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European Public Real Estate Association

Global REIT Survey 2016

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

Philip Charls

EPRA CEO

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

EPRA REPORTING

European Public Real Estate Association

Global REIT Survey 2016

EUROPE

Belgium – SICAFI

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
SICAFI	1995	- Royal Decree of December 07, 2010. - Law of April 19, 2014. - Other tax laws.	Corporate type.
SIR	2014	- Law of May 12, 2014. - Royal Decree of July 13, 2014. - Other tax laws.	Corporate type.

Under the current Belgian REIT regime, an undertaking investing in real estate can either take the form of (i) a SICAFI/Vastgoedbevak (*société d'investissement en immobilier à capital fixe / vastgoedbeleggingsvennootschap met vast kapitaal*), (ii) a SIR/GVV (*société immobilière réglementée / gereglementeerde vastgoedvennootschap)* or (iii) stay unregulated (meaning that only the laws applicable to companies in general, as set forth in the Companies Code will apply). The possibility to take the form of a SIR has been introduced by the Law of May 12, 2014 (as further implemented by the Royal Decree of July 13, 2014) to allow undertakings investing in real estate that wish to opt for a regulated status (and thus benefit from a preferential tax regime) to avoid the burden of compliance with the Belgian AIFM Law[1]. However, if a real estate company meets the definition of a collective investment undertaking as laid down in the AIFM Law (and wishes to publicly offer its interests), such a company will have no choice but to take the form of a SICAFI. A real estate company will qualify as a collective investment undertaking if it is considered to raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors. The different elements of such a definition are further refined by the ESMA Guidelines on Key Concepts of the AIFM Directive. Both the SICAFI and SIR are subject to specific tax rules.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector Mkt Cap (EUR€m)	% of Global REIT Index
Belgium	17	7	€ 11.027	0.57%

Top five REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Cofinimmo	€ 2.227	17.66%	3.17%	0.20%
Warehouses De Pauw SCA	€ 1.268	33.77%	4.34%	0.12%
Befimmo SA	€ 1.046	11.21%	5.68%	0.10%
Aedifica	€ 900	33.82%	2.19%	0.08%
Intervest Offices & Warehouses	€ 364	22.24%	6.72%	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.*

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

2 Requirements

SICAFI

2.1 Formalities / procedure

Key requirements
- Licence from the Financial Service and Markets Authority ("FSMA"). - SICAFI List.

Firstly, the SICAFI must obtain a licence as a collective investment undertaking from the FSMA. Then it can be registered on the list of Belgian recognised investment institutions ("SICAFI List"). The FSMA must approve or verify the following:

- the articles of association and the fact whether the company has been constituted for an indefinite term;
- if it has an appropriate administrative, accounting, financial and technical organisation which ensures an independent management;
- that its directors and the persons in charge of daily management, have the appropriate professional reliability and experience to ensure an independent management;
- that at least two persons in the board of directors supervise the daily management;
- that a minimum investment budget has been determined for a period of three years as of the registration on the SICAFI List;
- that it has called upon one or more independent real estate experts which are responsible for the valuation of the invested real estate. Such experts have to be chosen from a list annexed to the application and may not have direct links to the so-called "promoter" of the SICAFI;
- that the real estate expert has the required professional reliability and experience, including the organisation;
- that it complies with the rules on risk diversification;
- that an entity in charge of the financial services is appointed;
- that the identity of its so-called "promoter" is known and the confirmation of its obligations;
- that it engages to comply with the listing requirements.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
- Belgian public limited liability company. - Belgian limited partnership with shares.	EUR 1.25 million

Legal form

A SICAFI must be either a public limited liability company (*société anonyme, SA / naamloze vennootschap, NV)* or a Belgian limited partnership with shares (*société en commandite par actions, SCA / commanditaire vennootschap op aandelen, Comm VA*). The statutory seat and general management of the SICAFI must be located in Belgium.

A foreign entity cannot qualify as a Belgian SICAFI. A foreign entity has to comply with approximately the same rules as a Belgian SICAFI as it cannot enjoy the European passporting regime. These foreign entities must therefore register with the FSMA and comply with the aforementioned regulations.

Minimum share capital
The required minimum share capital amounts to EUR 1.25 million. In principle, each shareholder has an equal right to participate in the profits of the SICAFI. However, different categories of shares may be issued if allowed by the articles of association.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
No requirements.	Yes

Shareholder requirements
There are no specific shareholder conditions to fulfil in order to achieve SICAFI eligibility.

Listing requirements
All shares of a Belgian SICAFI must be listed on a stock exchange, with a minimum of 30% free float. Listing can only occur after a registration on the SICAFI List and after publication of a prospectus. There are specific prospectus requirements for SICAFIs in Belgium. Foreign entities are subject to largely the same rules as Belgian SICAFIs and cannot enjoy the European passporting regime. Such entities may maintain their home stock exchange listing next to their Belgian listing.

2.4 Asset level / activity test

Restrictions on activities / investments
- The principal activity must be passive investments in real estate and property rental. - A maximum of 20% of the total assets can be invested in one real estate project (ensemble immobilier / vastgoedgeheel) (“risk diversification”). - Developments are allowed, but cannot be sold within five years of completion. - The SICAFI is allowed to hold shares in subsidiaries investing in real estate, including institutional SICAFIs. - As an exception, the SICAFI is allowed to invest in transferable securities. - The SICAFI may hold hedging instruments (covering its financial risk), but excluding speculative transactions

The SICAFI may only invest in ‘immovable property’. This includes the following:

- real estate and rights *in rem* on real estate;
- shares with voting rights in real estate companies controlled either exclusively of jointly;
- option rights on real estate;
- shares in public SICAFIs and in institutional SICAFIs controlled either exclusively or jointly;
- the units of a foreign collective investment undertaking investing in real estate and registered on the Belgian FSMA list of foreign collective investment undertakings;
- the units of a collective investment undertaking investing in real estate, established in the EEA and subject to an equivalent control;
- real estate certificates;
- subject to limitations, rights resulting from financial leases and analogous rights of use

The SICAFI is not obliged to invest in Belgian real estate.

The Belgian Royal Decree of December 07, 2010 states that a SICAFI may not invest more than 20% of its total assets into one single real estate project. Under certain specific conditions it is possible to obtain a derogation of this rule from the FSMA.

A SICAFI may develop real estate, provided that the SICAFI maintains the completed developments for at least five years. However, if the development activities are ancillary, the SICAFI may transfer the real estate prior to five years.

As an exception, the SICAFI is allowed to invest in transferable securities to the extent that the articles of association authorise such investments. In such cases, investments in transferable securities must be considered additional or temporary. Belgian law does not provide for any specific minimum or maximum requirements. The FSMA will exercise its discretion when examining the SICAFIs articles of association.

The SICAFI may hold hedging instruments covering its financial risk to the extent that the articles of association authorize such transactions. Speculative transactions are not allowed. The hedging strategy must be disclosed in the SICAFIs financial reports.

The public SICAFI is allowed to hold shares in an institutional SICAFI. The status of institutional SICAFI is not optional. The public SICAFI must choose between having all its subsidiaries subject to this status or none.

2.5 Leverage

Leverage
- Loans limited to 65% of the total assets (under specific conditions loans limited to 33%). - Interest expenses limited to 80% of the total income. - Mortgage (or other collateral) is limited to 50% of the global fair value of the "immovable property" and to 75% of the value of one "immovable property"

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

In order to guarantee a pro-active management, the SICAFI must present a financial plan to the FSMA as soon as its consolidated debt-to-asset ratio exceeds 50%.

In case the SICAFI has obtained a derogation to the risk diversification rule, the debt-to-asset ratio may not exceed 33%.

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

2.6 Profit distribution obligations

	Capital gains	Timing
80% of net profit.	Not included in the distribution obligation, if reinvested within a four-year time period.	Annually.

Operative income

Subject to the provisions of the Belgian Company code on capital protection, Belgian legislation requires the SICAFI to distribute on an annual basis the positive difference between (i) 80% of its net operational result and (ii) the net decrease of its indebtedness. No distribution is allowed if the (statutory or consolidated) indebtedness ratio exceeds 65% or will exceed this limit as a result of the distribution. The rules of profit distribution apply to the SICAFI, regardless whether it is a domestic entity or not.

If the subsidiary of a SICAFI also qualifies as a SICAFI itself, the subsidiary is in principle subject to the same profit distribution obligations. Under certain specific circumstances deviating rules apply with regard to the profit distribution by the institutional SICAFI.

The SICAFI may decide to distribute its profit by way of an optional dividend. The articles of association of the SICAFI must contain certain provisions in this regard.

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

2.7 Sanctions

Penalties / loss of status rules
Various penalties (not necessarily resulting in the loss of SICAFI status).

If the FSMA concludes that the SICAFI does not observe the laws, regulations and/or its articles of association, this does not necessarily lead to a loss of SICAFI status. Instead, the FSMA may, for example, make the necessary recommendations to the SICAFI to remedy to the situation. Or, the FSMA might impose temporary sanctions (for example, a public notice). The FSMA could also ask the market authorities to suspend the listing of the shares of the transgressing SICAFI. The ultimate penalty would be to omit the SICAFI from the SICAFI List. The SICAFI would then lose its status and would become a regular real estate company. The official loss of status would start as of the date of notification. Additionally, if there is an intentional infringement to certain laws and regulations, a prison sentence and/or a fine could be imposed on the directors of the SICAFI, as well as on the "promoter" of the SICAFI.

2.8 Institutional SICAFI

An institutional SICAFI is a SICAFI controlled either exclusively or jointly by a Belgian public SICAFI. The other shareholder(s) needs to be either (an) institutional or (a) professional investor(s).

The institutional SICAFI is also subject to the supervision of the FSMA.

In principle, the institutional SICAFI is subject to the same regulatory regime as the public SICAFI. However, given the fact that the shares of an institutional SICAFI are held by institutional or professional investors, the regulations with regard to an institutional SICAFI are less stringent.

2.9 Qualification as an AIF

As a collective investment undertaking, a SICAFI qualifies as a (publicly offered) alternative investment fund (AIF). This means that the SICAFI not only has to adhere to the Royal Decree of December 07, 2010, the provisions of which are explained above, but equally, since it qualifies as a self-managed AIF, has to obtain a license as an alternative investment fund manager (AIFM). Although the AIFM Directive only requires self-managed AIFs (and management companies of AIFs) to obtain a licence if they exceed certain thresholds with regard to their assets under management, the Belgian legislator has opted to subject all self-managed AIFs that publicly offer their interests in Belgium to the requirement of obtaining a licence as an AIFM.

SIR
As explained above, the SICAFI qualifies as a publicly offered AIF which brings it into the scope of the Belgian AIFM Law. Since this entails an additional compliance burden, the Belgian legislator has introduced a new REIT form, namely the SIR. The new regime for SIRs is optional. Real estate companies not qualifying as a collective investment undertaking can either choose to take the form

of a SIR or stay unregulated. Existing SICAFIs were granted four months after the entry into force of the Law of May 12, 2014 (i.e. 16 July 2014) to apply for a licence as a SIR or apply for a licence as an AIFM. If a SICAFI opts for a licence as a SIR, this will entail the adaptation of its articles of association to the requirements of Article 4 of the Law of May 12, 2014 (see below), so that it no longer operates as a collective investment undertaking.

The requirements for SIRs are modelled after the requirements for SICAFIs and thus mainly follow the provisions of the Royal Decree of December 07, 2010. The SIR must equally be authorized by the FSMA, must equally take the form of either a public limited liability company or limited partnership by shares and must equally have a share capital of at least EUR 1.2 million. The SIR is also made subject to similar leverage limits, risk diversification requirements and profit distribution obligations as are applicable to the SICAFI. As is the case for the SICAFI, only a Belgian entity can take the form of a SIR. The (public) SIR is equally required to list, with a minimum of 30% free float.

An important difference between the SICAFI and the SIR is, however, that the latter is not an AIF, i.e. an entity that "raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors". Such difference is clearly reflected in Article 4 of the Law of May 12, 2014. Pursuant to such article, the activities of a SIR may only consist of (a) placing, directly or through a company in which it participates in accordance with the law and its implementing regulations, immovable property at the disposal of users and (b) if applicable, possessing "immovable property"[2] as mentioned in Article 2, 5° vi) to x) of the Law of May 12, 2014 within the limits of Article 7, b) of that same law[3]. The SIR must thus mainly engage in an operational activity instead of an investment activity. The SIR does therefore not follow a defined investment policy, but has a business strategy based on creating long term value (instead of engaging in buying in order to sell within the framework of a defined investment policy). To that extent, Article 4 of the Law of May 12, 2014 requires the SIR to (a) exercise its activities itself, (b) maintain direct relationships with its clients and suppliers and (c) have, for the purpose of exercising its activities as described above, operational teams at its disposal that make up an important part of its work force. The fact that the SIR engages in an operational/commercial activity, also entails that, contrary to what is the case for the SICAFI, the SIR is not exclusively managed in the interest of the shareholders, but must take into account the overall interest of the company.

The Law of May 12, 2014 also provides for the possibility of an institutional regulated real estate company or SIRI/institutional GVV (*société immobilière réglementée institutionnelle/institutionele*

[2] Like the Royal Decree of December 07, 2010, the Law of May 12, 2014 defines what constitutes "immovable property". Immovable property is:
(i) real estate and rights in rem on real estate, with the exclusion of real estate of the following nature: forestry, agriculture or mining industry;
(ii) shares with voting rights in real estate companies controlled either exclusively or jointly;
(iii) option rights on real estate;
(iv) shares in public SIRs and in institutional SIRs controlled either exclusively or jointly;
(v) rights arising out of contracts pursuant to which the SIR leases one or more goods or is granted anologous rights of use;
(vi) shares in public SICAFIs;
(vii) units of foreign collective investment undertakings investing in real estate and registered on the Belgian FSMA list of foreign AIFs;
(vii) units of collective investment undertakings investing in real estate, established in the EEA and subject to an equivalent control;
(ix) shares issued by companies (i) with legal personality; (ii) governed by the law of another EEA member state; (iii) the shares of which are admitted to trading on a regulated market and/or are subject to a regime of prudential supervision; (iv) the main activity of which consists of the acquisition or establishment of immovable property in anticipation of placing such immovable property to the disposal of users, or the direct or indirect possession of participations in companies with a similar activity; and (v) that are exempted from taxes on the revenues arising out of the profit that results from the activty mentioned under (iv) above, provided certain legal obligations are complied with, and that are at least obliged to distribute part of their revenues among their shareholders (i.e. "Real Estate Investment Trusts" or REITs);
(x) real estate certificates.

[3] Pursuant to Article 7, b), the SIR may possess "immovable property" as mentioned in Article 2, 5° vi) to x) of the law (see footnote 1 above), insofar the real value thereof does not exceed 20% of the total assets. The limit of Article 7, b) is to be distinguished from the limits of Article 30 of the same law, pursuant to which, as is the case for the SICAFI, only a maximum of 20% of the total assets can be invested in one real estate project.

gereglementeerde vastgoedvennootschap), the shareholders of which qualify as "eligible investors". As is the case for the institutional SICAFI, the SIRI is controlled either exclusively or jointly by a (public) SIR.

3 Tax treatment at SICAFI level

Unless indicated otherwise, the tax treatment applies to a public SICAFI as well as to an institutional SICAFI and a SIR.

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
The eligible rental income is excluded from the taxable basis.	Tax-exempt.	N/A

Current income

Theoretically, the SICAFI is subject to the Belgian corporate income tax at the rate of 33.99%. However, the taxable basis is reduced (i.e. *de facto* zero taxable basis). A SICAFI is taxed on an accrual basis only on the sum of the non arm's length benefits received and the expenses and charges due that are not deductible as expenses (other than reductions in value and capital losses on shares). The taxable basis does thus not include rental income or other types of business income.

Due to the fact that the SICAFI enjoys its own favourable tax regime which allows for a very low tax basis, it is not entitled to other benefits. For example, it is not able to apply reduced tax rates. The SICAFI is also not allowed to take advantage of the Belgian participation exemption nor of the Belgian notional interest deduction regimes. Additionally, Belgian law explicitly excludes a SICAFI from the foreign tax credit on foreign source income.

Capital gains

Capital gains are not taxable, provided they are received at arm's length terms.

Withholding tax

In principle, non-Belgian source dividends and Belgian and non-Belgian source interest distributed to a SICAFI are exempt from Belgian withholding tax. Belgian source interest distributed to an institutional SICAFI is subject to Belgian withholding tax. Any withholding taxes levied should be creditable and refundable.

Due to the fact that the SICAFI (public and institutional) is subject to corporate income taxes, the SICAFI will qualify as a Belgian resident. It will thus qualify for double taxation treaties, which is a major advantage.

Other taxes

The special tax regime of the SICAFI does not affect applicable local income tax.

Furthermore, the SICAFI is also subject to an annual tax of 0.0925% on its inventory value at the end of the financial year. The institutional SICAFI is subject to an annual tax of 0.01%.
The SICAFI is subject to Belgian real estate withholding taxes on the Belgian real estate that it owns, possesses, leases, has building rights to or enjoys the use thereof.

Accounting rules

The IFRS rules are applicable to the SICAFI.

3.2 Transition regulations

Conversion into REIT status
- Real estate assets are to be assessed at market value, excluding Registration Duties. - 16.995% tax on capital gains.

All capital gains that occur upon SICAFI recognition or upon reorganisation (for example, in the case of a merger) are taxable at the specific rate of 16.995% (i.e. 16.5% + 3% crisis tax).

3.3 Registration duties

Registration duties
- No capital duty. - Real property transfer tax of 10% or 12.5% (may be reduced to 5% if the SICAFI buys real estate).

No capital duty is due.

Depending on the location of the real estate, SICAFI real estate sales are subject to the 10% or 12.5% real estate transfer tax. The purchase of Belgian real estate by a SICAFI may be subject to a reduced 5% real estate transfer tax (instead of the usual 10% or 12.5%). If the purchase or sale is subject to VAT, then no real estate transfer tax is levied.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Dividends and capital gains are fully taxable, but if dividend participation regime applies, dividends are 95% tax free and capital gains are in principle taxed at a rate of 0.412%.	- Withholding tax on dividends at 15%/27% is the final tax burden. - In principle, capital gains are tax-exempt.	- In principle, 27% withholding tax. - As from 1 January 2017, 15% withholding tax for SICAFI investing in Belgian real estate for healthcare. - Participation privilege for domestic corporate shareholders.

Corporate shareholder

Dividends received and capital gains realised are fully taxable (33.99%). However, if the Belgian dividend participation exemption regime applies, dividends benefit from a 95% tax deduction while capital gains are taxed at a rate of 0.412% (however an exemption applies if the capital gain is realised by a so-called "small and medium sized company").

Under the Belgian corporate income tax law, the following requirement must be met in order to qualify for the participation exemption on dividends:

- the subject-to-tax requirement.

Under the Belgian corporate income tax law, the following requirements must be met in order to qualify for the participation exemption on capital gains:

- a minimum uninterrupted holding period of at least one year in full legal ownership. If not, the capital gain will be taxable at 25.75%.
- the subject-to-tax requirement.

The SICAFI qualifies as an investment company which, although in principle is subject to a tax regime that meets the standards set out in the country where it is resident for tax purposes, benefits from a tax regime that deviates from the normal one applicable there. Therefore, the SICAFI does not actually fulfil the subject-to-tax requirement as mentioned above. However, if according to the SICAFI's articles of association, (i) at least 90% of the income received must be distributed each year (after the appropriate deductions of the remunerations, commissions and costs have been made) and (ii) if and to the extent that this income stems from either dividends received and/or capital gains realised on shares which are eligible for the subject-to-tax requirement, the SICAFI would still be deemed to fulfil the subject-to-tax requirement.

A return of capital is not taxable if it occurs on the basis of a regular decision in accordance with the Belgian Company Code or a similar non-Belgian company law.

Individual shareholder

The 15%/27% dividend withholding tax is the final levy.

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

According to the Belgian CIT law, a return of capital is not taxable. This only applies if the capital decrease is performed on the basis of a regular decision and behaviour in accordance with the Belgian Company Code or a similar non-Belgian company law. Nevertheless, a return of capital upon liquidation or redemption of the SICAFI's shares would be taxable if upon the public offering of the shares in Belgium, the SICAFI guarantees a certain repayment or rate of return for a period of eight years or less to its investors. In that case, the return is deemed to constitute an interest subject to 27% withholding tax.

Withholding tax

In principle, 27% withholding tax is due on dividends distributed by a public and an institutional SICAFI.

The government announced that as from 1 January 2017, dividends distributed by the SICAFI to its shareholders are subject to 15% withholding tax if the SICAFI invests at least 60% of its assets in real estate used for healthcare. In order to qualify for the exemption, the real estate must be located in Belgium and exclusively or primarily used for healthcare.

If the conditions of the European Parent-Subsidiary Directive are met (e.g. a minimum participation of 10% held during an uninterrupted period of at least 1 year), no withholding tax will be due on dividend distributions to a corporate domestic shareholder. A reduced rate of 1.6995% applies in case a participation of less than 10% but with an investment value of at least EUR 2.5 million is held during an uninterrupted period of at least 1 year (subject-to-tax requirement).

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Capital gains tax-exempt in Belgium.	Capital gains tax-exempt in Belgium.	- In principle, a tax exemption applies. - If the exemption does not apply, 27% dividend withholding tax or as from 1 January 2017 15 % for SICAFI investing in Belgian real estate for healthcare. - Parent-Subsidiary Directive applicable. - Tax treaty relief may be available.

Corporate shareholder

Capital gains and a return of capital are, in principle, not taxable in Belgium.

Individual shareholders
Capital gains and a return of capital are, in principle, not taxable in Belgium.

Withholding tax
Dividends distributed by a public or an institutional SICAFI to a non-resident shareholder are tax exempt. The exemption does not apply to the part of the dividend that the distributing SICAFI has received from dividend income from a resident company.

If the above exemption is not applicable, 27% withholding tax is in principle due on dividends distributed by a public and an institutional SICAFI. However as from 1 January 2017 and if the above exemption is not applicable, dividends distributed by the SICAFI to its shareholders will be subject to 15% withholding tax if the SICAFI invests more at least 60% of its assets in real estate used for healthcare. In order to qualify for the exemption, the real estate must be located in Belgium and exclusively or primarily used for healthcare.

If the conditions of the European Parent-Subsidiary Directive are met (e.g. a minimum participation of 10% held during an uninterrupted period of at least 1 year), no withholding tax will be due on dividend distributions to a corporate foreign shareholder. This is the case provided that the corporate foreign shareholder is a resident of another EU-Member State. The Belgian domestic withholding tax exemption is extended to dividends distributed to companies resident in countries with which Belgium concluded a Tax Treaty. A reduced rate of 1.6995% applies in case a participation of less than 10% but with an investment value of at least EUR 2.5 million is held during an uninterrupted period of at least 1 year (subject-to-tax requirement).

A non-resident shareholder may be entitled to a withholding tax reduction under the Double Taxation Treaty between Belgium and his/her country of residence.

Dividends to a foreign tax exempt entity that does not carry on a business enterprise (e.g. pension funds) are also exempt.

5 Tax treatment of foreign REIT and its domestic shareholder

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

Foreign REIT
A foreign REIT is not eligible for the REIT regime and is therefore subject to the ordinary Belgian non-resident income tax. The net income of the foreign REIT will be taxable at a rate of 33.99%.

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

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

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

Individual shareholder

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

If it concerns a foreign fund without legal personality, the individual investor will be deemed to have invested in real estate himself. The same rules apply as for the corporate investors.

Concerning a foreign fund with legal personality, the individual investor will not be deemed to have invested in real estate but in the fund itself. The income received from the fund will be taxed according to the rules of dividend taxation. Consequently, the dividends would be taxable at a rate of 27% (plus communal surcharges if the fund is located outside the EER). The foreign withholding tax levied on the dividend income would be deductible from the Belgian taxable basis. Capital gains realised on foreign real estate fund shares are treated in the same way as capital gains realised on SICAFI shares. ■

Authors contact | Belgium

Enrico Schoonvliet
Tel. +32 2 743 43 66
enrico.schoonvliet@loyensloeff.com

Eveline Hellebuyck
Tel. +32 2 743 43 99
eveline.hellebuyck@loyensloeff.com

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

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A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
SPIC	2004	Special Purpose Investment Companies Act (SPICA)	Corporate type

The SPIC regime was introduced with the Special Investment Purpose Companies Act (SPIC), which came into force on January 01, 2004.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Bulgaria	53	0	€ 865	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 / procedure

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

In order to qualify as a SPIC, a company is required to obtain a licence from the Bulgarian Financial Supervision Commission (FSC). A SPIC shall be established at a constituent meeting at which its shares are subscribed. The founders may not number more than 50. Within seven days after the SPIC is registered in the Commercial Register, the FSC shall be notified. The SPIC shall file with the FSC an application for licence within six months as from its registration with the Commercial Register.

In addition, upon the incorporation of a SPIC, the constituent meeting is obliged to pass a resolution for initial capital increase up to at least 130% of the initial share capital. This first capital increase can be performed only on the basis of a prospectus authorised by the FSC. Once the formal authorisation (licence) is granted, the SPIC may effectively increase its capital. This increase is to be performed through the issuance of rights entitling their holders to take part in the subscription of shares from the capital increase. Said rights must be listed on a regulated market (the Bulgarian Stock Exchange).

2.2 Legal form / minimum share capital

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

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

The registered seat and address of management of a SPIC must be located in Bulgaria. The same requirement applies to its service companies, which are required for certain SPIC activities.

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

The initial increase of registered capital via an IPO should amount to not less than 30% of the initially registered capital.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
- At least 30% of the capital shall be owned by an institutional investor. - No more than 50 founders.	Yes

Shareholder requirements
Upon the incorporation of a SPIC, at least 30% of the capital shall be subscribed by institutional investors. An 'institutional investor' is not legally defined by the SPIC. However, according to § 1, item 1, letter "c" of the Supplementary Provisions of Public Offering of Securities Act (**"POSA"**) 'institutional investor' is any of the following: a bank, a collective investment scheme and a national investment fund, an insurance company, a pension fund or another corporation whereof the objects require the acquisition, holding and transfer of securities. In addition, according to FSC guidelines, an institutional investor is described as a bank, insurance company, licensed pension fund or other financial institution, which are subject to the supervision of the FSC. Foreign legal entities may also act as institutional investors if approved by the FSC. An institutional investor may also have a licence granted by the FSC. As an alternative to FSC supervision, banks are subject to special legal acts. It is not allowed for more than 50 persons or entities to be founders of a SPIC. It has not yet clearly been stated whether a SPIC may be owned by just one shareholder.

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

There is no clear rule regarding which stock exchange the SPIC must be listed on. However, based on the analysis of the current regulations and for other practical considerations, it seems that the SPIC can only be initially listed on the Bulgarian Stock Exchange. Before it may do so, the SPIC's IPO prospectus must be approved by the FSC. However, as of January 01, 2007, the Bulgarian legislation has introduced new amendments related to public offering of securities. These amendments also make reference to the regulated security markets of other EU member states. Therefore, according to the relevant amendments, SPICs may be listed on other EU regulated markets as well.

2.4 Asset levels / activity tests

Restrictions on activities / investments
- No more than 10% of the SPIC's assets may be invested in mortgage bonds. - No more than 10% of the SPIC's assets may be invested in service companies. - No investments allowed in real estate subject to legal dispute. - Real estate investments must be located in Bulgaria.

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

- purchasing real estate (which must be located in Bulgaria) and limited property rights to real estate, carrying out real-estate construction and improvements (for property management, renting, leasing, sales), and
- raising funds by issuing securities. The IPO is mandatory for SPICs. However, additional financing is not prohibited. Therefore, the SPIC may engage in equity and debt financing.

SPICs can invest up to 10% of their assets in mortgage bonds. SPICs are entitled to invest up to 10% of their assets in service companies. No other investments in shares are allowed.

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

2.5 Leverage

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

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

2.6 Profit distribution obligations

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

Operative income

The SPIC is obliged to distribute at least 90% of the profit as dividends. It must do so within 12 months following the financial year in which the profit was incurred.

Capital gains

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

2.7 Sanctions

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

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

- the SPIC does not begin activities within 12 months after receiving the licence;
- the SPIC has provided wrongful information (based on which the licence was granted);
- the SPIC does no longer meet the conditions under which the licence has been granted;
- the SPIC systematically breaches SPIC statutory rules.

Furthermore, SPICs are not allowed to change their legal form. Doing so would result in a loss of status.

SPICs which breach the profit distribution obligation may be penalised between BGN 5,000 (EUR 2,500) and BGN 10,000 (EUR 5,113).

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

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

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

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

Other taxes and fees
Other taxes may be applicable to SPICs such as VAT at a standard rate of 20%, garbage collection fees and annual real estate tax in the range of 0.01%-0.45% (the exact rate is determined by the municipality where the property is located).

Accounting rules
Unless provided by the SPIC regime, the rules provided by the IFRS apply.

3.2 Transition regulations

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

3.3 Registration duties

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

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

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends are subject to corporate income tax. - Capital gains could be tax exempt.	- 5% withholding tax on distributions is the final levy. - Capital gains could be tax exempt.	To credit withholding tax is not possible.

Corporate shareholder

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

Capital gains
Capital gains realised from the sale of SPIC shares could be tax-exempt if they are traded on a recognised EU/EEA stock exchange.

A return of capital distribution
Under the Bulgarian tax legislation, capital decrease is generally subject to the same tax treatment as dividend distribution.

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

Withholding tax
For individual shareholders and corporate shareholders who are not merchants a withholding tax of 5% on dividend payments applies. It is not possible to credit this withholding tax. Dividend distributions to corporate shareholders are not subject to withholding tax.

4.2 Foreign shareholder

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

Corporate shareholder

A 5% domestic tax rate, or the lower respective DTT withholding tax rate, applies.

If the income accrued to the foreign shareholder exceeds BGN 500,000 (EUR 255,646) for the calendar year DTT protection can be obtained following a successful completion of the advance clearance procedure under the Tax and Social Security Procedure Code.

If the accrued income is less than BGN 500,000, the DTT can be applied directly by the REIT. For direct application of the DTT relief, the foreign shareholder must give the REIT a tax residency certificate and a declaration of beneficial ownership of the income.

In addition, dividends distributed to EU/EEA tax resident entities are exempt from taxation.

Individual shareholder

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

Withholding tax

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

5 Tax treatment of foreign REIT and its domestic shareholder

Income realised by a foreign REIT from Bulgarian source

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

Income realised by Bulgarian residents from a foreign REIT

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

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

Corporate shareholder
Corporate shareholders are taxed on the income from dividends distributed by a foreign corporation, except for dividends from EU/EEA tax residents.

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

Authors contact | Bulgaria

Damyan Leshev
Tel. +359 2 93 55 100
damyan.leshev@tbk.bg

Ekaterina Aleksova
Tel. +359 2 93 55 111
ekaterina.aleksova@bg.pwc.com

Tsvetkova Bebov Komarevski
Attorneys-at-law

pwc

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

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EUROPE

Finland – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type	REIT market
FINNISH REIT	2009	Act on Tax Incentives for certain Limited Companies Carrying on Residential Renting Activities (24.4.2009/299).	Private limited company (closed-ended) Public limited company (closed-ended).	Only one REIT in the market

The Finnish REIT was introduced with effect from January 01, 2009 by the Finnish Act on Tax Incentives for certain Limited Companies Carrying on Residential Renting Activities (24.4.2009/299). This was however subject to a state aid notification to the Commission. On May 12, 2010, the Commission announced that REIT is not illegal state aid. However, the Commission considered that a provision allowing REITs to use up to 30% of their annual profits to create tax-exempt re-investment reserves would constitute incompatible aid. Following the Commission's concerns, the Finnish authorities made the commitment not to put in force this provision. Under the REIT regime, a Finnish REIT is fully exempt from paying corporate income tax. However, penalty tax charges may apply on a REIT in certain circumstances.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Finland	1	0	€ 75	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
- Application for REIT status must be filed. - Certain conditions for REIT status apply.

