains or profit of an income nature (e.g. if the unit holder holds the units as trading assets). Corporates who hold REIT units as trading assets are subject to Singapore income tax at the prevailing corporate tax rate, currently 17%.

There is no stamp duty on the sale of REIT units that are listed on the Singapore Exchange.

Individual unit holder

All distributions made by a REIT to unit holders who are individuals (beneficially entitled to these distributions) regardless of their nationality or place of residence, are exempt from Singapore income tax (if the distribution is investment rather than trading), unless they are derived through a partnership in Singapore or from the carrying on of a trade, business or profession.

If disposal gains derived by the REIT are determined to be 'capital' and hence not taxed at the REIT level, the distribution should also not be taxed in the hands of individual unit holders. If the gains are determined to be of an income nature or 'trading gains' and hence taxed at the REIT level, distributions out of such gains are exempt from tax.

A return of capital is not taxed.

Singapore does not impose tax on capital gains. Gains realised on the sale of the REIT units by an individual unit holder are not taxable, unless the gains are considered to be trading gains or gains or profit of an income nature. Individuals who hold REIT units as trading assets are subject to Singapore income tax at their respective tax rates (ranging from 0% to 22%).

Withholding tax

Distributions to domestic unit holders (e.g. domestic individuals, Singapore-incorporated and tax resident companies) are not subject to withholding tax if certain conditions and procedures are complied with.

One of the conditions will require unit holders to disclose their tax status on a prescribed form provided by the trustee. This will allow the REIT manager to ascertain whether tax has to be deducted on distributions made to unit holders. The REIT must pay any applicable tax withheld to the Singapore tax authorities by the 15th of the second month following the date of payment.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding tax rate
- Final withholding tax on current income distributions. - Withholding tax is not applicable on distributions of tax-exempt income (e.g. foreign dividends). - Distributions out of capital gains are generally not taxable.	- Distributions and capital gains are generally exempt from tax.	- Withholding tax rate reduced from 17% to 10% on distributions to non-resident non-individuals during the period from 18 February 2005 to 31 March 2020. - No treaty relief available.

Corporate unit holder

Current income distributions are subject to withholding tax at the prevailing corporate tax rate, currently 17%. A reduced rate of 10% applies for distributions made out of tax transparent income on or before March 31, 2020.

If disposal gains derived by the REIT are determined to be ‘capital’ and hence not taxed at the REIT level, the distribution out of such gains is also not taxed in the hands of corporate foreign unit holders. If the gains are determined to be ‘trading gains’ and hence taxed at the REIT level, distributions out of them are exempt from tax.

Withholding tax is not applicable on distributions of tax-exempt income (e.g. foreign dividends or interest received in respect of investments in foreign properties which qualify for exemption from Singapore income tax).

Distributions out of capital are not taxed.

Disposal gains are generally not taxable, unless they are considered to be trading in nature (e.g. if the unit holder holds the units as trading assets in a business carried on in Singapore).

Individual unit holder

Current income distributions are generally exempt from tax, unless they are derived through a partnership in Singapore or from the carrying on of a trade, business or profession.

Withholding tax is not applicable on the distribution of tax-exempt income (e.g. foreign dividends or interest received in respect of investments in foreign properties which are exempt from Singapore income tax).

If disposal gains derived by the REIT are determined to be ‘capital’ and hence not taxed at REIT level, distributions out of them are also not taxed in the hands of individual foreign unit holders. If the gains are determined to be ‘trading gains’ and hence taxed at the REIT level, distributions out of them are exempt from tax.

Distributions out of capital are not taxed.

Generally, disposal gains are not taxable, unless they are considered to be trading in nature, for example if the unit holder holds the units as trading assets.

Withholding tax

Distributions to a foreign non-individual unit holder are subject to withholding tax at the prevailing corporate tax rate (this is reduced to 10% for distributions made on or before March 31, 2020). The withholding tax of 10% applicable to distributions to foreign non-individuals is a final tax. There is no withholding tax on distributions to individuals.

Reduced tax treaty rates are not applicable as distributions from a REIT are not regarded as a dividend and the tax withheld is a tax in lieu of tax payable by the REIT.

5 Tax treatment of foreign REITs and domestic unit holders

Foreign REIT	Corporate unit holder	Individual unit holder
Taxed under normal Singapore tax rules.	Tax-exempt.	Tax-exempt.

Foreign REIT

A foreign REIT will be taxable under normal Singapore tax rules. Therefore, if it invests in Singapore properties, it will not be eligible for tax transparency status and will pay tax on its net rental income.

Corporate unit holder

Distributions made by a foreign REIT (only if it is constituted as a trust) out of income derived from a direct holding of Singapore properties which has been assessed to tax as income from a trade or business may be treated as capital in the hands of unit holders. In other words, no further tax should be imposed on the distributions received by Singapore corporate unit holders.

Any gain derived from the sale of units in the foreign REIT will not be subject to tax, as long as the gain is not derived from the carrying on of a trade or business in Singapore. Investors who trade or deal in the units are subject to tax on any gain derived from the disposal of units if the gains are regarded as Singapore sourced, that is, the buying and selling decisions are made in Singapore.

Individual unit holder

Individual unit holders (except where the units are held by the individual through a partnership) are not taxed in Singapore on foreign REIT distributions.

Any gain derived from the sale of units in the foreign REIT will not be subject to tax, as long as the gain is not derived from the carrying on of a trade or business in Singapore. Investors who trade or deal in the units are subject to tax on any gain derived from the disposal of units if the gains are regarded as Singapore sourced, that is, the buying and selling decisions are made in Singapore. ■

Authors contact | Singapore

Teo Wee Hwee
wee.hwee.teo@sg.pwc.com

Anulekha Samant
anulekha.samant@sg.pwc.com

Ng Wei Pheng
wei.pheng.ng@sg.pwc.com

EPRA
Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

South Korea –REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
REIC	2001	Real Estate Investment Company Act.	Corporate type.

The Real Estate Investment Company Act (REICA) was enacted in 2001. It lays the groundwork for Real Estate Investment Trusts in Korea. REICA governs Self-managed REITs (REIC), Paper-company Type REITs and CR-REITs (Corporate Restructuring REITs), the three REIT regimes in Korea.

There are about five listed REITs in Korea. The Self-managed REITs are corporate type REITs.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
South Korea	4	0	€ 773	0.00%

*Market cap rebased in EUR and 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
Approval from the Ministry of Land, Infrastructure and Transport

A REIT must obtain a business licence from the Ministry of Land, Infrastructure and Transport ("MOLIT").

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
- Joint-stock company (General REIT, REIC). - Paper-company Type REITs and CR-REIT: Special purpose company.	- Self-managed REITs (REIC): KRW 7 billion. - Paper-company Type REITs and CR-REITs. (Corporate Restructuring REITs): KRW 5 billion.

