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EUROPEAN PUBLIC
REAL ESTATE ASSOCIATION

EUROPEAN REITS AND CROSS-BORDER INVESTMENTS

April 2009

European REITs and Cross-Border Investments

CONTENTS

1. **INTRODUCTION**

1.1. The European Public Real Estate Association (EPRA) is the representative voice for the listed real estate sector in Europe. EPRA's members own and manage approximately EUR300 billion of real estate assets globally and are made up of property companies, REITs, investors, banks and advisors.

1.2. EPRA is delighted with the speed at which the REIT concept continues to spread within Europe and worldwide and has at all times been open for discussion and exchange with those wishing to promote the idea. In particular:

- EPRA has participated in discussions (with local industry representatives and/or respective government officials) with all those European countries that have successfully introduced a REIT regime or are in the process of introducing one.

- EPRA has participated in the working party mandated by the OECD Committee on Fiscal Affairs on the application of tax treaties to REITs. This resulted in the recommendation of specific language covering REIT distributions for incorporation in the OECD Model Tax Convention. These recommendations were approved by the OECD on 18th July 2008.

- EPRA is continuing to work with the OECD to build on these improvements and achieve a framework for the consistent taxation treatment of cross border REIT investment.

- EPRA will continue to document and publish the characteristics of existing REIT-like regimes in its annual EPRA Global REIT Survey, in order to encourage the spread of best practice, and to support national initiatives wherever possible.

- EPRA plays a leading role in increasing the transparency of the listed real estate environment by improving the quality and consistency of the financial reporting, performance reporting and corporate governance framework within Europe. Each year, EPRA produces its Best Practice Recommendations which are a recognised benchmark for reporting listed real estate under international accounting standards.

- EPRA plays an active role in the promotion of the REIT concept internationally through regular contact and interchange with European Member States, NAREIT in the USA and APREA in Asia, as well as national groups in South Africa, Canada and Australia.

1.3. In this positive context, EPRA has considered whether the REIT concept can be usefully widened to all countries within the European Community, and to what extent the 27 European Member States could benefit from a common framework for REITs.

1.4. The manner in which the REIT concept has developed in Europe over recent years has meant that national structures take into account the differing real estate markets, capital markets, savings markets and stock markets within the EU Member States, and these have led to differing adaptations of the basic principle.

1.5. Within Europe, the development of the concept has been focussed on the listed sector. Many factors have contributed to this focus – among them governance/transparency issues linked to the protection of retail investors, and the rapid development of cross-border investment through the stock market. This has not precluded the development of investment through un-listed funds, or indeed the strong development of direct cross-border real estate investment activity in both the commercial and the residential markets.

1.6. The REIT concept was developed in the USA as a means of encouraging collective retail savings in a secure and transparent manner into the real estate markets with benefits for the economy as a whole, in terms of corporate outsourcing and investment in all sectors of the capital-intensive property industry.

1.7. The introduction of REIT legislation by national governments has always been seen as an opportunity to attract new sources of capital into the local real estate market. The difficulties now being experienced, in particular, by the capital intensive property industry in accessing capital funding, has seen the accelerated introduction of REITs in Spain, the announcement of impending REIT legislation in China, as well as a raft of measures by various governments aimed at making REITs more attractive to overseas investors.

1.8. The main feature of this concept is the tax-exempt status of the REIT as regards its earnings from its rental activities (the flow-through principle) and full taxation of those earnings, when distributed by the REIT as a dividend, in the hands of the shareholders. Thus, investment in a REIT has – from a taxation standpoint – some comparability with a direct investment in real estate, whilst offering the liquidity of an investment in the equities market.

1.9. The legitimacy of REIT regimes in the long run depends on their capacity to generate overall tax revenue for governments that (i) is of an appropriate level in comparison with the overall tax revenue generated by non-REIT companies owning a similar asset base in the same jurisdiction and (ii) is not dependent on the identity of the shareholders of the REIT.

1.10. Whilst the principle of tax flow-through is easy to understand and generally simple to operate in the context of investment by a REIT in property situated in its own jurisdiction, cross-border investment in and by REITs gives rise to certain difficulties. The position is particularly complicated in the context of cross border investment in the EU by the need to respect the fundamental freedoms as laid down in the EC Treaty.

1.11. In EPRA's view, encouraging cross-border investment in property should be an important policy objective for a number of reasons:

- At the broadest level, it conforms to the overall policy framework of the single market.

- At the commercial level, facilitating cross-border geographical diversification enables investors to gain exposure to different property markets.

- It also facilitates the achievement of a lower overall cost of capital, by allowing access to a wider range of capital markets.

- Finally, if it becomes easier for property investment activity to cross the EU's internal borders, it will become easier for Europe's REITs to access capital in a credit constrained market, to grow larger, increasing competition, allowing greater economies of scale and thus enabling Europe to compete more effectively as a whole in global markets.

1.12. If the growth of cross-border property investment in the EU is to be supported, it is necessary to take into account not only individual Member State concerns relating to national savings flows and the taxation of real estate income derived from property situated on their territory, but also the strong preference on the part of the real estate industry for a coordinated approach to the direct tax aspects of cross-border investment, in order to provide the necessary level of certainty for cross-border investment decisions to be made. It is particularly important that legal certainty in this strategically important area should be achieved through the political process and not through the comparatively arbitrary resolution of disputes that find their way before the courts.

1.13. Looking at the way in which different Member States have implemented REITs, it seems that they have taken a common approach on certain corporate law issues (such as the legal form of the REIT) but differing approaches on other issues (such as the level of minimum share capital, the debt to equity ratio, etc.). Many of the requirements for qualifying for a given REIT regime are motivated by governments' fear of abuse and their concerns about the loss of tax base in the international context.