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

- the company does not carry on any other activities than renting of property and certain ancillary activities, such as property administration and maintenance and cash management. Property development on own account is permitted;
- at least 80% of the total assets of the company must comprise of shares in mutual real estate companies or residential real property (as defined in the relevant legislation) (measured using financial statements);
- the company does not hold any other assets than property, equipment required by its ancillary activities and liquid funds (as defined in the relevant legislation). The company may not, except for shares in mutual real estate companies, hold any shares in subsidiary companies;

- the company's total liabilities may not exceed 80% of the total assets (measured using consolidated financial statements);
- each shareholder must hold less than 10% of the share capital of the company; and
- the Finnish Act on Real Estate Funds (19.12.1997/1173) must apply on the company and hence it must be subject to supervision by the FIN-FSA.

The following additional conditions for REIT status apply as of the beginning of the first tax year as a REIT:
- the company must distribute as dividends at least 90% of its net income for each financial period.
- the company's shares must be listed on a regulated market or must be upon application admitted to trading on a Multi-lateral Trading Facility in the European Economic Area. Upon application to the Finnish tax authorities, this requirement may be suspended during the first two tax years as a REIT;
- the company does not distribute profits in any other form than as dividends; and
- the company or its mutual real estate company subsidiaries have not been involved in transactions the purpose of which is deemed to be tax avoidance.

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

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

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
In practice, a public limited company (closed ended)	EUR 5 million

Legal form

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

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

Minimum share capital

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

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
A shareholder should not own 10% or more of the share capital.	Yes Requirement to be listed on a regulated market or admitted upon application to trading on a Multi-lateral Trading Facility in the European Economic Area.

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

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

Under the Finnish Act on Tax Incentives for certain Limited Companies Carrying on Residential Renting Activities (24.4.2009/299), a REIT's shares must be listed on a regulated market or admitted upon application to trading on a Multilateral Trading Facility in the European Economic Area. Upon application to the Finnish tax authorities, this requirement may be suspended during the first two tax years as a REIT.

2.4 Activity/asset level restrictions

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

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

Disposals of property are permitted, but may result in a penalty tax charge unless the following requirements are met:
- the REIT disposes of less than 10% of its properties during a tax year (measured using balance sheet values);
- shares in mutual real estate companies have been held for five years, and at least ten years have elapsed from the initial use of the buildings owned by a mutual real estate company;
- more than five years have elapsed from a comprehensive modernisation fulfilling certain criteria (as defined in legislation).

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

2.5 Leverage

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

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

2.6 Profit distribution obligations

Profits	Capital gains	Timing
90% of the net income must be distributed.	Realised capital gains are included in the distribution obligation.	Not defined.

Dividends
A REIT must distribute as dividends at least 90% of its net income for each financial period.

Capital gains
Gains arising from the disposals of property fall under the distribution obligation.

2.7 Sanctions

Penalties / loss of status rules
Tax charges not necessarily resulting in the loss of the REIT status.

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

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

The REIT will incur a tax charge at a rate corresponding to the valid CIT rate (currently 20%) on the amount equivalent to the dividend paid to a shareholder, holding greater than or equal to 10% of shares in the REIT.

A REIT must distribute as dividends at least 90% of its net income for each financial period.
Disposals of property are permitted, but may result in a penalty tax charge unless the following requirements are met:
- the REIT disposes of less than 10% of its properties during a tax year;
- shares in mutual real estate companies have been held for five years, and at least ten years have elapsed from the initial use of the buildings owned by a mutual real estate company;
- more than five years have elapsed from a comprehensive modernisation fulfilling certain criteria (as defined in legislation).

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

3 Tax treatment at REIT level

3.1 Corporate tax / withholding tax

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

Corporate income tax

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

Capital gains

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

- the REIT disposes of less than 10% of its properties during a tax year;
- shares in mutual real estate companies have been held for five years, and at least ten years have elapsed from the initial use of the buildings owned by a mutual real estate company;
- more than five years have elapsed from a comprehensive modernisation fulfilling certain criteria (as defined in legislation).

Withholding tax

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

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

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

Other taxes

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

Accounting rules

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

3.2 Transition regulations

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

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

3.3 Asset transfer tax

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

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

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

Under the Finnish Act on Tax Incentives for certain Limited Companies Carrying on Residential Renting Activities (24.4.2009/299), dividends distributed by a Finnish REIT are defined as fully taxable income for Finnish recipients.

Corporate shareholder
Dividends distributed by a Finnish REIT are fully taxable at 20%.

Capital gains on disposal of shares in REITs are taxable under normal capital gains tax rules.

Individual shareholder
Dividends distributed by a Finnish REIT (a listed company) are fully taxable capital income.
The tax rate for capital income is currently 30% for income not exceeding EUR 30,000, and 34% for income exceeding EUR 30,000.

Capital gains on disposal of shares in REITs are taxable under normal capital gains tax rules.

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

4.2 Foreign shareholder

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

Corporate shareholder

Under domestic law dividends by a REIT to a non-resident recipient will be subject to 15/20% withholding tax at source, subject to the applicable tax treaties.

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

Individual shareholders/other shareholders

Under domestic law dividends by a REIT to a non-resident recipient will be subject to 30% withholding tax at source, subject to the applicable tax treaties.

Gains on disposals of shares in a Finnish REIT could be subject to tax at 30/33% (or 20% in case of shareholders other than individuals) in case at least 50% of the REIT assets are directly held property located in Finland (as opposed to shares in mutual real estate companies), subject to the applicable tax treaties. In practice, disposals of shares in a Finnish REIT should typically be outside the scope of Finnish capital gains tax.

Withholding tax

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

5 Tax treatment of foreign REITs and its domestic shareholders

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

Foreign REIT

A foreign REIT will be taxable under normal Finnish rules.

Corporate shareholder

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

Individual shareholder

A foreign REIT distribution to a Finnish individual shareholder is likely to be treated as a normal dividend from the non-resident company (will depend on structure of foreign REIT). As general rule, 85% of a dividend from a listed company is taxed at 30/33%, whereas a dividend from a non-listed company is divided into capital income (taxed at 30/33%) and earned income (taxed at progressive rates) under a certain formula.

Authors contact | Finland

Samuli Makkonen
Tel. +358 20 787 7752
samuli.makkonen@fi.pwc.com

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

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Global REIT Survey 2016

EUROPE

France – SIIC

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

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

Article 11 of the Finance Act for 2003 (Law n° 2002-1575 of December 30, 2002) introduced a specific corporate income tax exemption regime applicable to listed real estate investment companies *(sociétés d'investissements immobiliers cotées,* SIICs) available upon election and subject to conditions. This regime is governed by articles 208 C, 208 C bis, 208 C ter and 219 IV of the French tax code (FTC). The SIIC regime has been amended by the Amending Finance Act for 2004, the Finance Act for 2005, the Amending Finance Act for 2006, the Amending Finance Act for 2007, the Finance Act for 2008, the Finance Act for 2009, the Amending Finance Act for 2009, the Finance Act for 2012, the Amending Finance Act for 2013 and the Amending Finance Act for 2014. In addition, the French tax authorities had published administrative tax guidelines on September 25, 2003, February 01, 2010, December 27, 2011, March 08, 2012 and on June 15, 2012. These are now all included in the French tax authorities' official comments published in the *Bulletin Officiel des Finances Publiques* BOI-IS-CHAMP-30-20-20140304 dated March 04, 2014.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
France	32	8	€ 49.357	1,93%

Top five REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Klépierre	€ 13.382	7.43%	3.97%	0.80%
Gecina	€ 8.468	20.27%	3.70%	0.49%
Foncière des Régions	€ 5.733	12.46%	5.11%	0.28%
Icade	€ 5.070	7.63%	5.41%	0.22%
Mercialys	€ 1.918	7.08%	6.36%	0.08%

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

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

2 Requirements

2.1 Formalities / procedure

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

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

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

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

Due to the changes in the company's tax regime, the process of election results in a partial cessation of business. Therefore, the listed parent company and its elected subsidiaries must file a specific cessation tax return.

The election is irrevocable. Once it is made, the eligible companies may not waive it. The election is also considered global because it applies to all the properties and shares in the qualifying partnerships (subject to Article 8 of the FTC).

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

2.2 Legal form / Minimum share capital

Legal form	Minimum share capital
- Joint stock company - Partnership limited by shares	EUR 15 million

Legal form

The parent company must be a corporation (*Société Anonyme*) or any other company whose capital is divided into stocks (*actions*) that can be listed (e.g. *Société en Commandite par Actions*). The SIIC regime does not require that the parent company be incorporated under French law or be a tax-resident in France.

In order to qualify for the SIIC regime, the subsidiary company must be subject to French corporate income tax, either due to its legal form or pursuant to a tax election. As mentioned above, it must be at least 95% directly or indirectly held by one or several listed SIIC parent companies having validly elected for the SIIC regime during the entire financial year in which the SIIC regime was applied for or together by one or several SIIC and one or several SPPICAV.

Foreign companies which are listed on an EU-regulated stock exchange and which comply with other SIIC conditions may elect for the SIIC regime as parent, with respect to their French direct or indirect qualifying operations. In order to be eligible for the SIIC regime, the French tax authorities require that the foreign company has a permanent establishment in France and be subject to French corporate income tax. The foreign company's French assets and shares of qualifying French subsidiaries are recorded as assets of the branch for French tax purposes.

Minimum share capital

The share capital of the listed parent company must amount to at least EUR 15 million.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
- Shareholders must not hold more than 60% of share capital or voting rights. - At the time of election, 15% of the share capital and voting rights must be held by shareholders, who individually own less than 2%.	Yes

Shareholder requirements

A single shareholder (other than a SIIC parent) or a group of shareholders acting jointly (*agissant de concert)* pursuant to article L. 233-10 of the French Commercial Code (i.e. persons who have entered into an agreement in order to buy or sell voting rights, or to exercise voting rights in order to implement a policy in relation to a company) must not hold, either directly or indirectly, more than 60% of the share capital or voting rights of the listed parent company. This "60% shareholders test" must be met on a continuous basis (temporary breaches resulting from takeovers, exchange offers, mergers or conversions or redemptions of bonds into shares are allowed subject to conditions).

At least 15% of the listed parent company's share capital and voting rights must be held by shareholders who individually own, directly or indirectly, less than 2% of such share capital and voting rights. This condition aims to ensure a minimum level of free float before the company can elect for the SIIC regime. It has to be met on the first day of the first year of application of the SIIC regime.

Listing requirements

The parent company must be listed on an EU-regulated stock exchange.

2.4 Asset level / activity test

Restrictions on activities / investments
- Principal activity restricted to rent out the property. - No required asset level. - Real estate development may not exceed 20% of the gross book value.

In order to be eligible for the SIIC regime, the principal activity of the company must be restricted to property acquisition and/or construction with the aim to rent out the property as well as direct or indirect portfolio investments in partnerships (*sociétés de personnes*) or other companies liable to corporate income tax, having business activities and goals similar to the SIIC.

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

- the financial leasing of properties (*crédit-bail immobilier*) entered into before 2005, provided that the net book value of the outstanding portfolio of the properties does not exceed 50% of the total gross asset value of the company (financial leasing contracts entered into after January 01, 2005, is a qualifying leasing activity eligible to the SIIC regime). This applies to entities that are lessee under a financial lease and grant a sublease to tenants;
- other activities such as real estate development or real estate brokerage, provided that the gross book value of the relevant assets does not exceed 20% of the total gross asset value of the company. For the purpose of this 20% test, the value of properties subject to financial leases is disregarded. If these qualifying ancillary activities are performed through subsidiaries, then only the book value of the participation and current-account receivables would be considered for the purpose of the 20% test.

If the SIIC parent company or subsidiary entered, after 2005, into a financial lease for a building that is sub-let to tenants, this activity is considered as an eligible activity. By contrast, as mentioned above, a financial lease which was entered into before 2005 does not qualify.

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

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

The listed parent company's subsidiaries electing for the SIIC regime must have the same business purpose as SIICs.

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

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

2.5 Leverage

Leverage
Thin capitalisation rules.

The French SIIC regime does not provide specific leverage restrictions. However, French thin capitalisation rules and other interest deduction limitation rules apply to companies that have elected for the SIIC regime, affecting their tax exempt income, which is subject to profit distributions obligations (see paragraph 2.6 below).

The French thin capitalisation rules apply to loans granted by affiliated companies of the borrowing company and to loans granted by third-party lenders guaranteed by an affiliated company of the borrower (certain exceptions are however available). An affiliated party is defined as (i) a company that controls (or having a de facto control), directly or indirectly, more than 50% of the capital of the French borrowing company, or (ii) any company that is under the direct or indirect control of a person that also controls, directly or indirectly, more than 50% of the capital of the French borrowing company.

In addition to existing thin capitalisation rules, the Finance Act for 2013 has introduced a new general interest deduction limitation. Under the new rules, 25% (for financial year 2014 and onwards) of the net interest expenses borne by a company are non-tax deductible. The restriction applies to the net financial expenses (financial expenses minus financial income). In order not to impact on small and medium-sized enterprises, the restriction does not apply when net financial expenses do not exceed EUR 3 million.

The Finance Act for 2014 has introduced a specific anti-hybrid financing provision applying to loans granted by affiliated companies of the borrowing company. Under this provision, a French borrower is not allowed to deduct interest when the lender is not liable for the interest income to a corporate income tax equal to at least 25% of the ordinary French corporate income tax. Due to this rule, subsidiaries of SIIC may suffer a non deduction of interest relating to loans granted by the SIIC parent company or its subsidiaries having elected for the SIIC regime if such interest are not regarded as affected to a taxable sector at the lender level (which may be the case in certain circumstances).

2.6 Profit distribution obligations

Operative income	Capital gains	Dividends	Timing
95% of tax-exempt profits.	60% of capital gains.	100% of dividends.	See below.

Operative income

At least 95% of the tax-exempt profits realised during tax years closed as from December 31, 2013, derived from qualifying leasing activities (including profits realised by directly owned partnerships or pass-through entities), must be distributed before the end of the tax year following the year in which they are generated. Formerly this distribution obligation was 85% of these tax exempt profits.

Capital gains

At least 60% of the capital gains realised during tax years closed as from December 31, 2013, resulting from the sale of (i) rights relating to leasing contracts (ii) properties (including the sale of properties by directly held partnerships or pass-through entities) (iii) shares of qualifying partnerships or (iv) shares of corporate subsidiaries that have elected for the SIIC regime (including the sale of shares by a directly held partnership or a pass-through entity) must be distributed before the end of the second tax year following the year in which they have been realised. Formerly this distribution obligation was 50% of these tax-exempt gains.

Dividends

100% of the dividends received from SIIC's subsidiaries which have elected for the SIIC regime must be distributed before the end of the tax year in which they are declared.

2.7 Sanctions

Penalties / loss of status rules
- Profit and gain exemption is denied for the financial year in which the distribution shortfall appears. - Unrealised capital gains subject to the exit tax upon election for the SIIC status are subject to corporate income tax at the standard rate (after deduction of the 16.5% or 19% exit tax paid at the time of election for the SIIC regime) and unrealised capital gains accrued during the period of the SIIC election must be taxed at a 25% tax rate in case the SIIC leaves the status within ten years following the SIIC election.

If a parent company or a qualifying subsidiary that has elected for the SIIC regime does not meet the minimum distribution obligation, the profits and gains exemption is denied for the financial year with respect to which the distribution shortfall appears. If the tax administration were to conduct a tax audit and reassess the exempt profits or gains, the reassessed amount would normally be fully taxable because it would not have been distributed in due time. However, the reassessed amount should not be considered taxable if it is already covered by previous excess distributions of the 95% (85% previously) and 60% (50% previously) requirement based on initially reported profits and gains.

If the listed parent company no longer fulfils the conditions for the SIIC regime, then the rental income and capital gains would become fully taxable from the beginning of the financial year with respect to which the loss of status takes place. For instance, this could occur in the case of de-listing or if the non-qualifying ancillary activities exceed the applicable threshold or if one shareholder – or a group of share holders acting in concert – owns more than 60% of the share capital or voting rights of the SIIC. In addition, if the loss of status occurs within ten years following the SIIC election, unrealised capital gains on its real estate assets that had been subject to corporate income tax at the reduced "exit tax" rate (19% since 2009, 16.5% before) at the time of entry into the SIIC regime, become subject to corporate income tax at the standard rate applicable during the year of the exit (see paragraph 3.2 below). This rate is currently 33.1/3%, plus the additional surcharges of 3.3% and 10.7%[1], making an effective tax rate of 34.43% or 38%, after deduction for the 19% (or 16.5%) exit tax paid at the time of entry into the SIIC regime.

Should one of the qualifying subsidiaries that elected for the SIIC regime no longer fulfil the conditions, it would lose the benefit of the leasing profits and gains exemption as of the beginning of the financial year in which the loss of status takes place. This could occur if, for example, more than 5% of its capital shares are sold to an unrelated entity that is not a SIIC parent.

If a loss of status were to occur, there would be as well as recapture of the latent gains which were recognised upon the initial election and which benefited from the exit tax of 16.5% or 19%.

In the case of a merger or acquisition of one SIIC by another SIIC, the exemption regime remains valid insofar as the distribution conditions are executed by the acquirer. In the case of acquisition, the target SIIC parent, which becomes a subsidiary as a result of that acquisition, must remain subject to the SIIC regime (as a subsidiary) for the remainder of the ten-year period from its own election as SIIC parent.

The following main sanctions also apply in the event of an exit from the SIIC regime:
- Undistributed earnings relating to tax-exempt profits are taxed at the standard corporate tax rate on the financial year when the listed parent company exits the regime;
- Unrealised capital gains accrued during the period of the SIIC election on the real estate assets are taxed at a special rate of 25% (subject to a rebate of 10% per civil year passed since the election for the SIIC regime);
- A specific mechanism applies when a SIIC does not meet the 60% shareholder test for a limited period of time (when that period is exceeded then the SIIC definitively exits the regime).

3 Tax treatment at REIT level

3.1 Corporate income tax

Current income	Capital gains	Withholding tax
Eligible income tax-exempt.	Eligible capital gains tax-exempt.	- In principle, domestic sourced income not subject to withholding tax. - The taxes withheld on foreign sourced income could be credited if a double tax treaty allows.

[1] Companies recording an annual turnover exceeding EUR 250 million are liable to an exceptional corporate income tax surcharge equal to 10.7% of the tax due. This surcharge applies for fiscal years closed until December 30, 2016.

Current income

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

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

- Income realised directly or through qualifying partnerships from qualifying leasing activities. The exemption regime is applicable to financial lease contracts entered into after January 01, 2005, and to certain long-term leases (*baux emphythéotiques*) or building leases (*baux à construction*).
- Dividends received from qualifying subsidiaries that have elected for the SIIC regime, and paid out from the tax-exempt income of such subsidiary.
- The listed parent company may also benefit from the dividend exemption in respect of dividends received from (i) an another SIIC, (ii) or a SPPICAV or (iii) a foreign REIT, provided the listed parent company holds at least 5% of the distributing entity's capital shares and voting rights for at least two years.

Capital gains

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

Capital gains are only considered tax-exempt if the acquirer is unrelated to the seller. Two entities are considered to be related to each other if one of the two directly or indirectly holds the majority of the capital shares of the other (or has de facto control), or if both of the entities are directly or indirectly under control of the same entity.

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

- Non-depreciable assets (e.g. land): for tax purposes, the acquirer takes over seller's basis. Capital gain upon a subsequent sale would therefore, for tax purposes, be computed from this rolled-over tax basis, which will increase the 60% distribution obligation;
- Depreciable assets (e.g. construction): for tax purposes, the acquirer has a stepped-up tax basis. However, the gain recognised in the transaction must be recaptured in the tax-exempt rental income (over 15 years generally, or over the residual useful life if construction represents more than 90% of the value of the depreciable assets). This recapture increases the exempt income and therefore the amount of the compulsory 95% distribution, which in practice offsets the increased depreciation allowances (which themselves reduce the exempt income and the distribution obligation).

Contribution on payment of dividends

Dividends paid by the listed parent company trigger in principle a 3% additional contribution to corporate tax at the level of the distributing company. The Amending Finance Act for 2013 provides for an exemption from this contribution for dividends distributed by the listed parent company up to the amount distributed in accordance with the SIIC distribution requirements.

Withholding tax

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

Accounting rules

The French *Comité de la Réglementation Comptable* adopted a Resolution on December 12, 2002 (Regulation CRC, December 12, 2002, n°2002-10) which devoted a large section of IFRS relating to depreciation and impairment of assets under French GAAP. French companies are required to prepare financial statements in accordance with these rules as from January 01, 2005. Accordingly, French SIICs are also subject to the French GAAP rules regarding depreciation and property impairment.

3.2 Transition regulations

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

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

- The election for the SIIC regime triggers liability for an exit tax at a rate of 19% (16.5% before 2009) on unrealised capital gains on real estate assets and on interest in qualifying real estate partnerships owned by the listed parent company and its corporate subsidiaries electing for the SIIC regime. This exit tax is payable in four instalments (every December 15, for the first four years after election). Conversely, there is no taxation of the unrealised capital gains on participation held in qualifying corporate subsidiaries. However, there is a roll-over of tax basis on these gains;
- The unrealised capital gains on other assets are tax-exempt, but subject to roll-over tax basis;
- Prior tax losses, if any, may be offset against such taxable unrealised capital gains but should be capped to 50% of the fraction of the gains exceeding EUR 1 million.

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

3.3 Registration duties

Registration duties
- Notary and land security fees. - VAT and/or registration duties.

NB The rules described below are not SIIC-specific.

The French tax costs arising from property acquisition are:

- Notary fees equal to 0.814% of the property purchase price with a possible maximum 40% rebate for the part of the property exceeding EUR 10 million (as for non residential properties);.
- Land security fee amounting to 0.1% of the purchase price of the property;
- Depending on the nature of the property, either (i) a 20% VAT plus a 0.715% reduced registration duty, or (ii) registration duties at the standard 5.8% rate (5.09% in a few locations) (plus an additional tax on registration duties of 0.60% in case of transfer of office premises, commercial premises or warehouses located in the Ile-de-France region).

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

- Pursuant to article 257 of the FTC, the French standard VAT of 20% applies to (i) transfers of properties that have been completed less than five years before the transfer date, (ii) property transfers of building land;
- The sale is subject to French registration duties at a rate of 5.8% (5.09% in a few locations) depending on the location of the property liquidated on a fair market value of the properties if (i) the properties were built more than five years ago, and (ii) it is not a building land.

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

4 Tax treatment at the shareholder's level

4.1 Domestic shareholders

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends and capital gains are taxed at the standard rate of 33.1/3% (plus surcharges). - Return of capital is normally tax-free.	- Capital gains and dividends are subject to French income tax. - The return of capital is normally tax-free.	N/A

Corporate shareholders

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

Dividends paid out of the tax-exempt income and gains are fully subject to French corporate income tax at the standard rate. They are not eligible for exemption pursuant to the domestic parent subsidiary regime.

Dividends paid out of the taxable portion are also subject to corporate income tax at the standard rate. However, if the qualifying parent companies hold at least 5% of the shares of the SIIC for at least two years, it could be eligible for the domestic parent-subsidiary 95% dividend exemption.

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

Capital gains earned on the sale of the listed parent company shares are subject to corporate income tax at the standard rate of 33.1/3% (effective tax rate of 34.43% or 38% for companies liable to the exceptional corporate income tax surcharge[2]). The rate could be reduced to 19% (effective tax rate of 19.63% or 21.66% for companies liable to the exceptional corporate income tax surcharge) pursuant to the long-term capital gain tax regime if the shares have been held for at least two years and can be considered qualified participation (e.g. treated as participating shares for accounting purposes, which generally requires shareholding of 5% at least).

Individual shareholders

Dividends paid out of the tax-exempt income and gains are subject to progressive tax rates of personal income tax (up to 49%) and to social contributions at a total rate of 15.5%.

Dividends paid out of the taxable income and gains are also subject to progressive tax rates of personal income tax (up to 49%), but on 60% only of their amount, as well as to social contributions at a total rate of 15.5%.

French individuals deriving capital gains from the sale of SIIC shares are subject to progressive tax rates of personal income tax (up to 49%) as well as to social contributions at a total rate of 15.5%. They may benefit from the mechanism of progressive rebate on the taxable gain subject to personal income tax available after a two-year holding period. This rebate amounts to 50% for securities held less than eight years and to 65% for securities held at least eight years.

A return of capital distribution is normally tax-free. However, any reduction of capital shares or share premium distributions will be treated as a tax-free return of capital only to the extent that all

[2] Companies recording an annual turnover exceeding EUR 250 million are liable to an exceptional corporate income tax surcharge equal to 10.7% of the tax due. This surcharge applies for fiscal years closed until 30 December 2016.

reserves or profits have already been distributed. The latter condition is not applicable to share redemption.

Withholding tax

In principle, dividends paid to French tax residents are not subject to a withholding tax.
However, a specific 15% withholding tax applies on dividends distributed by the listed parent company or its subsidiaries having elected for the SIIC regime:

- to the following French collective investment vehicles (*organismes de placement collectif*): UCITS (*OPCVM*), real estate collective investment schemes (*organismes de placement collectif immobilier*) and closed-end investment companies (*sociétés d'investissement à capital fixe*), or to foreign collective investment vehicles fulfilling the conditions to benefit from the general exemption of withholding tax on dividends (see 4.2),
- when such dividends are paid out of the tax-exempt revenues.

This withholding tax is not in lieu of corporate or personal income tax and may neither be offset or refunded.

4.2 Foreign shareholders

Corporate shareholder	Individual shareholder	Withholding tax
- Final withholding tax for dividends.	- Final withholding tax for dividends	- Generally 30% withholding tax (or a reduced treaty tax rate). - EU Parent-Subsidiary Directive not applicable.

Corporate and individual shareholders

Dividends distributed by a French parent company or a qualifying subsidiary having elected for the SIIC regime to non-resident shareholders are subject to a withholding tax at the rate of 30%. If the shareholders are resident of a treaty country, they may however benefit from an exemption or a reduced withholding tax rate which is generally equal to 15% and such withholding tax is often creditable against the income tax liability in their home jurisdiction.

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

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

- which distributes most of its income annually; and
- whose income and gains from such immovable property are exempted from tax;

where the beneficial owner of these dividends holds, directly or indirectly, 10% or more of the capital of the vehicle paying the dividends.

In such case, the dividends may be taxed at the rate provided for by French domestic law, i.e. at 30%. The 15% tax treaty withholding tax rate is thus applicable only for small investor – i.e. when the beneficial owner holds less than 10% of the capital of the vehicle.

France has included this provision in the tax treaties recently concluded (among others) with the United Kingdom (tax treaty dated June 19, 2008), Panama (tax treaty dated June 30, 2011), Andorra (tax treaty dated April 02, 2013), China (tax treaty dated November 26, 2013), Singapore (tax treaty dated January 15, 2015), Germany (tax treaty dated March 31, 2015) and Colombia (tax treaty dated June 25, 2015).

The 30% withholding tax does not apply on dividend payments made to collective investment vehicles established on the basis of foreign law, located in a member state of the EU or in another state or territory that has concluded with France a convention on administrative assistance in order to fight against tax fraud and evasion, and which fulfil both the two following conditions:

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

However, when these dividend distributions are paid out of tax-exempt revenues, a specific 15% withholding tax is due.

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

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

Capital gains realised on the sale of the listed parent company shares are taxable in France at a flat rate of 19% (for all individual shareholders irrespective of their State of residence and corporate shareholders EU resident or resident of a State member of the EEA which has concluded with France a convention on administrative assistance in order to fight against tax fraud and evasion) or 33.1/3%, in case of substantial participation (more than 10%) and subject to double tax treaty. There are uncertainties as to whether capital gains on the sale of the listed parent company shares are taxable in France when the seller holds less than a 10% participation.

Capital gains realised on the sale of qualifying subsidiaries' shares that have elected for the SIIC regime are taxable in France at the standard rate of 33.1/3% and subject to double tax treaty.

4.3 Anti-abuse measures

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

A specific levy regime applies under certain circumstances to the dividends paid by the parent company to domestic or foreign shareholders.

The parent listed company must assess and pay a 20% levy in respect of the dividends distributed if the beneficiary of the dividends (i) is a French or foreign taxpayer other than an individual (ii) which holds, directly or indirectly, at least 10% of the financial rights of the parent company at the payment date, and (iii) which is either exempt from any corporate tax on the dividends or subject to tax thereon at a low rate (i.e. a rate lower than 11.12%).

5 Tax treatment of foreign REITs and its domestic shareholders

Foreign REIT	Corporate shareholder	Individual shareholder
Election for SIIC regime possible.	Same treatment as domestic shareholders of SIIC.	Same treatment as domestic shareholders of SIIC.

Foreign REIT

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

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

Authors contact | France

Eric Davoudet
Tel. +33 (0)1 44 05 52 73
eric.davoudet@cliffordchance.com

Carole Truong
Tel. +33 (0)1 44 05 52 40
carole.truong@cliffordchance.com

CLIFFORD CHANCE

EPRA

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

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Global REIT Survey 2016

EUROPE

Germany – G-REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

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

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

The REIT law came into force on June 01, 2007 with retroactive effect as of January 01, 2007. The REIT law is supported by changes in various tax laws, such as the German Income Tax Act and the Investment Tax Act. The REIT law has been amended by the Tax Amendment Act 2009 (*Jahressteuergesetz* 2009) and the UCIT IV Transformation Act in 2011 (*OGAW IV Umsetzungsgesetz*). One of the major changes was that shareholders may benefit from the privileged taxation generally applicable for dividend income if such dividends are sourced by pre-taxed profits of the G-REIT and certain further requirements are fulfilled. However, for corporate shareholders of a G-REIT this privileged taxation has de facto been abolished (see under no. 4.1).

The tax authorities published on July 10, 2007 an administrative guidance according to which upon registration as a REIT with the Commercial Register, tax exemption is to be assumed to start with the beginning of the year of registration, and therefore upon application, no tax prepayments are to be assessed.

According to an Interpretative Letter of the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstaufsicht – BaFin*) a G-REIT could qualify as an Alternative Investment Fund (*AIF*) depending on its purpose and its investment strategy. Further details are outlined in this Interpretative Letter dated June 14, 2013.

For this survey it will be assumed that the G-REIT will not qualify as an AIF in the meaning of the German Capital Investment law (*Kapitalanlagegesetzbuch – KAGB*).

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

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Germany	4	2	€ 2.792	0.19%

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
alstria office REIT AG	€ 1.899	2.98%	4.02%	0.13%
Hamborner REIT AG	€ 660	26.73%	3.97%	0.06%

* 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
- G-REIT: Registration with the Commercial Register. - Pre-REIT: Registration with the Federal Central Tax Office.