Legal form

A REIT can only be established as a stock corporation (called a Chusik Hoesa) under the Korean Commercial Code and REICA.

Paper-company Type REITs and CR-REITs are paper companies (special purpose company) and CR-REITs have finite lives, which should be stated in Articles of Incorporation and it should be dissolved when the period elapses.

The seat of a REIT must be established in Korea.

Minimum share capital

Under REICA, KRW 0.5billion is required as the minimum capital for obtaining a business license in case of Self-managed REITs and KRW 0.3billion is required in case of Paper-company Type REITs and CR-REITs (Corporate Restructuring REITs). After this official permission, REIT should increase its equity capital within six months up to the following.

Self-managed REITs (REIC): KRW 7 billion
Paper-company Type REITs and CR-REITs (Corporate Restructuring REITs): KRW 5 billion

2.3 Shareholders requirements / listing requirements

Shareholder requirements	Listing mandatory
- A shareholder may not own more than 30% of the shares in case of Self-managed REITs and 40% for Paper company Type REITs. - There are no restrictions on foreign shareholders.	Yes

Shareholder requirements

There are shareholding limitations as follows:

1. One shareholder and anyone who is specially related with the former shall not possess in excess of 30% in case of Self-managed REITs and 40% for Paper company Type REITs (hereinafter referred to as the “upper limit of possession of stocks per person”) of the total stocks issued by a REIT with an exception provided by Enforcement Decree of REICA;
2. Where a stockholder and the especially related person (hereinafter referred to as the “same person”) possess stocks of a REIT in excess of the upper limit of possession of stocks per person in violation of paragraph (1), the extent of exercise of voting right shall be limited to the upper limit of possession of stocks per person.
3. At least 30% of the shares must be offered to the public within 18 months from official permission(When the amount of investment in real estate development project accounts for 30% or more of the real estate development company's total asset, the date of permission refers to the day of approval or authorization for the real estate development project)

However, the above mentioned limitations do not apply to the case where certain shareholders (ex. Korean National Pension Corporation, etc) hold 30% or more shares in REICA.

Currently, there are no special restrictions on foreign shareholders.

Listing requirements

When a REIT becomes qualified to meet the listing standards under the Financial Investment Services and Markets Act, the REIT must list its stocks on the securities market of the Korea Stock Exchange or register them with the Korea Securities Dealers Association and make them traded either in the securities market of the Korea Stock Exchange or in the association brokerage market of the Korea Securities Dealers Association.

2.4 Asset level / activity test

Restrictions on activities / investments
- 70% must be invested in real estate. - 80% must be invested in real estate, real estate related securities and cash. - Not clear whether there are any restrictions for investment abroad either directly or indirectly. - Asset-management company must have performance in invest or management for 3 years - Investment in a single property is possible. - Investment in residential property is allowed. - Investment in subsidiaries is not allowed, since REIT cannot acquire more than 10% of voting shares in other companies.

As of the end of each quarter, 80% or more of the total assets of a REIT must be real estate, real estate related securities and cash, and 70% or more of the total assets of a REIT must be real estate (including buildings under construction).

In addition to those requirements, 70% or more of the total assets must be corporate recovery related real estate in case of a CR-REIT. Corporate recovery related real estate includes real property which a company sells to repay its debts to a financial institution, real property which a company sells to implement agreements with a financial institution providing debts to the company and real property which a company sells for corporate recovery under relevant laws.

When calculating the rate of investment in the real estate development project, the price of land possessed by a real estate company is included in the total asset but is excluded from the total amount of investment in the development project In case of newly constructing or reconstructing buildings.

For REITs, the minimum holding period of domestic real estate and overseas real estate are three years and the period as stipulated under the Articles of Association, respectively. For CR-REITs there are no restrictions. Also, Asset-management company must have performance in invest or management for 3 years – if it's not fulfilled, authorisation would be canceled
A REIT is not allowed to hold more than 10% of voting shares in other companies with an exception including a merger and an acquisition of a business.

Currently, there is no clear rule on a REIT holding real estate in foreign jurisdiction and thus, legal advice is required.

2.5 Leverage

Leverage
Maximum Debt: Equity ratio of 2:1

A REIT can borrow funds or issue bonds within twice the equity value. If there is a special resolution by the general stockholders' meeting, a REIT can borrow funds or issue bonds within ten times the equity value.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% or more of distributable income.	Included in operative income.	Depends on Articles of -Association.

Operative income
A REIT must distribute 90% or more of distributable income.
(Self- managed REIT must distribute 50% or more distributable income until the end of 2016)

There is no difference between a domestic and a cross-border profit distribution. The timing of the distribution depends on the Articles of Association.

Capital gains
Capital gains are subject to the distribution obligation.

2.7 Sanctions

Penalties / loss of status rules
- Imprisonment penalty. - Fine not exceeding KRW 50 million. - Revoke the establishment of REIT.

If the required asset level is not met, there is imprisonment penalty and a fine not exceeding KRW 50 million. Also, the Minister of Land, Transport and Maritime Affairs may revoke the establishment of REIT status if the required profit distribution is not met.

Any deviation from its obligations according to the applicable law results in regulatory action (i.e. penalty, withdrawal of licence, etc.).

Where the same person possesses stocks in excess of the upper limit of possession of stocks per person, the Minister of Construction and Transportation may order him to dispose of the stocks that are in excess of the upper limit of possession of stocks per person.

In case where the same person holds stocks in excess of the upper limit of possession of stocks per person after making his investment in kind, notwithstanding the provisions of paragraph (3), the Minister of Construction and Transportation may order him to dispose his stocks that are in excess of the upper limit of possession of stocks per person during the period ranging from not less than one year to not more than one year and six months from the date on which the stocks are issued after the investment in kind is made.

Where the Minister of Construction and Transportation finds that a REIT fails to list its stocks on the securities market of the Korea Stock Exchange, or register with the Korea Securities Dealers Association without sound reasons, he may order the REIT to be listed or register its stocks within a period of time to be designated by him.

3 Tax treatment at level of the REIT

3.1 Corporate income tax

Current income	Capital gains	Withholding tax
Income technically tax-exempt, if 90% distribution requirement met.	Income technically tax-exempt, if 90% distribution requirement met, but in certain cases 11% capital gains surtax.	- No withholding tax levied on domestic distribution. - Entitled to claim a foreign tax credit with a certain ceiling of tax credit.

Current income

A Paper-company Type REIT and CR-REIT can claim a dividend paid deduction, if 90% of the distributable income is distributed as dividends and thus, technically, the corporate income tax of REIT can be nil.

Otherwise (REIC) the company is subject to corporate income tax at a rate of 10% for the first taxable income up to KRW 200 million and 20% for the second taxable income up to KRW 20 billion and 22% for over the KRW 20 billion thresholds. 10% of corporate income tax is additionally levied as local resident as local income tax.