1.14. It is not EPRA's primary role to lobby national governments on the ideal characteristics of individual REIT regimes, because EPRA recognises that governments and local industry participants are best placed to understand and manage the policy objectives for investment vehicles residing in and investing in their own jurisdiction. However, looking at REITs from a European perspective, and considering the EU objective of reducing market and taxation inefficiencies within the internal market to improve Europe's position in the global market, EPRA believes market forces are providing good evidence of "best practice" REIT regimes from which individual countries can clearly benefit.

1.15. Given the discussions at the level of the European Commission with the Member States regarding the introduction of a European REIT structure and considering the different viewpoints of the Member States on this issue, the conclusion can be drawn that at least for the time being there is no real appetite among Member States to agree on a European-wide REIT. In fact, many Member States would actively oppose such an initiative at this relatively early stage in the development of the REIT regimes in Europe. The motivation and appetite for committing resource to this area will differ between Member States and in this respect, it is worth noting that at the time of writing, only 10 out of the 27 EU Member States currently have a REIT or “REIT-like” regime in operation.

1.16. Thus, there is not yet a consensus among Member States in support of the introduction of new corporate law rules, which would create a common legal platform for a European REIT regime – an “EU-REIT”. It is worth noting in that context that implementation of the concept of a European stock corporation, which was finally introduced in 2004 as the Societas Europaea (SE), was a process that took almost 40 years of discussion. Accordingly, EPRA believes that it is unlikely that any common corporate law REIT principles could be agreed by the Member States within the foreseeable future.

1.17. Having said that, EPRA’s view is that within the existing and emerging REIT regimes, there is both the need and the scope for facilitating cross-border investment into and through REITs. This need is heightened in the current financial environment where access to new capital is severely restrained. However, for the reasons given above, EPRA believe that is the approach should be to seek practical solutions to resolve the tax issues that make cross-border, intra-EU investment through REITs difficult.

1.18. Given the long-term nature of investment in the property sector and its importance to the European economy as a whole, it is also clear that confidence in the stability of the legislative framework is a major element in decision-making – and that it is important to ensure that the effectiveness in the cross-border context of national REIT regimes is clear, stable and has been mutually agreed between the Member States.

2. EXECUTIVE SUMMARY

2.1. This paper makes recommendations which:

- are EC Treaty compliant and therefore provide planning security for national European REIT regimes;
- remove the need for Member States to introduce artificial cross border participation thresholds for investment in REITs to protect national tax revenues;
- provides pragmatic solutions for the removal of the existing “bottlenecks” in the growth of cross border investment in the European REIT market;
- complement existing improvements currently being developed through the OECD to achieve a framework for the consistent taxation treatment of global cross border REIT investment; and
- will play a role in encouraging convergence within Europe towards a uniform and transparent REIT structure for national REIT regimes.

Key Recommendations

2.2. EPRA’s key recommendations seeks to achieve the following two objectives:

- Mutual Recognition of REIT regimes in Europe so that a common “flow through” approach to taxation can be applied.
- The collection of withholding tax by the REIT, and the fair allocation of that tax between the situs Member States where the property is located.

Mutual Recognition

2.3. EPRA’s principal recommendation is that Member States adopt an approach involving the “Mutual Recognition” of national REIT regimes in Europe. Under this approach, Member States can enter into reciprocal arrangements supported by the EC and bilateral tax treaty provisions, to collect taxation revenues and allocate them between the situs countries.

2.4. EPRA’s suggestions for the criteria for Mutual Recognition are set out at Section 4 below. In the discussion of Mutual Recognition criteria, a distinction is drawn between “investment” related requirements (such as the type of real estate eligible for favourable tax treatment, by a REIT, or the volume of debt financing) and other, “non-investment” related requirements (such as corporate and company related conditions).

How the principle of Mutual Recognition works

2.5. If two Member States (Country A and Country B) each have a REIT regime, both would recognise, under the principle of Mutual Recognition, the other’s REIT regime, and if a REIT in Country A (A-REIT) makes an investment in

Country B, Country B would treat A-REIT in the same way as it would treat one of its own REITs (B-REIT).

2.6. In particular, Country B would treat A-REIT as a tax-exempt REIT (in line with the treatment of a B-REIT) in relation to its investments in Country B if:

- A-REIT meets all non-investment related requirements imposed by Country A's REIT regime and

- A-REIT meets, in relation to its investments in Country B, all investment related requirements imposed by Country B's REIT regime.

2.7. As regards an indirect investment by A-REIT in Country B through a corporate subsidiary, the position will depend on how a similar investment in Country B through a corporate subsidiary by a B-REIT would be treated. In other words, this should benefit from tax exemption if and to the extent that the rules of Country B for B-REITs confer tax exemption on corporate subsidiaries of B-REIT.

Collection and allocation of tax

2.8. EPRA has identified two solutions both of which respect the basic principle that income from real estate is taxed in the country of situs, and which achieves the dual objectives of REIT regimes - the tax exemption of the REIT and the effective REIT dividend taxation in the hands of the shareholders.

2.9. Under both solutions, Country B receives the share of the tax withheld by A-REIT from the dividend distribution to its shareholders which is attributable to the income received by A-REIT from its property investments in Country B. Where A-REIT derives income from a number of different countries, the share payable to each of those countries would be identified using an appropriate allocation mechanism applied to the net revenues of A-REIT which are subject to withholding in Country A. The basis for the allocation of tax between the Member States should be the net revenues on a consolidated basis of A-REIT which are subject to Country A's withholding tax.

2.10. The allocation and payment process could be handled by the tax authority of Country A or, alternatively, by A-REIT (subject to appropriate supervision by the relevant tax authorities).