G-REIT

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

The main requirements for the registration of a G-REIT are as follows:
- joint stock company with minimum share capital of EUR 15 million;
- corporate seat and place of management in Germany;
- by-laws must provide for certain provisions (e.g. purpose of the company, compensation of shareholders with a shareholding of less than 3% in case of termination of the tax-exempt G-REIT status, etc.);
- listing at stock exchange;
- at least 25% widely held shares at IPO (after listing reduced to 15%);
- direct shareholding of a shareholder must be less than 10%;
- asset, equity and activity requirements (see under no. 2.4. and 2.5).

Pre-REIT

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

For the registration as a pre-REIT the company must fulfil the following requirements:
- joint stock company;
- corporate seat in Germany.

The pre-REIT must fulfil at the end of the business year following the year of registration and each consecutive year the following requirements:
- objectives of the pre-REIT must be limited to the objectives of a G-REIT;

- 75% of its total assets must consist of immovable property;
- 75% of its gross earnings must be derived from renting, leasing, letting and disposal of real estate;
- a pre-REIT service company's assets may not exceed 20% of the pre-REIT's total assets;
- a pre-REIT service company's gross earnings may not exceed 20% of the pre-REIT's gross earnings.

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

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

2.2 Legal form / minimum share capital

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

Legal form

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

Minimum share capital

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

2.3 Shareholder requirements / listing requirements

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

Shareholder requirements

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

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

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

Listing requirements

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

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

2.4 Asset levels / activity test

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

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

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

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

Investments in immovable property, which is used primarily (i.e. more than 50%) for residential purposes, are prohibited if the property is located in Germany and was built prior to January 01, 2007. The G-REIT may invest in all kinds of real estate abroad insofar as the real estate can be owned by a REIT corporation, REIT partnership or a REIT trust or a corporation, partnership or trust comparable to a REIT under the laws of the respective foreign country.

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

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

2.5 Leverage

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

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

2.6 Profit distribution obligations

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

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

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

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

2.7 Sanctions

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

Penalties will be levied by the competent tax office as follows:
- if less than 90% of the gross earnings are distributed, the penalty amounts from 20% to 30% of the difference;
- if less than 75% of the assets consist of immovable property, the penalty amounts from 1% to 3% of the difference;
- if less than 75% of the gross earnings is derived from qualifying income, the penalty amounts from 10% to 20% of the difference;
- if more than 20% of the gross revenue consists of real estate advisory or other related services to third parties, the penalty amounts from 20% to 30% of the earnings exceeding this threshold.

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

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

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

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

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

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

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

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

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

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

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

Other Taxes
Taxes other than income taxes will be levied. Specifically, real estate transfer taxes will be levied on the acquisition and sale of real estate.

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

The thresholds which must be met by the G-REIT (see no. 2.4 and 2.5) are determined based on IFRS rules.

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

3.2 Transition regulations/Exit-Tax

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

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

3.3 Registration duties

Registration duties
Real estate transfer tax.

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

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

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

Corporate shareholder

Before March 01, 2013, the taxation of dividends at the level of the corporate shareholder was dependent on the taxation of the underlying income (pre-taxed profits) distributed by the G-REIT. Pre-taxed profits of a G-REIT could be caused by the taxation of profits of the real estate of the G-REIT in a foreign jurisdiction or the taxation of a subsidiary or a partnership (with foreign real estate) of the G-REIT. If the underlying income had been taxed at least at the 15% German corporate income tax rate or a comparable foreign income tax rate and certain further requirements were met, dividends sourced by such pre-taxed profits were 95% exempt from corporate income tax at the shareholder level. As of March 01, 2013 dividends are fully taxable at the level of the corporate shareholder of a corporation as long as the shareholder owns less than 10% of the shares at the beginning of the year in which the dividends have been received. Because of the shareholder restrictions outlined under no. 2.3 above, this means that dividend income remains subject to corporate income tax at the level of the corporate shareholder at ordinary tax rates irrespective of whether the dividends are sourced by pre-taxed profits or not. The dividend income is also subject to trade income tax.

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

Individual shareholder

From January 01, 2009 onwards, dividends and all (i.e. short- or long-term) capital gains on the disposition of shares in a G-REIT realised by individuals as non-business income are subject to a (in principle) final withholding tax of 25% (plus solidarity surcharge of 5.5% thereon).

Long-term capital gains on privately held G-REIT shares acquired prior to January 01, 2009 remain tax exempt provided that the shares were held for more than one year and the shareholder did not own an interest of 1% or more in the G-REIT at any time during the five years preceding the sale of the shares.

Capital gains on privately held shares acquired on January 01, 2009 and onwards are fully subject to personal income tax (i.e. the final withholding tax does not apply), where the shareholder owned during the five years preceding the sale an interest of 1% or more in the G-REIT.

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

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

Withholding tax

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

4.2 Foreign shareholder

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

Corporate shareholder

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

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

Individual shareholder
The same principles apply as for foreign corporate shareholders.

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

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

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

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

5 Tax treatment of foreign REITs and its domestic shareholders

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

Foreign REIT
For this survey it will be assumed that the foreign REIT will not qualify as an AIF in the meaning of the German Capital Investment law (*Kapitalanlagegesetzbuch- KAGB*).

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

Corporate shareholder
Dividends distributed from a qualified foreign REIT as defined by the REIT law are fully taxable at the corporate shareholder level. If the dividend was sourced by pre-taxed profits and the corporate shareholder owns at least 10% of the shares in the foreign REIT, 95% of the dividends would be exempt from corporate income tax. Capital gains from the disposal of the shares in a qualified foreign REIT would be fully taxable at the level of the corporate shareholder. A foreign REIT is qualified under the following cumulative requirements:
- the REIT is not domiciled in Germany;
- the gross assets of the REIT consists of more than 2/3 of immovable property;
- more than 2/3 of the gross earnings are derived from rental, leasing, letting and disposal of immovable property; the distribution deriving from immovable property of the REIT do not carry underlying foreign taxes like the German corporate income tax;
- the REIT is not under the supervision of a financial supervision commission;
- the shares of the REIT are listed at an organised market.

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

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

Individual shareholder

For the tax treatment of dividends distributed from a qualifying foreign REIT and capital gains from the disposal of shares in a qualifying foreign REIT see under no. 4.1.

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

Authors contact | Germany

Tim Hackemann
Tel. +49 61 96996 21718
tim.hackemann@de.ey.com

EPRA

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

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European Public Real Estate Association

Global REIT Survey 2016

EUROPE

Greece – REIC

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

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

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

Subsequent to the merger of NBG Pangaea REIC with its subsidiary, MIG Real Estate REIC, which was completed in 2015 only four REICs currently exist in Greece (3 are listed at the moment) and they have been mostly set up and managed by Greek banks (see below). The investor base of those REICs is predominantly made up of Greece-resident companies and individuals, although lately some foreign investors have entered the market. Most notably, Invel RE in co-operation with York Capital Management acquired a two-thirds stake in Pangaea, the property-holding subsidiary of National Bank of Greece, for €653 million and Canadian Fairfax Financial Holdings acquired a percentage of Grivalia Properties (ex Eurobank Properties). In 2016, Varde Partners acquired a 33% stake in Trastor (the REIC held by Piraeus Bank).

The tax and regulatory legislation applicable to Greek REICs is often imprecise and several grey areas still exist. However, recent law 4389/2016 has updated the tax provisions applicable to REICs, restoring consistency between the new REIC tax regime and provisions of the general Greek tax framework, namely the current Greek Income Tax Code (l. 4172/2013) and the Greek Tax Procedure Code (l. 4174/2013).

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Greece	4	1	€ 1.817	0.03%

TOP REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Grivalia Properties REIC	€ 710,98	-1,45%	4.52%	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
- Prior operating licence issued by the Hellenic Capital Market Commission required. - Functions are supervised and regulated accordingly.

A Greek REIC has the legal form of a Société Anonyme (SA) and is subject to all the formalities and procedures set out by Greek Corporate Law (L.2190/1920). Moreover, its incorporation requires a prior operating license issued by the Hellenic Capital Market Commission. Its activities are also supervised and regulated accordingly.

Its operating activity must solely consist of managing a portfolio of real estate, certain 'capital means' (defined as certain highly liquid and short-term investments in bonds and certain marketable securities) and interests in other SAs whose sole purpose is to invest in real property and whose assets comprise solely of investments in real property. A thorough description of investment policy and real estate use must be submitted to the Hellenic Capital Market Commission for the issuance of the REIC´s operating license.

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

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

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

No possibility of a pre-REIC structure is provided by the Law.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Listed Société Anonyme	EUR 25million

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

Minimum share capital
The required minimum share capital amounts to EUR 25 million.

2.3 Shareholder requirements / listing requirements

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

Shareholder requirements

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

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

Listing requirements

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

2.4 Asset level / activity test

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

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

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

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

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

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

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

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

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

2.5 Leverage

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

Financing through either loans or credits must not exceed 75% of the REIC's total assets. The loans or credits can only be obtained from a financial institution.

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

2.6 Profit distribution obligations

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

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

Capital gains
Capital gains do not need to be distributed.

2.7 Sanctions

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

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

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

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Investment and liquid assets taxed at 0.375% or 10% of European Central Bank (ECB) interest rates plus 1%, whichever is higher.	Exempt due to the special tax treatment of the REIC.	No WHT except for dividend distributions received from Greek subsidiaries at a rate of 10%

Current income
REICs are subject to a special taxation rate, which amounts to 0.375% or 10% of the European Central Bank (ECB) interest rate in force (Reference Interest Rate) plus 1%, whichever is higher. The tax rate is applied to the average of the REICs investments plus any available funds (cash and securities), at their current value, as shown in their six-months investment tables which are a legal requirement to produce. For example, assuming the ECB interest rate is 0.05 %, the tax rate would be calculated as follows: 10% x (0.05% + 1%) = 0.105% and because such rate is lower than 0.375%, the REIT will calculate tax using the higher tax rate of 0.375%. The tax is payable by the REIC. Its direct shareholders have no further tax liability upon receipt of dividends. Should a change of the Reference Interest Rate occur, a new taxation basis would be valid starting the first day of the month following the stated amendment.

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

Other taxes
As from January 01, 2014, REICs are subject to the Annual Real Property Ownership Tax (the so-called “ENFIA” tax). The ENFIA tax consists of the main ENFIA tax and the supplementary ENFIA tax (0.55% on the total tax value of the property owned). REICs are fully subject to both the main tax and the supplementary tax.

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

Withholding tax
Income generated from foreign or Greek securities is not subject to any Greek withholding tax upon repatriation with the exception of dividends received from a Greek subsidiary. In respect of interest from bond loans, the said tax exemption is valid, provided that the bonds were acquired at least 30 days before the interest payment date. Dividends received by a Greek REIC from Greek entities are subject to withholding tax at 10%, which can be offset against the wealth tax imposed on its average net investments described above under “current income”. Any unused amount may be carried forward to be set off against tax on average investments in future tax returns. Income tax treaties may not apply to reduce the rate of withholding.

Accounting rules

The REIC can choose whether to follow Greek GAAP or IFRS until it is officially listed on a stock exchange. Then, it must follow IFRS.

3.2 Transition regulations

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

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

3.3 Registration duties

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

The issuance of REIC's shares and the transfer of real estate to a REIC are exempt from any Greek tax duties, stamp duties, or any kind of tax liability. Capital Concentration Tax (CCT) at 1% is payable in the case of a share capital increase. However, no CCT is imposed on the initial share capital injected upon formation of the REIC.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Tax-exempt on dividends received from REIC. Exempt from capital gains tax on sale of shares in Greek REIC.	Tax-exempt on dividends received from REIC except for special solidarity tax (up to 10%). Exempt from capital gains tax on sale of shares in Greek REIC, but subject to solidarity tax.	N/A

Corporate shareholder

The taxation of dividends distributed by the REIC should be exempt from any Greek withholding tax as well as corporate income tax at the level of the corporate shareholder, according to the wording of the law. Capital gains arising from the sale of shares in Greek REICs are exempt from income tax.

Individual shareholder

Dividend income from REICs received by an individual shareholder should be exempt from income tax but subject to special solidarity tax at rates up to 10%, The special solidarity tax is imposed on the individual's total income whether exempt or not. Capital gains arising from the sale of shares in Greek REICs are exempt from income tax but subject to the special solidarity tax.

Withholding tax

N/A

4.2 Foreign shareholder

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

Corporate shareholder

Dividends distributed by the REIC to a non-resident corporate shareholder should not be subject to withholding tax in Greece. Capital gains arising from the sale of shares in Greek REICs are exempt from income tax by virtue of Greek domestic law (no need to resort to the applicable Double Tax treaty).

It is not clear whether Greek REICs can benefit from double tax treaties entered into by Greece.

Individual shareholder

Dividends distributed by the REIC to a non-resident individual shareholder should not be subject to withholding tax in Greece Capital gains arising from the sale of shares in Greek REICs are exempt from income tax by virtue of Greek domestic law.

It is not clear whether Greek REICs can benefit from double tax treaties entered into by Greece.

Withholding tax

N/A

5 Treatment of foreign REIT and its domestic shareholder

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

Foreign REIC

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

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

Domestic corporate shareholder

There is no specific tax provision dealing with the taxation of income received by a company resident in Greece from a non-resident REIC. In the absence of specific rules, it is expected that such foreign-sourced income should be taxed in the hands of the Greek corporate shareholder according to the general rules applicable to income from a foreign source. Dividends from EU qualifying subsidiaries will be exempt from tax, provided that the conditions of the EU Parent/Subsidiary Directive are met. If the dividend income does not qualify for exemption under the EU Parent/Subsidiary Directive, then it is taxed as normal business income at 29% with a credit for any tax withheld at source. If the participation distributing the dividends is in the EU, then unlimited foreign tax credit is provided for both the dividends Withholding Tax and the underlying Corporate Income Tax.

Domestic individual shareholders

There is no specific tax provision dealing with the taxation of income received by an individual resident in Greece from a non-resident REIC. In the absence of specific rules, it is expected that such foreign-sourced income should be taxed in the hands of the Greek individual shareholder according to the general rules applicable actually to income from a foreign source. A 15% final tax is imposed on the amount of dividends and capital gains received plus a special solidarity tax up to 10% which is imposed on total income (whether exempt or not). However, as this has not been dealt with by the Greek tax authorities previously, the exact treatment is unclear. ■

Author contacts | Greece

Thomas Leventis
Tel. +30 210 67 81 100
tleventis@deloitte.gr

Deloitte.

EPRA

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

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EUROPE

Hungary – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

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

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

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

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

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

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

- sale of their own real estate;
- rental and operation of their own real estate;
- property management; or
- asset management.

Advantages of a Hungarian REIT structure:

- Unlike Hungarian real estate funds, a REIT is able to hold shares in a project company (SPV);
- A corporate income tax exemption is available at REIT and SPV levels (including gains on asset deals);
- A local business tax exemption is available at REIT and SPV levels (including gains on asset deals);
- REITs are subject to only 2% real estate transfer tax (RETT) levied on the transfer of Hungarian real estate or any rights related to such property and also on the acquisition of shares in companies owning domestic real estate (real estate holding company).

Limitation and obligations

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

- REITs have an obligation to pay out 90% of their profits each year as dividends, SPVs have an obligation to pay out 100% of their profits each year as dividends;
- A starting capital of HUF 5 billion is required for a real estate investment company;
- Strict registration obligations are administered by the Tax Authority;
- Investment policy limitations and liabilities for REITs are similar to those for real estate investment funds in Hungary;
- Limitations exist regarding top management;
- A compulsory quarterly market valuation of the property portfolio is required for SPVs.

2 Requirements

2.1 Formalities / procedure

Key requirements
REITs (including pre-companies) have to be registered at the Tax Authority. Strict formal and practical requirements should be met.

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

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

REITs should notify the Tax Authority within 30 days if there have been any significant changes to their status (including any changes to the assets held, for example via acquisition).

REITs should not be undergoing voluntary closure, bankruptcy or liquidation procedures prior to or during their registration.

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

REITs (including SPVs) should revalue their properties and accounts every quarter in accordance with Hungarian GAAP.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Publicly Limited Company	5 billion HUF

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

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

2.3 Shareholder requirements / listing requirements

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

Shareholder requirements

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

REITs are allowed to own only a maximum of 10% of shares in other REITs. The minimum nominal issuance value of a share should not be less than HUF 10,000.

Listing requirement

At least 25% of the shares should be traded on controlled financial markets (i.e. certain defined stock exchanges).

2.4 Asset level

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

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

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

However, 70% of the total assets should be in the form of real estate. A single real estate asset or shares in other REITs should not make up more than 20% of the total assets.

The supervisory board's permission is required when purchasing an asset with an asset value exceeding the 10% of the REIT's total assets.

2.5 Leverage

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

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

2.6 Profit distribution obligations

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

REITs have an obligation to pay dividends stipulated as expected dividends in their deed of foundation. If the available cash amount does not reach the distributable after tax profit as expected dividends, then 90% of the available cash amount has to be distributed.

SPVs have an obligation to pay dividends at 100% of their profits each year. If the available cash amount does not reach the distributable after tax profit as expected dividends, then 100% of the available cash amount has to be distributed.

REITs and SPVs should not enter into any agreement which limits their dividend payment obligation or which provides pre-emption rights to third parties in respect of their real estate assets (except for loan agreements with financial institutions).

Distribution of the profit should take place within 15 trading days after the annual report has been accepted by the shareholders.

2.7 Sanctions

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

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

REITs should start their activities within six months of registration and they cannot suspend their activities for more than six months, otherwise the Tax Authority will delete them from its records.

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

3 Tax treatment at REIT level

3.1 corporate tax / local business tax / withholding tax

Operative income	Capital gains	Withholding tax
Corporate income tax and local business tax exemptions are available for REITs and SPVs. Certain related party transactions could be subject to corporate income tax, if arm's length prices are not met.	Received capital gains are tax exempt for corporate income tax and local business tax purposes.	No withholding tax in Hungary for profit distributed to entities, other than individuals.

Operative income

REITs should calculate their corporate income tax base according to the general CIT rules, however they are not subject to corporate tax.

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

Tax losses cannot be carried forward.

REITs are exempt from local business tax.

Capital gains

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

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

Foreign taxes

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

Hungarian CFC rules are applicable, therefore any cost on the part of the REIT related to a payment to a CFC could increase the tax base.

Accounting rules

An interim audit is required after the registration and deregistration of REITs or a pre-company; SPVs fulfill the REIT requirements.

REITs should revalue their real estate units at least quarterly. For the revaluation, the general accounting rules are applicable. If the market value of a real estate unit is higher than its accounting book value, then the difference might be accounted for as income and/or as capital depending on the effects of the revaluation on the real estate units.

There are no special accounting rules applicable for REITs.

REITs (i.e. entities whose shares are traded on regulated markets) have to use IFRS instead of Hungarian GAAP for local reporting purposes as of 2017.

3.2 Transition regulation

Conversion into REIT status
Possible

If a company fulfils the requirement of REIT law, then it is possible to request REIT registration.

3.3 Registration duties

Registration duties
No duty on capital contribution

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

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

4 Tax treatment at shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Dividends received are tax deductible for CIT purposes. - Capital gains are subject to corporate income tax, however participation exemption rules could apply.	- Individual shareholders are subject to 15% on their dividend income. - 14% health care charge on dividends may be applicable. Health care contribution is capped at HUF 450,000 per individual, per calendar year.	There is no dividend withholding tax in Hungary.

Corporate shareholders

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

Capital gains are subject to corporate income tax, however the general participation exemption rules could apply. Domestic or foreign participation of at least 10% is considered an "announced participation", and this should be reported to the Tax Authority within 75 days of the acquisition. The capital gains on such participations held for at least 1 year are exempt from corporate taxation. Any loss on write-offs, foreign exchange or losses incurred when cancelling from the books (except during transformations) should be added back to the corporate income tax base.

Individual shareholder

Individual shareholders are subject to personal income tax of 15% on their dividend income. There is a 14% health care charge on dividends not derived from securities on an EEA exchange market. The personal income tax and the health care charge should be deducted and paid to the Tax Authority by the REIT.

Capital gains on the sale of shares in REITs are subject to personal income tax at 15%. Direct expenses related to the acquisition of the shares are deductible. There is a 14% health care charge on capital gains not derived from securities on an EEA exchange market.

Withholding tax

There is no dividend withholding tax in Hungary.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Distributed dividends are exempted from Hungarian corporate income tax.	- Foreign individual shareholders are subject to personal income tax at 15% on their dividend income. - Treaty rates may be applicable.	There is no dividend withholding tax in Hungary.

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

Hungarian REITs should not be qualified as real estate holding companies for Hungarian corporate tax purposes; therefore the capital gains realised on the sale of shares in Hungarian REITs should not be subject to corporate tax in Hungary.

Individual shareholder
Foreign individuals are liable for personal income tax at 15% on gains realised on the sale of shares; however, the tax can be reduced or eliminated by an applicable double taxation treaty.

Withholding tax
There is no dividend withholding tax in Hungary.

5 Tax treatment of foreign REITs and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
- Capital gain on the sale of shares of real estate companies could be subject to Hungarian corporate income tax. - Treaty exemptions may be applicable.	- Received dividends are exempted. - Capital gains are subject to corporate income tax, however participation exemption rules could apply.	- Individual shareholders are subject to personal income tax at 15% on their dividend income; and - 14% health care charge on dividends which may be applicable.

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

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

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

Corporate shareholders
Dividends received from foreign sources (including foreign REITs) are exempt from Hungarian corporate income tax.
Capital gains are subject to corporate income tax; however, participation exemption rules could apply.

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

Individual shareholder

Under its double taxation treaties, Hungary mainly gives tax relief by way of exemption with progression. The wording of each double-taxation treaty should be considered on its own merits. If the income is derived from a jurisdiction which does not have a tax treaty with Hungary, then the individual shareholders are subject to personal income tax at 15% tax on their dividend income from that source. However, foreign withholding tax can be credited against the Hungarian tax liability, although the Hungarian effective tax rate should remain at least 5%.

By default, the 14% health care charge on dividends not derived from securities on an EEA exchange market is applicable; however, possible exemption could be investigated for each case. ■

Author contacts | Hungary

Gábor Matuss
Tel.: +36 30 515 5006

Róbert Rátosi
Tel.: +36 30 559 1690

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EPRA

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

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EUROPE

Ireland – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1. General introduction

Citation	REIT type
Introduced by Finance Act 2013	Corporate entity

On December 05, 2012, the Minister for Finance Michael Noonan announced that Finance Act 2013 would introduce legislation to enable REITs to be established in Ireland. This was duly done as part of Finance Act 2013 with the inclusion of Part 25A into the Taxes Consolidation Act comprising of Sections 705A – 705Q.

To date three REIT's, Green REIT Plc, Hibernia REIT plc and IRES REIT have been established which between them have managed to raise over EUR 2 billion. It is generally thought that the Irish market will be in a position to support a small number of REITs. REITs have improved the stability of the Irish property market. With the continued steady improvement in the Irish property market in 2015 and to date in 2016, all three REITs have been involved in significant property acquisitions.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Ireland	3	3	€ 2.416	0.21%

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Green REIT Plc	€ 1.004,28	-4.05%	1.72%	0.09%
Hibernia REIT Plc	€ 938,76	4.56%	1.10%	0.09%
Irish Residential Properties REIT	€ 473,30	N/A	2.96%	0.04%

* 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
Notice must be filed to become a REIT/Group REIT Certain conditions for REIT/Group REIT status.

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

i. Incorporated under the Irish Companies Acts 1990,
ii. Resident in Ireland for Irish tax purposes and not resident in another country,
iii. Listed on the main market of a recognised stock exchange in an EU Member State,
iv. Not a closely controlled company for corporation tax purposes (unless owned by certain "qualifying investors" such as pension funds, life businesses, Qualifying Investment Funds (an Irish regulated non UCITs fund structure), charities and NAMA).

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

In addition, each of the following conditions should be met by the REIT or the Group REIT for each accounting period:
i. At least 75% of the aggregate income of the REIT or Group REIT must derive from carrying on a property rental business,
ii. The property rental business conducted by the REIT or Group REIT must consist of at least three properties. The market value of any one of these properties should not exceed 40% of the total market value of the property rental portfolio held by the REIT/Group REIT,
iii. The REIT or Group REIT must maintain a ratio of at least 1.25:1 in respect of property income and property finance costs to property finance costs,
iv. At least 75% of the aggregate value of the assets of the REIT or Group REIT relate to assets of the property rental business;
v. The debt of the REIT or the Group REIT shall not exceed 50% of the market value of the assets of the REIT or Group REIT,
vi. Subject to having sufficient distributable reserves, at least 85% of the REIT's or Group REIT's property income (excluding capital gains) must be distributed to shareholders within 9 months of the year end

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

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

Commencing January 01, 2015, where subsequent to the initial notice referred to above a new company is incorporated or acquired by the Group REIT as a wholly owned subsidiary; an amended notice must be filed with the Revenue Commissioners (Form REIT 2A) within 30 days of the new company becoming a member of the Group REIT. This amended notice must specify:

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

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

2.2 Legal form / minimum share capital

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

Legal form

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

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

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

Minimum share capital

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

2.3 Shareholder requirements / listing requirements

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

Shareholder Requirements

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

The close company rule will not apply where the shares in the REIT or principal company of a group REIT are controlled by “qualifying investors” i.e. pension funds, life businesses, Qualifying Investment Funds, charities and NAMA.

Where a shareholder holds 10% or more of the share capital with voting rights in the REIT or principal company of a Group REIT or is entitled to 10% or more of a distribution, and the REIT or Group REIT has not taken “reasonable steps” to prevent a distribution to such a shareholder, then the REIT or Group REIT shall be deemed as receiving an amount of income equal to the amount of the distribution to the shareholder. This income shall be taxable at the 25% rate and no loss allowance or expense may be set against it for the purposes of calculating the amount chargeable to tax. The 10% shareholding rule does not apply to a “qualifying investor” i.e. pension funds, life businesses, Qualifying Investment Funds, charities and NAMA.

It is not clear what will be considered as “taking reasonable steps” and there is no guidance to date on this point.

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

Listing requirements

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

2.4 Asset level / activity test

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

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

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

In addition to the income test, there is an asset test that requires that 75% of the market value of the REIT or Group REIT relates to assets of the property rental business. On a strict technical reading of the legislation, the re-investment provisions will only apply to the 75% income test and not to the 75% asset test. However, the revenue is prepared to apply the re–investment provisions to the 75% asset test. Therefore proceeds from share issues and property sales should be treated as property rental assets for a period of 2 years. The 75% asset and income test should limit the amount of investment in non-property rental generating assets.

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

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

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

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

2.5 Leverage

Leverage
Profit: Financing Ratio

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

Property income plus property finance costs: property finance costs.

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

Where the ratio is breached, the REIT shall be chargeable to tax at the rate of 25% on the amount by which the property financing costs would have to be reduced for the property financing cost ratio to equal 1.25:1 subject to certain limits.

For example if the property income was EUR 100 million and the financing costs was EUR 500 million, then the Profit: Financing ratio would be 1.2:1. In order to bring the ratio back to 1.25: 1 then the financing costs would need to be reduced by EUR 100 million.

However, the taxable amount shall not exceed 20% of the property income of the REIT. Thus the REIT or principal company of a Group REIT would be chargeable to tax at the rate of 25% on EUR 20 million (EUR 100 million @ 20%).

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

While the Profit: Financing Ratio appears generous, it will need to be considered in conjunction with the requirement that debt shall not exceed 50% of the market value of the assets of the REIT/Group REIT i.e. all of the assets of the REIT/Group REIT and not just property rental assets.

2.6 Profit distribution obligations

Property income	Capital gains	Timing
85% of property income must be distributed to shareholders.	Not included in the distribution obligation.	On or before the tax return filing date for the relevant accounting period.

Property Rental Income

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

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

i. Where no distribution is made, the amount chargeable will be equal to 85% of the property income for the period,
ii. Where a distribution is made but it is less than 85% of the property income, then the amount chargeable will be the difference between the distribution made and the amount equal to 85% of the property income.

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

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

Capital gains

The 85% distribution requirement does not apply to gains arising from the disposal of real estate. Profits arising on the proceeds, if not re-invested in property rental assets within 24 months will be treated as “bad” income for the 75% income test. Similarly, if the proceeds are not re-invested in property rental assets within 24 months, the proceeds will be considered “bad assets” for the purposes of the 75% test.

Other Profits

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

2.7 Sanctions

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

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

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

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

In addition, penalties may arise in the following circumstances:

1. Where a shareholder holds 10% or more of the share capital with voting rights in the REIT or Group REIT or is entitled to 10% or more of a distribution, and the REIT or Group REIT has not taking reasonable steps to prevent a distribution to such a shareholder, then the REIT or Group REIT shall be deemed as receiving an amount of income equal to the amount of the distribution to the shareholder. This income shall be taxable at the 25% rate. (See 2.3 above)
2. The REIT or Group REIT must maintain a profit financing ratio of at least 1.25:1. Where this requirement is breached, the REIT shall be chargeable to tax at the rate of 25% on the amount by which the property financing costs would have to be reduced for the property financing cost ratio to equal 1.25:1. (See 2.5 above)
3. Where a REIT fails to make the required 85% distribution, the REIT or the principal company of the REIT will be chargeable to tax at 25% on the amount that was not distributed. (See 2.6 above)

3. Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
- Income from a property rental business is exempt from corporation tax. - Residual business income is taxable at mainstream CT rates (i.e. 12.5% on trading profits, 25% on passive income or income from an 'excepted trade'). - Deposits of a REIT or a Group REIT are exempt from deposit interest retention tax (DIRT)	- Gains realised on disposals of assets used in the property rental business are not subject to tax. - Gains on the disposal of other investment assets are subject to Capital Gains Tax (Currently 33%). - Profits from trading in land are taxed at 25%.	- Property income dividends paid by the REIT are subject to Dividend Withholding Tax at 20%.

Property Rental Income

Income from the property rental business is not subject to corporation tax. Non rental business income (residual income) will be taxable at the rate of 25% unless such activities constitute a trade in which case such profits will be taxable at the 12.5% rate.

Capital Gains

Capital gains or losses that arise on disposal of property used in a REIT's or Group REIT's property rental business are not chargeable to tax.

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

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

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

Withholding tax

Dividend Withholding Tax (DWT) at 20% will be levied on distributions made to all investors unless the investor is an exempt qualifying investor such as a pension fund and certain investment funds. For non-resident investors, this should be their final liability to tax. Certain non-residents may be entitled under their tax treaties to recover some of this DWT.

Other taxes

Irish stamp duty of 1% will apply to the purchase of shares in a REIT. The REIT itself will pay stamp duty on the purchase of Irish property. The rate of stamp duty on non-residential property will be 2%. The rate of stamp duty for residential property will be 1% on the first EUR 1 million, and 2% on any amount in excess of EUR 1 million.

Foreign tax-resident companies

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

Accounting rules

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

For periods commencing on or after January 01, 2015, the individual accounts of the parent company and any of its subsidiaries must be prepared under FRS101, FRS102 or IFRS.

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

Transition regulations

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

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

Due to the recovering nature of the Irish property market, it may be common that the conversion triggers losses.

3.2 Registration duties

Registration duties
Irish stamp duty of 1% will apply to the purchase of shares in a REIT.

4. Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Distributions from an Irish REIT to an Irish corporate shareholder will be chargeable to tax at 25%, with some exceptions. - Generally, Capital Gains Tax at 33% will apply on any gains arising on a disposal of shares in a REIT.	- Irish resident shareholders will be liable to income tax at marginal rates plus Universal Social Charge (USC) and Pay Related Social Insurance (PRSI). - Capital Gains Tax at 33% will apply on any gains arising on a disposal of shares	- Withholding tax is deducted at 20% on Property Income Dividends

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

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

Individual shareholder
Irish resident individual shareholders in a REIT will be liable to income tax on distributions at their marginal rates together with USC and PRSI.

