EPRA REPORTING
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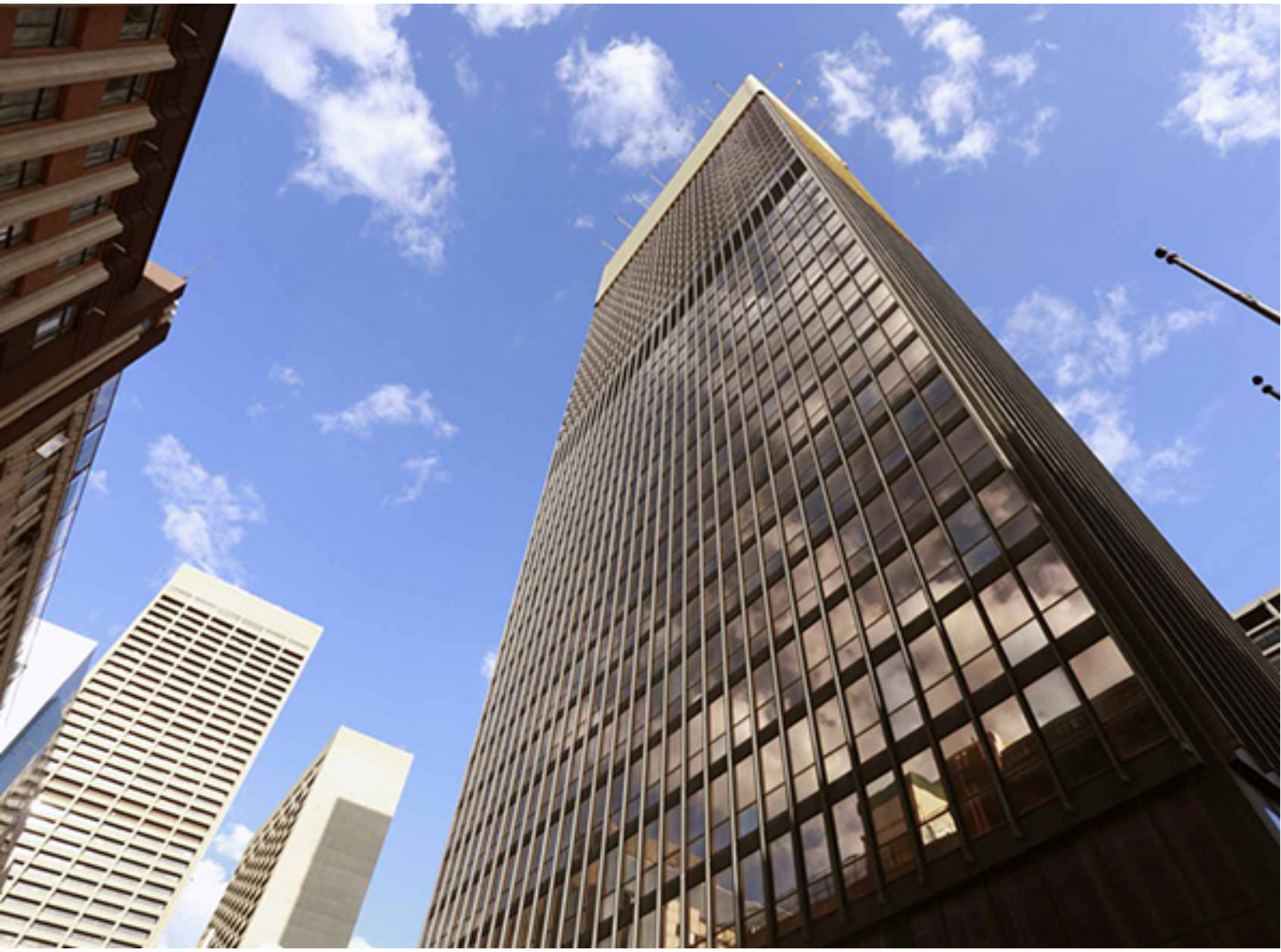
Global REIT Survey 2016

AFRICA

South Africa – REIT



A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

1 General introduction

	Enacted year	Citation	REIT type
REIT	REITs were introduced in the market in 2013. Trust REIT. Company REIT.	- Part V of the Collective Investment Schemes Control Act No. 45 of 2002 ("the CISA"). - Companies Act No. 71 of 2008 ("the Companies Act"). - Income Tax Act No. 58 of 1962 ("the Income Tax Act"). - JSE Limited ("JSE") Listing Requirements.	Legally a company or trust but company for income tax purposes.