Implementation of the recommendations

2.11. EPRA considers that the best way to resolve the REIT related European tax issues would be for the European Commission to issue a Communication on the subject inviting the Member States to adopt the Mutual Recognition procedure.

2.12. This Communication would become effective between those Member States which have REIT legislation in their domestic system. The Communication might also invite Member States without a domestic REIT regime to recognize the REIT regimes of other Member States, thereby attracting investment by European REITs from other Member States into their country.

3. DESCRIPTION OF THE ISSUES

Principal features of a REIT

3.1. The principal common feature found in REIT regimes worldwide is the tax exemption of the REIT and the full taxation of REIT distributions in the hands of the receiving shareholders. Thus, the REIT structure resembles a direct investment in real estate by the shareholders in the REIT – where all net income is taxed in the hands of the property owner.

3.2. However, because of the (typically) corporate structure of the REIT, the income received by REIT shareholders retains the character of a dividend for both legal and tax purposes and is not reclassified as rental income.

3.3. A comprehensive definition of a REIT can be found in the OECD 2008 Update to the Model Tax Convention (MTC) approved on 18th July 2008 by the OECD Committee on Fiscal Affairs as follows:

"A widely-held company trust or contractual or fiduciary arrangement that derives its income from long-term investment in immovable property (real estate), distributes most of that income annually and does not pay income tax on income related to immovable property that is so distributed. The fact that the REIT vehicle does not pay tax on that income is the result of tax rules that provide for a single-level of taxation in the hands of the investors in the REIT (with corresponding withholding tax obligations imposed on the REIT with respect to its distributions to foreign investors)."

3.4. A REIT qualifies in most instances for tax treaty entitlement.

REITs in an EU context

3.5. The tax treatment of REITs gives rise to particular issues in the cross-border context because of the unique tax-exempt corporate status of the REIT. From an EU law perspective, the tax-exempt status of a REIT raises a number of questions when a REIT of one EU Member State makes a direct or indirect investment in another Member State, which may or may not have a REIT regime of its own.

3.6. In considering the tax treatment of a direct or indirect investment through a REIT established in Member State A (A-REIT) in real estate situated in Member State B, it is necessary to have regard both to the need to comply with the fundamental freedoms as laid out in the EC Treaty, and to strive for a coordinated approach on direct taxation (including, ideally, in cases where Member State B has no domestic REIT regime of its own).

3.7. Given the increasing significance of cross-border property investment within the EU and the growing demand for, and appreciation of, internationally diversified portfolios by investors, a solution is required that will provide legal certainty for REITs and their investors, without the need for lengthy tax court proceedings which may end up before the European Court of Justice (ECJ).

3.8. In EPRA's view, it is not entirely clear how, as things currently stand, the ECJ would decide a case involving cross-border investment by a REIT where the REIT claims, but the investee Member State refuses to grant it, tax-exempt status. It is uncertain how the ECJ would resolve the apparent conflict between the fundamental freedoms of the EC Treaty (including, in this context, the principle of comparability) and the lack of EU harmonisation in the field of direct taxation, which stays under the sovereignty of the 27 individual Member States.

3.9. That uncertainty demonstrates the need for a common framework for cross-border REIT investment within the EU. EPRA does not want this uncertainty to persist until it is resolved by the courts. The future of cross-border investment in real estate in the EU is a matter of strategic importance to the EU and its Member States, so these issues should be addressed swiftly, on the basis of negotiated agreement, and not by judicial opinion.

3.10. The analysis that follows uses typical cross-border real estate investment scenarios to identify and explore the issues which need to be addressed.

REIT investment scenarios

3.11. The tax issues explored in this paper are discussed in the context of the following scenarios:

- A-REIT invests directly or indirectly in real estate in Country A and Country B. Both Country A and Country B are EU Member States.

- The position is initially considered only where Country B has its own national REIT regime.[1]

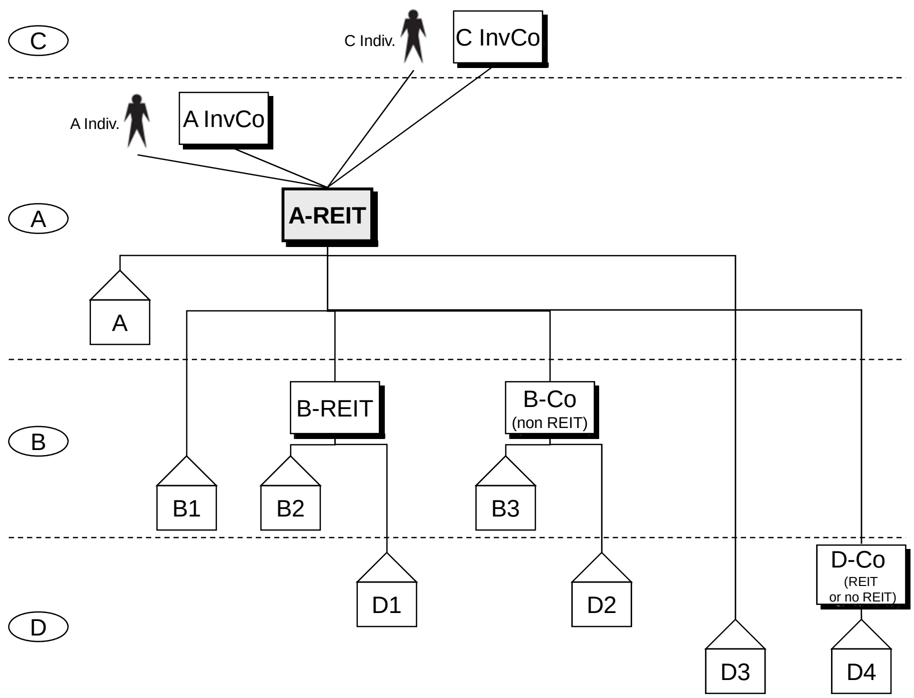
- The entity through which indirect investments are undertaken is resident in the investee country. The position is considered both where that entity may be treated by that country as tax-exempt, and where it is not so treated.