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

Withholding tax
Withholding tax is deducted at 20% on Property Income Dividends. Irish resident individuals and corporates will be able to credit this withholding tax against their final tax liability.
Non Property Income Dividends will be subject to the normal Dividend Withholding Tax (DWT) rules. Thus DWT will be deducted from dividends made to individuals. Generally DWT will not be deductible on dividends made to corporates subject to certain conditions being met.

Irish resident pension funds, insurance companies and other exempt persons will be exempt from DWT.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- 20% final withholding tax for property income dividends. - Disposal of shares in an Irish REIT is outside the scope of Irish capital gains tax.	- 20% final withholding tax for property income dividends. - Disposal of shares in an Irish REIT is outside the scope of Irish capital gains tax.	- Certain non-residents may be entitled to recover some or all of the DWT deducted from the Irish Revenue Commissioners. - Otherwise, foreign investor may be in a position to claim credit for DWT against taxes in their country of residence.

Corporate shareholder
Foreign shareholders will receive property income dividends net of 20% withholding tax.

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

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

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

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

Individual shareholders
Foreign shareholders will receive property income dividends net of 20% withholding tax.

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

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

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

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

Withholding tax
In respect of property income distributions, DWT of 20% will be charged on distributions made to a corporate or individual non-resident shareholder. Treaty relief may be claimed retrospectively.

DWT will apply on distributions made out of other non-property income subject to any of the normal exemptions.

5. Tax treatment of foreign REITs and its domestic shareholders

Foreign REIT	Corporate shareholder	Individual shareholder
Taxed under normal Irish tax rules.	May be tax exempt.	Subject to Income tax, PRSI and USC.

Foreign REIT

A REIT resident outside Ireland and investing in Irish property will be taxable under normal Irish rules as a non-resident landlord. Tenants will be obliged to pay the non-resident landlord rent net of income tax of 20%. The income tax should be paid by the tenant to the Revenue Commissioners.

Alternatively, the non-resident landlord may appoint a local agent. In this case the tenant will pay the rent gross but the agent will be assessed to tax on the rental income.

Gains on the disposal of Irish property will be subject to Irish Capital Gains Tax at 33%. However, where a property was acquired in the period from December 07, 2011, to December 31, 2014, and continues in the ownership of the person who acquired that property for a period of at least seven years, then any uplift in the value of the property during the seven-year period will be exempt from Capital Gains Tax. This provision has not been extended beyond December 31, 2014.

Corporate shareholder

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

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

Individual shareholder

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

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

Author contacts | Ireland

Padraic Whelan
Tel. +353 1 4172848
pwhelan@deloitte.ie

Deirdre Power
Tel. +353 1 4172448
depower@deloitte.ie

Frank Murray
Tel. +353 1 4172438
fmurray@deloitte.ie

Michael Raine
Tel. +353 1 4172224
mraine@deloitte.ie

Deloitte.

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

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Israel – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
REIT	2006	Sections 64A2–64A11 of the Israeli Tax Ordinance (“ITO”)	Corporate type

The REIT (Real Estate Investment Trust) regime was introduced into the Israeli tax legislation in 2006. The Israeli REIT is a ‘flow-through’ regime. As a result, each of the REIT investors is taxed on the distributed REIT incomes.

The REIT is governed by Sections 64A2–64A11 of the Israeli Tax Ordinance.

In this model, certain shareholders are exempt from tax on the income from the REIT.
The exempted shareholders include:
1) Retirement fund or a public institution - as for public institution income, half of the tax should be exempt for the purposes of this exemption. For the purposes of this paragraph, "fund for retirement" and a public institution,"- as defined in in the Israeli tax code;
2) A resident of a treaty country managing a retirement age savings plan or a long term savings plan similar to a fund, and any pension fund that is a resident of a treaty country or managed by a resident of a treaty country, to the extent that profits received from retirement savings are exempt from tax the in that resident country.

Other corporations that invest in the REIT are subject to corporate tax rates (25% in 2016). Individuals are subject to the individual marginal tax rate of up to 48% at the highest tax bracket, in 2016). Please note that as of January 01, 2013, individuals which their total chargeable income exceeds NIS 803,520 (in 2016), are subject to an additional 2% tax rate on part of their chargeable income.

2 Requirements

2.1 Formalities / procedure

Key requirements
- Special purpose company required. - Incorporated in Israel. Controlled and managed from Israel. - Company’s shares are listed for trading in a stock exchange in Israel within 24 months from the date of its incorporation - Company’s shares are listed for trading in a stock exchange in Israel within 36 months and at this period the company’s value assets which are real estate for residential rental purposes or income-yielding real estates for housing for rent are not less than 30% of the entire assets of the company. - Certain assets’ value / ratio should be maintained. - Certain limitations on company’s shareholders holdings ratio should be maintained.

The REIT regime applies to a new company that is established for this purpose or a company commits to become REIT.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Public company traded in the Tel Aviv Stock Exchange (TASE).	No

Legal form

A REIT must be a public company listed for trade on the Israeli stock exchange (TASE). It must be a tax-resident of Israel. Apparently, the REIT Subsidiaries can reside outside Israel, but the value of income-yielding real estate assets and the value of Israeli real estate for residential rental purposes located in Israel should be non-less than 75% of the value of all the company's income-yielding real estate assets and real estate for residential rental purposes.

The company must meet these requirements on the testing dates, June 30 and December 31 of each year since its incorporation.

Minimum share capital

No minimum share capital is required.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
The REIT's shareholders means of control should not exceed the limitations described	Yes

Shareholder requirements

As of three years from the company trading date at least 30% of the company's means of control are held by more than five shareholders.
However, as of five years from the company trading date at least 50% of the company's means of control are held by more than five shareholders.

In addition, as of the sixth year from the company trading date no shareholder will held more than 30% of the company's means of control, and as of the ninth year, not more than 20% Of the company's means of control.

The limitations on the company's shareholder apply on directly or indirectly holdings (a shareholder and his relative, as defined in section 88 of the ITO, are considered a single shareholder).

"Means of control" is defined as one of the following: the right to profit, the right to appoint a director or manager in the company or similar function, voting rights, the rights to liquidation proceeds, or the power to order or instruct someone who holds any of the rights listed above to act on his behalf.

Listing requirements

The company must be listed for trade on the TASE within a period of 24 months or 36 months from the date of incorporation under the provisions described above. The REIT may also be (dually) listed for trade abroad.

2.4 Asset levels

Restrictions on activities / investments
- 95% or more of the value of the REIT's assets must consist of income-yielding real estate assets, residential rental real estate assets and liquid assets (cash, deposit, bond, etc.). - 75% or more of the value of the REIT's assets must consist of: (1) Income-yielding real estate. (2) Money received from the first issue of the REIT's securities, which were listed for trading on the TASE– during the two years following the day of issue. (3) Money received from an additional issue of the REIT's securities, which were listed for trading on the TASE – during one year following the day of issue. (4) Consideration from the sale of real estate – during one year following the day of issue. - The value of the REIT's assets mentioned exceeds 200 million NIS. - the value of income-yielding real estate assets and the value of Israeli real estate for residential rental purposes located in Israel should be non-less than 75% of the value of all the company's income-yielding real estate assets and real estate for residential rental purposes.

A REIT must fulfill all the restrictions stated below:
95% or more of the value of the REIT's assets must consist of income-yielding real estate assets, residential rental real estate assets and liquid assets (cash, deposit, bond, etc.).
The value of income-yielding real estate assets and the value of Israeli real estate for residential rental purposes located in Israel should be non-less than 75% of the value of all the company's income-yielding real estate assets and real estate for residential rental purposes.

The company must meet this requirements on the testing dates, June 30 and December 31 of each year since its incorporation.

75% or more of the value of the REIT's assets must consist of:
1) Income-yielding real estate.
2) Money received from the first issue of the REIT's securities, which were listed for trading on the TASE– during the two years following the day of issue.
3) Money received from an additional issue of the REIT's securities, which were listed for trading on the TASE – during one year following the day of issue.
4) Consideration from the sale of real estate – during one year following the day of issue.

The value of the REIT's assets mentioned exceeds 200 million NIS.

The company must meet this requirements on the testing dates, June 30 and December 31 of each year since the date of the REIT's registration to TASE.

"Income-yielding real estate" is defined as real estate that generates income from rent and from additional activities, as long as at least 70% of the real estate is developed and the real estate is not considered inventory in the funds books.

Holding of real estate association by REIT does not affect REIT's requirements while the real estate association invest in assets according to the REIT's requirements. In addition, the real estate income will be subject to tax as part of the REIT's income.

2.5 Leverage

Leverage
The REIT's debt should not exceed the ratio from the REIT's total assests as described

The REIT's obligations (other than equity) do not exceed 60% of the income-yielding real estate value plus 80% of the real estate for residential rental purposes or income yielding real estates for housing for rent plus 20% of the other assets it holds.

The company must meet this requirements on the testing dates, June 30 and December 31 of each year since the date of the REIT's registration for trading in TASE.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of its chargeable income	100% of its capital gain from disposal of real estate.	- Distribution of the chargeable income must take place no later than April 30 of the following year. - Distribution of the capital gain must take place during a period of 12 months from the sale's date of the real estate.

Operative income
The REIT is obliged to distribute 90% of its chargeable income, excluding capital gains and non-deductible expenses and including exempted income, calculated based on generally accepted accounting principles.
The REIT may choose to distribute an additional amount equal to the depreciation.

Capital gains
The REIT is obliged to distribute 100% of its capital gain from disposal of real estate.

Timing
Distribution of the chargeable income must take place no later than April 30 of the following year since the date of the REIT's registration for trading in TASE

Distribution of the capital gain must take place in a period of 12 months from the date of sale of the real estate since the date of the REIT's registration for trading in TASE

2.7 Sanctions

Penalties / loss of status rules
Loss of tax privilege.

The REIT will be taxed similarly to an ordinary company from the date in which the requirements are no longer met. However, if the company fails to meet the requirements on a testing date in any given year since the date of the REIT's registration for trading in TASE, but within a period of up to three months successfully meets the requirements, and continues to do so for a consecutive year, the company will be considered a REIT throughout the entire period.

REITs that do not meet the requirements or choose to discontinue REIT status will be taxed as ordinary company from the date of its election or 90 days from the date of its application to the Israeli Tax Authority, according to the latest, or from the date that requirements are no longer met;
Any decision to discontinue REIT status by choice requires the approval of the company's general meeting. Controlling shareholders shall not be included in the count of voters.

The REIT must submit an annual tax return which includes an accountant certificate that the company has met all the requirements of a REIT.

3 Tax treatment at the REIT level

3.1 Corporate tax /withholding tax

Current income	Capital gains	Withholding tax
- No taxation of distributed eligible income. - Undistributed irregular income is subject to 60% tax rate. Distributed irregular income is subject to 70% tax rate. - Undistributed chargeable income from the disposition of real estate held for a period of less than 4 years will be subject to corporate tax rates or individual marginal tax rates. - income as well as capital gain derived from yielding real estate assets for residential rental purposes which not held for a short period, will be subject to 20% tax rate. - income paid to the shareholders which exceed the taxable income and beyond to the amount of depreciation will be subject to capital gain tax rate. - Other chargeable income is subject to corporate tax rates.	Distributed capital gains are tax exempt. Undistributed capital gains will be subject to corporate tax rate or individual marginal tax rate.	Upon distribution to the shareholders, a banking corporation or a member of TASE will withhold tax at the following rates: - Capital gains: 25%/30% for individuals, corporate tax rate for companies. However, regarding individuals, chargeable income from the disposition of real estate held for a period of less than 4 years will be withheld at the individual marginal tax rate. - income or capital gains derived from yielding real estate assets for residential rental purposes which not held for a short period, will be subject to 20% tax rate. - Irregular income: 70%. - Other chargeable income is subject to the regular corporate or individual marginal tax rates.

Current Income

The REIT is a ‘flow-through’ regime. However, the REIT is subject to taxes on undistributed income.

A 70% tax rate applies to ‘irregular income’ upon distribution;

‘Irregular income’ is defined as:
1) Income from the sale of inventory (real estate or otherwise);
2) Income other than the following to the extent that such income exceeds 5% of the revenues of the fund in that tax year:
   a) Income-yielding real estate, residential rental real estate income and income from the sale of construction rights related to the income-yielding real estate;
   b) Income from public traded securities, state bonds and deposits.
   c) Inflation income which considered as a business profits.

Irregular income, which is not distributed, is subject to 60% tax.
Distribution of the irregular income in later years will be considered a dividend distribution and will be subject to 25/30% withholding tax rate. No credit will be granted to the shareholders for the REIT taxation.

Capital Gains

Distributed capital gains are not subject to taxation. The REIT must distribute 100% of its capital gain income.

Foreign taxes

Foreign taxes paid by the REIT will be deducted from the foreign taxable income which was subject to the foreign taxes. However, no foreign tax credit will be granted to the REIT or to the REIT’s shareholders.

Accounting Rules

There are no special accounting rules for a REIT. A REIT listed for trade in the TASE must follow the IFRS rules, as any other listed company.

3.2 Transition regulations

Conversion into REIT status
According to the rules mentioned in section 2

3.3 Registration duties

Registration duties
Under certain conditions, Reduced real estate 'purchase tax'.

Under certain conditions an acquiring of income yielding real estate or real estate for housing for rent purpose by REIT in exchange for share allocation, the REIT will pay a reduced purchase tax of 0.5% of the real estate value. The reduced purchase tax rate also applies on a company commits to become a REIT according to the requirements mentioned in section 2.

If the following conditions does not met the company will pay the full purchase tax rate (in 2016 – 6%).

The reduced purchase tax of 0.5% also applies on REIT's income yielding real estate or real estate for housing for rent purpose acquiring.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Corporate tax is 25% in 2016. - Corporate capital gains tax is 25% in 2016.	- The Individual maximum marginal tax rate is 48% in 2016. - Individual capital gains tax is 25/30%.	As mentioned above

Corporate shareholder

The income derived from the REIT is subject to corporate tax. The corporate tax rate in 2016 is 25%.

Individual shareholder

The individual's income derived the REIT is subject to the individual's marginal tax rate. The maximum individual tax rate in 2016 is 48%.

Withholding tax

Upon distributions, the REIT must withhold tax that the shareholder would have paid had their investment been directly in the real estate. The individual or corporate tax rates are based on ordinary income. For example, the withholding tax would be 25% on corporate capital gains or ordinary business income based on the corporate tax rate.

The withholding tax is not a final tax assessment – the shareholder must submit an annual tax return which reflects his actual taxable income (including losses), credit will be granted for the withholding tax charged by the REIT.

Distribution of irregular income will be subject to 70% withholding tax. Distribution of the irregular income which was not distributed in the year in which it was generated, in later years will be considered a dividend distribution and will be subject to a 25% withholding tax rate.

4.2 Foreign shareholders

Corporate shareholder	Individual shareholder	Withholding tax
- Withholding tax subject to tax rates applicable for Israeli companies. - 'Irregular income' which is distributed is subject to 70% tax.	- Withholding tax subject to tax rates applicable for Israeli individual. - 'irregular income' which is distributed is subject to 70% tax.	- Final withholding tax. - Treaty relief available to distributions of 'irregular income' in later years.

Corporate shareholder

Distributions of current income and capital gains are subject to a withholding tax at the corporate tax rates applicable to Israeli investors. Treaty country resident pension funds and mutual funds are exempt from the withholding tax, excluding irregular income, to the extent that the profits are exempt in their country of residence.

Individual shareholder

Distributions of current income and capital gains are subject to a withholding tax at the individual income tax rates applicable to Israeli investors.

Withholding tax

Treaty relief may be granted for distribution of the irregular income in later years which are considered as dividend distribution.

5 Tax treatment of foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Taxed under normal Israeli tax rules.	- Taxed at corporate tax rate of 25% in 2016 if REIT is a flow-through entity. - Dividend is subject to 25% tax rate if the REIT is not a flow-through entity.	- Taxed at 48% in 2016 if REIT is a flow-through entity. - Dividend income will be subject to 25/30% tax if the REIT is not a flow-through entity.

Foreign REIT

A foreign REIT will be taxable under normal Israeli tax rules, based on its legal character (Corporation, Fund, Partnership etc.).

Corporate shareholders

A corporate shareholder in a foreign REIT, which derived taxable income from foreign sources, is subject to corporate income tax rate of 25% in 2016 as long as the REIT is considered a flow-through entity for Israeli tax purposes (regardless of its election under foreign country rules).

Dividend income is subject to 25%/30% tax rate. If the foreign REIT is not a flow-through, a tax credit is allowed.

Individual shareholder

An individual shareholder in a foreign REIT, which derives taxable income from foreign sources, is subject to individual income tax at the maximum rate of 48% in 2016, as long as the REIT is considered a flow-through entity.

Authors contact | Israel

Orli Blau
Tel. +972 3 684 8890
Gfisher@kpmg.com

EPRA

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

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Global REIT Survey 2016

EUROPE

Italy – SIIQ

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

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

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

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

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

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

The Revenue Agency provided clarifications regarding the SIIQ regime with the Circular Letter No. 8/E/2008 and with the Circular Letter No. 32/E/2015 (the latter in order to clarify and implement the new rules). Moreover, with the Regulations of December 18, 2015 the Revenue Agency provided for the form to be filed in order to exercise the option for the SIIQs and SIINQs regime.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Italy	3	2	€ 2.172	0.08%

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Beni Stabili SpA	€ 1.316	-15,35%	4,10%	0.06%
SpA	€ 618	-3,07%	5,13%	0.03%

* 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, August2016.*

2 Requirements

2.1 Formalities / procedure

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

An eligible listed real estate investment company must file a specific form with the Italian Revenue Agency by the end of the fiscal year prior to the year in which the company shall apply the SIIQ regime. As anticipated, the form and the relative submission rules have been recently amended in order to take into consideration the recent changes in the requirements to be met to adopt the SIIQ regime.

SIINQs must opt for the special regime jointly with the SIIQ parent company. In such regard, the Revenue Agency (Circular Letter n. 8/E/2008) clarified that "jointly" must be intended as for the same or for a subsequent tax period to the tax period for which the SIIQ exercised the option.

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

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Joint stock company	Listing requirements (for SIIQs)

Legal form

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

Following the entry into the SIIQ regime, the company's name must include the words *"Società d'Investimento Immobiliare Quotata"* or 'SIIQ', therefore the company's By-law must be amended accordingly (together with other amendments required by law).
The same requirements in terms of legal form (*Società per azioni*) and By-laws amendments must be satisfied also by the SIINQs.

Moreover, in 2009, the SIIQ regime was amended (by Article 12 of the Law Decree No. 135/2009 converted into Law No. 166/2009) in order to extend the SIIQ regime also to Italian permanent establishments of foreign REITS established in EU/EEA States which allow an adequate exchange of information with Italy.

Minimum share capital

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

2.3 Shareholders' requirements / listing requirements

Shareholders' requirements	Listing mandatory	Foreign Shareholders' Restrictions
At least 25% of the shares must be 'widely held'	Yes for parent company (SIIQ)	No specific foreign shareholders restrictions has been enacted
A single shareholder is not allowed to own more than 60% of voting rights and profit participation rights	Not for subsidiaries (SIINQ)	
For SIINQs, at least 95% of voting rights and profit participation rights must be owned by a SIIQ		

Shareholders' requirements

No single shareholder should hold, directly or indirectly, more than 60% of voting rights and profit participation rights.

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

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

It is worth noting that Law Decree No. 133/2014 has increased the maximum holding threshold allowed to a single shareholder from the previous 51% to the current 60% and has decreased the free floating threshold from the previous 35% to the current 25%.

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

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

In particular, provided that the 25% free floating threshold is met within the end of the first fiscal year for which the option has been exercised, the 60% shareholding requirement must be met within 24 following months.

In this case the SIIQ regime has effect from the first day of the fiscal year in which the 60% threshold is satisfied.
Until both the ownership requirements are met, the Italian corporate income tax (IRES – standard rate 27,5%/24% starting from 1 January 2017) and Italian regional tax on business activities (IRAP – standard rate 3,9%) are due pursuant to the ordinary rules.

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

With regard to ownership requirements for SIINQs, a SIIQ must own (also jointly with other SIIQs) at least 95% of the voting rights and profit participation rights of the SIINQ. Moreover, following the access to the special regime, the SIINQs must opt for the consolidation for tax purposes with the SIIQ parent company.

Listing requirements
SIIQ shares must be listed on the Italian stock exchange *(Borsa Italiana)* or any other recognized stock exchange of the EU/EEA Countries which allow an adequate exchange of information with Italy.
SIINQ shares must not be listed on a stock exchange.

2.4 Asset level / activity test

Restrictions on activities / investments
80% real estate assets requirement 80% real estate income requirement

At least 80% of the SIIQ's assets must consist of ("asset test"):
i) real estate properties to be leased (ownership or other rights)
ii) participations accounted as fixed assets in SIIQs/SIINQs/Italian real estate funds whose real estate assets held for lease or participations in real estate investment companies, real estate investment funds, SIIQs, SIINQs are at least 80% of the total assets ("Qualifying REIFs").

At least 80% of SIIQ's positive components of income must be ("profit test"):
i) proceeds from lease activity
ii) dividends from lease activity raising from participations in SIIQs/SIINQs/Qualifying REIFs
iii) capital gains realised on the disposal of real estate properties held to lease or of participations in SIIQs/SIINQs/Qualifying REIFs.

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

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

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

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

The same tests must be satisfied by the SIINQs.

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

2.5 Leverage

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

The company's By-law (after the election for the SIIQ regime) shall mandatory include the maximum leverage ratio allowed. This provision is aimed at protecting SIIQ's investors through the effective control of National Security and Exchange Commission (CONSOB) and of Bank of Italy.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
70% of net profits deriving from the leasing activity	50% of capital gains	Net profits: annually Capital gains: in the two years subsequent to the d`isposal

Operative income

SIIQs must distribute at least 70% (before the amendments introduced by Law Decree No. 133/2014 such rate was 85%) of the lower of:

i) net profits deriving from the leasing activity or from participations in other SIIQs, SIINQs, Qualifying REIFs, Qualifying SICAFs;

ii) total profits available for distribution, according to Italian civil law provisions.

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

Capital gains

SIIQs must distribute at least 50% of net capital gains realised on the disposal of real estate properties held for leasing or on the disposal of participations in SIIQs, SIINQs, Qualifying REIFs and Qualifying SICAFs, in the two years subsequent to the disposal. Such obligation has been introduced by Law Decree No. 133/2014.

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

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

2.7 Sanctions

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

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

Furthermore, the SIIQ/SIINQ loses its status if it does not meet the asset test or the profit test for three consecutive years (grace period extended from two to three years by Law Decree No. 133/2014).

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

There are no specific penalties in case of withdrawal of the SIIQ or SIINQ status.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Income deriving from rental or leasing activities are tax-exempt Other income are subject to the ordinary corporate and local taxation	Capital gains deriving from the disposal of rented real estate properties and of participations in SIIQs, SIINQs, Qualifying REIFs, Qualifying SICAFs are exempt Other capital gains are subject to the ordinary corporate taxation	Proceeds from lease activity distributed by Qualifying REIFs to SIIQs are not subject to withholding tax

Current income

The SIIQ income deriving from rental activities and from dividends from rental or leasing activities distributed by SIIQs, SIINQs, Qualifying REIFs, Qualifying SICAFs are exempt from corporate income tax (IRES) and from regional tax on business activities (IRAP). The tax exemption applies from the beginning of the fiscal year in which the SIIQ regime is adopted. Such income will be taxed only in the hands of the shareholders upon distribution applying a withholding tax (at 26% rate), as better described below.

The same tax exemption applies also to the rental income realised by SIINQs.

Income deriving from activities different from the lease activity is subject to ordinary corporate income tax and regional tax on business activities (aggregate 31.4%/27.9% starting from 1 January 2017).

With regard to such portion of income, SIIQs are subject to the ordinary corporate income tax provisions limiting the deduction of interest expenses to an amount equal to interest revenues and, for the exceeding amount, within the limit of 30% of the adjusted EBITDA. This provision may not apply to interest expenses on loans secured by a mortgage on real estate assets held for leasing under certain conditions that should be verified on a case by case basis.

Capital gains

Capital gains on the disposal of rented real estate properties and of participations in SIIQs, SIINQs, Qualifying REIFs and Qualifying SICAFs are exempt from corporate income tax (IRES) and from regional tax on business activities (IRAP).

Capital gains different from those deriving from the leasing activity are fully taxable according to the ordinary capital gains provisions.

Other taxes

Excluding income taxes, other taxes (e.g. IMU) ordinarily apply.

Withholding tax

No withholding tax is levied on dividends received by the SIIQ from other SIIQs and SIINQs deriving from rental activities.

Moreover, according to the amendments introduced by the Law Decree No. 133/2014, the 26% withholding tax ordinarily applied on proceeds distributed by real estate investment funds is not applicable on proceeds from lease activity distributed by Qualifying REIFs and Qualifying SICAFs to SIIQs or SIINQs.

Dividends received by other entities are subject to the ordinary regime.

Accounting Rules

Since SIIQs are Italian public listed companies, they must adopt IFRS standards. In addition, SIIQs shall set-up two different sets of accounts with the purpose to distinguish the net profits deriving from the 'exempt' activity (i.e. the activities which can benefit from the tax flow-through treatment) and the other activities carried on, if any.

Moreover, pursuant to the special regime, also SIINQs are required to adopt the IFRS standards for their financial statements.

3.2 Entry Tax

Conversion into REIT status
20% substitute tax on real estate properties contributed to SIIQs
20% 'entry tax'

Real estate properties contributed to a SIIQ can be subject to a 20% substitute tax on realised capital gains instead of the ordinary taxation (by option of the conferor), provided that the SIIQ retains the assets for a minimum three-year period.

Moreover, companies opting for the SIIQ regime are required to align the fiscal value of their real estate assets to their fair value, determined at the beginning of the first fiscal year in which the SIIQ regime applies (step-up of the fiscal value). Such increase of the fiscal value may be alternatively subject to a 20% substitutive tax (so called "entry tax") or included in the taxable income for corporate income tax (IRES) and from regional tax on business activities (IRAP) purposes (under the ordinary rules).

If the capital gains are subject to the 20% entry tax (which is payable in five annual equal instalments) the higher fiscal value of the assets will be effective from the fourth period following that in which the company opted for the SIIQ regime. If the assets are sold before such date, capital gains are taxed at the ordinary tax rate (i.e. IRES and IRAP aggregate 31.4%/27.9% starting from 1 January 2017) while the 20% entry tax already paid can be offset as tax credit. Thus, applying for the SIIQ regime offers the opportunity of reducing the tax burden on latent capital gains.

On the contrary, if capital gains are included in the taxable income, they are subject to the ordinary IRES and IRAP rules for the taxation of capital gains.

In addition, tax losses realised before the election for the SIIQ regime can be used to offset the tax base for the calculation of the 20% entry tax under the ordinary limits (i.e. within the limit of 80% of the taxable income, as clarified by the Revenue Agency in the Circular Letter No. 32/E/2015).

3.3 Registration duties

Registration duties
Commercial buildings: VAT exempt (or subject to a 22% or 10% VAT under certain circumstances), EUR 200 registration tax, 2% mortgage and cadastral taxes. Residential buildings: (i) if the transfer is subject VAT (22% or 10% under certain circumstances), registration tax and mortgage and cadastral taxes are due at the fixed amount (EUR 200 each); (ii) if the transfer is VAT exempt, registration tax is due at the rate of 9%, mortgage and cadastral taxes are due at the fixed amount of EUR 50 each.

Indirect taxes are applied to the transfers of real estate properties to a SIIQ as follows:

- Commercial buildings are exempt from VAT, but it is possible to opt for the VAT application (22% or 10%). In addition, the registration tax is applied at the lump sum of EUR 200 and, irrespective of the VAT application or not, 1.5% mortgage tax and 0.5% cadastral tax are levied. In the case that commercial buildings are transferred to a SIIQ from the companies which built them or carried out some restructuring works in the preceding five years VAT compulsorily applies (at the rate of 22% or 10%).
- Residential buildings are exempt from VAT, registration tax is applicable at 9% (in any case the amount cannot be lower than EUR 1,000); mortgage and cadastral taxes are applicable at lump sum of EUR 50 each. Registration, mortgage and cadastral taxes applies at the lump sum of EUR 200 if VAT compulsorily applies (since the residential buildings are transferred by the companies which built them or carried out some restructuring works over the preceding five years) or if VAT applies by option (at a rate of 22% or 10% under certain conditions).

The contribution to a SIIQ of a portfolio consisting mainly of rented real estate properties falls out of the scope of VAT and is subject to registration, mortgage and cadastral taxes at the fixed amount (EUR 200 each).

4 Tax treatment at the shareholder's level

4.1 Domestic shareholders

Corporate shareholder	Individual shareholder	Withholding tax
Full taxation of dividends from exempted income Dividends from non-exempted income subject to ordinary dividend taxation rules Full taxation of capital gains (participation exemption not applicable)	A final withholding tax is levied on SIIQ exempted income Dividends from non-exempted income are subject to ordinary dividend taxation rules Full taxation of capital gains	26% withholding tax on the distribution of exempted SIIQ income Corporate and business shareholders can credit the withheld taxes

Corporate shareholder

Dividends deriving from the SIIQ's non-exempted income are subject to the ordinary tax regime therefore they are subject to corporate income tax (IRES – 27.5%/24% starting from 1 January 2017) on the limited amount of 5% of such dividends (i.e. effective IRES rate 1.375%/1.20% starting from 1 January 2017).

Dividends deriving from the SIIQ's exempted income are fully taxable in the hands of corporate shareholders at IRES ordinary rate (27.5%/24% starting from1 January 2017), and the 26% tax withheld upon distribution (on account) is offset against corporate income tax.

Capital gains resulting from the disposal of SIIQ shares are fully subject IRES at the ordinary tax rate (27.5%/24% starting from1 January 2017), since the participation exemption regime is not applicable by law on SIIQs shares.

Individual shareholder

Dividends deriving from the SIIQ's non-exempted income are subject to the ordinary tax regime. In particular, a 26% final withholding tax applies in case of non-affiliated shareholdings (voting rights <2% and participation rights <5%) and dividends collected on affiliated shareholdings are subject to individual income tax (IRPEF) at progressive rates on the limited amount of 49.72% of such dividends (*i.e.,* dividends would benefit from a 50.28% exemption for the purposes of the ordinarily applicable individual income tax). The 49.72% rate will be re-determined starting from 1 January 2017.

Dividends deriving from the SIIQ's exempted income are subject to a final 26% withholding tax upon distribution.

In case the individual holds the SIIQ shares in the course of a business activity, dividends from the SIIQ's non-exempted income are subject to individual income tax (IRPEF) at progressive rates on the limited amount of 49.72% of such dividends (such rate will be re-determined starting from 1 January 2017).
While dividends from the SIIQ's exempted income are fully taxable in the hands of the shareholder at IRPEF progressive rates, and the 26% tax withheld at distribution (on account) is offset against individual income taxes.
Capital gains realised on the disposal of SIIQ shares by individuals not engaged in any business activity are fully subject to IRPEF at progressive rates in case of affiliated shareholdings while are subject to a 26% substitute tax in case of non-affiliated shareholdings.