Capital gains
Under Korean Corporate Income Tax Law, the treatment of capital gains constitutes as ordinary income subject to the ordinary corporate income tax rate. There is no tax on capital gains if the 90% distribution obligation is met.

In addition, the capital gains surtax at a rate of 11% could be imposed on the sale of certain tainted assets such as housing or non-business purposes land. The 11% capital gains surtax should be imposed additionally also if the 90% distribution obligation is met.

Withholding tax
If a REIT receives a distribution of a domestic company no withholding tax is levied. The REIT is entitled to claim a foreign tax credit with a certain ceiling of tax credit.

Other taxes
There are no other taxes levied on the corporate income.

Accounting rules
A financial statement single (not consolidated) should be prepared in accordance with Korean GAAP or Korean IFRS.

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
- Acquisition tax. - Registration tax.

In general, when real estate in Korea is purchased by a company or constructed in Korea, 4.6% or 3.16% acquisition tax is imposed on the purchase price. There is no more registration tax when real estate is registered for reason of the acquisition of real estate.
On the other hand, the acquisition tax will be levied in accordance with a certain formula respectively if (i) the real estate is newly constructed or is used for head office in Seoul Metropolitan Area (SMA) or (ii) the real estate acquired by a company which has been registered in SMA for less than five years and is located in the SMA.

In addition, the capital registration tax is levied at the rate of 0.48% to 1.44% of the total par value amount of paid-in capital.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Subject to corporate income tax and resident surtax. - No difference between current income dividend and capital gains dividend. - Capital gains on disposal subject to ordinary income tax rate.	- Withholding tax of 15.4% final levied if interest and dividend income does not exceed KRW 20 million. - Capital gains tax exempt if certain thresholds are met.	- No withholding tax for domestic corporation. - Final withholding tax of 15.4% for Korean individual residents on distributions.

Corporate shareholder
A dividend is subject to corporate income tax. There is no difference between current income dividend and a capital gains dividend under the Korean tax law.

A return of capital distribution (capital redemption/retirement) may be a deemed dividend: the sum of funds and the value of other assets acquired by a shareholder in return for the retirement of stocks and redemption of capital in excess of the acquisition costs of the capital would be deemed as dividends. The deemed dividend is subject to corporate income tax.

"Under Korean Corporate Income Tax Law, the treatment of capital gains constitutes as ordinary income subject to the ordinary corporate income tax rate."

Individual shareholder
There is no difference between current income dividends and a capital gains dividend under Korean Law. The withholding tax of 15.4% is a final levy if interest and dividend income does not exceed KRW 20 million. If the aggregate interest and dividend income exceeds KRW 20 million, the individual is subject to the ordinary individual income tax rates ranging from 6.6% to 41.8%.

A return of capital distribution (capital redemption/retirement) may be a deemed dividend: the sum of funds and the value of other assets acquired by a shareholder in return for the retirement of stocks and redemption of capital in excess of the acquisition costs of the capital would be deemed as dividends. The deemed dividend is subject to withholding tax.

Individuals who hold less than 2% of listed REIT shares and also proceeds from the sale of the listed REIT shares are less than KRW 5 billion, are exempted from the income tax on capital gains. Otherwise individuals are subject to income tax.

Withholding tax
If the shareholder is a domestic corporation, the dividend paid by a REIT is not subject to withholding tax. If the shareholder is a Korean individual resident, the dividend paid by a REIT is subject to 15.4% withholding tax.

If the shareholder is a foreign resident or corporation, the dividend paid by a REIT is generally subject to 22% withholding tax. Such withholding tax could be reduced depending on the applicable tax treaty between Korea and the country where the shareholder is a resident.

In general, withholding tax should be collected when the dividend is paid. The dividend which is declared by a REIT but not paid to its shareholders within three months from the date of declaration of the dividend is deemed to be paid at the end of such three-month period.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Withholding tax of 22%. - Can be reduced according to a tax treaty.	- Withholding tax of 22%. - Can be reduced according to a tax treaty.	Tax treaty relief available.

Corporate shareholder

A dividend is subject to Korean withholding tax at a rate of 22% and can be reduced according to a tax treaty. There is no difference between current income dividend and a capital gains dividend.

A return of capital distribution (capital redemption/retirement) may be a deemed dividend: the sum of funds and the value of other assets acquired by a shareholder in return for the retirement of stocks and redemption of capital in excess of the acquisition costs of the capital would be deemed as dividends. The deemed dividend is subject to Korean withholding tax at a rate of 22% and can be reduced according to a tax treaty.

Capital gains realised on the sale of the REIT shares are subject to the Korean withholding tax. The withholding tax rate for residents in non-treaty countries for REIT shares is the lower of 22% of the gain or 11% of the gross proceeds, and the foreign shareholder is required to file a tax return on the capital gains taxed at the rate of 22% (the withheld tax is creditable). However, there is an exception. Capital gains earned by a non-resident from the transfer of listed REIT shares through the Korean Stock Exchange or KOSDAQ are tax exempt if such non-resident, together with its certain related parties, hold or have held less than 25% of the REIT shares at all times during the calendar year of the share transfer and the immediately preceding five calendar years.

Individual shareholder

For a foreign individual, the dividend paid by a REIT is subject to 22% withholding tax, but the withholding tax can be reduced depending on a tax treaty. There is no difference between current income dividend and a capital gains dividend.

The treatment of a return of capital distribution and capital gains realised on the sale of REIT shares earned by an individual shareholder is not different to a corporate shareholder.

Withholding tax

For a foreign individual or company, the dividend paid by a REIT is subject to 22% withholding tax, but the withholding tax can be reduced depending on a tax treaty.

In general, withholding tax should be collected when the dividend is paid, but the dividend which is declared by a qualified REIT but not paid to its shareholders within three months from the date of declaration of the dividend is deemed to be paid at the end of such three-month period.

5 Treatment of foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Tax privileged with its Korean rental income.	No specific tax privilege.	No specific tax privilege.

Foreign REIT

A foreign REIT should report its Korean sourced rental income to the Korean tax authorities and should pay Korean income tax as if the REIT is a Korean resident (i.e. a Korean permanent establishment of the foreign REIT is created).

Corporate shareholder

A Korean corporate shareholder of a foreign REIT is subject to corporate income tax on the distribution received by the foreign REIT and can claim a foreign tax credit.

Individual shareholder

A Korean individual shareholder of a foreign REIT is subject to individual income tax on the distribution received by the foreign REIT and can claim a foreign tax credit. ■

Authors contact | South Korea

Jeong Hun You
Tel. +82 2 3770 0972
jeong-hun.you@kr.ey.com

EY Building a better working world

EPRA
Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA | REPORTING

European Public Real Estate Association

Global REIT Survey 2016

ASIA

Taiwan –REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT/REAT type
Taiwan REIT/REAT.	Enacted in 2003 Last amended in 2015.	Real Estate Securitisation Act.	Trust type.