- A-REIT has individual and corporate investors, which are resident in Country A and in Country C. Country C may be an EU Member State or a non-member state (Country D).

- For the sake of completeness, a REIT investment scenario is included where A-REIT makes a direct or indirect investment in Country D.

[1] Section 5 below considers the position in cases where Country B has no domestic REIT regime.

Those scenarios are shown in diagrammatic form below:



Domestic investment in Country A

Taxation of REIT

3.12. In a purely domestic scenario where A-REIT (with its statutory seat and place of management in Country A) invests in real estate situated in Country A, the income from the investment is not taxable at the level of A-REIT. No particular EU issues arise in this context.

Taxation of Investors

3.13. Country A levies domestic withholding tax on its distributions according to its domestic law provisions (assuming they provide for withholding in these circumstances).

3.14. In Country A this withholding tax is normally credited (or results in a tax refund depending on the facts and circumstances of each investor's case e.g. if the investor is a tax-exempt pension fund) at the level of the individual or corporate investor who is tax resident in Country A.

Some countries currently have a definitive or flat tax system for individual shareholders holding the investment in A-REIT as private property, and/or for certain investors, such as tax-exempt investors, who may be eligible for a withholding tax refund (or reduction).

3.15. For an investor in A-REIT who is tax resident in Country C, the withholding tax position will depend on the tax treaty between Country A and Country C, if any, but tax withheld should also be creditable at the level of the individual or corporate investor (subject to and in accordance with the tax law of the investor's home country).

Cross-border investment in Country B

Taxation of REIT – Direct investment

3.16. If A-REIT makes a direct investment in real estate situated in Country B (B1 Investment) and Country B has a REIT regime, it is arguable that Country B would be obliged, as a matter of EC Law, to confer on A-REIT the same tax exemption that is available to its own REITs (B-REITs).

Taxation of REIT – Indirect investment (partnership)

3.17. The same analysis would – as a matter of principle – apply if A-REIT makes an indirect investment in real estate situated in Country B through a partnership structure. Provided Country B treats the investee partnership as a transparent entity, A-REIT would be considered as the investor in the Country B real estate so that its tax exemption would have to be honoured by Country B in the same way as with a direct investment.

3.18. In both cases, the granting of a tax exemption to A-REIT would mean that Country B is unable to generate tax revenues from rental income and capital gains derived by the foreign A-REIT from property situated in Country B. For that reason, Country B would not typically be willing to grant tax exemption to A-REIT.

Taxation of REIT – Indirect investment (corporation)

3.19. The analysis is more complex where A-REIT makes an indirect investment in real estate situated in Country B, through a local Country B corporate vehicle (B-Co/B3 Investment).

If A-REIT's indirect investment through B-Co satisfies the requirements imposed by Country B for B-REITs investing in property in Country B through a local corporate vehicle, the tax treatment of B-Co by Country B should arguably reflect that which would apply if the indirect investor were a B-REIT.

3.20. In such indirect investment circumstances:

- B-Co will be taxed on its property income in the same way that Country B would tax property income in a B-Co held by a B-REIT. Distributions by B-Co to A-REIT would be subject to withholding tax levied by Country B, subject to the effect of the tax treaty applicable between Country A and Country B[2].

[2] See Art. 10 OECD-MTC.

- The Parent-Subsidiary Directive would not apply to reduce the withholding tax rate further, because it does not apply to tax-exempt entities such as REITs[3].

- Arguably, if a B-Co held by a B-REIT would be tax-exempt, so should B-Co where it is held by A-REIT (assuming that B-Co satisfies any qualifying conditions imposed by Country B for a B-REIT subsidiary to be tax-exempt).

  Also in this scenario a distribution by B-Co would be subject to Country B withholding tax and to the tax treaty provisions applicable between Country A and Country B.

- Since A-REIT is tax-exempt, any Country B withholding tax on a B-Co distribution is under current taxation rules not creditable or refundable to A-REIT in Country A and remains a final tax burden for A-REIT.

Taxation of Investors

3.21. Finally, at the shareholder level, Country A levies its domestic withholding tax on its distributions in accordance with its domestic rules. The Country B tax suffered, which is attributable to A-REIT's investment in Country B is not creditable at the investor level (even where the investor is a normal taxpayer), because that tax is a liability of A-REIT and not of the investor. For a more detailed discussion of the withholding tax aspects, see Section 5 below.

Conclusion

3.22. In summary, solutions need to be found to the problems described above for a cross-border investment by A-REIT in Country B, namely:

1. How and in what circumstances should the taxation benefits of domestic REITs be extended to REITs established under the law of other Member States?

2. How can one ensure that the Member State (Country B) in which the real estate is located obtains a fair allocation of taxation on the overall consolidated profits derived from the real estate by the REIT?

[3] Art 2 para. 1 lit. c Parent-Subsidiary Directive.

4. PROPOSED SOLUTION

How and in what circumstances should the taxation benefits of domestic REITs be extended to REITs established under the law of other Member States?

Mutual Recognition principle

4.1. The principal recommendation of EPRA is that Member States adopt the approach of "Mutual Recognition" of each other's REIT regimes. The concept of Mutual Recognition goes back to the very early days of the European Economic Community and is familiar to and accepted by the Member States.

The concept was originally developed for tangible goods delivered from one Member State to another with a view to ensuring that they should be accepted and recognized in the receiving Member State just as they were in the Member State of origin. The concept has since been further developed and expanded from tangible goods to intangibles, including such things as legal structures (a recent example is the EU passport for investment funds).