Capital gains realised on the disposal of SIIQ shares by individuals engaged in a business activity are fully subject to IRPEF at progressive rates.

Other taxes

No other taxes are levied.

Withholding tax

As anticipated, a 26% withholding tax applies on dividends paid out of the SIIQ's tax-exempted income upon distribution.

The withholding tax is applied as final for individual shareholders not carrying out a business activity. While it is applied on account for corporate shareholders and individual shareholders carrying out a business activity (they credit the withheld taxes to offset corporate income tax and individual income tax).

Distributions to pension funds and collective investment funds established in Italy are exempt from the withholding tax.

The withholding tax is levied by the financial intermediaries where the SIIQ shares are deposited.

4.2 Non-resident shareholders

Corporate shareholder	Individual shareholder	Withholding tax
Final withholding tax	Final withholding tax	Double tax treaty benefits Parent Subsidiary Directive not applicable

Corporate shareholder

Dividends paid out of the SIIQ's non-exempted income are subject to the ordinary tax regime that foresees a 26% final withholding tax (provided that non-residents do not have a permanent establishment in Italy). This withholding tax rate may be reduced to 1.375% rate (1.20% starting from 1 January 2017) if the dividends are paid to companies, which are resident in EU or in EEA Countries, provided that an adequate exchange of information with Italian Tax Authorities exists.

Dividends deriving from the SIIQ's exempted income are subject to a final 26% withholding tax upon distribution. Double tax treaties apply.

Capital gains deriving from the sale of shares in SIIQs are subject to the tax regime ordinarily applicable to the sale of Italian shares (including certain domestic and Double tax treaty exemptions available to non-residents). Double tax treaty protection will apply in most circumstances.

Individual shareholder

Dividends paid out of SIIQ's non-exempted income are subject to the ordinary applicable tax regime which provides a 26% final withholding tax. Dividends deriving from SIIQs exempted income will be subject to a final 26% withholding tax when distributed under the SIIQ regime. Double tax treaties apply.

Withholding Tax

Withholding taxes on dividends paid to non-resident shareholders are final, provided that the shares are not assets of a permanent establishment in Italy.

Non-resident shareholders may claim the tax treaty relief on the dividends (after amendments introduced by the Law Decree No. 133/2014).

The applicability of the Parent-Subsidiary Directive under the SIIQ regime is not allowed for the portion referring to dividends from the SIIQ exempt income. The Parent-Subsidiary Directive is only applicable to the portion of dividends from the SIIQ non-exempt income.

5 SIIQ/REIT cross border investments

Foreign REIT	Corporate shareholder	Individual shareholder
It follows the ordinary withholding taxation rule at rate of 27.5%/24%	1.375%/1.20% final taxation	26% final tax or 50.28% exemption depending on the number of the shares held (or % re-determined after 1 January 2017)

Foreign REIT

It follows the ordinary withholding income taxation rule applicable to non-residents. As a consequence, any income deriving from immovable property situated in Italy will be subject to the general 27.5%/24% starting from 1 January 2017 corporate income tax rate applicable to non-resident entities, if not covered by the provisions of any Double tax treaty.

Moreover, as regards foreign investors, the Law Decree No. 133/2014 amended the provision which extends the SIIQ regime to foreign REITs resident in EU/EEA white-list countries and having in Italy a permanent establishment. In particular, under the new rules, access to the SIIQ regime is also allowed to foreign REITs operating through a permanent establishment which carries out the lease activity in Italy exclusively through investments in Italian SIINQs. Consequently, starting from the fiscal year for which the option has effect, the lease income connected with the permanent establishment in Italy is subject to a 20% substitute tax. Under the new provisions the permanent establishment may carry out its real estate activity in Italy only through subsidiaries (SIINQs).

Corporate shareholder

Domestic corporate shareholder receiving dividend income from certain foreign REIT may benefit from a 95% exemption (if certain conditions are met). The remaining 5% will be taxed at the ordinary 27.5%/24% starting from 1 January 2017 corporate income tax rate. Thus, the effective domestic taxation of dividends received by a foreign REIT is equal to 1.375%/1.20%. The only exception concerns REITs resident in a black-listed Country. In this case, the 95% exemption would no longer apply and the full amount of the dividends distributed will be subject to a 27.5%/24% ordinary corporate tax rate.

Foreign tax credit will be limited to the taxable amount. ■

Authors contact | Italy

Giuseppe Andrea Giannantonio
giuseppeandrea.giannantonio@chiomenti.net

CHIOMENTI
STUDIO LEGALE

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

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EUROPE

Lithuania – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction / history / REIT type

REIT objective	Enacted year	Citation	REIT type	REIT market
REIT for non-professional investors	2008	Law on Collective Investment Undertakings.	Investment Company / Investment Fund.	5 existing fund.
REIT for professional investors	2013	Law on Collective Investment Undertakings for Professional Investors.	Investment Company / Investment Fund.	10 existing funds.

On the November 11, 2007, the Lithuanian Parliament amended the Law on Collective Investment Undertakings, which came into force on the March 01, 2008. The Law regulates the activities of collective investment undertakings which shares / units may be traded to non-professional investors. According to the law, a non-professional investor is the investor that does not have sufficient investing experience, therefore, subject to additional investors' protection measures.

The Law on Collective Investment Undertakings regulates the activities of collective investment undertakings for non-professional investors including the activities of Real Estate Investment Trusts (the REIT) for non-professional investors.

On the July 1, 2013, the Law on Collective Investment Undertakings for Professional Investors was introduced into Lithuanian legislation. The law regulates the activities of collective investment undertakings which shares / units may be traded only to professional investors. According to the law, professional investor is (1) a regulated entity operating in the financial market, or (2) institutional investor whose main activity is investment in financial instruments, or (3) a large company that meets certain criteria set in the law, or (4) individual / legal person with a minimum investment amount of EUR 125 000, or (5) individual recognized by professional investment institution as able to assess investment risk.

The Law on Collective Investment Undertakings for Professional Investors regulates the activities of collective investment undertakings for professional investors including the activities of REIT for professional investors.

Since the Law on Collective Investment Undertakings and the Law on Collective Investment Undertakings for Professional Investors do not provide for a new form of entity, REIT for non-professional investors as well as for professional investors are incorporated as a legal entity or an investment fund, managed by a management company.

2 Requirements

2.1 Formalities / procedure

Key requirements
- Special collective investment undertaking status required. - License from the Bank of Lithuania.

In order to become eligible to the regime entities are required to have special collective investment undertaking status, which could be either (1) open-ended (variable capital investment company or open-ended investment fund), or (2) closed-ended (closed-ended investment company or closed-ended investment fund).

Variable capital investment company / open-ended investment fund is defined as an entity whose shareholders / co-owners have the right to request at any time that their shares / investment units be issued or redeemed. Also, the amount of capital of variable capital investment company varies depending on the issue and redemption of shares.

Closed-ended investment company / closed-ended investment fund is defined as an entity with a fixed number of shares / investment units outstanding that are re-purchased after the end of its activity or any other event indicated in the articles of incorporation and are not redeemed upon the request of the investor.

In order to have the status of the REIT, the investment company or fund's management company has to obtain a license from the Bank of Lithuania. The application for the license shall be accompanied by the information about the company, its shareholders, members of the management bodies, the company's program of their development and activities, initial capital and other documents, information and explanations specified in the licensing regulations approved by the Bank of Lithuania.

The bylaws of the REIT must contain a number of specific provisions that are verified by the Bank of Lithuania during the procedure of granting a license for the activities.

The Bank of Lithuania shall notify the applicant of its consent or refusal to grant a license within 6 months from the filing of all documents, information and explanations in case REIT for non-professional investors is registered and within 3 months in case REIT for professional investors is registered.

In case the applicant company is related to a management company, an intermediary of public trading in securities, a credit institution or an insurance company licensed in another European Union member state a license may be granted only upon asking for the opinion of the foreign supervisory authority.

2.2 Legal form / minimum share capital

REIT objective	Legal form	Minimum share capital
REIT for non-professional investors	Joint stock company or investment fund managed by a management company.	EUR 40,000 for joint stock company EUR 125,000 for the management company.
REIT for professional investors	Joint stock company, or limited liability company, or partnership or investment fund managed by a management company.	EUR 40,000 for REIT or management company organized as a joint stock company. EUR 2,500 for REIT or management company organized as a private limited liability company. No share capital requirements for partnership.

Legal form

REIT for non-professional investors and REIT for professional investors may be organized in different legal forms.

REIT for non-professional investors should have a form of either (1) a joint stock company incorporated under the Lithuanian law or (2) an investment fund managed by a management company. Additional statutory and management seat requirements apply.

REIT for professional investors should have a form of either (1) a joint stock company, or (2) a limited liability company, or (3) a partnership, or (4) an investment fund managed by a management company. Additional statutory and management seat requirements apply.

Minimum share capital

REIT for non-professional investors and REIT for professional investors are subject to different share capital (monetary contributions of founders) requirements under Lithuanian legislation. In case REIT is organized as an investment fund, share capital requirements are applied to the management company.

The following share capital requirements are applied to REIT for non-professional investors:

- The share capital of a REIT organized as a joint stock company should be not less than EUR 40,000.
- The share capital of the management company managing an investment fund should not be less than EUR 125,000.

The following share capital requirements are applied to REIT for professional investors:

- The share capital of a REIT / management company of investment fund organized as a joint stock company should not less than EUR 40,000;
- The share capital of a REIT / management company of investment fund organized as a private limited liability should not less than EUR 2,500;
- No share capital requirements are applied to REIT organized as a partnership.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
No requirements.	No.

Shareholder requirements

There are no specific shareholder conditions that have to be fulfilled to become eligible for the REIT status either for local or for foreign shareholders.

However, since the REIT status is not harmonised with the Council Directive 85/611/EEC as of December 20, 1985, restrictions may apply for a distribution of REIT’s units or shares in another Member State of the EU, however, for this the local regulations of foreign countries would apply.

Listing requirements

Listing is not a mandatory requirement to obtain the REIT status. Private REITs are allowed.

2.4 Asset level / activity test

Restrictions on activities / investments of REIT for non-professional investors
- No more than 20% of its net assets in securities of other companies; - No more than 30% of its net assets in a separate real estate asset or real estate company (exceptions under certain circumstances may apply); - No more than 20% of its net assets in real estate under development; - No more than 40% of its net assets in a single real estate property and any assets required for its maintenance; - No more than 30% of its net assets in securities issued by a single real estate company including liabilities arising from the transactions with real estate company involving derivatives; - No more that 30% of its net assets in the securities in a single real estate company and in the assets that such real estate company has invested in. - Further restrictions apply. - May invest in real estate abroad.

The REIT for non-professional investors is allowed to invest into the following real estate assets: land, buildings and (or) premises constituting separate real estate objects, registered in the name of the investment company, and other tangible assets that are necessary for the operation of the real estate.

Following the provisions of the Law on Collective Investment Undertakings, the assets of the REIT for non-professional investors must consist from at least 4 separate real estate objects, i.e. the investment into a single real estate is not allowed. For the purposes of the diversification of assets, the REIT is allowed to invest:

- no more than 20% of its net assets in securities of other companies or other liquid assets;
- no more than 30% of its net assets in a separate real estate asset or real estate company (exceptions under certain circumstances may apply);
- no more than 20% of its net assets in real estate under development;
- no more than 40% of its net assets in a single real estate property and any assets required for its maintenance;
- no more than 30% of its net assets in securities issued by a single real estate company including liabilities arising from the transactions with real estate company involving derivatives;
- no more than 30% of its net assets in the securities in a single real estate company and in the assets that such real estate company has invested in.

The investments of REIT for non-professional investors are not permitted into:

- real estate assets whose ownership is restricted and this may result in the loss of the ownership;
- real estate assets not registered in the real estate or any other comparable registry.

Specific cases where the investments are allowed to:

Investments abroad	Allowed directly and indirectly*
Investments in residential properties	Allowed
Investments in developments	Allowed
Investments in subsidiaries	Allowed

* In case of an indirect investment, investments into units of other REITs registered in other EU or EEA member states where they are regulated at as strictly as in Lithuania

The investment portfolio of a newly incorporated REIT for non-professional investors is allowed, for four years from the approval of its instruments of incorporation, not to comply with the diversification requirements mentioned above. However, in all cases, this should not waive the obligation of a management company and a REIT to invest the assets of a REIT in compliance with the requirements set in the Law on Collective Investment Undertakings.

Restrictions apply regarding investment in the securities of foreign companies incorporated in non-EU or non-EEA member states.

The REIT for non-professional investors is allowed to invest into real estate objects in development, if their development is to be finished during an acceptable timeframe.

The REIT for non-professional investors is allowed to invest into:
- securities of companies whose primary business activity is purchase, reconstruction, lease, trade or development of real estate;
- shares or units of other REITs registered in other EU or EEA member states;
- other securities (including shares), money market instruments dealt on regulated markets.

The net assets of REIT for non-professional investors of the investment fund after a six-month period from the beginning of its activities should reach a level of EUR 300,000. The net assets of the REIT as a joint stock company should reach a level of EUR 600,000 within 12 months from the receipt of the license from the Bank of Lithuania.

Capital adequacy requirements are stipulated for the management companies managing investment funds aimed to non-professional investors. The capital of the management company cannot be less than the initial share capital of 125,000 EUR. If the value of assets managed by the management company exceeds 250,000,000 EUR, the management company is obliged to increase the capital by not less than 0.02% of the asset value in excess of EUR 250 million. However, once the capital reaches EUR 10 million, no further increase is required.

Following the provisions of the Law on Collective Investment Undertakings for Professional Investors, the assets of the REIT for professional investors has to be invested in objects indicated in REITs establishment documents.

REIT for professional investors is not permitted to provide loans to its participants, except for the members of partnership provided that it is stipulated in REITs establishment documents.

The net assets of REIT for professional investors should reach a level of EUR 1,000,000 within 1 year from the receipt of the license from Bank of Lithuania. The assets and liabilities of REIT for professional investors should reach a level of EUR 2,000,000 within 2 year from the receipt of the license from Bank of Lithuania.

2.5 Leverage

Leverage for REIT for non-professional investors
Limited to 50% of the value of real estate.

REIT for non-professional investors may borrow up to 50% of the value of real estate of REIT for the period defined in REIT establishment documents.

Leverage for REIT for professional investors is not regulated by the law.

2.6 Profit distribution obligations

Operating income	Capital gains	Timing
No requirement.	No requirement.	No requirement.

There is no legal requirement for the profit distribution. The procedure of payment of dividends to the shareholders (periodicity, share of income allocated for dividends) must be defined in the bylaws or rules of investment of the REIT.

2.7 Sanctions

Penalties / loss of status rules
- No tax penalties - Administrative penalties - Revoking of the license

There are no tax penalties. However the Bank of Lithuania shall have the right to apply the following measures to an REIT:

- warn about the shortcomings and set a term for their elimination;
- impose administrative penalties (up to EUR 57,924);
- temporarily suspend the license for the provision of one or more services;
- revoke the license for the provision of one or more services;
- oblige the management company or investment company to change the manager;
- suspend the distribution or redemption of shares;
- prohibit, for periods not longer than 3 months, to buy securities or money market instruments;
- appoint an interim representative of the Bank of Lithuania for the supervision of the activity.

3 Tax treatment at the level of REIT[1]

3.1 Corporate tax/ withholding tax

Current income	Capital gains	Withholding tax
- Investment income (e.g. rental income, capital gains upon disposal of property and shares) is tax-exempt. - Dividend income or any other income from distributed profits is tax-exempt under certain conditions. Otherwise, corporate income tax at a rate 15% applies.	Tax-exempt.	Not creditable for investment fund.

Current income

According to the provisions of the Law on Corporate Income Tax, investment income of the REIT with a status of a investment company (rental income, capital gains upon disposal of shares) are treated as not taxable income, except for dividends income or any other income from distributed profits. Capital gains upon disposal of real estate are also tax-exempt. Other types of business income (if any) are subject to 15% corporate income tax.

Dividends received by the investment company from foreign investments are tax-exempt if (1) dividends' payer is established in EEA and is subject to corporate income tax therein, or (2) participation exemption applies (if the investment company owns at least 10% of the voting shares of dividends' payer for at least one year) and payer is subject to corporate income tax. In other cases, dividends are subject to 15% corporate income tax.

[1] If not specified, the tax treatment of the REIT for professional investors describes situations where REIT is established in a form of a joint stock company. Please note, that depending on the legal status of the REIT, tax treatment might be different.

Profit distributed by the REIT with a status of a company to the individual shareholder and not taxed at the level of the REIT is subject to 15% corporate income tax at the moment of the distribution.

The REIT with a status of the investment fund is not a subject to tax. Therefore the income of such REIT as well as dividends received is not taxable.

Capital gains
The treatment is the same as for current income.

Withholding tax
Dividends distributed by the REIT to corporate recipients are taxable at 15% withholding tax.

Accounting rules
Financial statements of the REIT should be drawn up in compliance with the Lithuanian GAAP which is very close to IFRS. However, REITs whose securities are traded on regulated markets should draw up financial statements according to IFRS. Lithuanian laws make a distinction between group and single financial statements; therefore, single statements must always be prepared whereas those of the group only in case of mandatory consolidation.

The REIT whose securities are not traded on regulated markets has an option between Lithuanian GAAP and IFRS.

For the purposes of corporate income tax calculation the financial result of the REIT (calculated according to IFRS or Lithuanian GAAP) would be decreased by non-taxable income, i.e., investment income, and increased by non-deductible expenses, i.e., expenses related to the non-taxable income etc.

3.2 Transition regulations

Conversion into REIT status
N/A

3.3 Registration duties

Registration duties
- Land registration fee and real estate registration fee apply. - Notary fees are 0.45% of the value of property capped at approx. EUR 5,792.

Land ownership registration fee and real estate ownership registration fee applies. It is calculated based on the value of the property. For example, when registering a building valued at EUR 300,000 the fee is approximately EUR 150.

Notary fees are 0.45% of the value of the real estate but not less than EUR 28.96 and not more than EUR 5,792.40.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Withholding tax of 15% on dividends. - Generally, capital gains are subject to 15% corporate income tax.	- Final withholding tax of 15% on dividends. - Capital gains exceeding EUR 3,000 are subject to 15% income tax.	Creditable.

Corporate shareholder

Dividends distributed to domestic corporate shareholders are subject to withholding tax at a rate of 15%.

The amount of corporate income tax withheld and paid to the budget by the REIT with a status of a company may be set off against the amount of corporate income tax to be paid by the corporate shareholder.

Capital gains realised on the sale of the REIT's shares are generally subject to 15% corporate income tax rate.

Return of capital distribution due to the redemption of shares shall be treated as capital gains from sale of shares and taxed accordingly.

Individual shareholder

Dividends distributed to domestic individual shareholders are subject to the final withholding tax at a rate of 15%.

If the REIT distributes dividends to the individual shareholder from the profit which was tax exempt, the distributed dividends will be subject to 15% resident's income tax and 15% corporate income tax.

Capital gains realised by an individual resident shareholder on the sale of the REIT shares are tax-exempt if the amount is less than EUR 500. The exceeding amount of capital gains is subject to 15% residents' income tax.

Return of capital distribution due to the redemption of shares shall be treated as capital gains from share sale and taxed accordingly. However, no exemptions apply.

Withholding tax

The obligation to calculate and pay the tax falls on the REIT. The tax must be paid until the 10th day of the month that follows the dividend payment. It is possible to credit withholding tax against the taxes payable on the same income, however, the credit should not exceed the tax due.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Final withholding tax of 15% on dividends. - Capital gains are tax-exempt.	- Final withholding tax of 15% on dividends. - Capital gains are tax-exempt.	- Treaty benefits available.

Corporate shareholder

Dividends paid to foreign shareholders are subject to 15% withholding tax.

Capital gains from the sale of shares are not subject to corporate income tax in Lithuania.

Return of capital distribution is not subject to profit tax in Lithuania.

Individual shareholder

Dividends paid to foreign shareholders are subject to 15% withholding tax.

Capital gains from the sale of shares are not subject to the resident’s income tax in Lithuania.

Return of capital distribution is not subject to the resident’s income tax in Lithuania.

Withholding tax

The obligation to calculate and pay the tax on dividends paid to corporate shareholder falls on the REIT. The tax must be paid until the 10th day of the month that follows dividends payment.

A non-resident shareholder may be entitled to a withholding tax reduction under a Treaty on Avoidance of Double Taxation.

5 Tax Treatment of foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Rental income and capital gains on disposal of property shall be subject to 15% withholding tax.	- Dividends are subject to 15% profit tax. - Generally, capital gains are subject to 15% profit tax.	- Residents income tax of 15% on dividends. - Generally, capital gains are subject to 15% income tax.

Foreign REIT

As it was indicated investment income is treated as non-taxable in the hands of the REIT, provided that its activity is regulated by the Lithuanian Law on Collective Investment Undertakings. Since it is not the case for a foreign REIT, its local rental income and capital gains on disposal of property shall be subject to 15% withholding tax.

Corporate shareholder

Dividends received by domestic corporate shareholders from foreign REITs are subject to 15% profit tax.

Individual shareholder

Dividends received by domestic individual shareholders from foreign REITs are subject to 15% Lithuanian residents' income tax. ■

Authors contact | Lithuania

Donatas Kapitanovas
Tel. +370 5 274 2317
donatas.kapitanovas@lt.ey.com

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

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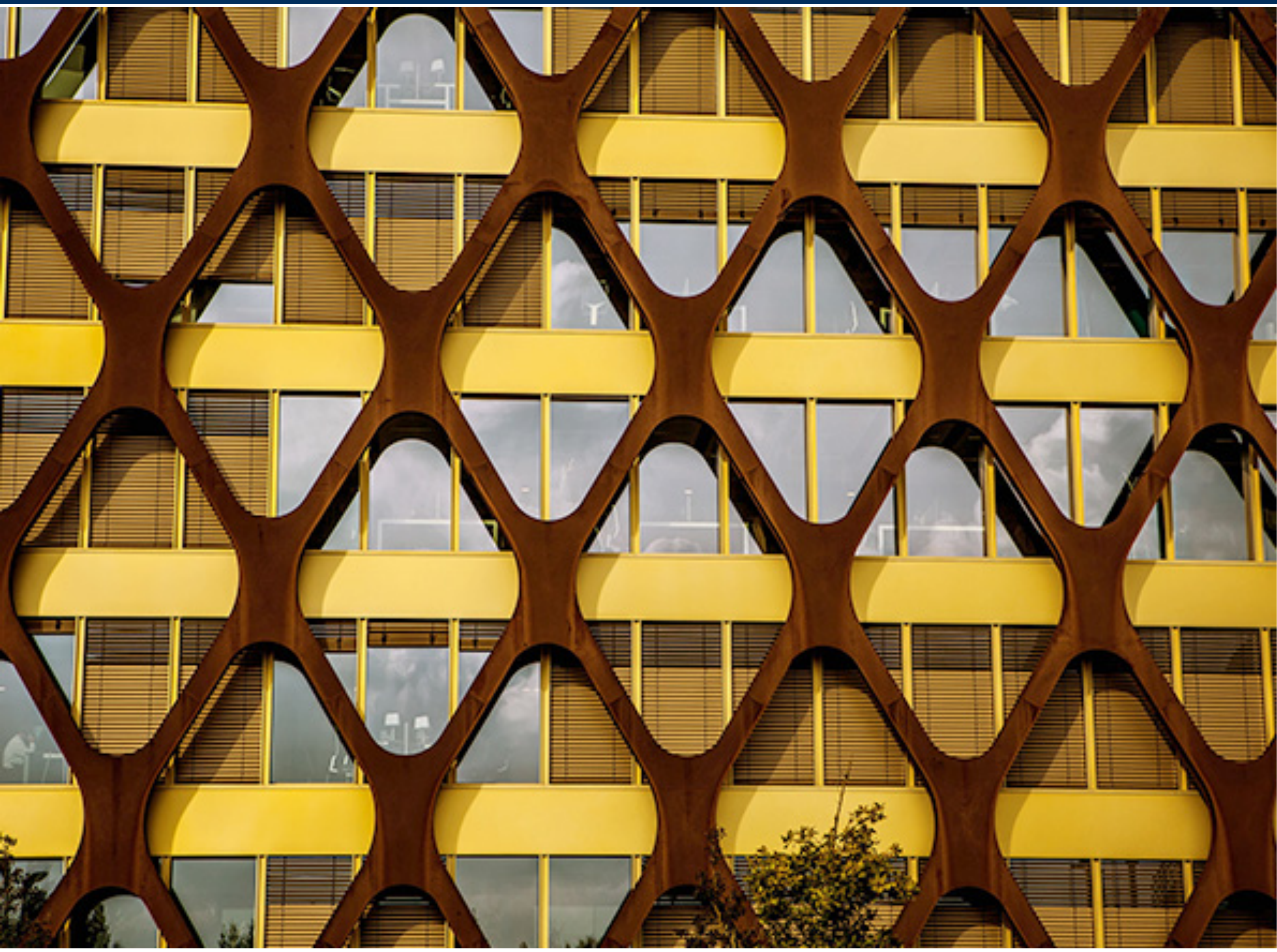

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

Fund Name	Enacted year	Citation	REIT type
SIF	2007	Law relating to specialised investment funds	- Contractual Type - Corporate Type - Other Type

Although Luxembourg has not yet enacted a REIT regime *per se*, the specialised investment fund (SIF) regime enacted on the February 13, 2007 has developed into a specialised property fund regime for years.

A SIF shall be any undertaking for collective investment situated in Luxembourg (i) the exclusive object of which is the collective investment of its funds in assets in order to spread the investment risks and to ensure for the investors the benefit of the results of the management of its assets, and (ii) the securities or partnership interests of which are reserved to one or several well-informed investors, and (iii) the constitutive documents or offering documents or partnership agreement of which provide that it is subject to the provisions of the law of February 13, 2007, as amended, relating to specialised investment funds (the SIF Law). In addition, there are plans to enact a separate REIT regime comparable to those of other European countries. This new REIT regime is currently under discussions amongst the authorities and the market players.

2 Requirements

2.1 Formalities / procedure

Key requirements
- Authorisation and ongoing supervision by the Luxembourg supervisory authority. - Requirement for a depositary.

Every SIF must be authorised by the supervisory authority of the financial sector, the *Commission de Surveillance du Secteur Financier* (CSSF). The CSSF will review and authorise the SIF's (i) constitutive documents (i.e. the Articles of Association for the corporate form of SIF, or the management regulations for the contractual SIF) and (ii) offering document and (iii) approve the various intervening parties in the SIF (e.g. depositary, central administration, portfolio managers), its risk management process and other internal procedures (conflict of interest policy, etc.). The CSSF will also look at the identity of the persons in charge of the management of the SIF (members of the board of directors, day-to-day managers, where applicable, etc.). Where the SIF qualifies as an Alternative Investment Fund (AIF) under Directive 2011/61/EC (AIFMD) transposed into Luxembourg legislation by the law of July 12, 2013 on alternative investment fund managers (AIFM Law), the CSSF will review compliance with the regulatory regime deriving from and in particular the appointment of an authorized or registered alternative investment fund manager.

Upon authorisation, each SIF is entered on the official SIF list maintained by the CSSF. Registration on this list signals that the SIF is subject to ongoing prudential supervision by the CSSF.

A SIF must entrust the custody of its assets to a depositary bank that is either (i) a credit institution having its registered office in Luxembourg, (ii) the Luxembourg branch of a credit institution having its registered office in another member state of the European Union, or (iii) for closed-ended real estate SIFs (i.e. SIFs that do not foresee redemption rights for a period of five years from the date of the initial investment), a Luxembourg entity having the status of professional depositary of assets other than financial instruments. The duties of the depositary of a SIF depend on the SIF qualifying as AIF or not:

- In respect of SIFs qualifying as AIFs, the depositary rules derive from the AIFMD (assets safekeeping, cash flow monitoring and oversight duties); and
- In respect of SIFs which do not qualify as AIFs, the depositary's duties should be understood in the sense of "supervision", which implies that the depositary must have knowledge at any time of how the assets of the SIF have been invested and where and how these assets are available.

For property investments, the depositary will monitor the acquisition and disposition process of either the property or property rights directly in an asset transaction, or of the intermediate special purpose vehicle(s) if the property is held via special purpose vehicles.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital/Net Assets*
- Contractual form (FCP) - Corporate form (SICAV) - Other form (e.g. SICAF)	EUR 1.25 million

Legal form

A SIF may be organised under any of the following three categories:

i. Common Fund (*Fonds Commun de Placement* or FCP):
The contractual type fund is a co-ownership of assets with no legal personality, which is managed, on behalf of the joint owners, by a management company based in Luxembourg. An investor in an FCP receives, as a counterpart for its investment, units of the FCP, which may be issued in registered or in bearer form and which represent a portion of the net assets of the FCP. Unlike shares of a corporate type fund, units of an FCP do not offer statutory 'shareholder' rights (unless expressly provided for in the management regulations of the FCP). Unit holders are only liable up to the amount contributed by them.

ii. Investment Company with Variable Capital *(Société d'Investissement à Capital Variable* – SICAV*):*
A SIF may be incorporated in the form of a public limited company (*société anonyme-SA*), a corporate partnership limited by shares (*société en commandite par actions-SCA*), a limited partnership (*société en commandite simple-SCS), a special limited partnership (société en commandite special-SCSp),* a private limited liability company (*société à responsabilité limitée-Sàrl*) or as a cooperative company organised as a public limited company (*société cooperative organisée sous forme de société anonyme-SCoopSA*). The SICAV acronym only refers to the variable capital concept, whereby the variations in the capitalisation of the SIF are organised without any specific formal requirements.

iii. SIF which are neither FCPs nor SICAVs
This third category is a residual category allowing the formation of a SIF under other legal forms or arrangements such as an association or even a fiduciary contract or any of the corporate forms mentioned under item (ii) though with a fixed capital (and then referred to as a SICAF).

All of the above fund types may furthermore be organised as single funds or as umbrella (multi-compartment) funds. An umbrella fund (which merely exists through its compartments or sub-funds) is segregated into one or more compartments or sub-funds, each of which corresponds to a separate pool of assets and liabilities. Each compartment or sub-fund is linked to a specific pool of properties or property rights, which are ring-fenced from the properties or property rights in other compartments/sub-funds.

Although the umbrella fund constitutes a single legal entity (if a SICAV or SICAF) or a single contractual arrangement (if an FCP), unless otherwise provided for in the fund documentation, the assets of a compartment or sub-fund are exclusively available to satisfy the rights of investors and creditors existing in relation to that compartment or sub-fund only.

The umbrella structure and its terms must be detailed in the constitutive documents of the SIF. In addition to the umbrella structure, it is also possible to create various classes of units or shares in a SIF or within each compartment or sub-fund. Such classes of units or shares may differ, *inter alia*, as to their fee structure, distribution policy and type of target investors.

Minimum capitalisation

The minimum capitalisation for a real estate SIF is EUR 1.25 million. This minimum must be reached within 12 months from the authorisation of the SIF, and may be constituted by the subscribed capital increased by the share premium or the value of the amount constituting partnership interest. In the case of an umbrella SIF, this minimum capital requirement applies to the SIF as whole and not to a single compartment.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
Well-informed investors	No

Shareholder requirements

Units, shares and other securities issued by SIFs are reserved to ‘well-informed’ investors. ‘Well-informed’ investors are institutional investors, professional investors as well as any other investor that:

a. has declared in writing his adhesion to the status of well-informed investor, and
b. (i) invests a minimum of EUR 125,000 in the SIF, or
   (ii) has obtained an assessment from a credit establishment as defined in directive 2006/48/CE, from an investment firm as defined in directive 2004/39/CE, or from a management company as defined in directive 2009/65/CE, certifying his expertise, his experience and his knowledge to appraise in an appropriate manner an investment in a SIF.