In Taiwan the Real Estate Securitisation Act (RESA) was enacted in 2003 and was last amended in 2015. The REIT (Real Estate Investment Trust) and REAT (Real Estate Asset Trust) structures are legally regulated by the RESA. The REIT and REAT structures are both in the form of a trust. The distinction is that a REIT will accept funds from investors which will be invested in specified properties, whereas a REAT will accept properties from a settler and then issue beneficiary certificates representing those properties.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Taiwan	5	0	€ 2.007	0.00%

*Market cap rebased in EUR and 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
Trustee shall submit certain documents to the competent authority (the Financial Supervisory Commission) for approval or effective registration.

According to Article 6 of the RESA, to publicly-offer or privately-place REIT Beneficial Securities, the Trustee shall submit the following documents to the competent authority for approval or effective registration:

- REIT plan;
- REIT trust agreement;
- Comparison table of the REIT trust agreement against the model of a standard trust agreement published by the industry association;
- Prospectus or investment memorandum;
- Documentation evidencing that the operating and managerial personnel of the REIT Fund is in compliance with the regulations prescribed by the competent authority;
- Name list, documentation of qualifications, and appointment agreement of the Trust Supervisor, if any;
- Minutes of the resolution adopted by the Trustee's board of directors for the public offer or private placement of REIT Beneficial Securities;
- Explanations regarding the method of managing and disposing of the trust property: Where a real estate management institution is appointed to manage or dispose of trust property, the appointment agreement or other documentary proof is needed;
- Case examination tables filled out by the Trustee and reviewed by a CPA or lawyer;
- Legal opinion of a lawyer; and
- Other documentation as required by the competent authority.

For Trustee companies purely engaged in the business of a real estate investment trust or a real estate asset trust, the competent authority may prescribe rules for the minimum issued capital, shareholders' structure, qualifications of the person responsible for the company, the expertise and experience of the company's management, and its business activities.

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital for Trustee
REIT/ REAT	Trust Asset held by the Trustee.	Depending on the scope of business engaged by the trustee (ranging from NT$ 300 million to NT$ 2 billion).

Legal form

REITs and REATs are established as trusts and are administered by a Trustee. The term 'Trustee' refers to an institution that may manage and dispose of the trust property and publicly offer or privately place Beneficial Securities of the REIT/REAT, and is limited to the trust enterprises defined in the Trust Enterprise Act. In practice to date, Trustees have been local banks or branch offices of foreign banks in Taiwan.

According the Trust Enterprise Act, except for banks approved by the competent authority to conduct a trust business, a trust enterprise may only be a company limited by shares. The trustee of a REIT or REAT must also meet the following criteria:

- Be engaged in the trust business pursuant to the Trust Enterprise Act,
- Be established for at least three years,
- Have a credit rating no less than the rating requirement prescribed by the competent authority.

A trust company shall be a public company, which means that it is regulated under the Securities and Exchange Act as well as the Company Act and the shares to such trust company are publicly-offered.

Minimum initial capital

To apply to establish a trust company, the minimum paid-in capital of ranges from NT$ 300 million to NT$ 2 billion depending on the scope of business engaged by the Trustee. The capital contributions must be made in cash only. The minimum paid-in capital required for a trust company engaging only in real estate investment trust (REIT) business under the RESA is NT$ 1 billion; the minimum paid-in capital for a trust company engaging only in real estate asset trust (REAT) business is NT$ 300 million; and the minimum paid-in capital for a trust company engaging in both REIT and REAT business only is NT$ 1 billion.

2.3 Certificate holder requirements / Listing requirements

Unit holder requirements	Listing mandatory
With regard to a public offering, certificates shall be held by at least 50 persons for at least 335 days during a fiscal year; and any five certificate holders shall not own more than ½ of the total value of the certificates issued. With regard to a private placement, the investors should be banks, finance bills enterprises, trust enterprises, insurance enterprises, securities enterprises, other juristic persons or institutions approved by the competent authority; or a natural person, juristic person or fund that meet the requirements as prescribed by the competent authority; and the total investors of the natural person, juristic person and the fund above shall not exceed 35 persons in number.	No

Unit holder requirements

With regard to a publicly-offered REIT or REAT, certificates shall be held by at least 50 persons for at least 335 days during a fiscal year, it is not required for the 50 persons to be the original holders of certificates. Any five certificate holders shall not own more than 1/2 of the total value of the certificates issued – except for independent professional investors.

With regard to a privately-placed REIT or REAT, the investors should be banks, finance bills enterprises, trust enterprises, insurance enterprises, securities enterprises, other juristic persons or institutions approved by the competent authority; or a natural person, juristic person or fund that meet the requirements as prescribed by the competent authority. The total investors of the natural person, juristic person and the fund above, shall not exceed 35 persons in number.

According to Article 6 of the Standards for the Establishment of Trust Enterprises (SETE), the same person or same related parties respectively may not hold shares in the same trust company in an amount exceeding 25% of the total number of shares issued. The term ’same person‘ means the same natural person or the same juristic person; the term ’same related parties‘ includes the person, his or her spouse, blood relatives within the second degree, and enterprises of which the person or his or her spouse is a responsible person (i.e. Chairman, General Manager or other person in accordance with Taiwan Company Law); and the juristic person controls or is controlled by or is under common control with the juristic person shareholder.

Listing requirements

According to Article 3 of the SETE, the Trustee company shall be a public company, but there are no mandatory listing requirements.

The beneficial securities issued by the Trustee can be publicly offered or privately placed.

2.4 Asset level / activity test

Restrictions on activities / investments
Investment in real estate, related rights of real estate, securities of real estate, as well as other investment objects approved by the competent authority.

According to Article 17 of the RESA, the investment or utilisation of REIT funds shall be limited to the following objects:

1. existing real estate with stable income or real estate to be developed (including the foreign real estate held via a foreign special purpose vehicle wholly owned by the REIT Trustee and solely for the purpose of investment in foreign real estate);
2. related rights of real estate with stable income or of real estate to be developed. Such “rights” refer to the superficies and other rights approved by the competent authority;
3. securities relating to real estate;

4. permitted utilisation as prescribed in Article 18 of the RESA; or
5. other investment or utilisation objects approved by the competent authority.

The total investment amount of the real estate to be developed and the related rights of real estate shall not be greater than 15% of the net worth of the publicly-offered REIT or 40% of the net worth of the privately-placed REIT.

The total investment amount in foreign REITs, together with other beneficial certificates issued pursuant to RESA and Financial Asset Securitisation Act shall not be greater than 25% of the net worth of the REIT.

The total investment amount in single foreign REIT shall not be greater than 5% of the net worth of the REIT.

The total investment amount in foreign real estate, together with foreign REITs, shall be less than 50% of the net worth of the REIT.