EPRA's view is that the principles developed for Mutual Recognition can be applied to the legal structure of a REIT and are well suited to resolving the REIT issues identified under Section 3 above.

Under this approach, Member States should accept the tax-exempt status of an investing REIT from another Member State. Furthermore, they should enter into reciprocal arrangements supported by the EU and bi-lateral tax treaty provisions, to ensure that the net earnings of a REIT from one Member State arising from direct and/or an indirect real estate investments are allocated fairly among the different situs countries. That way, each country's taxing rights in respect of property situated in its territory would be respected.

It is proposed that this process of Mutual Recognition of REIT structures by Member States would form the basis of a Communication issued by the European Commission.

4.2. EPRA's recommendations on the criteria for Mutual Recognition are set out below. These recommendations do not seek to make judgments about the "ideal" REIT regime. Instead, they reflect the current status of the emerging REIT regimes in Europe and worldwide, with a view to helping those regimes grow and prosper. For example, the focus is limited to publicly listed REIT regimes not because EPRA opposes the introduction of unlisted REITs, but rather because public listing of REITs is a typical feature of the European REIT market as it can be observed today. An additional benefit of this approach is simplicity, as, in the short term, it avoids the need to address the additional hurdles that most Member States who do not currently permit unlisted REITs will need to consider in agreeing to the Mutual Recognition principle.

4.3. Under the concept of Mutual Recognition, a REIT which has been established under the laws of one Member State and which makes a direct or indirect real estate investment into another Member State which also has a REIT regime will be recognized by that other Member State as a tax-exempt REIT.

As an extension of the concept of Mutual Recognition, a Member State which does not currently have a REIT regime might want to consider recognizing the tax-exempt status of an investing REIT from another Member State. This approach would demonstrate that the European Union is, regardless of the sovereignty for direct taxes of its 27 Member States, a territory in which investment structures of one Member State are recognized throughout the European Union.

In this context, EPRA suggests that it would be helpful for minimum criteria to be established for REIT regimes in the different Member States qualifying for Mutual Recognition, either prior to implementation, or as part of the Mutual Recognition process. Such criteria should aim to be broad.

It is therefore proposed that the definition of a REIT for the purposes of the Mutual Recognition process should be the OECD definition stated in paragraph 3.3 with the following additional criteria:

REIT characteristic	**Minimum requirement**
Legal form	Corporate
Listing requirements	Listed
Mandatory distribution of income	>80% net tax-exempt income

The combination of the OECD definition with the above additional criteria should give strong protection to the Member States against unwanted “REIT-shopping” and that the concept of Mutual Recognition does not lead to abuse. Only a REIT which meets the defined criteria would qualify for Mutual Recognition.

4.4. Mutual Recognition would also be the starting point and set the ground rules for how two Member States should agree to cooperate with respect to dealing with distributions and the collection of tax in one Member State on REIT earnings attributable to investment in the other Member State. Such agreement would give Member States the confidence that accepting the tax-exempt status of a REIT from another Member State would not prevent them from adequately participating in the total tax revenues generated by the REIT.

4.5. As outlined in paragraph 4.3 above, the investee Member State (Country B) would accept and recognize the investing REIT (A-REIT) from another Member State (Country A) as a REIT as long as A-REIT follows the REIT rules of Country A.

Since there are, however, differences in the REIT regimes in the various Member States, both in terms of corporate law requirements and investment related conditions, EPRA considers it reasonable and helpful to distinguish, in the discussion of Mutual Recognition criteria, between non-investment and investment related criteria.

The reason that a distinction should be useful is that it may be simpler to determine (1) whether a particular vehicle qualifies to be recognized under the concept of Mutual Recognition as a REIT by looking at the non-investment related REIT rules of its country of origin, and (2) whether a particular investment by that vehicle should attract tax-exempt status in the investee country by looking at the investment related rules of the investee country.

Thus, each Member State retains sovereignty in terms of the operation of its REIT regime:.

- Country A has control over its non-investment related REIT rules under which a corporate vehicle is recognized as a REIT – and which Country B agrees (under the Mutual Recognition concept) to accept.

- Country B has control over its own investment related REIT rules, which A-REIT must observe in relation to its investment in Country B if it is to attract tax-exempt treatment in Country B. Provided the same rules apply to B-REITs as to A-REITs, no other country can interfere with these rules.

The specific investment and non-investment related conditions should become part of the EU Commission's Communication. Alternatively, those conditions might be left as an ultima ratio at the discretion of national governments to be resolved between the two REIT countries concerned (i.e. the investor and the investee country) on a bilateral basis.

4.6. Thus, EPRA’s view is that:

1. **non-investment related requirements** should be assessed in relation to the REIT by applying the rules of Country A; i.e., the country of residence of the investing REIT; and

2. **investment related requirements** should be assessed in relation to the investments made by the REIT in Country B, i.e. the country in which the investment property is situated, by applying the rules of Country B.

The table below shows how this approach could be applied in practice to certain of the requirements typically encountered in REIT regimes. The list of conditions is not intended to be exhaustive.

Requirement	**Type**	**Applicable rules**
Minimum equity capitalisation	Non-investment	Country A
Restrictions as to permitted classes of shares	Non-investment	Country A

Listing requirement	Non-investment	Country A
Minimum distribution requirement (both in regard of the percentage of profit to be distributed and the type of income to be included in the distribution)	Non-investment	Country A
Permitted debt to equity ratio	Investment	Country B
Permitted interest cover ratio	Investment	Country B
Restrictions on permitted investment types/activities	Investment	Country B

How can one ensure that the EU Member State in which the real estate is located obtains a fair allocation of taxation?

4.7. As a condition of agreeing to the Mutual Recognition of A-REIT, Country B must receive its fair share of the tax revenues generated by A-REIT in order to ensure that income from real estate is taxed in the situs country.