Listing requirements

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

2.4 Asset level / activity test

Restrictions on activities / investments
Principle of risk-spreading

A SIF may invest into any (transferable) real estate asset or right, and more particularly in (i) real estate (i.e. lands and buildings) registered in the name of the SIF, (ii) participations in real estate companies (including loans to such companies) the exclusive object and purpose of which are the acquisition, development and sale together with the letting and tenanting of real estate, and (iii) various long-term real estate related interests such as rights to ground rents, long-term leases and option rights over real estate investments.

By and large, a SIF may invest in any type of real estate assets and pursue any type of real estate investment strategy subject to compliance with the principle of risk spreading. Although the SIF Law does not provide for quantitative investment restrictions, the CSSF has issued further guidance in its Circular 07/309.

In general, the CSSF considers that the risk-spreading principle is complied with if a SIF does not invest more than 30% of its assets or subscription commitments into (i) a single property or (ii) the same property right or (iii) the same issuer of property rights. Property whose economic viability is linked to another property is not considered a separate item of property for this purpose.

However, the CSSF may provide exemptions from the restrictions laid out in Circular 07/309 on a case-by-case basis (e.g. the 30% rule may not apply during a start-up period). The CSSF may also request that additional restrictions are adhered to, in cases of SIFs with specific investment policies.

2.5 Leverage

Leverage
No quantitative restrictions

Though the SIF Law does not provide for quantitative borrowing restrictions, the CSSF requires a clear disclosure of the contemplated borrowing ratio in the offering document. The CSSF will typically review borrowing ratios in light of market trends and may object to those ratios which are clearly outside those trends.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
No obligation	No obligation	N/A

There are no profit distribution obligations or restrictions applicable to SIFs for as long as the minimum capitalisation is complied with. The net assets may in principle not fall below the legal minimum of EUR 1.25 million.

2.7 Sanctions

Penalties / loss of status rules
Withdrawal from the official list Dissolution and liquidation Criminal penalties

The non-compliance with the SIF Law, applicable CSSF Circulars and certain other rules or regulations, may result in the striking of the fund from the official SIF list by the CSSF, subsequently triggering a liquidation of the SIF. Criminal penalties may apply to those involved with the management or administration of a real estate SIF, although not to the fund itself.

3 Tax treatment at SIF level

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt.	Tax-exempt.	Tax-exempt.

Current income, Capital gains and Withholding tax

Luxembourg specialised real estate funds are fully exempt from corporate income, municipal business and net wealth tax on the profits derived from investments, whether such profits constitute current income or capital gains. They are also exempt from withholding tax upon dividend distribution, capital reduction, interest payment, etc.

Other taxes

Annual subscription tax

Specialised real estate funds are subject to a 0.01% annual subscription tax (*taxe d'abonnement*), which is payable quarterly and is calculated on the aggregate net assets of the fund as valued on the last day of each quarter.

Capital duty

Capital duty has been abolished as of January 01, 2009. As such, no capital duty will be levied on the issuance of shares or increase in capital. That said, a fixed registration duty of EUR 75 would be applicable on transactions involving Luxembourg notaries (i.e. incorporation, amendments of by-laws and transfer of seat to Luxembourg).

Withholding tax

Dividend distributions made by a specialised real estate fund are not subject to dividend withholding tax. It should be noted that Luxembourg is no longer imposing any withholding tax on interests under EU Savings Directive as since January 01, 2015 Luxembourg is applying the automatic exchange of information.

Real estate tax

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

VAT

Based on established Luxembourg VAT administrative practice, Luxembourg regulated funds are considered as VAT-able persons carrying out VAT exempt operations without being entitled to recover input VAT incurred on expenses. They are released from the obligation to be VAT registered in Luxembourg, unless they are liable to declare and pay Luxembourg VAT on services received from foreign suppliers or owning and letting immovable property subject to Luxembourg VAT.

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

Accounting rules

Specialised real estate funds may either apply Luxembourg generally accepted accounting standards or IFRS.

3.2 Transition regulations

Conversion into REIF (SIF) status
Taxation of underlying assets or properties.

The conversion may be a realisation event for tax purposes, and thus trigger the taxation of any underlying properties or assets. Each conversion thus requires a detailed analysis of the potential tax implications.

3.3 Registration duties

Registration duties
Luxembourg real estate transfer tax (max. 10%).

Luxembourg specialised real estate funds are subject to registration duties such as real estate transfer tax (*droit de mutation à titre onéreux*) on real estate acquisitions and transfers located in Luxembourg (i.e. 7%/10% depending on the municipality and the type of real property). If real property is contributed to a Luxembourg company against the issuance of shares, a reduced rate of 1.4% (for Luxembourg City) is applicable.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Corporate income tax (max. 22.47%) combined with municipal tax (max combined rate of 29.22%). Net wealth tax (0.5%).	Income tax (max. 43.6%).	N/A

Corporate shareholder

A corporate domestic shareholder will be fully subject to tax on any income derived from a Luxembourg specialised real estate fund in the form of a SICAV or SICAF. Therefore dividends, capital gains and return of capital received by such shareholder are fully subject to Luxembourg corporate income tax (max. 22.47%) and municipal business tax, which may lead to an aggregate tax burden of up to 29.22% (for Luxembourg-City for 2016). Income received from a Luxembourg specialised real estate fund in the form of an FCP or SCS (inclusive of SCSp) in principle is also taxable, but not to the extent the corporate shareholder could apply the participation exemption or a double taxation treaty in relation to the fund's underlying investments, if applicable.

A corporate domestic shareholder will also be subject to net wealth tax levied on its net assets. Since 1 January 2016 the net wealth tax rate has been amended and the minimum corporate income tax has been abolished and replaced by minimum net wealth tax applying to all corporate entities having their statutory seat or central administration in Luxembourg.

A digressive scare of net wealth tax rate applies as follows:
- 0.5 % of the unitary value up to EUR 500 million;
- 0.05 % of the unitary value exceeding EUR 500 million.

By the way of derogation from net wealth tax rates above, new minimum net wealth tax charges apply as follows:

a) EUR 3,210 if the sum of financial assets, receivable by affiliated companies, transferable securities and cash at bank exceeds 90 % of the total gross assets and EUR 350,000 (based on the closing balance sheet of the preceding year). Note that Luxembourg Government announced that minimum net wealth tax will be increased to EUR 4,815, as part of the 2017 tax changes.
b) For all other entities that do not fall within the scope of the minimum of EUR 3,210, the minimum net wealth tax charge should range from EUR 535 to EUR 32,100 (including the solidarity surtax) depending on the entity's total gross assets based on the closing balance sheet of the preceding year) as follows:

Total gross assets in EUR	Minimum tax in EUR
Up to 350,000	535
From 35,001 to 2,000,000	1,605
From 2,000,001 to 10,000,000	5,350
From 10,000,001 to 15,000,000	10,700
From 15,000,001 to 20,000,000	16,050
From 20,000,001 to 30,000,000	21,400
As from 30,000,001	32,100

Shares and units in a Luxembourg specialised real estate fund in the form of a SICAV or SICAF are fully subject to net wealth tax. Units in FCP or SCS (including SCSp) in the form of a specialised real estate fund are in principle also subject to Net Wealth Tax, but not to the extent the corporate shareholders could apply the Luxembourg participation exemption on a double taxation treaty to the fund’s underlying investments if applicable.

Individual shareholder

Income and profit received by an individual domestic shareholder from a Luxembourg specialised real estate fund will be fully subject to Luxembourg tax, and borne by the recipient (max. 45,5%).

Interest paid by the fund to an individual domestic shareholder managing his or her own private wealth is subject to a final 10% withholding tax at the level of the fund, and is not included in the taxpayer’s income tax return.

Capital gain on the disposal of shares of a Luxembourg specialised real estate fund earned by an individual domestic shareholder in the management of his or her own private wealth, is not subject to tax if the gain was realised at least six months after the acquisition of the shares, and provided that the investment in the fund does not represent a substantial (< 10%) shareholding in the fund.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
No taxation.	No Taxation.	N/A

Income derived by foreign shareholders who have neither a permanent establishment nor a permanent representative in Luxembourg to which or to whom the shares or units of the - Luxembourg fund are attributable are not subject to taxes in Luxembourg.

5 Tax treatment of foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Net wealth tax	Fully taxed	Fully taxed

5.1 Corporate shareholder

A corporate domestic shareholder will be fully subject to tax on any income derived from a foreign REIT, unless the foreign REIT would qualify under the Luxembourg participation exemption. Therefore dividends, capital gains and return of capital received by such shareholder should be fully subject to Luxembourg corporate income tax (max. 22.47%) and municipal business tax, which may lead to an aggregate tax burden of up to 29.22% (for Luxembourg-City for 2015). Income received from a foreign REIT which is considered tax transparent from a Luxembourg tax perspective in principle is also taxable, but not to the extent the corporate shareholder could apply the participation exemption or a double taxation treaty in relation to the fund's underlying investments, if applicable.

A corporate domestic shareholder will also be subject to net wealth tax levied on its net assets at the rates described above in the section 4 of this Survey, in principle, shares and units in a foreign REIT are fully subject to net wealth tax. Units in a foreign REIT which is considered as tax transparent from a Luxembourg tax perspective are in principle also subject to net wealth tax, but not to the extent the corporate shareholders could apply the Luxembourg participation exemption on a double taxation treaty to the fund's underlying investments if applicable.

Individual shareholder

Income and profit received by an individual domestic shareholder from a foreign REIT should be fully subject to Luxembourg tax in the hands of the recipient (max. 45.5%), unless a specific exemption under a double taxation treaty exists.

6 The "Reserved Alternative Investment Fund (RAIF)"

Luxembourg submitted bill no. 6929 on 14 December 2015 (the "Bill") for the adoption of the new "Reserved Alternative Investment Fund" (RAIF). The new Law is likely to enter into force later in 2016.

The new RAIF is substantially based on the regime for Specialised Investment Funds (SIFs) and the Bill has therefore been drafted by adopting many provisions from the SIF Law. The main similarities concern (i) the various legal forms (corporate and contractual) which are available, (ii) the absence of limitation as regards eligible assets or investment policies, (iii) the possibility to set up an umbrella structure with multiple compartments and share/unit classes as well as (iv) in terms of flexible subscription, redemption and distribution features. In addition, in principle, RAIFs will be subject to a 0.01% subscription tax (or a zero rate in certain circumstances). However, the main difference is that RAIFs will not be subject neither to prior CSSF approval nor ongoing supervision by the CSSF.

The new regime will be applicable:

- to Luxembourg AIFs managed by an authorised and fully licensed AIFM (which can also be based in an EU Member State other than Luxembourg), which must be an external entity (contrary to a SIF-AIF, a RAIF cannot be managed internally),
- that invest in accordance with the principle of risk spreading (except for exclusive SICAR-like investments),
- whose securities or partnership interests are reserved for well informed investors and
- whose incorporating documents (i.e. articles of association, management regulations or partnership agreement) expressly provide that they are subject to the provisions of the RAIF Law (therefore the RAIF regime is optional).

Being managed by an authorised and fully licensed EU-based AIFM, the RAIF will also benefit from all EU AIFMs' passporting advantages through a regulator-to-regulator notification regime. Consequently, the RAIF's units/shares and interests will be distributed by way of the marketing passport across Europe to professional investors only. Subject to an opinion and positive advice from the European Securities and Markets Authority (ESMA), the EU Commission may decide to extend the passport to non-EU AIFMs, which may then, subject to compliance with the AIFMD requirements, also manage RAIFs and benefit from the passport. A Luxembourg approved statutory auditor (Réviseur d'entreprises agréé) must audit the RAIF's annual accounts.

It should be noted that several investment regimes available in Luxembourg can be combined, in order to comply with differing investor needs. Therefore, a RAIF could be set up in a limited amount of time without prior CSSF approval in order to quickly organise a first closing for investors that do not compulsorily need a directly supervised structure. At a later stage, the RAIF could be converted into an SIF with prior CSSF approval in order to attract further investors who wish or are required to invest in a directly supervised investment vehicle.■

Authors contact | Luxembourg

Alexandre Jaumotte
Tel. +352 49 48 48 5380
alexandre.jaumotte@lu.pwc.com

Nicolas Schulz
Tel. +352 49 48 48 4211
nicolas.schulz@lu.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

EUROPE

Netherlands – FBI

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
FBI	1969	FBI (art. 28 CITA)	In principle corporate type (only for corporate taxpayers).

The Netherlands introduced the Fiscal Investment Institution regime (*fiscale beleggingsinstelling*: **FBI**) in 1969. An FBI is in principle subject to Dutch Corporate Income Tax, albeit at a rate of zero per cent (0%) (a *de facto* full exemption). The FBI regime has been incorporated in the Dutch Corporate Income Tax Act 1969 (*Wet op de vennootschapsbelasting* 1969: **CITA**) and should be considered a tax facility. It may also apply to other passive, portfolio investments than real estate.

In 2007, the FBI regime was amended to comply with EU law regulations. It has become possible for a foreign entity to apply for the regime. Further, certain restrictions which prohibited foreign shareholders to invest in an FBI have been abolished.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
The Netherlands	5	5	€ 29.124	2.64

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Unibail-Rodamco**	€ 24.244	5.59%	3.94%	2.20%
Eurocommercial Properties NV	€ 1.926	5.81%	5.00%	0.17%
Wereldhave	€ 1.711	-12.61%	5.27%	0.16%
Vastned Retail	€ 700	-4.45%	5.46%	0.06%
NSI NV	€ 544	3.68%	6.82%	0.05%

* 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.*
** Main listings done on Euronext Amsterdam. For Index purposes, classified as Dutch company.

2 Requirements

2.1 Formalities / procedure

Key requirements
Application in the corporate income tax return.

In the Netherlands, an eligible investment company may elect to apply for the FBI regime by making the appropriate election in its corporate income tax return, which is filed after the end of the relevant tax year.

The FBI regime is a corporate income tax regime and its application is not contingent on the satisfaction of regulatory requirements for purposes of for instance the Financial Supervision Act (*Wet op het financieel toezicht*: **FSA**). However, less restrictive shareholder requirements apply if the FBI is under supervision of the Netherlands Authority for the Financial Markets (see 2.3 below).

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
- Dutch private limited liability company (BV). - Dutch public limited liability company (NV). - Open-ended mutual investment fund (FGR). - Comparable foreign legal entity.	- BV: None - NV: EUR 45,000 - FGR: None

Legal form

A Dutch public liability company (**NV**), a private limited liability company (**BV**), an open-ended mutual investment fund (*fonds voor gemene rekening*: **FGR**) or comparable foreign legal entities are eligible for the FBI regime. Comparable foreign legal entities are not required to have Dutch residency but they should be liable to Dutch corporate income tax.

If an FBI takes the legal form of an FGR – an entity which in itself does not have legal personality – it is required to have a management company. An FBI can only be self-managed if it is in the form of a company, although a management company could also be used in that situation.

Minimum share capital

The FBI regime does not impose any requirements as to minimum share capital. However, minimum capital requirements do follow from Dutch company law and are as follows for the various Dutch entities:

BV: None
NV: EUR 45,000
FGR: None

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing requirements
If listed or regulatory licensed: - One single corporate entity may stand alone – or together with affiliates – not hold 45% or more of the shares. - One single individual may not hold 25% or more of the shares. If not listed or licensed: - The shares in the FBI must for at least 75% be owned by individuals / non-taxable corporate entities / regulated FBIs. - One single individual may not hold 5% or more of the shares. Further, in both cases: Dutch corporate entities may not own 25% or more of the shares in the FBI through interposition of foreign entities	None

Shareholder requirements

The FBI shareholder requirements are more lenient if either the FBI is listed on any recognised stock exchange, it (or its manager) has a licence pursuant to the FSA or it (or its manager) benefits from an exemption of a license requirement as a result of being subject to regulatory supervision by another EU member state (hereinafter referred to as a ‘regulated FBI’). If the FBI does not meet any of these requirements (hereinafter referred to as a ‘non-regulated FBI’) more stringent shareholder requirements must be met.

In case of a regulated FBI the shareholder requirements can be summarised as follows:

- a single corporate entity (a regulated FBI excluded) which is subject to any form of profit tax or an entity whose profits are taxed in the hands of its participants (i.e. a transparent entity) may not own 45% or more of the shares together with affiliated entities; and
- a single individual may not own 25% or more of the shares.

In case of a non-regulated FBI, the shareholder requirements are as follows:

- at least 75% of the shares must be held by any combination of (i) individuals; (ii) corporate entities which are not subject to any form of profit tax or which are exempt therefrom and whose profit is not taxed in the hands of the beneficial owner of those profits; and (iii) directly or indirectly by regulated FBIs; and
- a single individual may not own 5% or more of the shares.

Irrespective of whether the FBI is regulated or not, all FBIs must meet the condition that their shares are not owned for 25% or more by Dutch resident entities through the interposition of non-Dutch entities which have a capital divided into shares or of non-Dutch mutual funds.

However, it is approved by the Dutch Ministry of Finance that non-regulated FBIs, having a non-regulated FBI as shareholder which owns more than 25% of the shares, will meet the shareholder requirements, provided the non-regulated FBI distributes 95% of the available profits before closing its financial year. Therefore, multi-layer FBI structures are possible to a certain extent.

Listing requirements

Listing is not required, but it does offer access to less restrictive shareholders requirements.

2.4 Asset level / activity test

Restrictions on activities / investments
- FBIs are only permitted to invest in passive, portfolio investments. - FBIs are allowed to invest abroad.

The statutory object and the actual activities of an FBI must be exclusively restricted to portfolio investments. As such, the FBI is in principle prohibited to be engaged in activities which go beyond that scope. This means that investments must have the objective of realising a return in terms of yield derived from investment and appreciation in value which one reasonably may expect from regular investment management (i.e. investments in shares, bonds and real estate).

An FBI investing in real estate must restrict its activities to ‘passive’ renting out of and investment in real estate. The permitted activities of an FBI itself include (i) the granting of guarantees for the benefit of affiliated companies whose assets comprise at least 90% of real estate (and associated rights), and (ii) financing such companies with external loans. Furthermore, real estate development is, in principle, not regarded as a ‘passive’ investment activity. However, development activities on behalf of an FBI itself are specifically permitted. These activities should be carried out by a subsidiary which is subject to tax at the standard statutory corporate income tax rate (the taxable amount up to EUR 200,000 will be subject to a rate of 20%; in excess thereof the rate is 25%). This 'development subsidiary' is not allowed to carry out any other activity than development activities for the FBI’s portfolio of properties and it should charge the FBI an at arm’s length fee. For practical purposes the law provides for a safe harbour rule to avoid discussions about the nature of relatively small investment activities: improving and expanding existing real estate objects will not be considered ‘development activities’ as long as the investments involved do not exceed 30% of the relevant property’s market value determined under the Value of Immovable Property Act (*Wet waardering onroerende zaken*: "**WOZ**").
In addition, as of 2014, ancillary business activities are permitted if they are related to the FBI's portfolio of properties. These activities should also be carried out via a regularly taxable subsidiary (standard corporate tax rates of 20/25%). This subsidiary should charge the FBI an at arm’s length fee. The allowed ancillary business services may not exceed certain statutory qualitative and quantitative limits.

An FBI is allowed to invest in foreign assets. It would, however, still be subject to the same restrictions. It may hold shares and / or interests in subsidiary corporations and / or in partnerships.

2.5 Leverage

Leverage
- 60% of the tax book value of directly / indirectly held real estate; and - 20% of the tax book value of all other investments.

The debt of the FBI may not exceed:
- 60% of the tax book value of directly / indirectly held real estate; and
- 20% of the tax book value of all other investments.

Debt is defined as the total amount borrowed by the FBI, which is, in principle, calculated on a non-consolidated basis.

The 60% leverage ratio for investments in real estate also applies to equity investments through shares in affiliated companies whose assets comprise at least 90% of real estate (and associated rights). Further, intra-group loans to such real estate subsidiaries of an FBI may be externally funded up to 100%. Therefore, intra-group loans to real estate subsidiaries effectively fall outside the FBI’s leverage restriction. Consequently, an FBI will be able to attract external financing in order to provide back-to-back financing to real estate group subsidiaries without deteriorating its leverage limitations.

2.6 Profit distribution obligations

Operational income	Capital gains	Timing
100% of taxable profit.	Capital gains / losses can be allocated to a tax-free reserve.	Within eight months after the end of its financial year.

Operational income

Dutch tax law requires that an FBI distributes all (100%) of its profits to its shareholders within eight months after the end of its financial year. The amount of taxable profit is calculated on the basis of the regular rules applicable to corporate income taxpayers, with some exceptions especially provided for FBIs. In accordance with the regular rules, depreciation on passively held real estate is limited.

Capital gains

The net balance of unrealised capital gains on securities and realised capital gains on all other investments may be added to a so-called reinvestment reserve (*herbeleggings-reserve*). These capital gains are excluded from the taxable profit of the FBI and are not subject to the profit distribution obligation (see 3.1 below).

2.7 Sanctions

Sanction
Cancellation of FBI status.

If at any point in time an FBI fails to meet any of the requirements to qualify as an FBI, such FBI status will be cancelled as from the start of the financial year during which such failure occurred, except for a failure of the profit distribution obligation which will cancel the FBI status as from the start of the accounting year the profits of which should have been distributed under this requirement.

The main consequence of a loss of the FBI status is that the relevant entity will become a regular taxpayer for Dutch corporate income tax purposes so that its profits, determined in accordance with the regular Dutch tax accounting principles, will be subject to Dutch corporate income tax at the standard rates (20/25%). Prior to the day on which the FBI becomes (or returns to be) a regular taxpayer for Dutch corporate income tax purposes, its assets are revalued to fair market value. Consequently, any capital gain realised as a result of this revaluation is still subject to the FBI-regime (i.e. taxed at 0%).

3 Tax treatment at REIT level

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Real estate income is part of the taxable profit and is subject to a corporate income tax rate of 0% (effective exemption).	Capital gains / losses can be allocated to a tax-free reserve and are thus effectively exempt from corporate income tax.	Withholding taxes incurred are not refunded; FBIs are granted a Dutch dividend tax remittance rebate instead.

Current income

An FBI is subject to corporate income tax in the Netherlands at a rate of zero per cent (0%). The taxable profits of an FBI are in principle determined on the basis of the same tax accounting principles which apply to taxpayers regularly subject to Dutch corporate income tax. The taxable profits typically include the direct investment result and, if the reinvestment reserve is not applied, the net balance of capital gains and losses. However, some exceptions on the determination of the taxable profit apply to an FBI. Without being exhaustive, the main exceptions are:

- the participation exemption does not apply to investments in entities made by an FBI;
- subject to conditions and limitations, an FBI can elect to apply a rounding-off reserve (*afrondingsreserve*);
- subject to conditions and limitations, an FBI can elect to apply a reinvestment reserve (see 2.6 above); and
- certain particular items which are not deductible for regular corporate income taxpayers are taken into account in calculating the taxable profit of an FBI;

Capital gains

The FBI can elect to apply a reinvestment reserve. By doing so, the balance of capital gains and losses is excluded from the taxable income and allocated to the reinvestment reserve. The remainder of taxable income represents the annual distribution obligation (see 2.6 above).

Withholding tax

Given that an FBI is liable to Dutch corporate income tax at a rate of zero per cent (0%), the FBI is effectively unable to credit Dutch or foreign withholding taxes suffered against its Dutch corporate income tax liability. Moreover, unlike taxpayers who are regularly subject to Dutch personal income tax or corporate income tax, the FBI is not entitled to a refund of Dutch dividend withholding tax upon request.

However, subject to certain conditions and limitations, the FBI is allowed to apply a rebate to its obligation to remit the amount of Dutch dividend withholding tax which the FBI has to withhold in respect of its recurrent compulsory distribution of profits, in an amount equal to the amount of withholding taxes suffered by the FBI (*afdrachtvermindering*). As such, the FBI can impute the domestic and foreign withholding tax it suffered on the obligation to pay Dutch dividend withholding tax which it withholds from distributions it makes to its shareholders.

With respect to such a rebate in respect of foreign withholding taxes suffered (on interest and dividend only), certain limitations apply. Such limitations are: (i) a maximum underlying tax rate of 15% may be taken into account with respect to foreign source tax on dividends and interests; and (ii) the rebate is further reduced if and to the extent the FBI has shareholders which are entitled to a reduction or rebate of Dutch dividend withholding tax under a prevailing arrangement for the avoidance of double taxation or by virtue of the Dutch Dividend Withholding Tax Act.

Accounting rules

There are no special commercial accounting rules for FBIs. A listed FBI is required to follow IFRS rules, just like any other listed company.

3.2 Transition regulations

Conversion into REIT status
- All assets and liabilities are assessed at market value. - Tax recognised reserves must be realised and should be added to the taxable profits. - Hidden capital gains and losses must be recognised and are subject to corporate income tax at regular rates.

At the end of the year immediately prior to the year as of which the entity converts to an FBI, all its assets and liabilities must be revalued to market value. Hidden capital gains are therefore realised and subject to Dutch corporate income tax in accordance with the regular rules. Tax-free reserves must also be realised and added to the taxable profits. The final tax charge prior to conversion is levied at the regular Dutch corporate income tax rates (20/25%), i.e. a special conversion regime is not available.

3.3 Registration duties

Registration duties
- No capital duties. - A real estate transfer tax of 6% applies if the FBI acquires Dutch real estate or shares of Dutch real estate companies (a 2% rate applies to residential real estate).

A 6% real estate transfer tax (*overdrachtsbelasting*) applies if the FBI acquires Dutch real estate (a 2% rate applies to residential real estate). In addition, an acquisition leading to an interest of at least one third in a real estate company is subject to real estate transfer tax as well. Real estate transfer tax is levied from the acquirer of Dutch real estate (or the shares of the Dutch real estate company).

4 Tax treatment at shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Dividends and capital gains are taxable.	Taxpayer is typically taxed on the basis of a deemed income.	- In principle, withholding tax of 15%. - Creditable.

Corporate shareholder

A Dutch corporate investor's investment in shares of an FBI disqualifies for the Dutch participation exemption regime. Therefore, any benefits derived from this shareholding in terms of dividends and capital gains, will be included in the taxable profits subject to corporate income tax at the standard rates (20/25%).

In principle, Dutch corporate investors can credit the Dutch dividend withholding tax which they have suffered on dividends distributed by the FBI against their Dutch corporate income tax liability (full credit). Any excess of dividend withholding tax is refundable. Application of the dividend tax remittance rebate (*afdrachtvermindering*) by the FBI does not affect the entitlement to a credit for such Dutch shareholder.

Individual shareholder

The income tax consequences of a Dutch individual shareholder depend on the qualification of the FBI participation for the investor. In most cases, benefits from the investment will be taxed annually as a benefit from savings and investments (*voordeel uit sparen en beleggen*). Such benefit is deemed to be 4% per annum of the 'yield basis' *(rendementsgrondslag)* at the beginning of the year, to the extent that such yield basis exceeds the 'exempt net asset amount' (*heffingsvrij vermogen*) for the relevant year. The benefit is taxed at the rate of 30%. The fair market value the investment forms part of the yield basis. Actual benefits derived from the participation in the FBI, including any gain realised on the disposal of the shares, are not as such subject to Dutch income tax.

As of 1 January 2017 the deemed benefit will no longer be a fixed 4% rate of the yield basis. A progressive differentiation will instead be implemented. The deemed benefit in respect of the yield basis up to EUR 100,000 will be 2.9%. For the yield basis up to EUR 1,000,000 the deemed benefit will be 4.7%. Finally, the yield basis exceeding EUR 1,000,000 will be deemed to realise a benefit of 5.5%

If an individual owns, alone or together with certain family members, an interest of 5% or more in an FBI (only possible if the FBI is regulated), the dividend distributions and capital gains are subject to the so-called 'substantial interest' taxation rules (*aanmerkelijk belang*). Basically, all results from a substantial interest (dividends and capital gains included) are taxed at a flat rate of 25%, if and when received.

If an individual owns FBI shares in the course of his enterprise, the results from the interest could be subject to tax at progressive income tax rates (up to 52%).

Individual shareholders are allowed to credit the Dutch dividend withholding tax which they have suffered on dividends distributed by the FBI against their personal income tax liability in the Netherlands (full credit). Application of the dividend tax remittance rebate (*afdrachtvermindering*) by the FBI does not affect the entitlement to a credit for such Dutch shareholder.

Withholding Tax

Distributions of profits in whatever name or form made by an FBI are subject to 15% Dutch dividend withholding tax. Distributions made from the reinvestment reserve (*herbeleggingsreserve*) are considered capital repayments for withholding tax purposes and therefore are not subject to Dutch dividend withholding tax (if certain formalities are complied with). The repayment of nominal share capital is generally not subject to Dutch dividend withholding tax. However, the redemption of share premium is only free from Dutch dividend withholding tax if the FBI does not have any net profit (*zuivere winst*), such as available profit reserves or hidden reserves.

As stated above, Dutch taxable corporate and individual shareholders are allowed to credit the Dutch dividend withholding tax against their corporate income tax or personal income tax liability in the Netherlands.

A Dutch entity which is not subject to Dutch corporate income tax (e.g. pension funds), can claim a refund of Dutch dividend withholding tax suffered on distributions by an FBI.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Generally speaking should not be subject to corporate income tax.	Generally speaking should not be subject to personal income tax.	- In principle, withholding tax of 15%. - Tax treaty relief might apply. - Parent-Subsidiary Directive does not apply.

Corporate shareholder

Generally speaking, foreign corporate investors should not be subject to Dutch corporate income tax with respect to their investment in an FBI. However, a foreign corporate investor which owns a so-called ‘substantial interest’ in a Dutch FBI (generally speaking 5% or more of the FBI’s aggregated nominal share capital) may be liable to Dutch corporate income tax on the dividends received and capital gains made in respect of this substantial interest (standard rates of 20/25%). Conventions for the avoidance of double taxation concluded by the Netherlands, may limit the Netherlands in fully exercising these taxing rights.

Individual shareholder

Generally speaking, foreign individual investors should not be liable to Dutch personal income tax with respect to their investment in an FBI. However, a foreign individual investor who owns a so-called ‘substantial interest’ in a Dutch (regulated) FBI (generally speaking 5% or more of the FBI’s aggregated nominal share capital) may be liable to Dutch personal income tax at a flat rate of 25% on the dividends received and capital gains made in respect of this substantial interest. Conventions for the avoidance of double taxation concluded by the Netherlands, may limit the Netherlands in fully exercising these taxing rights.

Withholding tax

Distributions of profits in whatever name or form made by an FBI are subject to 15% Dutch dividend withholding tax.

Distributions made from the reinvestment reserve (*herbeleggingsreserve*) are considered capital repayments for withholding tax purposes and therefore are not subject to Dutch dividend tax (if certain formalities are complied with). The repayment of nominal share capital is generally not subject to Dutch dividend withholding tax. However, the redemption of share premium is only free from Dutch dividend withholding tax if the FBI does not have any net profit (*zuivere winst*), such as available profit reserves or hidden reserves.