In the South African context, until April 01, 2013 REITs did not exist, however, comparable investment vehicles were Property Unit Trust (PUT) or a Property Loan Stock Company (PLS company)[1]. A PUT holds immovable property and shares in property companies. A PUT is managed by a management company. This management company trades participation units in the market as market maker. A South African PUT is legally regulated by the CISA. The conduit principle (flow-through) applies to distributions made by a PUT, i.e. income flows through to beneficiaries in its original form and the PUT is exempt from capital gain). The main difference between a PUT and a PLS company, is that a PLS company is a company regulated by the Companies Act and is not required to comply with the CISA. Unlike a unit holder in a PUT, an investor in a linked unit in a PLS company holds both equity and a debenture. Interest distributions to investors flow through. The interest is deductible by the PLS whilst it is treated as ordinary revenue in the hands of the investor.

The National Treasury has long debated the introduction of the REIT regime in South African. The long-awaited dispensation was introduced through the amendment of the tax legislation and the JSE listing requirements. In light of the recent introduction of special taxation rules[2] in respect of the taxation of REITs vs. PUT and PLS, the JSE was requested to facilitate the introduction of the REIT structure and regulations. With effect from May 01, 2013, a REIT is regulated in terms of the JSE listing requirements and rules[3].

From this effective date, PUTs are automatically considered to be REITs (Trust REIT) and listed on the JSE REIT board in accordance with this new dispensation. PLS' are able to adopt the regulatory framework set out by the JSE in order to qualify to list on the REIT board of the JSE. An unlisted PLS cannot fall under the new dispensation.

Sector summary*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of Global REIT Index
South Africa	34	10	€ 26.797	1.46%

[1] South Africa (2007) The Department of National Treasury. Reforming the Listed Property Investment Sector in South Africa – Discussion paper: "Introduction", December 3. .
[2] Section 25BB of the Income Tax Act No. 58 of 1962 (ITA) applicable in respect of years of assessment commencing on or after April 01, 2013.
[3] Bulletin 3 of 2013, The JSE Limited Listing Requirements read with section 25BB of the ITA. These rules have been introduced align the legislation with international standards and to stream line the tax treatment of PUT and PLS.

Top five REITs*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield	% of Global REIT Index
Growthpoint Properties Ltd.	€ 5.067,86	-4.87%	4.96%	0.44%
Redefine Properties	€ 3.820,02	6.58%	7.07%	0.31%
Resilient REIT Ltd	€ 3.396,01	32.80%	3.42%	0.21%
Hyprop Investments Ltd	€ 2.274,32	3.97%	4.16%	0.21%
SA Corporate Real Estate Fund	€ 852,15	17.43%	6.75%	0.08%

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 REIT: Formalities / procedure

Key requirements
- Qualify for listing under the JSE rules. - Distribute at least 75% of its taxable earnings available for distribution to its investors each year. - Earn 75% of its income from rental or from indirect property owned or investment income from indirect property ownership. - Owns at least R300 million worth of property. - Maintain its debt below 60% of its gross asset value. - Have a committee to monitor risk. - Not enter into derivative instruments that are not in the ordinary course of business.

A REIT is a listed property investment vehicle which is primarily engaged, directly or indirectly, in property activities and is listed on the JSE under the ‘REIT sector. A REIT qualifies for the REIT tax dispensation. A REIT can be a listed Company REIT or a Trust REIT.

No prescribed management model is enforced as to how a Company REIT is to be managed both internally and externally. Company REITs may have any external or internal management and/or property administration function. The company’s directors are responsible for the ongoing compliance with the JSE listing requirements and the Companies Act.

2.2 Legal form / minimum initial capital

Legal form

A Company REIT is a company regulated by the Companies Act and is a legal person for the purposes of South African law.

A Trust REIT is a unit trust, regulated by the CISA.