4.8. In this respect, from the viewpoint of Country B, the only investor to which it could look directly in connection with a direct (or indirect via a partnership) real estate investment is the tax-exempt A-REIT, rather than the different investors in A-REIT (who could of course be located anywhere).

4.9. Therefore, a mechanism must be established under which Country B receives tax revenues attributable to A-REIT's real estate investment in Country B by way of an allocation out of the total amount of withholding tax revenues generated by A-REIT. Furthermore, the mechanism must address situations where a REIT has profits and losses in different Member States, whether it makes an overall profit or an overall loss. This issue is considered at paragraph 4.31 below.

Mechanism for collecting and allocating WHT

4.10. EPRA has identified two alternative solutions, both of which are compatible with the Mutual Recognition concept described above. The first solution, the "Indirect" approach, represents the ideal solution which most closely complies with the principle of a "flow-through" approach to REITs. The second solution, the "Direct" approach, is potentially the more pragmatic solution as it requires less co-operation between Member States. Appendix II provides illustrative examples which demonstrate how these solutions would work in practice.

Alternative 1 – "Indirect" approach

4.11. Under this solution, Country A collects the withholding tax which becomes due on its distribution to its shareholders – be they tax resident in Country A or in Country C – and Country B receives from Country A (either directly from A-REIT and subject to a tax audit by the countries concerned, or indirectly through an allocation process handled by the tax authority of Country A) the share of such withholding tax which is attributable to the direct investments (B1 Investment) of A-REIT in Country B.

4.12. The same mechanism should apply to an indirect investment by A-REIT in Country B, whether it is via a subsidiary corporation which qualifies as a REIT in Country B, or via a subsidiary which qualifies as a tax-exempt REIT subsidiary.

Where A-REIT invests through a B-REIT (B2 Investment) or a tax-exempt corporate subsidiary (B3 Investment), those indirect investments are not subject to tax in Country B, so they are comparable with a direct investment in Country B real estate.

Accordingly, withholding tax should only be levied by Country A when A-REIT makes its dividend distribution, and Country B should not impose any withholding tax. Instead, Country B should receive its share when the withholding tax is allocated by A-REIT or by the tax administration in Country A, as the case may be.

4.13. This solution avoids double taxation in the case of an investment through a tax-exempt subsidiary in Country B since withholding tax is only levied once, by A-REIT in Country A (and not in addition by Country B), and is then allocated between Countries A and B.

Thus, the A-REIT investor, regardless of whether he is tax resident in Country A or Country C, can credit the withholding tax as levied by A-REIT according to the tax rules of Country A or Country C, respectively, or he can receive a refund.

Taxation would be solely at the investor level (i.e. the A-REIT shareholder be it in Country A or Country C). The withholding tax liability is generated only in Country A and thus qualifies as a creditable tax for the investors.

4.14. If A-REIT invests through a corporate subsidiary B-Co (B3 Investment) which is not tax-exempt in Country B, Country B would collect tax attributable to the investment from B-Co so it will have no right to any share in the tax withheld by A-REIT when it makes its distribution to its shareholders.

In this scenario, Country B (which itself has a REIT regime) should arguably refrain from levying withholding tax on a B-Co distribution to A-REIT, recognising the tax-exempt status of A-REIT.

4.15. By the application of the proposed allocation mechanism, a single level of taxation (at the investor level) could be achieved in cross-border situations. If it is only Country A which taxes the income derived from a REIT in Country A and Country B, the tax liability would arise in Country A only. As a result, the question whether an investor in Country C or Country A is entitled to credit for a tax liability arising in Country B would not arise. At the same time, the situs country (Country B) would still obtain its share of the tax (collected in Country A). By contrast, the current problematic position is described at paragraph 3.21.above.

4.16. This solution is not in conflict with Art. 10 para. 5 OECD-MTC, which deals with the prohibition of extraterritorial taxation. The non-applicability of Art. 10 para. 5 OECD-MTC follows from two of the key elements of the REIT definition, namely, tax exemption at the level of the REIT and taxation of the REIT dividend at the shareholder level. Thus, the corporate structure of the REIT is to be disregarded for purposes of Art. 10 OECD-MTC, and it becomes simply a question of levying withholding tax on payment of a dividend by A-REIT to its investors and allocating that tax between Country A and Country B so that Country B receives its appropriate share.

4.17. The proposed mechanism should have the added benefit of reducing filing requirements and other administrative costs in dealings with tax authorities, both for investors in Country C (because they would only have to deal with Country A, the jurisdiction in which the REIT have invested is resident) and for investors in Country A (because they would only be liable to tax in their home country).

Alternative 2 – "Direct" approach

4.18. EPRA has considered an alternative approach which would involve Country B exercising its taxing rights by levying a tax on the share of the income of A-REIT which belongs to the B1 Investment in Country B.

4.19. Country B would be entitled to a quasi-withholding tax on that proportion of the total REIT profit from direct investments, which is attributable to the direct investment of A-REIT in Country B. The same would apply in regard of an indirect investment by A-REIT in Country B through a partnership structure.

4.20. For an indirect real estate investment in Country B by A-REIT through a corporate structure, Country B will receive the dividend withholding tax to be collected on any dividend distribution by B-REIT or B-Co (which is not a REIT), respectively, to A-REIT (assuming Country B's domestic law provides for such withholding taxation).

4.21. In case of a direct investment, the "withholding tax" could be deemed to become due in the year after the underlying allocable net profits were earned. There should be no issues in case of an indirect corporate investment in B-REIT or B-Co, respectively. The general rule would be that the withholding tax has to be collected and paid to the local tax authorities by the distributing entity if and when the dividend is distributed.