The total investment amount of cash (including bank deposits), government bond and items 1 to 3 above shall not be lower than 75% of the net worth of the REIT.

The total investment amount in the securities set forth under the Securities and Exchange Act shall not be greater than 40% of its offering limit and NT$600 million, provided that the invetment in item 3 above is not restricted.

The total investment in the short-term commercial paper of any company shall not be greater than 10% of the net worth of the REIT as of the investment date.

The total amount of bank deposits, bank guarantees, bank acceptances or short-term commercial papers with any one financial institution shall not be greater than 20% of the net worth of the REIT or 10% of the net worth of the financial institution as at the investment date.

The total investment in certificates or asset backed securities issued or delivered by trustee institutions or special purpose companies shall not be greater than 20% of the net worth of the REIT as at the investment date.

According to Article 18 of the RESA, the utilisation of idle funds of the REIT Funds shall be limited to the following objects:
1. bank deposits;
2. purchase of government bonds or financial bonds;
3. purchase of treasury bills or negotiable certificates of time deposit;
4. purchase of commercial paper with a credit rating above a certain level or guaranteed or accepted by banks with a rating above the level stipulated by the competent authority; or
5. purchase of other financial products approved by the competent authority

2.5 Leverage

Leverage
50%

The Trustee may borrow money with the trust property serving as collateral pursuant to the terms of the REIT Fund contract; however, the purpose of the borrowed money is limited to the needs of real estate operations and the distribution of profits, interests or other proceeds.

The Trustee may grant real estate mortgage rights or other security interests over the trust property acquired with the borrowed money.

To ensure the financial health of the REIT Funds, the competent authority may prescribe an upper limit of the ratio regarding borrowings by the Trustee. When the borrowings exceed the upper limit of the ratio, the Trustee shall make adjustments to the level of borrowing within the time prescribed by the competent authority. Currently, the upper limit is 50% of the net worth of the REIT depending upon its credit rating.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
Pursuant to the REIT contract.	Pursuant to the REIT contract.	Within six months after the closing of the fiscal year.

According to Article 28 of the RESA, the proceeds derived from the REIT investment shall be distributed pursuant to the scheme provided in the REIT contract within six months after the closing of the fiscal year.

2.7 Sanctions

Penalties / loss of status rules
Transfer REIT/REAT to other trustee.

According to Article 55 of the RESA, if the trustee is not in compliance with the related law and regulations, the competent authority may appoint a new trustee for the REIT or REAT.

3 Tax treatment at level of the REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt	Tax-exempt	Refundable if the tax withheld exceeds the payable amount

Current Income

The Trustee is considered as a pass-through entity in terms of tax. Therefore, the income generated from the operation of the REIT funds is not subject to corporate income tax at the trustee level.

Capital gains

The Trustee is considered as a pass-through entity in terms of tax. Therefore, capital gains generated by the operation of the REIT funds are not subject to corporate income tax at the trustee level. However, the Land Value Increment Tax, applicable to the increase in sale value over purchase value of land, will be paid by the REIT upon the sale of the real estate.

Withholding tax

According to Article 89-1 of Income Tax Act, withholding tax on the revenue arising from the trust property shall be withheld at source in the name of the Trustee at the prescribed rate under the Income Tax Act. The withholding rate applied depends on the category of the income. Generally, interest income of REIT will be subject to a 10% withholding rate. Rental revenues received by the

Trustee will not be subject to withholding if the GUIs (Government Uniform Invoice) are issued by the Trustee or the tenants are individuals. Withholding tax withheld may be recovered by the Trustee from the tax authority if the tax withheld exceeds the payable amount.

Other taxes

The Trustee is the taxpayer of land value tax imposed on the registered owner of property under Article 3-1 of the Land Tax Act.

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
- There are registration fees for the formation of the Trustee. - There is no tax/fee/duty imposed on the issuance of the beneficial securities.

No duty is imposed on the issue of beneficial securities.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- The distribution shall be consolidated into gross corporate income since January 01, 2010. - Capital gains corporate tax-exempt, but subject to alternative minimum tax.	- Withholding tax final levy on distributions. - Capital gains tax-exempt.	- Final withholding tax of 10%.

Corporate unit holder

The distributed amount shall be the beneficiary's interest income.

Capital gains from the sale of beneficiary certificates are exempt from corporate income tax; however, such gain will be subject to the alternative minimum tax (AMT). Taiwan companies or foreign companies having permanent establishments entitling them to tax-exempt capital gains, claiming tax holidays or other tax incentives in Taiwan must calculate AMT income by using taxable income calculated in accordance with the regular income tax system, plus the add-back of certain tax-exempted income. Taiwan companies are required to compare their regular income tax against their AMT income tax, and pay whichever is higher. The AMT rate for companies is currently at 12% with an exemption if AMT income does not exceed NT$ 0.5 million.

Individual unit holder

The distributed amount shall be the beneficiary's interest income.

Capital gains from the sale of beneficiary certificates are exempt from individual income tax.

Withholding tax

Distributions to domestic individual unit holders will be subject to 10% withholding tax, which is the final tax for domestic individual unit holders of REITs (the distributions received by the unit holders are not included in the unit holders' personal income tax returns). The 10% withholding tax is not creditable against the unit holder's individual tax payable resulted from other sources of income. Distributions to domestic corporate unit holders will be consolidated into gross corporate income of the domestic corporate unit holders.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding tax
Final withholding tax of 15%.	Final withholding tax of 15%.	No tax treaty relief available.

Corporate unit holder/individual unit holder

Capital gains from the sale of beneficiary certificates by foreign unit holders are exempt from income tax.

Withholding tax

The distribution to foreign corporate unit holders or foreign individual unit holders will be subject to 15% withholding tax which is the final tax for the foreign unit holders, unless otherwise provided by available tax treaties with specific jurisdictions.

5 Tax treatment of foreign REIT and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
- Investment income subject to withholding tax. - Capital gains are tax free.	Corporate income tax.	Needs further clarification.

The tax implications for foreign REIT and its domestic unit holders are not clear under the current tax regulations. The following analysis is for reference purpose only.

Foreign REIT

The tax implications will depend on the nature of the investment income. Except for the preferential rate provided under applicable tax treaties, investment income (including interest and dividends from approved investments) will be subject to a 20% withholding rate. The capital gains attributable to Taiwan securities investments (including government bonds, corporate bonds and shares) are tax-exempt.

Corporate unit holder

For Taiwan-incorporated profit-seeking enterprises, the corporate income is assessed on a worldwide basis. Thus, Taiwanese companies shall include income distributed by the foreign REIT for their income tax purposes. Foreign tax relief is applicable under Article 3 of the Taiwan Income Tax Act.