Minimum initial capital

A Company REIT is required to own at least R300 million of property and must keep its debt below 60% of its gross asset value.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
REIT	No requirements.	Yes

Unit holder requirements

There are no specific requirements for the unit holders of a REIT, other than compliance with the JSE listing requirements.

The sale and acquisition of units in a REIT must comply with the JSE regulatory requirements for securities exchange. Such requirements include compliance with the Financial Intelligence Centre Act (No 38 of 2001) (FICA) and the Securities Services Act (No 36 of 2004).

The purchase and sale of units in a REIT, can only be done through a securities account (online or using a stock broker), collective investment scheme (Unit Trust) or a Retirement Annuity that invests in South African REITs. The SA REIT index can also be used to obtain exposure to the whole sector. A minimum investment of 1 share is required to invest in a REIT.

2.4 Asset level / activity test

Rental Income includes amounts received from:
- Use of immovable property including penalty interest
- Dividends from other REITs
- Qualifying distributions from a company that is a controlled company
- Local dividends or foreign dividends from a property company.

Rental income excludes amounts received from:
- Asset management fees
- Deal fees
- Underwriting fees
- Interest received
- Distributions from non REIT property companies
- Distributions from minority stakes in property investment companies

The following limits and conditions are imposed on the above investments:
- the total investment exposure to assets included in a portfolio may not exceed 25% of the market value of all assets comprised in a portfolio;
- all assets issued by a single concern may not exceed 10% of the market value of all assets comprised in a portfolio; and
- a manager must obtain prior consent of the Trustee for the inclusion of any asset in a portfolio.

The above limits may only be exceeded by virtue of the appreciation or depreciation of the market value of the underlying assets comprised in the portfolio, or as a result of any corporate action by the REIT. A manager may not make any further investment in the asset in question as long as any limit determined above is exceeded.

A REIT may only invest in property in a foreign country and property shares or participatory interests in a collective investment scheme in property in a foreign country, if that foreign country has a foreign currency sovereign rating by a rating agency. The rating and rating agency must be determined by the Registrar. Currently the requirement is a rating of ‘Baa2’ or higher by Moody’s Investors Service Limited, or ‘BBB’ or higher by Standard and Poor’s, or by Fitch Ratings Limited, or by Fitch Southern Africa (Pty) Limited[4]. Where the country has been rated by more than one agency, the lower of the ratings applies.

[4] “Foreign Countries In Which Collective Investment Scheme In Securities Or In Property May Invest” Published under

2.5 Leverage

	Leverage
REIT	Debt financing is limited to 60% of the gross value of the underlying asset value.

The debt financing of a Company REIT is limited in terms of the company's memorandum of incorporation and the Companies Act and a Trust REIT is limited in terms of its Trust Deed and the CISA. Furthermore, the JSE requirements permit a REIT to be geared up to levels of 60% of the gross value of the underlying assets.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
REIT	Earn 75% of its income from rental, property owned or investment income from indirect property ownership.	No requirement.	Distribute at least 75% of its taxable earnings available for distribution to its investors each year.

Operative income

A REIT is required to distribute at least 75% of its taxable earnings available for distribution to its investors annually. Income distributed by the REIT to unit holders will be treated as deductible expenditure for income tax purposes.

2.7 Sanctions

	Penalties / loss of status rules
REIT	- Non-compliance with the CISA. - Non-compliance with the JSE requirements. - Non-compliance with the Companies Act.

There are specific sanctions for non-compliance with the CISA, the Companies Act and the JSE requirements, which may result in the renunciation of the REIT status and therefore loss of the tax benefit under the new dispensation.

General Notice 2073 in *Government Gazette* 25283 of August 01, 2003

3 Tax treatment at the level of REIT and PLS

3.1 REIT: Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
- Subject to tax on income from financial instruments. - Allowed to deduct distributions made. - Undistributed income is subject to a tax rate of 28%.	A REIT is generally not subject to Capital Gains Tax.	A South African tax resident REIT will not be subject to withholding taxes.

General

The income tax provisions noted below may also apply to relevant subsidiaries of a REIT such as a controlled company or a property company. A controlled company is a subsidiary, as defined in the International Financial Reporting Standard 10, of a REIT. A property company is a company where at least 20% of the equity shares or linked units are held by a REIT or a controlled company jointly or severally with other relevant companies in the same group of companies. In addition and with regards to the property company, 80% of the value of the assets is directly or indirectly attributable to immovable property.