4.22. The Country B source income received by A-REIT (regardless of whether it stems from a direct or from an indirect real estate investment) would be tax exempt in Country A, as it would have been subject to tax in Country B already. Whether A-REIT is required to make this already taxed income subject to the distribution obligation under its domestic legislation depends on the respective rules in the domestic law. In most cases however, it is expected that such Country B source income should not be subject to the distribution obligation at A-REIT level.

4.23. Upon distribution by A-REIT of a dividend taken out of profits subject to tax in Country B, the Country B tax on such profits would have to be credited against the Country A dividend withholding tax. Such mechanism would require that A-

REIT records Country B (direct and indirect) source income in a separate entry in its accounts.

4.24. Moreover, that portion of the dividend distributed by A-REIT and which corresponds to Country B source profit should be eligible to the participation exemption regime (if any) at the shareholders level. A-REIT, for that purpose, would inform the recipients of the dividend distribution about the portion of the dividend corresponding to Country B source income.

4.25. The “Direct” approach would however, result in a triangular situation because the shareholders of A-REIT are tax resident either in Country A or in Country C. They do not have a tax treaty relationship with Country B regarding the real estate investment given the interposition of A-REIT who owns the B1 (and B-REIT and B-Co) Investment.

4.26. Thus, the question has to be answered at what rate Country B should apply its withholding tax and thereby participate in the tax revenues of A-REIT.

4.27. A workable solution, in case of a direct investment structure (B1 investment), is to apply the tax treaty withholding tax rate for a portfolio investor between Country B and Country A to the portion of the Country B distribution in the total A-REIT distribution. It would seem logical to use the withholding tax applicable on cross border REIT dividends.

4.28. In case of a B-REIT and B-Co Investment the withholding tax rate will in all likelihood be determined under the applicable provisions of the tax treaty in place between Country A and Country B.

4.29. An issue to overcome under the Direct approach could be the provision in Art. 10 para. 5 OECD-MT which deals with the prohibition of extraterritorial taxation. This is discussed in more detail in Appendix I.

4.30. However, EPRA’s view is that the granting of a right to Country B to withhold tax from the income generated by A-REIT from its real estate located in Country B and being part of the dividend distribution of A-REIT is not in contradiction of a prohibition of extraterritorial taxation as laid down in Art. 10 para. 5 OECD-MT.

Special rules would be needed to allow investors both in Country A and in Country C to get credit for tax levied by Country B. One solution would be to grant full tax credit for the theoretical withholding tax levied by Country A upon A-REIT distributions. In other words, the fact that a portion of that withholding tax would have been offset against the tax paid in Country B, up to the proportion of the dividend taken out of profits taxed in Country B, would be disregarded.

Taxation allocation mechanism

4.31. In order for the above solutions to work, an allocation mechanism must be found which is acceptable to all the countries involved. The mechanism needs to address both direct and indirect investments in more than one other

Member State and circumstances in which A-REIT generates profits from its investments in one country, but losses in another country. It could even be that A-REIT suffers an overall loss and therefore makes no distribution, in circumstances where its investment in Country B generated income which should, in principle, give rise to tax revenue for Country B.

4.32. To resolve these issues there will first have to be consensus between the Member States concerned, that regardless of their own country's contribution (be it a profit or a loss) to the overall result of A-REIT, the consolidated profits and losses of A-REIT are the starting point for the allocation of tax revenues to the investee Member States.

4.33. There have been discussions and indications in some Member States that the consolidated result (profits and losses) of A-REIT could be acceptable for purposes of allocating the A-REIT dividend and related withholding tax between the Member States in which A-REIT has its investments. While this view may not prevail, there would at least seem to be a reasonable basis for this approach to be the starting point in discussing the issue which would then also have to address the point as to whether a Member State with a loss from the investment could participate in the allocation.

4.34. Following the discussions in the context of the project of implementing a Common Consolidated Corporate Tax Base (CCCTB), the allocation key could be calculated by reference to sales, number of employees/payroll, or assets. Since a REIT normally will not have a sizable number of employees, this factor does not seem to be suitable for a REIT. But the two other factors (sales – i.e., in effect, rental income and capital gains) are reasonable and could be used for determining the allocation of tax withheld as between the investee countries concerned.

The CCCTB project also contemplates the consolidation of profits and losses from different investee countries, with the consolidated result then being allocated between the countries – including the loss making countries.

4.35. Thus, the further discussions on implementing CCCTB in the EU will have to be closely monitored, as they may generate useful technology, in particular in relation to possible allocation keys where a REIT has investments in various Member States and also for dealing with cases where REIT investments in certain Member States, but not others, give rise to a loss.

Should there be no reasonable progress on the CCCTB project, an alternative source of existing technology could emerge from looking at the US tax allocation rules in connection with income generated in different US States.

4.36. Finally, the Member States may benefit from the experience gained in the course of the introduction of the Savings Directive (2003/48). Under that directive, a revenue sharing system was set up to ensure that both the source state and the state of residency get a fair share of tax withheld. That system might be adapted to deal with the allocation of tax between the situs state and the state in which the investing REIT is resident.

Directive 77/799/ECC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (as amended) may also assist and help to overcome administrative concerns and hurdles.

4.37. Of course, any withholding tax can only be allocated if such tax has in fact been withheld and is thus available for allocation.

Thus, a solution must be found for the case where a tax treaty between Country A (the state of residence for A-REIT) and Country C (the state of residence of an investor/shareholder in A-REIT) provides for a lower tax rate (or even for a zero tax rate) than the rate as contained in the tax treaty between Country B and Country C.

It is EPRA's view that a solution could be found in setting a uniform withholding tax rate of 15% which is applied by all REIT-Member States (for a further discussion of withholding taxation reference is made to para. 5.14 seq. below).