Individual unit holder

Individual income tax is imposed only on Taiwan-sourced income. An individual's overseas investment income shall be subject to AMT since January 01, 2010. However, whether the income received from a foreign REIT investing in Taiwan assets would be considered as individual unit holder's non-Taiwan sourced income is in question. Further clarification is required from the Ministry of Finance. ■

Authors contact | Taiwan

Stacy Lo
Tel. +886 2 2718 3400 Ext. 3010
stacylo@lexgroup.com.tw

LEXCEL PARTNERS
ATTORNEYS AT LAW
A MEMBER OF LEXGROUP

Ethan Su
Tel. +886 2 2718 3400 Ext. 3000
ethansu@lexgroup.com.tw

EPRA

Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING
European Public Real Estate Association

Global REIT Survey 2016

ASIA

Thailand – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
PFPO	1992	Securities and Exchange Act B.E. 2535	Fund type
REIT	2007	Trusts for Transactions in the Capital Market Act B.E. 2550 Securities and Exchange Act B.E. 2535	Trust type

The Type I Property Fund, the property fund for public offering (PFPO), is the first type of real property mutual fund and is listed on the Stock Exchange of Thailand (SET).

The PFPO is established for the purpose of raising funds from the public to invest in income-producing real property (office buildings, service apartments, industrial factories, etc.).

In late 2012, the Office of Securities and Exchange Commission of Thailand (SEC) has announced a new type of the property trust fund called Real Estate Investment Trusts (“REIT”), trying to supplant the PFPO.

REIT is established to provide a modernized vehicle which differs in many respects from the PFPO to offer more flexibility and impose less restriction. While the PFPO is a juristic structure, REIT is a trust fund structure whereby the ownership of the property is held by a trustee. REIT has more advantages than the PFPO. For example, REIT can invest in real estate located overseas, and can borrow up to 60% of total assets if rated as investment grade.

The law regulating the PFPO and REIT is the Securities and Exchange Act B.E. 2535. It was enacted in 1992.

However, REIT is additionally governed by the Trusts for Transactions in the Capital Market Act B.E. 2550.

Sector summary*

Listing Country	Number of REITs/PFPOs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Thailand	63	0	€ 10.617	0.00%

EPRA *Market cap rebased in EUR and 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 / procedures

PFPO

Key requirements
- PFPO can only be established and managed by an Asset Management Company (AMC) through a Public Offering. - AMC must be licensed by the Thailand Ministry of Finance.

The Type I Property Fund can only be established and managed by an Asset Management Company (AMC) through a Public Offering (PO). Based on the SEC's policy, no new PFPO can be set up from 1 January, 2014. Additionally, the existing PFPOs are not allowed to extend their size thereafter.

The AMC must be licensed by the Thailand Ministry of Finance and regulated by SEC.

While the AMC is responsible for setting up and managing the fund, there is a fund supervisor ensuring that the AMC will operate the fund in accordance with the scheme. Also, an expert property service provider is occasionally appointed by AMC to carry on a day-to-day operation of the property.

REIT

Key requirements
- REIT can be established and managed by REIT Manager (RM) which can be AMC or the qualified company through a PO. - Trustee is responsible to monitor the activities of the RM.

REIT can be established by the trust settlor through giving a Trust Certificate (TC) to the beneficial owner. The trust settlor can be the same person as RM which can be AMC or the qualified company through a PO.

To be RM, the AMC or qualified company must be the company with expertise in real estate investment and management.

Based on the trust concept, RM is a responsible person for setting up and managing the REIT. Trustee, who has the legal right over the properties in terms of ownership, is significantly responsible to monitor the activities of the RM in order to ensure that the RM will operate the REIT in accordance with the scheme, receive profits from properties and distribute them to beneficial owners.

Trustee must be completely independent of RM, hold a trustee's license authorised by SEC and has registered capital of more than Baht 100 million.

2.2 Legal form / minimum initial capital

PFPO & REIT

Legal form	Minimum initial capital
PFPO: Mutual Fund REIT: Trust	Baht 500 million

Legal form
The PFPO is a mutual fund under Thai law, however, a REIT is a trust under the Trust Act.

Minimum initial capital
A capital of minimum Baht 500 million is required.

2.3 Unit holder requirements / Listing requirements

PFPO

Unit holder requirements	Listing mandatory
- At least 250 unit holders are required for an IPO. - At least 35 unit holders are required after SET listing[1]. - No more than 33.33% of unit holders can be related persons[2]. - No more than 49% of unit holders can be foreign investors, in case the property fund directly owns (i) land or (ii) a -condominium more than 49% of the total area including the area owned by other existing foreign owners[3].	Yes

Unit holder requirements

The minimum number of unit holders is 250 unit holders for an IPO and 35 unit holders after listing in the SET.

Former property owners and related persons i.e. three layers above and below (of at least 10% shareholding at each layer) the institutional investors, shall not acquire more than 1/3 of total units sold.

The 'small lot first' practice is in place for units allocation. This practice means the fund units will be allocated to those subscribed in small lots first, before being allocated to those subscribed in 'big' lots.

Listing requirements

Listing at the SET is mandatory.

REIT

Unit Holder requirements	Listing mandatory
- At least 250 unit holders are required for an IPO and at least 20% of the units must be sold to public investors - At least 35 unit holders are required after SET listing. - At least 15% of the units should be held by public investors in each tranche. - No more than 50% of unit holders can be related persons[4]. - Foreign investor limit must be complied with the laws related to the real estate invested by the REIT.	Yes

Unit holder requirements

The minimum number of unit holders is 250 for an IPO and 35 after listing in the SET.

Former property owners and related persons shall not acquire more than 50% of total units sold of each tranche (if any).

No specific percentage for the foreign investment in REIT is provided under the SEC rules. However, if the REIT invests in more than one project, the percentage of foreign investment in the REIT is capped at the lowest percentage allowed by the related laws for foreign ownership among the projects.

[1] No. 77 (1) of the SEC's Regulation No. SorNor. 25/2552 effective from August 16, 2009 onwards.
[2] SEC's Regulation No. SorNor. 26/2552 effective from August 16, 2009 onwards.
[3] SEC's Regulation No. SorNor. 53/2552 dated October 29, 2009 effective from November 16, 2009 onwards.
[4] SEC's Regulation No. TorJor. 49/2555 dated November 21, 2012 effective from January 01, 2013 onwards.

Free float

At least 15 % of the unit must be held by public investors in each tranche.

Listing requirements

Listing at the SET is mandatory.

2.4 Asset levels / activity test

PFPO

Restrictions on activities / investments
- 75% of the net asset value invested in property. - Property must be at least 80% complete. - Property must be located in Thailand. - The PFPO cannot purchase real property in dispute. - Property insurance required. - AMC must conduct feasibility studies before investment decisions are made. - AMC must appoint a property appraiser, property prices are based on appraisals. - Property re-evaluation every two years.

No less than 75% of the net asset value must be invested in property. The fund may only invest in completed property or property that is at least 80% complete. Also, the PFPO may only invest in property which is located in Thailand. Real property in dispute is not allowed to be purchased or leased. Additionally, property insurance is required.