A corporate shareholder established in a country within the European Union or European Economic Area who is not subject to corporate income tax in that country and neither would be subject to Dutch corporate income tax if the entity would be established in the Netherlands, can file a request to the Dutch tax authorities for a refund of Dutch dividend withholding tax.

Furthermore, it should be noted that in April 2016, due to European Court of Justice case law, the Dutch Ministry of Finance issued a decree providing for the possibility to partially reclaim Dutch dividend withholding tax under certain conditions. Such may be the case if the foreign shareholder, owning less than 5% of the FBI’s share capital, is confronted with a levy (i.e. the withheld dividend tax, potentially up to 15%) which is more burdensome (i.e. higher) than the tax treatment of Dutch domestic shareholders also owning less than 5% of the share capital of the FBI. For the treatment of Dutch domestic shareholders, reference is made to 4.1 above.

5 Tax treatment of foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
A foreign REIT should be tax-exempt.	No specific tax privileges.	No specific tax privileges.

Foreign REIT

A foreign entity which is comparable in nature, form and behaviour to the qualifying Dutch FBI and that complies with all the FBI requirements (shareholder, leverage, distribution obligation, etc.) can obtain FBI status in respect of its qualifying Dutch sources of income (Dutch real estate, etc.). In that case, qualifying FBI income derived from Dutch taxable sources will be subject to a corporate income tax rate of zero per cent (0%).

Corporate shareholder

The participation exemption does not apply to a participation in a Dutch resident or foreign resident company which qualifies as an FBI. Hence, a Dutch corporate shareholder owning a participation in a foreign entity which qualifies as an FBI cannot apply the participation exemption in respect of income and capital gains derived from the participation in the FBI. However, a participation of a Dutch corporate taxpayer in a foreign REIT is in principle eligible for the participation exemption, provided certain conditions are met.

Individual shareholder

There is no specific tax privilege. General rules apply (see 4.1 above). ■

Authors contact | Netherlands

Etienne M.S. Spierts
Tel. +31 20 578 57 70
etienne.spierts@loyensloeff.com

LOYENS LOEFF
ATTORNEYS • TAX LAWYERS • CIVIL LAW NOTARIES

Robin Willemstein
Tel. +31 10 224 63 44
robin.willemstein@loyensloeff.com

LOYENS LOEFF
ATTORNEYS • TAX LAWYERS • CIVIL LAW NOTARIES

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

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EUROPE

Spain – SOCIMI

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction / history / REIT type

	Enacted year	Citation	REIT type	REIT market
SOCIMI	2009	Act 11/2009	Corporate type.	To be established.

Act 11/2009 governing the 'Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario' (known as 'SOCIMI') introduced a long-awaited REIT vehicle to the Spanish real estate market. However, a substantial change of the SOCIMI regime was enacted in December 2012, with effects as of January 01, 2013. As a result, the new SOCIMI system has been assimilated to other European REITs, in which the main feature is the elimination of direct taxation on the SOCIMI, transferring such taxation to the final investors. Specifically, the SOCIMI will be taxed at a 0% rate. Furthermore, and like in other European REIT systems (i.e. SIICs or UK-REITs), a special levy of 19% has been introduced with the aim of avoiding schemes in which profits distributed by the SOCIMI are free or subject to low taxation at investor level.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Spain	5	4	€ 7.806	0.53%

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Merlin Properties Socimi, SA	€ 3.340,13	4.54%	0.81%	0.30%
Hispania Activos Inmobiliarios, SAU	€ 1.294,29	-7.61%	0.00%	0.12%
Axiare Patrimonio SOCIMI SA	€ 847,58	N/A	0.34%	0.06%
Lar Espana Real Estate SOCIMI SA	€ 560,44	-17.16%	0.78%	0.04%

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 listed on regulated or alternative markets. Decision to apply the special tax regime.

SOCIMIs must be listed on a regulated market in Spain, in the European Union, or within the European Economic Area uninterruptedly for the entire tax period. Furthermore, after the amendment of the SOCIMI Act in December 2012, listing on alternative markets is also permitted. Likewise, this alternative listing is allowed not only on the Spanish alternative market (*Mercado Alternativo Bursátil,* "**MAB**") but also on any alternative market of the European Union (i.e. Alternative Investment Market) or the European Economic Area.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
Spain – MAB	23	0	€ 2.974	0.00%

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.*

Furthermore, the decision to apply this special tax regime must be adopted by the general shareholders meeting and notified to the Tax Authorities prior to the final quarter of the financial period in which it is intended the special tax regime be applied (for example for financial year January 01, 2016 – December 31, 2016, the decision must adopted done before October 01, 2016). This tax regime will take effect as from that financial period (2016) until notification is given to stop applying this special regime.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Listed join stock corporation (Sociedad Anónima).	EUR 5 million.

SOCIMIs must take the form of a listed joint stock corporation with a minimum share capital of EUR 5 million. Furthermore, the SOCIMI's shares must be nominative and only one single class of shares is permitted.

Besides, it is compulsory that their corporate name include the name or acronym by which they are known in Spain; i.e. '*Sociedad Anónima Cotizada de Inversión en el Mercado Inmobiliario, Sociedad Anónima'* or 'SOCIMI, S.A.'.

Lastly, the SOCIMI's main corporate object must consist of:
i. The acquisition and development (refurbishment included) of urban real estate for rental purposes.
ii. The holding of shares of other SOCIMI or REITs which have a similar corporate purpose and similar income distribution requirements.

iii. The holding of registered shares in the capital stock of Sub-SOCIMI: non-listed companies – regardless of whether or not they are tax resident in Spain – whose primary corporate purpose is the acquisition of urban real estate for rental, and who are subject to equivalent investing, income distribution and leverage requirements.
iv. The holding of shares/participations in real estate collective investment schemes.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
No threshold of ownership percentage. Minimum free float depending on the listing system	Yes

Shareholder requirements
There is no prohibition on the acquisition of a holding exceeding a certain percentage of the share capital. However, different free float requirements would apply depending on the listing system (see below).

Listing requirements
Listing is mandatory, but there is a two-year grace period as of the date of the application for the SOCIMI regime to become listed.

The SOCIMI's shares must be listed in Spain, in the EU or in the European Economic Area on (i) an official regulated secondary market (e.g. Spanish "Bolsa"); or (ii) a multilateral alternative market (e.g. MAB).

As a general rule, the minimum free float for listing on the Spanish Bolsa is 25%. In the case of MAB listing, shareholders holding a percentage of less than 5% of the share capital must own a number of shares which, as a minimum, represents either (i) an estimated market value of EUR 2 million; or (ii) 25% of the SOCIMI's issued shares. Such calculation will include the shares made available to the liquidity provider to carry out is liquidity duties.
Notwithstanding the above, and according to the MAB Regulations, SOCIMIs would have a maximum term of 12 months as from its listing to ensure that their shares are effectively distributed within several shareholders throughout the market (i.e. after a 12 months period the free float requirement would not be fulfilled anymore by making available the free float shares at the disposal of the Liquidity Provider).

2.4 Asset level / activity test

Restrictions on activities / investments
Asset test: at least 80% of their assets must be invested in: (a) urban real estate (acquired or developed) for rental or, (b) other SOCIMIs, (c) foreign REITs and (d) Spanish or foreign qualifying subsidiaries ("**Sub-SOCIMI**") and real estate collective investment schemes. Revenue test: at least 80% of the SOCIMI's revenue must derive from (i) the lease of qualifying assets, and/or (ii) the dividends distributed by qualifying subsidiaries. Minimum holding period: qualifying assets are subject to a minimum three-year holding period owned by the SOCIMI.

Asset test
At least 80% of the SOCIMI's assets shall consist of "Qualifying Assets":
i. Urban real estate for rental purposes.
ii. Shares in similar entities (i.e. other SOCIMI, SUB-SOCIMI, international REITs)
iii. Shares in real estate Collective Investment Schemes.

There is no asset diversification rule and SOCIMIs are entitled to hold a single property asset.

Activity test
Furthermore, at least 80% of the SOCIMI's revenues must derive from the lease of Qualifying Assets, or from dividends distributed by qualifying subsidiaries (Sub-SOCIMI, foreign REITs and real estate collective investment schemes).

Lease agreements between related entities would not be deemed a qualifying activity and therefore, the rent deriving from such agreements cannot exceed 20% of the SOCIMI's total revenue.

Capital gains derived from the sale of Qualifying Assets are in principle excluded from the 80/20 revenue test. However, if such Qualifying Asset is sold prior to the minimum three year holding period, then (i) the capital gain would compute as non-qualifying revenue; and (ii) it would be taxed at the standard corporate income tax rate, currently set at 25%. Furthermore, the entire rental income derived from this asset would be also subject to the standard corporate income tax rate (25%).

Minimum holding period
Finally, Qualifying Assets must be owned by the SOCIMI for a three-year period since (i) the acquisition of the asset by the SOCIMI, or (ii) the first day of the financial year that the company became a SOCIMI if the asset was owned by the company before becoming a SOCIMI. In the case of urban real estate, the holding period means that these assets should be rented; the period of time during which the asset is on the market for rent (even if vacant) will be taken into account, with a maximum of one year.

However, if such Qualifying Asset is sold prior to the minimum three-year holding period, then (i) the capital gain would compute as non-qualifying revenue; and (ii) it would be taxed at the standard CIT rate, currently set at 25%, Furthermore, the entire rental income derived from this asset would be also subject to the standard CIT rate (i.e. 25%).

2.5 Leverage

Leverage
No restrictions

The reform of the SOCIMI Act enacted in 2012 has eliminated the leverage restrictions.

Recently approved tax limitations by the Spanish Government (tax deduction of financial expenses and annual depreciation, carrying-forward of tax losses and tax credits) should have no practical impact provided that the SOCIMI is taxed at 0% CIT rate on all income.

2.6 Profit distribution obligations

Operating income	Capital gains	Timing
80% as a general rule (i.e. profits obtained from rental income and ancillary activities) 100% of profits stemming from dividends distributed by qualifying entities.	50% of profits derived from the transfer of qualifying property and holdings where the holding period has been met. The remaining 50% must be reinvested in Qualifying Assets in three years.	In a maximum of six months as from the financial year end. Dividends must be paid to the SOCIMI's investors within one month.

Operating income
At least 80% of the operating income of the SOCIMI must come from rental and ancillary activities. However it is compulsory to distribute 100% of profits stemming from dividends distributed by qualifying entities.

Capital gains
At least 50% of the profit corresponding to income derived from the transfer (where the holding period has been met) of real estate assets and qualifying holdings must be distributed. The other 50% of that profit must be reinvested in Qualifying Assets in a period of three years or, otherwise, distributed to the SOCIMI's shareholders

Timing
All income must be effectively paid to the shareholders in the month following the date of the distribution resolution. The distribution resolution needs to be adopted within six months of the financial year end.

2.7 Sanctions

Penalties / loss of status rules
- Loss of SOCIMI status. - Penalties of between EUR 1,500 and EUR 30,000 in the event of failure to comply with information obligations.

The recent reform of the SOCIMI Act has softened the circumstances in which the SOCIMI can be sanctioned with the loss of the SOCIMI status. In particular, such circumstances are:

i. Loss of listed status
ii. Substantial failure to comply with the information and reporting obligations, unless such failing is remedied in the annual accounts.
iii. Failure to adopt the dividend distribution resolution or the failure to effectively pay the dividends within the deadlines established in the SOCIMI Act. In this case, the loss of SOCIMI status would have effects in the tax year in which the profits not distributed were obtained.
iv. Waiver of the SOCIMI regime by the taxpayer.
v. Failure to meet the requirements established in the SOCIMI Act unless such failure is remedied the following year. However, the failure to observe the minimum holding period of the assets would not give rise to the loss of SOCIMI status, but (i) the assets would be deemed non-qualifying assets; and (ii) income derived from such assets would be taxed at the standard corporate income tax rate (i.e. 25%).

Should the SOCIMI fall into any of the above scenarios, the SOCIMI regime will be lost and it will not be eligible for the special tax regime for three years.

On the other hand, in the event of non-compliance with information obligations, the Act establishes penalties of between EUR 1,500 and EUR 30,000 depending on the kind of information not provided.

3 Tax treatment at REIT level

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
0% of corporate income tax rate (general rule). A special levy of 19% on dividend paid to certain shareholders may be imposed on the SOCIMI.	Same rules apply.	General withholding tax rules.

Current income
As per January 01, 2013, all the income received by a SOCIMI will be taxed under CIT, at a 0% rate. Nevertheless, rental income stemming from Qualifying Assets being sold prior to the end of the minimum holding period (three years) would be subject to the standard CIT rate (i.e. 25%).

Capital gains
As a general rule a SOCIMI will be taxed under CIT, with a 0% flat rate being applicable.

Nevertheless, a SOCIMI will be taxed at the standard CIT rate of 25% if the relevant asset has been sold prior to the end of the minimum holding period (three years), in the circumstances described above.

Other taxes
The incorporation/share capital increase of a SOCIMI, as well as the contribution of assets to the latter, are eligible for a capital duty exemption. See also section 3.3.

Withholding tax
General withholding tax rules normally apply in connection with payments made by a SOCIMI. However, dividend payments within a SOCIMI group would be exempt from withholding taxes.

Accounting rules
SOCIMIs will apply Spanish GAAP. Furthermore, according to the SOCIMI Act, the SOCIMI will be obliged to keep separate accounts for each of the properties held.

3.2 Sub-SOCIMI

Current income	Capital gains	Withholding tax
0% of corporate income tax rate (general rule).	Same rules apply.	General withholding tax rules. No withholding tax over the dividends paid within a SOCIMI group.

Some qualifying subsidiaries resident in Spain for tax purposes could, even if not listed, enjoy the same special tax regime as a SOCIMI. In particular, such SUB-SOCIMI must:

i. Be wholly owned by (i) a Spanish SOCIMI (ii) a foreign REIT or (iii) a foreign company assimilated to a SOCIMI.
ii. Have a main corporate object consisting of the acquisition and development (refurbishment included) of urban real estate for rental purposes.
iii. Not hold a stake in other subsidiaries (two levels of subsidiaries are not permitted).
iv. Meet the same SOCIMI mandatory dividend distribution requirements and the 80/20 asset/revenue tests.

If the above conditions are met, the Sub-SOCIMI could apply for the special tax regime within the same terms and deadlines as the ones described above.

3.3 Registration duties

Registration duties
95% exemption on Transfer Tax and Stamp Duty.

A 95% rebate of Transfer Tax (tax rate between 6% and 11%) and Stamp Duty (tax rate between 0.75% and 2.5%) is applicable to residential real estate acquired for rental purposes, provided that the assets acquired are maintained during the three-year holding period.

3.4 Transition regulations

Conversion into REIT status
- No exit tax payment. - Tax losses carried forward generated before becoming a SOCIMI are maintained. - The requirements of the SOCIMI regime must be met in the two years following the decision to opt for this tax regime.

No exit tax payment is due as a result of the conversion into a SOCIMI. However upon the transfer of a real estate asset the stake of the capital gain that corresponds to period pre-SOCIMI under the general tax regime (currently set at 25%).

Tax losses existing prior to the application of the special tax regime can be offset with future positive tax bases of SOCIMI taxable income. This is a scenario that would only arise in cases where the asset maintenance requirements (three years) are breached or where it finds itself in any of the scenarios where it would lose its special tax regime (de-listing, failure to distribute dividends, etc.).

Even if a SOCIMI does not meet all the necessary requirements, it can apply the special tax regime provided that the requirements are met in the following two years after the decision to opt for this tax regime is made.

4 Tax treatment at shareholder level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
General rules, but without the possibility to apply deductions for double taxation on dividends	General rules, but without the possibility to apply exemption on dividend income	General rules apply

Corporate shareholder

i. Dividends will be subject to general taxation. Consequently, dividends received from the SOCIMI will be included in the taxable base of the shareholder and will, in principle, be taxed at the standard 25% CIT rate. No deductions are allowed (i.e. deduction for double taxation).

ii. Capital gains will be taxed at the standard 25% tax rate. Deduction or exemption to avoid double taxation does not apply.

Individual shareholder

i. Dividends will be subject to general taxation. Consequently, dividends received from the SOCIMI will be taxed at the fixed Personal Income Tax rate (currently, between 19% and 23%). No exemptions are allowed.

ii. Capital gains will also be subject to general taxation. Consequently, dividends received from the SOCIMI will be taxed at the fixed rate (currently between 19% and 23%). No deductions are allowed (i.e. deduction for double taxation).

Withholding tax

Dividends distributed to shareholders are subject to general rules regarding withholding taxes.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
General rules apply, but without the possibility to apply exemption on capital gains for listed investment funds.	General rules, but without the possibility to apply exemption on dividend income and on capital gain for listed investment funds.	General rules apply EU Parent-Subsidiary Directive and double taxation treaties could apply provided that the relevant conditions are met.

Corporate shareholder

The following relates to foreign corporate shareholders not acting in Spain through a permanent establishment (if the foreign corporate shareholders were acting in Spain through a permanent establishment, the applicable tax treatment would be the same as for Spanish resident corporate shareholders). In this respect we should highlight the following:

i. Dividends will be subject to Non-Resident Income Tax, at the standard withholding tax rate (currently, 19%). This standard rate can be reduced or eliminated as per the application of the EU Parent-Subsidiary Directive or the relevant double taxation treaties that may be applicable.

ii. Capital gains will also be subject to Non-Resident Income Tax, at the standard rate for capital gains (currently, 19%). Again, this standard rate can be reduced or eliminated as per the application the relevant double taxation treaties. The exemption on capital gains derived from the transfer of shares of listed investment funds regulated would not be applicable. However, capital gains obtained by those shareholders owning a percentage lower than 5% in the listed SOCIMI would be exempt from Spanish taxation.

Individual shareholders

The tax treatment for foreign individual shareholders would be similar to the tax treatment applicable to corporate foreign shareholders, with the following specialities.

i. The foreign shareholder will not be entitled to exemptions.

ii. The foreign shareholder will not be eligible under the EU Parent-Directive.

Withholding tax

Dividends distributed to non-resident shareholders are subject to general withholding tax provisions. Thus, non-resident corporate shareholders could be eligible under the EU Parent-Subsidiary Directive and the relevant double taxation treaties, provided that the relevant conditions were met.

4.3 Anti-abuse Measures

Specific levy of 19%
Applicable to the dividends paid by the SOCIMI to domestic or foreign shareholders under certain circumstances.

A special levy regime applies to the dividends paid by the SOCIMI to domestic or foreign shareholders under certain circumstances.

The SOCIMI must assess and pay a 19% levy in respect of the dividends distributed if the beneficiary of the dividends is a Spanish or foreign taxpayer (i) which holds at least 5% of the financial rights of the SOCIMI, and (iii) which is either exempt from any corporate tax on the dividends or subject to tax on the dividend received (i.e. a rate lower than 10%).

This special levy will be accrued on the date in which the dividend distribution is formally approved by the SOCIMI. Payment to the Tax Authorities will be due within the two months following to the distribution resolution.

5 Tax treatment of foreign REIT and its domestic shareholder

Foreign REIT	Corporate shareholder	Individual shareholder
Taxed in Spain, as a non-resident, for the income derived from real estate assets located in Spain. Potential application of the SOCIMI regime to the Spanish subsidiary of the foreign REIT.	Subject to taxation in Spain. Specific analysis of foreign REIT is required.	Subject to taxation in Spain. Specific analysis of foreign REIT is required.

Foreign REIT

The foreign REIT could be subject to taxation in Spain, as a non-resident, on the income derived from the real estate assets located in Spain.

If the foreign REIT is investing in Spain through a Spanish subsidiary, such Spanish subsidiary could enjoy, under certain circumstances, the Sub-SOCIMI regime described above.

Corporate shareholder

Subject to taxation in Spain. Double-taxation relief credit or participation exemption may be available, specific analysis of foreign REIT is required though.

Individual shareholder

Subject to taxation in Spain. Double-taxation relief credit may be available, specific analysis of foreign REIT is required though.

Author contacts | Spain

Pablo Serrano de Haro
Tel: +34 91 590 7533
Pablo.Serrano@CliffordChance.com

Laura Fernández
Tel: +34 91 590 7545
Laura.Fernandez@CliffordChance.com

CLIFFORD CHANCE

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

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European Public Real Estate Association

Global REIT Survey 2016

EUROPE

Turkey – REIC

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIC type
REIC	1995	- Capital Markets Law no. 6362 ("CML") - Communiqué on Principles Regarding Real Estate Investment Companies, Serial III No. 48.1 ("Communique")	Corporate type National Stock Exchange Commission.

The concept of a 'trust' does not exist in Turkey, so REITs are structured as Real Estate Investment Companies (REICs).

REIC is a capital market institution that can invest in real estate, capital market instruments based on real estate, real estate projects and rights based on real estate.

REICs were introduced in 1995 after the completion of the necessary legal arrangements by the Capital Markets Board (CMB). Turkish REICs are corporate income tax-exempt stock companies that must be listed on an organised stock market in Istanbul.

The Turkish real estate market has grown very rapidly and has demonstrated remarkable performance during the past couple of years. In parallel to the increase in demand and high quality office and retail space, the brand new mortgage system and decreasing interest rates have been the main catalysts for the noteworthy pick up of the real estate market.

REICs have entered the Turkish real estate market as an advantageous vehicle that offers easy access to the profits of huge real estate portfolios. Thus REICs have attracted the attention of both local and foreign investors. The listed REICs' total asset value reached a level of approximately EUR 16.134 billion as of March 31, 2016.

Under the Communiqué number 48.1-a published by CMB on 23 January 2014, the regulations regarding Infrastructure Real Estate Investment Companies (IREICs) which were published at the beginning of 2009 were integrated to the Communiqué 48.1 as a type of REIC. Therefore, REICs which are incorporated to manage portfolios composed of infrastructure investment and services and other infrastructure related market instruments under the provisions of Communiqué can operate as IREIC and also benefit from the Corporate Income Tax exemption. (*Please note that the explanations below only pertain to REICs*)

Sector summary*

Listing Country	Number of REICs	Number in EPRA REIC Index	Sector mkt cap (EUR€m)	% of Global REIC Index
Turkey	30	4	€ 6.763	0.19%

Top five REICs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Emlak Konut	€ 3.371,99	5.53%	3.30%	0.16%
Torunlar REIC (Real Estate Investment Company)	€ 689,00	44.38%	2.64%	0.01%
Is Gayrimenkul Yatirim Ortak	€ 419,61	6.45%	3.77%	0.02%
Dogus Gayrimenkul Yatirim Ortakligi	€ 252,54	6.82%	0.00%	0.00%

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2 Requirements

2.1 Formalities / procedure

Key requirements
- Regulated and closely monitored by the Capital Markets Board (CMB). - Statutes must be in accordance with the law and the procedures of the Communiqué. - Founders must have no records of legal prosecution due to bankruptcy or other offences.

According to article 6 of the Communiqué, REICs may be constituted by way of establishing new joint stock companies, or existing joint stock companies can be converted into REICs by amending their articles of association in accordance with the procedures of the Communiqué and CML.

For the purpose of establishing a REIC, the founders are required to apply to the CMB in order to obtain its approval for establishment with an application for establishment form, the format and procedures of which are determined by the CMB, and the documents specified in this form.

For either the establishment or the conversion of a company into a REIC, CMB approval must be obtained. In order to obtain the approval for establishment from the CMB, the applicant companies are required to hold the qualifications specified below:

- Prospective REICs have to be established in the form of joint stock companies with registered capital.
- Prospective REICs have to be established in order to offer the shares representing at least 25% of the issued capital to the public within three months after the establishment and principles determined by the Communiqué.
- The initial capital should not be less than TRY 30 million for the year 2016. This amount is to be amended by the CMB annually.
- If the initial capital is less than TRY 60 million, at least 10% of the shares representing the initial capital should be issued for cash; if the initial capital is TRY 60 million or more, at least TRY 6 million of the shares representing the initial capital should be issued for cash.
- The phrase “Real Estate Investment Company” must be included in the commercial title.

- Real person founders indirectly and ultimately holding at least 20% or more of the concerned company's shares and real person founders indirectly holding privileged shares providing management control in the concerned company's shares must meet the conditions mentioned in the Communiqué.
- Directors and the members of the board of directors of the company must meet the conditions mentioned in the Communiqué.

The articles of association of the prospective REIC have to be in conformity with the provisions of CML and the Communiqué and affirmative opinion of the CMB needs to be obtained.

In order for the approval of the transformation of other companies into REICs, those companies should meet the following requirements;

- Applicant companies are required to be in the registered capital system or should have applied to the CMB for this purpose.
- Applicant companies are required to declare their commitment to the CMB that at least 25% of the issued capital of that company shall be offered to the public within three months after the conversion and principles determined in the Communiqué.
- The present paid-in capital or issued capital and its equity should not be less than TRY 30 million.
- If the present paid-in capital or issued capital is less than TRY 60 million, at least 10% of the shares representing present paid-in capital or issued capital should be issued for cash.
- If the present paid-in capital or issued capital is TRY 60 million or more, at least TRY 6 million of the shares representing present paid-in capital or issued capital should be issued for cash.
- An application needs to be filed with the CMB in order to change its commercial title so that the phrase "Real Estate Investment Company" is included.
- Real person shareholders indirectly and ultimately holding at least 20% or more of the concerned company's shares and real person shareholders indirectly holding privileged shares providing management control in the concerned company's shares must meet the conditions mentioned in the relevant legislation.
- Directors and the members of the board of directors of the companies must meet the conditions mentioned in the Communiqué.

An application needs to be filed to amend the articles of association to comply with the provisions of the relevant legislation and obtain the affirmative opinion of the CMB.

The CMB evaluates the application in terms of conformity to with the provisions of CML and the Communiqué. Upon obtaining the relevant approval from the CMB, an additional application shall be filed with the Ministry of Trade and Customs requesting for the approval of the amendments in the articles of association in the case of a conversion or the approval for establishment in the case of establishment.

Companies to be established shall acquire a legal identity upon registration of the company with the Trade Registry in accordance with the related provisions of the Turkish Commercial Code no 6102 ("Turkish Commercial Code").

Corporations to be converted shall call the shareholders and, if necessary, the preferred stockholders of the company to a meeting in accordance with article 421 and 454 of the Turkish Commercial Code so that the changes in the articles of association of the concerned company can be approved. With the approval of the amendments and registration with the Trade Registry, the conversion transactions shall be completed.

Further requirements other than those explained above may be imposed by the CMB during the approval process.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Joint stock company	TRY 30 million

Legal form
The general guidelines of joint stock companies are regulated with the Turkish Commercial Code. REIC specifics shall be determined by the CML and the Communiqué. The company's name must include "real estate investment company".

Share capital
The minimum capital requirement for a REIC is TRY 30 million for the year 2016.This amount may be amended annually by the CMB. If the initial capital is:
- less than TRY 60 million, at least 10% of the shares,
- TRY 60 million or more, shares representing TRY 6 million of the initial capital should be issued for cash. The shares can be issued in registered or bearer form.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
Only for company founders	Yes

Shareholder requirements

It is required in the real estate investment companies that:
- Real or legal person founders must not have any payable tax
- Real or legal person founders must not be bankrupt, go bankrupt, or have any postponement of bankruptcy;
- Real or legal person founders must not have any responsibility for actions that cause cancellation of an enterprise's activity permits by CMB;
- Real or legal person founders must not be condemned;
- Real or legal person founders or the corporations that they are shareholders of must not be subject of a liquidation decision;
- Real or legal persons must have obtained the resources needed for foundation from their own commercial, industrial and other legal activities free from any kind of collusion, and must have financial power to fund the subscribed capital amount;*
- Real or legal persons must have the honesty and the reputation required for the business
- Real or legal persons must not have been convicted of crimes under the Law on Prevention of Financing of Terrorism no. 6415; and
- Real or legal persons must not have been banned on trading pursuant to the investigations of insider trading and manipulation under CML.

*This requirement is not applied in the conversion applications.

In terms of CMB regulations there are no restrictions on foreign shareholders.

Listing requirements
At least 25% of the REIC's shares should be offered to the public. REICs are obligated to apply to CMB for offering share certificates representing 25% of their capital to the public within three months as of their establishment or registration of their articles of association's amendment before the trade registry.

2.4 Asset level / activity test

Restrictions on activities / investments
- Only transactions permitted by the Communiqué are allowed. - Must primarily deal with portfolio management. - The portfolio of a general purpose REIC is required to be diversified. - If a REIC is established to display activity in a specific area or invest in a specific project, 75% of its portfolio must consist of assets mentioned in its title and/or articles of association. - Cannot be involved in the construction of real estate. - Cannot commercially operate any hotel, hospital, shopping center, etc. - Cannot provide services by its personnel to individuals or institutions in project development, project control, financial feasibility and follow-up of legal permission except for the projects related or to be related with the portfolio. - Cannot make any expense or commission payment which is not documented or which materially differs from the market value. - Cannot sell or purchase real estate for short-term consistently.

The portfolio of a general purpose REIC is required to be diversified based on industry, region and real estate and to be managed with a long-term investment purpose.

In case a REIC is established with the purpose of operating in certain areas or investing in certain projects, at least 75% of the REIC's portfolio must consist of assets mentioned in its title and/or articles of association.

REIC's are required to invest in real estates, rights supported by real estates and real estate projects at a minimum rate of 51% of their portfolio values. They can invest in time deposit and demand deposits in TRY or any foreign currency for investment purposes at a maximum rate of 10% of their portfolio values. The rate of vacant lands and registered lands that are in the portfolio for a period of five years that have not been subject to any project development should not exceed 20% of the portfolio value.

REIC's cannot:

- Engage in capital market activities other than portfolio management for its own portfolio limited to the investment areas.
- Be involved in construction of real estate as a constructor.
- Commercially operate any hotel, hospital, shopping center, business center commercial parks, commercial warehouses, residential sites, supermarkets and similar type of real estates and employ any personnel for this purpose.
- Engage in deposit business, conduct business and operations resulting in deposit collection.
- Engage in commercial, industrial or agricultural activities other than the transactions permitted.
- Grant loan or commit in any debit/credit transaction which is not related to good/services purchase and sale with their participations.
- Make any expense or commission payment which is not documented or which materially differs from the market value; and
- Sell or purchase real estate for short-term consistently.

REICs can invest in foreign real estate and capital market instruments backed by real estate at a maximum rate of 49% of the portfolio value.

2.5 Leverage

Leverage
Short-term credits limited to five-times the shareholders' equity.

In order to meet the short-term fund demands or costs related to the portfolio, a REIC can obtain credits at a rate of five times its shareholders' equity (. In order to calculate the maximum limit of such credits, the obligations of the company arising from financial leasing transactions and non-cash credits shall be taken into account.

A REIC can issue debt instruments within the restrictions of the capital market legislation. As for the issued debt securities, the aforementioned credits shall be deducted from the issue limit calculated according to the capital market legislation.

Companies can issue asset-backed securities-based on sales contracts, or on the promise to sell, real estate from the portfolio.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
REICs determine their own profit distribution politics	Will be regarded within the distributable profit.	Annually or Quarterly

The CMB sets out specific rules with respect to the timing, procedures and limits of profit distributions. As REICs are public companies, profit distributions of REICs are subject to the general regulations of the CMB regulating the profit distribution of public companies. According to the communiqués regarding dividend distributions, public companies are free to determine their own profit distribution politics. The distributable profit is calculated in line with both CMB and Turkish Commercial Code regulations.

In order to secure the capital position of the REIC, the lesser of the net distributable profit calculated in line with the statutory accounts or in line with CMB regulations should be distributed.