Current income

A REIT will be subject to ordinary tax on rental income received at a rate of 28%. A REIT or controlled company may claim a deduction in respect of dividends paid or payable to its shareholders[5], except in the case of a share repurchase. A REIT may also claim a deduction for interest incurred in respect of a debenture forming part of a linked unit[6] in that company. The deduction may be allowed to the extent that gross rentals received or accrued by the REIT, controlled company or an associated property company exceeds 75% of the gross receipts or accruals of the REIT. The deduction will also be limited to the REIT's taxable income before taking into account any taxable capital gain and the deduction for the amount distributed.

A REIT or a controlled company is precluded from claiming any building tax allowances.

Where a REIT or controlled company is the beneficiary of a non-resident (vesting) trust and this trust was liable/subject to tax on income in the country where it was established, the amount of tax proved to be payable (to a government other South Africa) by the trust, as is attributable to the interest of the REIT or controlled company in that trust, will be allowed as a deduction from taxable income of the REIT or controlled company. In order for this amount of foreign tax to be deductible, there must be no right to recovery. This deduction is allowed before taking into account any deduction of a qualifying distribution.

Any tax paid by a REIT or controlled company to a government other than South Africa, is deductible for income tax purposes if, the amount has been proved to be payable and there is no right to recovery (other than the entitlement to carry back losses). This deduction is allowed before taking into account any deduction of a qualifying distribution.

The amount of any donation made by a REIT or controlled company is allowed as a deduction from taxable income. This deduction is limited to 10% of taxable income, after taking into account both foreign tax deductions (mentioned above) and before any deduction of a qualifying distribution.

[5] The shareholder holds a property link unit in the REIT. Any distributions made by the REIT in relation to the property linked unit including the interest paid in respect of the debenture portion will be deemed to be a dividend (excluding in the case of a share repurchase). The amount will not be subject to interest withholding tax.
[6] A property linked unit may be converted to an equity share

Capital gain

A REIT or a controlled company does not pay tax on capital gains arising from the disposal of their immovable property, a share/linked unit in a REIT or a share/linked unit in a property company. In order for the capital gains tax on these disposals to be disregarded, it is vital that the company is a REIT, controlled company or property company at the time of the disposal. A REIT or controlled company may have to account for capital gains tax on the disposal of other assets, not listed above.

Withholding tax

South Africa imposes withholding taxes on royalties or similar payments, interest, proceeds from the disposal to a non-resident of any equity share held in South African immovable property, dividends, interest and payments made to foreign entertainers and sportspersons. It is unlikely that withholding tax on royalties or similar payments could be applicable to a REIT given its principle business purpose.

The withholding tax on dividends will generally not apply in respect of dividends paid to a REIT from its investments in South Africa provided the REIT is a South African tax resident company as resident companies are specifically exempt from dividends tax. In order for the paying company to be exempt from withholding dividends tax in relation to the dividends, the REIT will be required to provide it with certain information required by the South African Revenue Services ("SARS"). Withholding tax on interest will generally not apply since this tax is not imposed on South African tax residents.

The REIT is, however, required to withhold dividends tax on distributions made to investors who are not South African tax residents. The current withholding rate is 15%, subject to the applicable Double Tax Agreement.

3.2 Transition regulations

Conversion into PLS to REIT status
A PLS can be converted to a REIT.

In accordance with the JSE listing rules, a PLS can be converted to a REIT. The deadline to convert a PLS to a REIT was July 01, 2013. It had until July 2015 to meet the gearing requirements.

3.4 Registration duties

Registration duties
No specific rules.

There are no specific registration duties applicable to a REIT. These vehicles will need to comply with general initial set-up requirements for trusts, companies and JSE listing requirements. Annual fees may be required in respect of the specific vehicle, i.e. JSE annual listing fees, etc.