The fund can generate capital gain income of at most 25% of the total income.

The AMC is required to conduct feasibility studies for investment decision-making. Acquisition and disposal prices must be based on an appraisal price. To purchase/dispose property, the AMC must appoint a property appraiser approved by the SET to appraise the property and disclose the results to investors. Properties must be revalued every two years.

A PFPO may invest in subsidiaries.

REIT

Restrictions on activities / investments
- 75% of the net asset value invested in real estate ready to generate income. - Investment in any type of real estate is permissible, except the real estate involving illegal or immoral business. - Overseas real estate is allowed to invest. - No more than 10% of total assets is allowed to invest in the real estate under construction. - Indirect investment through at least 99% REIT's own subsidiary may be made. - Property re-evaluation every two years[5].

No less than 75% of the net asset value must be invested in real estate ready to generate income.

No restriction on type of real estate investment is imposed while investment overseas is allowed. However, the real estate involving illegal or immoral business is not allowed.

The fund may invest in project under construction (Green field project) up to 10% of the net asset value.

[5] SEC's Regulation No. SorRor. 26/2555 dated November 21, 2012 effective from January 01, 2013 onwards.

The RM is required to conduct feasibility studies and due diligence for investment decision-making[6]. Acquisition and disposal prices must be based on an appraisal price. Properties must be revalued every two years.

From April 16, 2016, indirect investment through at least 99%[7] REIT's own subsidiary may be made, providing that REIT subsidiary must also comply with REIT investment regulations.

2.5 Leverage

PFPO

Leverage
Borrowing is allowed under the specified conditions not more than 10% of its total assets.

The PFPO is allowed to borrow not more than 10% of its total assets. However, AMC is required to specify the borrowing in the PFPO Management Project and Prospectus and to comply with the specified conditions of SEC[8].

REIT

Leverage
Borrowing is allowed not more than 35% of its total assets and extended to 60% of its total assets if rated as investment grade.

REIT may apply for a loan facility up to 35% of its total assets and the limit will be shifted up to 60% of its total assets if rated as investment grade.

2.6 Profit distribution obligations

PFPO & REIT

Operative income	Capital gains	Timing
90% of net profit.	90% of net profit.	Within 90 days of the end of each accounting period.

Operative income
At least 75% of the total income of the fund must be generated from rental income. At least 90% of the net profit must be distributed to unit holders within 90 days after the end of each annual accounting period[9].

Capital gains
Also at least 90% of capital gains are to be distributed. As a maximum, 10% of the net profit can be retained by the fund without being distributed to the unit holders.

[6] SEC's Regulation No. SorChor. 29/2555 dated November 21, 2012 effective from January 01, 2013 onwards.
[7] SEC's Regulation No. TorJor. 49/2555 dated November 21, 2012, amened on March 30, 2016.
[8] SEC's Regulation No. KorNor. 11/2552 dated July 20, 2009 effective from August 16, 2009 onwards.
[9] SEC's Regulation No. KorNor. 26/2555 dated November 21, 2012 effective from January 01, 2013 onwards.

2.7 Sanctions

PFPO & REIT

Penalties / loss of status rules
Units may be delisted as listed securities if they fail to the unit holder requirements.

3 Tax treatment at the level of REIT

REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Not subject to income tax, but a 12.5% Land and Building tax on rental income of immovable properties levied.	Tax-exempt	N/A

Current income
A REIT is not subject to income tax, but it pays a 12.5% Land and Building Tax on the annual rental income of immovable properties.

Capital gains
REIT is not subject to income tax.

Withholding tax
REIT is not subject to withholding tax.

Other taxes
REIT should be subject to VAT on service income, sale of goods and movable properties. Likewise, income from the disposal of immovable properties are subject to Specific Business Tax (SBT). REIT is also subject to Stamp Duty.

REIT has to pay a once-off registration fee of 1% on the amount of rental fee of immovable properties (only if the lease period is more than three years); and 2% transfer fee of the official appraised price for the income on disposal of immovable properties. The official appraised price refers to the value of the immovable properties (according to its type and location) assessed by the Land Department.

Accounting rules
REIT is to observe the Thai Generally Accepted Accounting Principles.

PFPO

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
- Not subject to income tax, but a 12.5% Land and Building tax on rental income of immovable properties levied. - From May 24, 2017, PFPO will be subject to VAT, SBT and SD.	Tax-exempt	N/A

Current income

PFPO is not subject to income tax, but it pays a 12.5% Land and Building Tax on the annual rental income of immovable properties.

Capital gains

Capital gains are not taxed at the level of PFPO.

Withholding tax

On distributions to a PFPO, no withholding tax is levied.

Other taxes

Service income from movable and immovable properties as well as income from the disposal of properties is exempt from the VAT. Likewise, interest income and the income from the disposal of immovable properties are exempt from the Specific Business Tax (SBT). The PFPO is also exempt from the Stamp Duty.

However, from May 24, 2017, the above tax exemption, i.e. VAT, SBT and SD will be cancelled and PFPO should be subject to VAT, SBT and SD[10].

The PFPO is to pay a once-off registration fee of 1% on the amount of rental fee of immovable properties (only if the lease period is more than three years); and 2% transfer fee of the official appraised price for the income on disposal of immovable properties. The official appraised price refers to the value of the immovable properties (according to its type and location) assessed by the Land Department. The 2% transfer fee is reduced to 0.01% for the transfer of immovable properties to the property fund[11].

Accounting rules

The PFPO is to observe the Thai Generally Accepted Accounting Principles.

3.2 Transition regulations

Conversion into REIT status
- No direct conversion to REIT status is allowed. - Income incurred from the conversion shall be exempted from the tax. - PFPO shall be exempted from VAT, SBT and SD for the value of the tax base, income, an execution of instrument, respectively, incurred from the conversion.

No direct conversion to REIT status is allowed. However, a PFPO can perform a conversion by selling its assets to REIT.

The real estate assets must be sold by an existing entity to REIT at market value.

Unit holders shall be exempted from the Income Tax (Personal Income Tax or Corporate income tax) on income incurred from the conversion.

PFPO shall be exempted from VAT, SBT and SD for the value of the tax base, income, an execution of instrument, respectively incurred from conversion or creation of real rights or any property rights according to the conversion.

[10] Royal Decree issued under the Revenue Code governing exemption from Value Added Tax (No. 608) B.E. 2559 dated May 24, 2016;
Royal Decree issued under the Revenue Code governing designation of business exempt from Specific Business Tax (No. 609) B.E. 2559 dated May 24, 2016; and
Royal Decree issued under the Revenue Code governing exemption from Revenue Taxes (No. 610) B.E. 2559 dated May 24, 2016.