The public companies may freely determine their dividend distribution policy under the CMB's new Dividend Distribution Communiqué through their general assemblies. General assemblies should determine their policy on whether to distribute any dividend, the rate and type (i.e. in cash) of the dividend, the time of the dividend payment and whether to pay advance dividend. The general assembly of the company must determine the time of the dividend payment provided that the distribution payment process is initiated no later than by the end of the relevant financial year of that general assembly meeting.

Moreover, based on the CMB communiqué public companies may freely decide to:
- distribute dividends entirely in cash;
- distribute dividends entirely as shares;
- distribute dividends partially in cash and partially as shares and keep the remaining as reserves;
- keep all the profits as reserves.

However, the public companies whose shares are not traded in the exchange have to distribute the dividend fully and in cash. Also the rate of the dividend for those companies cannot be less than 20% of the net distributable profit calculated under the Communiqué.

REICs are entitled to make advance dividend distributions quarterly. Such advance dividend distributions are subject to CMB regulations as well. Advance dividend distributions can only be realised in cash. Advance dividend distributions shall not exceed half of the net interim profit remaining after subtracting the legal reserves and accumulated losses.

Besides, the advance dividend distribution amount shall not exceed the lower one of the following amounts;

a) The half of the previous year's net profit amount,
b) The total amount of other distributable sources, except the net profit amount stated in the financials of the corresponding interim period.

2.7 Sanctions

Penalties / loss of status rules
Modification of the articles of association to exclude real estate investment company operations.

If REICs do not apply to the CMB by completing the public offering application form and the documents mentioned in this form within the time periods, or if the application is found inappropriate due to the failure to fulfill the necessary conditions, the REIC shall lose the right to operate as an REIC. The CMB will inform the Ministry of Finance and the company loses its tax exempt REIC status.

As the company will lose its REIC status and its tax-exempt status, unpaid taxes, late payment interest and tax penalty may be levied retrospectively on the REIC from the incorporation date of the company.

In addition to judicial fines, the CMB may impose administrative fines for breaches of the CMB regulations or decisions made by the CMB or take relevant measures or bring the case to court or the public prosecutor's office where relevant.

3 Tax treatment at REIC level

3.1 Corporate tax

Current income	Capital gains	Withholding tax
Tax-exempt.	Tax-exempt.	Credit/refund may be possible.

Current income

Generally, corporations in Turkey are subject to 20% corporate tax which is payable over the fiscal profit after adjusting for deductible/non-deductible items and exemptions. Annual corporate tax is declared and paid in April of the following year (assuming that a normal calendar year is applied).

The determination of the taxable income of REICs is no different to ordinary companies in Turkey. On the other hand, REICs are exempt from corporate tax and whilst they are obliged to submit an annual corporate tax return in April of the following year, they do not pay any corporate tax.

The dividend income of Turkish resident companies obtained from its taxable Turkish resident subsidiaries is exempt from corporate income tax.

Dividends received from non-taxable subsidiaries are taxable in Turkey. However, dividends received by REICs in general are tax exempt due to REIC exemption status.
The foreign corporate income of REICs is also exempt from corporate tax.

Dividends

A dividend withholding tax rate of 15% is applicable to dividends distributed to individual and foreign corporate shareholders. However, for REICs, the Council of Ministers has determined a withholding tax rate of 0%. Therefore, dividend distributions to individual and non-resident shareholders of REICs create no dividend withholding tax burden.

Capital gains

Capital gains are, in principle, deemed the commercial income of an REIC and are thus regarded as corporate tax-exempt.

Withholding tax

REICs may have income subject to withholding taxes to be taxed at source. Credit/refund may be possible.

Accounting rules

Turkish REICs are required to prepare audited financial statements in accordance with the standards of the CMB, which are very similar to IFRS standards.

There is no separate tax accounting system in Turkey. The provisions of the tax laws are applied to the determination of taxable income by making adjustments to the fiscal profit determined in accordance with the CMB financial standards.

3.2 Transition regulations

Conversion into REIC status
In principle, no tax privilege.

There is no exit tax or any other major tax to be applied upon transformation from a regular company into a REIC.

There is no privileged exit taxation rule for capital gains realised on real estate if sold to a REIC. However, there is a specific limited exemption rule stipulated in the Corporate Income Tax Code and applicable only for resident companies. According to this rule, under some certain conditions, 75% of the gains derived from the disposal of real estate may be exempted from corporate taxes. This is not a special rule for real estate disposals to REICs. However, according to Corporate Tax Code, the earnings that a company, which is engaged in the trading of real estate property or their rental, obtained from the sale of such assets, is not eligible to the exception.

3.3 Other Taxes

Registration duties
- Title deed fee of 4%. - Stamp tax exemption. - Transfer may be subject to VAT.

VAT

Since no specific VAT exemption is applicable for the transactions carried out by REICs, transactions of REICs are subject to value-added tax (VAT). All transactions carried out by REICs, including the purchase and sale of land or any other real estate by an REIC from/to a Turkish resident company will be subject to 18% VAT which is accounted as input VAT.

On the other hand there are some exemptions to the above-mentioned principle:

- If the seller of the real estate is an individual who is not constantly engaging in real estate trading, the sale of real estate is not subject to VAT.
- Acquisitions of real estate from banks and insurance companies are not subject to VAT but are subject to banking and insurance transaction tax (BITT) at the rate of 5%. Please note that this BITT is taken as a cost.
- Acquisition of real estate from companies whose main activity is not real estate trading is exempt from VAT if the seller company has held that real estate for at least two years at the time of sale.

However, the input VAT that has been accumulated can be offset against the output VAT calculated over the sales or rental income of the REIC. Please note that the input VAT, that has been accumulated which could not be offset against the output VAT, cannot be considered as deductible expense in the determination of the corporate tax base.

Title Deed Fee

The acquisition of the legal title of Turkish property is subject to a 2% title deed charge over the higher of the sales price or the real estate tax base, which is determined by the related municipality by taking into consideration the fair market value of the real estate. This title deed fee is applicable to both the buyer and the seller separately. Therefore, the total title deed charge burden is 4%. Additional title deed fees may also apply depending on the type of the title deed transaction.

Stamp Tax

Stamp tax applies to a wide range of documents, including but not limited to agreements, financial statements and payrolls. Stamp tax is levied as a percentage of the monetary value stated on the agreements at rates ranging from 0.189% to 0.948%.

On the other hand, promise to sell agreements and agreements signed by REICs regarding the acquisition and the disposals of real estate are exempt from stamp tax. Please note that apart from these agreements REICs are also subject to all stamp tax liability mentioned above.

Each and every original signed agreement that has a monetary value stated on it is separately subject to stamp tax at a general rate of 0.948% (9.48 per thousand) with a ceiling of TRY 1.797.117,30 (approximately EUR 546.000 under the current foreign exchange rate, subject to annual revaluation) for the year 2016.

Lease contracts are also subject to stamp tax. The rate applicable per original copy of a lease agreement is 0.189% (1.89per thousand) with the cap amount mentioned above. In the case the period of the rental contract is longer than a year, the taxable base for the stamp tax is the total rent amount calculated over the full rental income and total period of the contract.

Property Tax

An annual property tax (real estate tax) is levied on the owner of real estate.

Buildings and land owned in Turkey are subject to property tax at the following rates:

- Residences 0.1%.
- Other buildings 0.2%.
- Vacant land (allocated for construction purposes) 0.3%.
- Land 0.1%.

Furthermore, the effective property tax rates double for property located within the borders of metropolitan areas.

Environmental Tax

Annual environmental tax will become due based on a tariff which does not have a material value.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
Dividends and capital gains from share disposal subject to standard corporate income tax rate (20%).	- 50% of dividend subject to individual income tax (15% to 35%). - Capital gains in principle tax–exempt.	General view: N/A

Capital gains received by resident corporations

The capital gains derived from the sale of REIC shares by resident legal entities are to be included in the corporate income and will be subject to corporate income tax at 20%. However, there is a special partial exemption method that can be used to minimise the tax burden which is available for 75% of the gains derived from the sale of shares that are held for at least two years, with certain further conditions.

Dividends received by resident corporations

Since REICs are exempt from corporate tax, 'participation exemption' is not applicable for the dividends received from REICs. So, dividends received by corporations in Turkey from REICs are subject to a 20% corporate income tax. And then, if distributed to non-resident companies or individuals, those distributions are also subject to dividend withholding tax in line with local regulations.

Capital gains received by resident individuals

Since REICs are public companies, capital gains derived from the sale of shares in the Borsa Istanbul by resident individuals will be subject to taxation via withholding tax. The current rate of 0% withholding tax is applicable for the capital gains received by resident individuals and that tax will be the final tax for those individuals.

Dividends received by resident individuals

Resident individual shareholders of REICs are obliged to declare half of the dividends received from REICs if half of the dividends received exceed the declaration limit (approx. EUR 9.105 for the year 2016). Declared income will be subject to Income tax at the progressive rate between 15% - 35%.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
0% withholding tax.	0% withholding tax.	0% withholding tax.

Capital gains received by non-resident corporations

Since REICs are public companies, capital gains derived from the sale of shares in the Borsa Istanbul by non-resident legal entities that do not have a permanent establishment in Turkey, will be subject to taxation via withholding tax. The current rate of 0% withholding tax is applicable for the capital gains received by non-resident corporations and that tax will be the final tax for those companies.

Please note that capital gains derived from the sale of non-listed Turkish company shares by non-resident corporations that do not have a permanent establishment in Turkey is to be declared after the application of cost adjustment (adjustment of the original cost with Whole Sale Price Index (WPI) except for the month the shares are disposed if the total increase in WPI is more than 10%), within 15 days following the sale of shares, through a special corporate tax return and be taxed at standard corporation tax rate. Additionally dividend withholding tax will be applied on the net gains. But, since most of the Double Tax Treaties prohibits Turkey's taxation right on these capital gains depending on the holding period (one year in most cases) of the Turkish company shares we strongly suggest to examine double tax treaties before these transactions.

Dividends received by non-resident corporations

Dividends that are distributed by REIC will be subject to a 0% dividend withholding tax in Turkey. On the other hand, taxation of dividends in the hands of non-resident corporations depends on the tax treatment of the country of residence.

Capital gains received by non-resident individuals

Since REICs are public companies capital gains derived from the sale of shares in the Borsa Istanbul (BIST) by non-resident individuals, will be subject to taxation via withholding tax. The current rate of 0% withholding tax is applicable for the capital gains received by non-resident individuals and that tax will be the final tax for those individuals.

Dividends received by non-resident individuals

Dividends that are distributed by REIC will be subject to a 0% dividend withholding tax in Turkey. On the other hand, taxation of dividends in the hands of non-resident individuals depends on the tax treatment of the country of residence. ■

Authors contact | Turkey

Ersun Bayraktaroglu
Tel. +90 212 326 6474
ersun.bayraktaroglu@tr.pwc.com

EPRA

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

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Global REIT Survey 2016

EUROPE

United Kingdom – REIT

A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
UK-REIT	2007	Finance Act 2006, and subsequently issued regulations. Legislation re-written with enactment during Spring 2010.	Corporate entity.

The UK REIT was introduced in the UK with effect from January 01, 2007 by the Finance Act 2006. On January 01, 2007 nine companies elected to become REITs – a number which grew significantly within the first year of the regime, but since then the increase has been small each year, however it has increased recently due to new REIT launches and channel island property companies managed by asset managers converting to REIT status.

The UK REIT regime operates through a combination of legislation (primary and secondary) plus guidance. The primary legislation has been rewritten as part of a project to simplify the UK's tax legislation, it should be noted that the rewrite project tried not to amend the effect of the original legislation, but merely improve the legibility. The rewritten legislation forms part of the Corporation Tax Act 2010. Updated guidance to accompany the legislation, and subsequent amendments are long awaited. The legislation now refers to the property rental business (previously referred to as "tax exempt") and the residual business (which relates to all other business activities).

Amendments to the REIT rules have been introduced which came into effect in Finance Act 2012. Such changes have made the UK REIT regime more attractive. Entry to the REIT regime is now cheaper – the entry charge has been abolished, new REITs can list on AIM and there is a three year grace period for REITs to become widely held and not "close". Furthermore, certain institutions are encouraged to invest in REITs given their shareholdings in a REIT will be treated as widely held. More recently in Finance Act 2013 and 2014, the Government has introduced further amendments in relation to UK REITs investing in other UK REITs. The measure allows the income from UK REITs investing in other UK REITs to be treated as income of the investing REIT's tax exempt property rental business, and REITs shareholders to be ignored when considering "close" status. These changes provide three benefits to the REIT sector: investment diversification, cash management flexibility and tax simplification.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
UK	36	23	€ 56.585	4.58%

Top five REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Land Securities Group plc	€ 10.105	-13.01%	3.20%	0.92%
British Land Co plc	€ 7.927	-16.84%	4.23%	0.72%
Hammerson plc	€ 5.147	-11.88%	4.00%	0.47%
Intu Properties plc	€ 4.808	-4.79%	4.57%	0.31%
SEGRO	€ 3.885	2.18%	3.52%	0.35%

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.*

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)
UK – AIM	4	1	€ 1.545

Top REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of AIM Index
Real Estate Investors plc	€ 117	-13.01%	4.91%	7.82%

EPRA * All market caps and returns are rebased in EUR and are correct as at 29 July 2016. *EPRA, August 2016.*

2 Requirements

2.1 Formalities / procedure

Key requirements
- Election must be filed prior to conversion. - Certain conditions for REIT status.

An election must be filed prior to conversion. In order to become a UK REIT, a group of companies has to confirm that the parent company:

- is UK resident and not resident elsewhere;
- has shares traded on a recognised stock exchange (does not apply for first three years);
- is not an open-ended investment company;
- is not a close company (does not apply for first three years);

- has only one class of ordinary shares (i.e., non-voting fixed rate preference shares which may be convertible are permitted);
- has no performance-related loans and
- that the parent company will produce financial statements.

Strictly, two tax returns (relating to property rental business and residual business of the UK REIT group) should be filed annually, although HMRC may not insist on a return in respect of the exempt property rental business. Three sets of financial statements (which demonstrate that the UK REIT group fulfils the various qualifying tests and conditions) need to be filed annually.

2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Listed closed-ended company.	GBP 50,000 (if listed in UK).

Legal form

The parent company of a UK REIT must be a closed-ended company which is either listed or actively trading on a stock exchange which is recognised by the UK tax authorities within three years of entry into the regime. However, there is no requirement as to where it is incorporated. It must be tax resident in UK and must not be tax resident in another country.

Subsidiary entities can be tax resident outside the UK, but such entities are subject to the local tax regime in that overseas jurisdiction and may suffer tax.

Management may be internal or external.

Minimum share capital

The normal listing requirements in respect of share capital are applicable. A UK REIT may only have one class of ordinary shares, but it can also offer non-voting preference shares, convertible non-voting preference shares, and convertible loan stock.

A UK company that lists on the UK stock exchange must have a share capital of at least GBP 50,000.

2.3 Shareholder requirements / listing requirements

Shareholder requirements	Listing mandatory
- Not a ‘close company’. - A single corporate shareholder may not own 10% or more of the shares/voting rights. - No restriction on foreign shareholders.	Yes, but can be on any Stock Exchange recognised by the UK tax authorities (within three years).

Shareholder requirements

A UK REIT cannot be a ‘close company’. A company is “close” where it is controlled by five or fewer shareholders. A listed company will not be close if at least 35% of the shares are owned by the public. “Public” for this purpose includes shareholders owning less than 5% and pension funds (who do not provide pensions for the employees of that REIT) but excludes non-close companies. Institutional investors are also excluded, including charities, registered providers of social housing, sovereign wealth funds, pension funds, managers/trustees of authorized unit trusts and OEICs and since 2014 UK REITs and overseas equivalents to UK REITs. HMRC guidance on what constitutes an overseas equivalent is currently being drafted.

No corporate shareholder, wherever tax resident, should hold 10% or more of the shares or voting rights in a UK REIT, otherwise a penalty tax charge will arise if it pays any dividend to such a corporate shareholder without having taken reasonable steps to prevent the payment of such a dividend. UK REITs therefore usually have restrictions in their Articles of Association that prevent distributions from being made to corporate shareholders who hold 10% or more of share capital or voting rights and allow a UK REIT to force shareholders to sell stock if they are in danger of breaching the 10% limit.

There are no restrictions on foreign shareholders.

Listing requirements

Listing on the LSE or any other 'recognised stock exchange' (which now includes AIM following FA 2012) is required. HM Revenue & Customs maintain a list of recognised stock exchanges across the world.

2.4 Asset level / activity test

Restrictions on activities / investments
- At least 75% of a REIT's net profits must be derived from the property rental business (measured using financial statements). - At least 75% of a REIT's assets must be used in the property rental business (measured using financial statements). - The REIT must hold at least three separate assets. - No one asset may exceed 40% of the total assets. - May invest outside the UK in real estate wherever located.

Restrictions are imposed by the balance of business tests, which limit the amount of investment permitted in non-rental generating assets and the amount of non-rental income. However, other activities are permitted subject to these restrictions. Essentially, only rental profits and gains realized on the disposal of properties used in the UK property rental business will be exempt from UK tax.

The balance of business tests state that:

- at least 75% of a UK REIT's net profits must be derived from the property rental business;
- at least 75% of a UK REIT's assets must be used in the property rental business.

A UK REIT must hold at least three separate assets directly (note that interests held via partnerships would not count for this test), and no one asset can exceed 40% of the market value of the total portfolio. (Note that a single property which can be multi-tenanted, e.g. a shopping centre will count as more than one asset). Qualifying properties may be residential or commercial and in any location worldwide.

Cash counts as a good asset for the balance of business test, whereas interest is still taxable and is income of the residual business. These changes apply for the accounting period starting after July 17, 2012.

Owner occupied assets (that is property used by the UK REIT, e.g. a head-office building) are not qualifying rental assets for the purposes of the balance of business test. Certain land rich groups were seeking to use planning to structure group businesses in such a way that the operating companies could claim tax relief for rents paid to a group rental company which was not taxed on the rent. The restructuring relied on treating the operating company as outside the UK REIT group for tax purposes only; therefore there was no need to separate economic ownership of the operating and rental businesses. Anti-avoidance legislation was introduced by the Finance Act 2009 to counter such tax planning.

Development by the UK REIT for investment on its own account is permitted, and is generally included within the property rental business unless development costs exceed 30% of the acquisition cost (or the property's value at the time of entry to the UK REIT regime if higher) and the property is sold within three years of completion (see 3.1). Property trading is permitted but is taxable, and falls outside of the property rental business for the purpose of the balance of business restrictions.

The parent company must own at least 75% of a subsidiary company for the subsidiary to be a member of the UK REIT group; such members can in turn own at least 75% subsidiaries but the parent must ultimately more than 50% of the shares of all the subsidiaries in a group. Where a UK REIT has the right to at least 40% of the profits of a joint venture company then the proportion of rental exempt income and gains that are attributable to the UK REIT will be exempt from tax, if an election is made.

Where UK REITs are partners in a partnership with share of 20% or less, the share of assets and income are treated as outside the ring-fence for the balance of business tests although the income and gains will be treated as tax-exempt. Similar provisions apply where the UK REIT has an interest of 20% or less in a unit trust such as a Jersey Property Unit Trust which is a 'Baker trust' (where the income belongs to the investor but the capital is under the control of the trustees).

2.5 Leverage

Leverage
Interest cover test.

Borrowing of money is limited by the Financing Cost Ratio. The ratio is defined as "property profits" that is, profits of the property rental business before a deduction for interest, losses from a previous accounting period and tax depreciation (capital allowances) divided by the property financing costs (that is finance related to the property rental business which is broadly defined). Finance costs are limited to interest costs and amortisation of discounts relating to financing. They no longer include SWAP break costs or normal SWAP payments. The property profits must be at least 1.25 times the property financing costs. Where income cover is less than 1.25 times, a tax charge will arise based on the amount of the property financing costs that cause the ratio to fall below 1.25 times.

As the test looks only at the relationship between rental income and interest costs, a sudden unexpected increase in interest rates or a drop in income may result in a tax penalty. HMRC has the power to waive this penalty charge if the UK REIT is in severe financial difficulty, the ratio is breached due to unexpected circumstances and the UK REIT could not reasonably have taken action to avoid the ratio falling below 1.25 income cover.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of tax-property rental profits. 100% of PID from other REITs.	Not included in the distribution obligation.	Within 12 months of the end of the year.

A distribution out of the property rental business of the REIT (rental income and capital gains) is called a Property Income Distribution – a 'PID'.

Operative income

90% of the income from the property rental business must be distributed within 12 months of the end of the accounting period (however profit from the residual business income does not have to be distributed). Measures were introduced in Finance (No 3) Act 2010 to permit REITs to issue stock dividends (i.e. to issue new shares to shareholders) in lieu of cash dividends which would be treated as qualifying distributions.

Where a REIT invests in another REIT, 100% of the PID dividends received by the investing REIT must be distributed within 12 months of the end of the accounting period. This revision to the legislation was introduced in Finance Act 2013.

Capital gains
Gains arising from the disposal of real estate used in the property rental business do not have to be distributed.

2.7 Sanctions

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

The legislation makes provision for penalties or the withdrawal of UK REIT status where certain requirements are breached. These provisions have been rewritten in the CTA 2010, are complex and the HMRC guidance has not yet been updated for the 2010 changes. There are differing remedies and time limits, plus some breaches may occur a number of times whereas others may be only breached once before UK REIT status is lost. Consequently, care needs to be exercised to determine how a particular breach may be dealt with. Here is an outline of the rules which will be applied.

Where the parent company of a group UK REIT or a single company UK REIT loses its stock exchange listing or becomes close, then its UK REIT status may be withdrawn with effect from the end of the previous accounting period. In certain circumstances there will not be a breach, for example:
- if the loss of a stock exchange listing arises from the takeover by another group or single UK REIT or
- where the group UK REIT or single company UK REIT becomes close as the result of the action of others, but this is remedied by the end of the next accounting period.

Failure to meet the property rental business tests (at least three properties must be held by the REIT and no property can be worth more than 40%) is a breach which can occur more than once.

Failure to distribute 90% of the taxable profits of a property rental business and 100% of any PIDs received from other UK REITs is a breach. Where the profit distribution obligation is not complied with within three months after the point at which the group's results are agreed with HMRC, then a tax charge (currently 20% but reducing to 17% by 2020) will arise on the UK REIT and will be based on the shortfall of the distribution.

It is possible to breach the balance of business test for assets at the beginning of the first accounting period of a UK REIT so long as the test is complied with at the beginning of the next accounting period.

Thereafter, failure to meet the 75% assets test is assessed as a minor breach if more than 50% of the assets are qualifying assets at the beginning of the accounting period, but a major breach if less than 50% of the assets are qualifying assets at that time. Similar provisions apply to the balance of business tests when considering what proportion of the UK REIT's income is rental income.

The UK REIT will incur a 20% tax charge on the amount equivalent to a PID paid to a corporate shareholder which holds 10% or more of the shares in UK REIT. It is therefore usual for the REIT to take steps to discourage such a level of investment (e.g. by amending the company's Articles of Association to prevent such distributions).

There are special rules to deal with multiple breaches which are too detailed to deal with here, but note that in the event of breaches of a number of differing requirements in a ten-year period, HMRC can require the group UK REIT or single company UK REIT to leave the REIT regime.

HMRC have significant powers which permit them to make a UK REIT group or single UK REIT company leave the UK REIT regime and can also levy additional taxes if they consider that the UK REIT has entered into arrangements with the sole or main purpose of obtaining a major tax advantage.

Where HMRC issue a notice to leave the UK REIT regime, the UK REIT rules will cease to apply from the start of the current accounting period and for future years; however the taxpayer can appeal.

3 Tax treatment at REIT level

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
- Income from a property rental business is exempt from corporation tax. - Residual business income is taxable at the highest rate of corporation tax (currently 20%).	Gains realised on disposals of assets used in the property rental business are not subject to tax.	- In principle, no withholding tax levied on distributions that are made out of the residual business income. - Distributions out of the property rental business profits (PIDs) are generally subject to 20% withholding tax unless the recipient is a UK corporate, UK charity or UK pension fund. - Withholding tax suffered by a UK REIT on its property rental income from directly held non-UK real estate will be deducted in the calculation of the required PID. - Withholding taxes suffered on distributions in respect of shares will be part of the REIT's residual business and tax credit relief may be available.

Current income

Income from the property rental business is not subject to UK corporation tax. Investment by a UK REIT in another UK REIT will be included as an asset of the investing REIT's property rental business. PIDs received will be included as part of the property rental business and tax exempt, but 100% of PIDs received must be distributed. Non-rental business income (residual income) is taxable in the ordinary manner at the highest rate of corporation tax which is currently 20%. Corporation tax rates will reduce to 17% by 2020. The property rental business of the UK REIT is ring-fenced for corporation tax purposes, which means that it is not possible to offset profits and losses of the property rental business against profits and losses of its residual activities.

Capital gains

Capital gains or losses that arise on disposal of property used in a UK REIT's property rental business are not chargeable to tax. The sale of 'developed properties' may be subject to tax if they are disposed of within three years of the completion of any development activities conducted by the UK REIT. Any property whose cost of development (where the development is conducted by the UK REIT) exceeds 30% of the fair value of the property's acquisition cost (or value at entry, if later) is deemed to be a 'developed property'. The disposal of property which is used for non-eligible business is taxable. Gains realised on property used partly for the rental business, and also for taxable business, may be partially exempt from tax.

Withholding tax

The UK does not levy dividend withholding taxes in case of a normal distribution to any investor, regardless of tax residence, but in the case of a distribution by a UK REIT out of its exempt property rental business profits (a PID), tax of 20% will be withheld by the UK REIT and paid to HMRC (although PIDs can be paid to UK companies, UK charities and UK pension funds gross). Overseas investors may be entitled to treaty relief and have to reclaim tax from HMRC.

If an overseas jurisdiction levies a withholding tax on payment of a dividend to a UK REIT, the UK REIT is unlikely to be able to obtain a credit for such tax if the income is exempt in the UK. If, however, the income is taxable it may be possible for the UK REIT to credit this against any UK tax due.

Other taxes

Stamp duty, stamp duty land tax, employee taxes, uniform business rates and value added tax apply to UK REITs in the same way that they apply to ordinary property companies.

Accounting rules

A UK REIT is taxed based on UK entity accounts for each group company (either UK GAAP or IFRS). Group UK REITs are required to present financial statements under IFRS for the purposes of calculating the balance of business tests.

3.2 Transition regulations

Conversion into REIT status
No conversion charge from July 17, 2012

Companies entering the UK REIT regime are no longer subject to an entry charge equal to 2% of the gross market value of properties; abolished by FA 2012. For UK tax purposes only, a new accounting period begins at the time of conversion, and the base cost of property rental assets are re-based to market value. Any latent capital gains on property within the UK REIT at the date of conversion are extinguished.

3.3 Registration duties

Registration duties
Stamp Duty Land Tax (SDLT) of between 1% and 5% for commercial property and 0%-15% for residential property. Scotland has a Land and Buildings Transactions Tax with rates of 3% between £150k and £350k and 4.5% above for commercial property, and between 0% and 15% for residential property.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- Distributions out of property rental business income (PIDs) are treated as rental profits currently taxable at 20% (for a large company). - Distributions out of residual business profits (non-PIDs) will be tax-exempt. - Capital gains on disposal of UK REIT shares are taxable under normal capital gains rules.	- 20% tax on PIDs (collected by way of the withholding tax). - Higher rate tax payers pay additional tax (the amount of which depends on their personal tax position) through their tax returns. - Capital gains on disposal of REIT shares taxable in ordinary manner.	- Withholding tax is deducted at 20% on PIDs to individual shareholders. - Where the distribution is a PID, there is a withholding tax exemption where the REIT has a reasonable belief that the person entitled to the PID is a UK corporate, UK charity or UK pension fund. - UK REIT shares held via a 'tax wrapper' such as an ISA can be paid gross.

Corporate shareholder

Distributions relating to property rental business (PIDs) are treated as rental profits in the hands of the recipient. These are taxed at the corporation tax rate applying to that company, currently 20% for a large company. Distribution of taxed profits (distributions out of the residual business) is likely to be tax-exempt in the hands of UK corporate shareholders.

Distributions of gains from UK REITs are taxed as if they were a distribution of property rental business income.

Capital gains on disposal of shares of a UK REIT are taxable under normal capital gains tax rules.

Individual shareholder

PIDs are taxed as rental profits received from direct property, whether the PID represents distributed rental profits or capital gains. The shareholder will be taxed at either 20% (already levied with the withholding tax) or at 40% or 45% for higher rate taxpayers and additional higher rate tax payers. In this case the shareholder will pay 20% via withholding tax and the remaining amount through his tax return. Individuals are not entitled to an imputed tax credit, as was the case with normal dividends. Distribution of taxed profits (distributions out of the residual business) will be taxable in the same way as ordinary dividends. The taxation of ordinary dividends has been changed from April 2016 onwards, where individual shareholders receiving total dividends above £5,000 will be taxed at the marginal rates of 7.5%, 32.5% and 38.1%. These changes do not impact taxation of PIDs.

Capital gains on disposal of UK REIT shares are fully taxable in the ordinary manner. Note that from April 2016 the rate of tax on capital gains on shares for individuals is 10% rising to 20% for higher rate taxpayers.

A share buy-back will be a disposal for capital gains purposes and taxable in the ordinary manner.

Withholding tax

Withholding tax is not deducted where a PID payment is made to a UK corporate shareholder, UK charity or a UK pension fund. A withholding tax of 20% is levied on PIDs to individual shareholders by the UK REIT.

4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
- 20% final withholding tax for PIDs. - Disposal of shares in a UK REIT is outside the scope of UK capital gains tax.	- 20% final withholding tax for PIDs. - Disposal of shares in a UK REIT is outside the scope of UK capital gains tax.	- Tax treaty relief available if claimed following receipt. - Will be treated as a dividend distribution under most treaties. - Parent-Subsidiary Directive not applicable.

Corporate shareholder

Foreign shareholders receive dividends from the tax-exempt property rental business (PIDs) net of basic rate income tax (20%).

Individual shareholders

Foreign shareholders receive dividends from the tax-exempt property rental business (PIDs) net of basic rate income tax (20%).

Withholding tax

A corporate or individual non-resident shareholder suffers withholding tax of 20%. Treaty relief may only be claimed retrospectively from HMRC. The PID is only taxed as rental income in the UK; it is likely that the PID will be treated as a dividend distribution under most treaties. The EU Parent – Subsidiary Directive is not applicable (see under no. 2.3 above).

5 Tax treatment of foreign REITs and its domestic shareholders

Foreign REIT	UK Corporate shareholder	Individual shareholder
Taxed under normal UK tax rules.	May be tax-exempt.	20% or 40% or 45% tax on foreign income.

Foreign REIT

A REIT resident outside the UK and investing in UK property will be taxable under normal UK rules as a non-resident landlord with tax at 20% on income only and not capital gains for commercial property.

Corporate shareholder

A foreign REIT distribution of income from property in the UK to a UK corporate shareholder is likely to be treated as a normal dividend from an overseas company. This will depend on structure of the foreign REIT and may benefit from tax exemption.

Individual shareholder

A foreign REIT distribution of income from property in the UK to a UK individual shareholder is likely to be treated as a normal dividend from an overseas company (this will depend on the structure of foreign REIT). ■

Author contacts | United Kingdom

Robert Walker
Tel. +44 20 7212 2324
robert.j.walker@uk.pwc.com

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