4 Tax treatment at the unit holder's level

4.1 REIT: Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
REIT	- Distributions taxed at 28% - Taxation of capital gains on disposal (if not dealer) 80% of the gain is included in taxable income (resulting in an effective rate of 22.4%).	- Distributions are taxed at an individual's margin tax rate (between 18% and 41%) as if income was directly received. Note that Trusts are taxed at a different rate. - Taxation of capital gains on disposal (if not dealer) 40% of the gain is included in taxable income (resulting in an effective rate between 7.2% and 16.4%).	- There are no withholding taxes.

Corporate unit holder

A shareholder holds a property linked unit in the REIT. Any distributions made by the REIT in relation to the property linked unit including the interest paid in respect of the debenture portion will be deemed to be a dividend (excluding in the case of a share repurchase). The property linked unit can also be converted to an equity share.

Capital gains

A shareholder will be subject to capital gains tax at an effective rate of 22.4% (28% x 80%) on the disposal of a unit in a REIT.

Withholding taxes

South Africa imposes withholding taxes on royalties or similar payments, interest, proceeds from the disposal to a non-resident of any equity share held in South African immovable property, dividends, interest, payments made to foreign entertainers and sportspersons. . The withholding tax on dividends will generally not apply in respect of dividends paid by a REIT to a South African resident corporate unit holder. In order for the REIT to distribute the dividend free from withholding tax, unit holders are required to provide the REIT with certain declarations. Withholding tax on interest will generally not apply since this tax is not imposed on South African tax residents.

Individual unit holder

The taxation is the same as for corporate unit holders except that capital gains tax is imposed at a rate of 40% of the gains included on taxable income. The resultant tax effective rate is between 7.2% and 16.4%. Post January 01, 2014 the distributions will still be exempt from dividends withholding tax and will remain taxable as ordinary revenue.

4.3 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
REIT	- There is no tax on distributions. - Taxation of capital gains on disposal (if not dealer) 80% of the gain is included in taxable income (resulting in an effective rate of 22.4%).	- Distributions individual's tax margin rate (between 18% and 41%) as if income was directly received. Note that Trusts are taxed at a different rate. - Taxation of capital gains on disposal (if not dealer) 40% of the gain is included in taxable income (resulting in an effective rate between 7.2% and 16.4%).	- None

Corporate unit holder

As stated above, a shareholder holds a property linked unit in the REIT. Any distributions made by the REIT in relation to the property linked unit including the interest paid in respect of the debenture portion will be deemed to be a dividend (excluding in the case of a share repurchase). The property linked unit can also be converted to an equity share.

Capital gains

Capital gains tax is levied on a right of whatever nature of a person to or in immovable property situated in South Africa. Such interest in immovable property situated in South Africa includes interest of at least 20% held by a non-resident in the equity shares of a company or any other entity. In addition, 80% or more of the value of the abovementioned company or other entity at the time of disposal of the shares or interest, must be attributable directly or indirectly to immovable property situated in South Africa other than immovable property held as trading stock.

Withholding tax

South Africa imposes withholding taxes on royalties or similar payments, interest, dividends, proceeds from the disposal to a non-resident of any equity share held in South African immovable property, dividends, interest and payments made to foreign entertainers and sportspersons.

Dividends and deemed dividends paid by a REIT or a controlled company and received or accrued to a foreign shareholder are subject to dividends withholding tax. In order for the REIT to distribute the dividend free from withholding tax, the unit holder will be required to provide REIT with certain declarations. The current withholding rate is 15%, subject to the applicable Double Tax Agreement.

Withholding tax on interest will generally not apply since the distribution made by the REIT is deemed to be a dividend which is subject to dividends withholding tax.

Individual unit holder

The taxation is the same as for corporate unit holders save for the capital gains tax rates which may be applied.

5 Treatment of foreign REITs and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Subject to tax on income from a source in South Africa or which is attributable to a South African permanent establishment or immovable property.	Subject to tax on income from REIT based on South African tax residence status, subject to certain exceptions.	Subject to tax on income from REIT based on South African tax residence status, subject to certain exceptions.

Foreign REIT
A Foreign REIT will generally be subject to tax on income from a source in South Africa.

Corporate unit holder
A Foreign REIT will generally be subject to tax on income from a source in South Africa

Individual unit holder
A Foreign REIT will generally be subject to tax on income from a source in South Africa if not of a capital nature. Profits of a capital nature are subject to tax if attributable to a permanent establishment or immovable property in South Africa. ■

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