[11] Ministerial Regulation No. 47 (B.E.2541) Issued Under the Land Code B.E.2497

The aforesaid exemption shall be applicable to the conversion made between February 25, 2016 and December 31, 2016[12].

3.3 Registration duties

Registration duties
Reduced transfer fee of 0.01%.

In the case of selling an immovable property, there will be a 2% transfer fee levied on the appraised value of the property. However, if the property is sold to a property fund, such fee can be reduced to 0.01%, capped at 100,000 THB. In practice, the responsibility of this property transfer fee would depend on the negotiation between the seller and the buyer, and if the negotiation is finalised, the clause regarding this property transfer fee should be stipulated in the sale and purchase agreement.

In the case of leasing an immovable property, there will be a 1% registration fee levied on the total rental income if the lease period is more than three years.

4 Tax treatment at the unit holder's level

REIT

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- Profit distribution from a REIT must be included in the company 's income and subject to CIT at the rate of 20% - The same tax implications on profit distribution are applied to capital gains. (CIT 20%)	- Income tax of 5-35%. - If unit holder allows the REIT to deduct 10% withholding tax, this withholding tax is final levy. - Resident individual TC holder will be exempt from tax on the gain from sale of trust unit as the TC is traded in the SET.	- 10% withholding tax on distributions to an individual unit holder. - 10% withholding tax levied on distributions to a corporate unit holder.

Corporate unit holder

The profit distribution from a REIT to a corporate unit holder will be included in the company's income and subject to CIT at the rate of 20%[13].

Similar to the profit distribution, 20% income tax is levied on capital gains.

Individual unit holder

Individual unit holders are to pay 5-35% income taxes on profit distribution. If the unit holder allows the trustee to deduct 10% withholding tax upon payment, the withholding tax is the final levy.

Withholding tax

If the individual unit holder allows the trustee to deduct 10% withholding tax upon payment, the withholding tax is the final levy. Otherwise individual tax rates are applicable.

10% withholding tax is levied on a corporations TC holder.

[12] Royal Decree issued under the Revenue Code governing exemption from Revenue Taxes (No. 599) B.E. 2559 dated February 24, 2016

[13] Corporate income tax rate currently reduced to 20% permanently which beginning on or after January 01, 2016.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder
- 10% withholding tax on profit distribution from REIT - 15% withholding tax on capital gains	- 10% withholding tax on profit distribution from REIT - Non- Resident individual TC holder will be exempt from tax on the gain from sale of trust unit as the TC is traded in the SET.

Corporate unit holder

The profit distributed from a REIT will be regarded as income under 40(4) (b) of Thai Revenue Code. Hence, the TC holder which is a foreign company receiving the profit distributed from the REIT will be subject to WHT at the rate of 10%.

In case a TC holder is a foreign company, the gain received by the TC holder from selling the trust unit will be subject to WHT at the rate of 15% in Thailand.

Individual unit holder

An individual TC holder, both resident and non-resident, should be subject to WHT on profit distributed from REIT at the rate of 10%.

An individual TC holder, both resident and non-resident, will be exempt from tax on the gain from sale of trust unit as the TC is traded in the SET.

PFPO

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- Generally distributions 50% (unlisted company) or 100% (listed company) tax exempt. - 20% income tax on capital gains.	- Income tax of 5-35%. - If unit holder allows the fund to deduct 10% withholding tax, this withholding tax is final levy. - Capital gains tax-exempt.	- 10% or 0% withholding tax on distributions to an individual unit holder. - No withholding tax levied on distributions to a corporate unit holder.

Corporate unit holder

Corporate unit holders may receive a 50% or a 100% exemption on income taxes on profit distribution. A corporate unit holder is 100% exempt if it is a listed company in SET, and 50% exempt if it is a non-listed company and the company holds units in the fund at least three months before and after the distribution of the share of profit. Otherwise normal corporate tax rules apply.

A 20% income tax is levied on capital gains[14].

Individual unit holder

Individual unit holders are to pay 5-35% income taxes on profit distribution. If the unit holder allows the fund to deduct 10% withholding tax upon payment, the withholding tax is final levy.

Individuals are exempt from income tax on capital gains made from disposal of the fund units.

[14] Corporate income tax rate currently reduced to 20% permanently which beginning on or after January 01, 2016.

Withholding tax
If the individual unit holder allows the fund to deduct 10% withholding tax upon payment, the withholding tax is final levy. Otherwise individual rates are applicable. Capital gains made by an individual are exempt from withholding tax. Withholding tax is not applicable to corporations.

4.2 Foreign unit holder

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

Corporate unit holder
No Thai taxes are imposed on foreign corporate unit holders on income or on capital gains. The income is viewed by the Revenue Department as commercial income under Section 40(8) of the Revenue Code and not subject to withholding tax when it is paid to a beneficiary overseas. There is no specific exemption, but foreign companies are outside the Thai tax regime.

Individual unit holder
No Thai taxes are imposed on foreign individual unit holders on income or on capital gains. The income is viewed by the Revenue Department as commercial income under Section 40(8) of the Revenue Code and not subject to withholding tax when it is paid to a beneficiary overseas. There is no specific exemption, but foreign individuals are outside the Thai tax regime.

Withholding tax
No withholding taxes are imposed on overseas investors.

5 Tax treatment of foreign REIT and its foreign unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Same as other foreign companies.	N/A	N/A

Foreign REIT
The Thai tax treatment of a foreign REIT will be the same as that of another foreign individual or company, provided that it is considered as a non-resident entity as supported by the certificate of residency issued by the relevant foreign tax authority.

Corporate unit holder
Given that it is a foreign unit holder of foreign REIT, no Thai tax would be applicable on any types of income paid from foreign REIT to its foreign unit holders.

Individual unit holder
Given that it is a foreign unit holder of foreign REIT, no Thai tax would be applicable on any types of income paid from foreign REIT to its foreign unit holders. ■

Author contact | Thailand

Wirat Sirikajornkij
Tel. +66 2 677 2423

KPMG cutting through complexity™

EPRA

Square de Meeus 23B • 1000 Brussels • Belgium
www.epra.com • info@epra.com

EPRA REPORTING

European Public Real Estate Association

FOR ANY QUESTIONS OR FEEDBACK RELATED TO THIS SURVEY, PLEASE CONTACT:

Katarzyna Jasik

EPRA Communications

T +32 (0)2739 1029

E k.jasik@epra.com

W www.epra.com

PRODUCTION EDITOR:

Katarzyna Jasik

EPRA Communications

DESIGN AND LAYOUT:

Marek Moggré

M-space

W www.m-space.nl

Len 't Hoen

LenShape

W www.lenshape.nl

Caveat: All information in this paper is based on our research as at July 2016. No reliance should be placed on nor should decisions be taken on the basis of the contents of this brochure. Any party or individual involved in the preparation of this brochure shall bear no responsibility for the consequences of any action taken on the basis of informationcontained herein, including errors and omissions. Updated August 2016.