By this, an equal platform is created whereby withholding taxes which can be allocated to the entitled Member States in a fair and equal treatment manner.

The agreement on a uniform withholding tax rate by the Member States concerned would, however, require that a Member State which does not yet have a withholding tax in its taxation system would have to introduce withholding taxation provisions in its tax law. On the other hand, this might be a necessity for such Member State anyhow in order to generate tax revenues from the activities of a tax-exempt REIT on its territory.

The withholding tax treatment would have to apply regardless of whether Country C is a Member State or a Third Country.

4.38. In summary, EPRA believes that it should be possible to find a workable mechanism for achieving a fair allocation of the withholding tax levied by A-REIT among each of the Member States in which the real estate is located such that:

- Effective double taxation of A-REIT investment income is avoided and

- An investor of A-REIT, be he tax resident in Country A or Country C, would ultimately only be subject to withholding tax of Country A. This tax should be creditable against the investor's overall tax liability.

4.39. This should, in principle, apply to investors in EU/EEA Member States as well as to investors in third countries given that the current status of EC law suggests that all investors may rely on the free movement of capital which also applies to third countries[4].

[4] Cf. ECJ of 14. December 2006 C-170/05 Denkavit Internationaal

5. OTHER CONSIDERATIONS

Investment in Country B where Country B does not have a REIT-regime

5.1. If A-REIT makes a direct or indirect investment in real estate located in Country B (being an EU/EEA country) and Country B does not have a REIT regime, EU law would not seem to impose any obligation on Country B to treat A-REIT as tax-exempt, because the comparability principle (and thus Mutual Recognition) would not apply.

However, Country B may want to adopt the Mutual Recognition concept with a view to attracting foreign REITs to invest in its territory. Doing so should not materially prejudice Country B's revenue raising powers, as it would expect to receive an appropriate allocation of tax withheld from distributions payable by A-REIT to its investors.

Taxation of the REIT

5.2. If A-REIT is not treated as tax-exempt by Country B, its direct investment (B1 Investment) will be subject to non-resident taxation in accordance with the normal rules and rates applicable in Country B.

5.3. In the case of an indirect investment by A-REIT via a taxpaying B-Co (B3 Investment) the real estate income (rental income and capital gains) will be taxed in Country B in accordance with the normal rules and rates applicable in Country B at the level of B-Co (as a resident corporate taxpayer in Country B).

5.4. The profit distribution by B-Co to A-REIT will be subject to the withholding as applied by Country B and as reduced under the applicable tax treaty between the two countries[5].

There will be no further withholding tax reduction under the Parent-Subsidiary Directive because it does not apply to a REIT as a tax-exempt entity.

Taxation of the Investor

5.5. Because the Country B Investment income (from the B1 or the B3 Investment), has already been taxed in Country B, it should flow into a distinct income basket at the level of A-REIT and should not be subject to withholding tax levied by Country A on the distribution of profits by A-REIT to its investors (as that would contravene the key element of the REIT concept of a single layer of taxation).

5.6. At the investor level, the B1 Investment income has been subject to tax in Country B. This is an A-REIT related tax for which – were A-REIT a normal taxable corporation rather than a tax-exempt REIT, credit could be given by Country A.

5.7. To avoid double taxation at the investor's level, it might be possible to make this previously taxed B1 Investment income tax-free in the hands of an

[5] See Art. 10 OECD-MTC.

investor who is tax resident in Country A. The same approach might be adopted by Country C for investors who are resident there.

5.8. Alternatively, if no tax exemption for this basket of income is granted to the investor by Country A, it might be possible to allow the tax levied by Country B as a tax credit at the investor level. The same approach could be adopted by Country C.

5.9. As far as the B3 Investment is concerned, the withholding tax levied by Country B on the B-Co dividend distribution to A-REIT cannot be used as a tax credit by A-REIT because of its tax-exempt status. Investors (whether in Country A or Country C) would be prevented from using it by the basic operation of their domestic tax rules and any tax treaty rules.

5.10. A way of avoiding double taxation for investors in A-REIT might be to allow the investors to use the Country B withholding tax as a tax credit against their own tax liability. That may be a relatively straightforward matter for investors from Country A, since both A-REIT and its investors are tax resident in the same country. However, that approach may be more problematic for investors from Country C because of the absence of any direct relationship between Country C and Country B – although Country C might choose to adopt that approach if it wished to encourage its residents to invest in foreign REITs.

5.11. If no credit is available to investors in Country A or Country C for the withholding tax levied by Country B, that would seem to give rise to a breach of the fundamental freedoms, if in a comparable domestic scenario a tax-exempt recipient of the distribution in Country B could claim for a refund.[6]

Investment in a Non-EU Member State (D Investment)

5.12. A non-EU Member State is not bound by EC law and will likely tax any capital gain or income generated by a foreign REIT in its territory in accordance with its standard tax rules and will levy its withholding tax in accordance with its domestic law, subject to any bilateral arrangements in place under any applicable double tax treaty.

Withholding tax and withholding tax rates

5.13. Based on the approach adopted in the OECD Model Tax Convention 2008 Update, the provision that applies to distributions made by a REIT to small (portfolio) investors is Art. 10 OECD-MTC (and not Art. 6 OECD-MTC).

5.14. The OECD generally suggests that portfolio investors are those with an interest of less than 10%, and that an appropriate rate of withholding for such investors is 15%, but leaves it open to the contracting states to deviate from those figures if they wish.

5.15. Thus, the OECD's approach is to treat a portfolio investor in a REIT as essentially an investor in shares, rather than in real estate, and to confer tax treaty benefits accordingly.

[6] Cf. ECJ of 14 December, 2006, C-170/05, Denkavit Internationaal.

5.16. Although EPRA supports the OECD's approach, its initial view is that EPRA would prefer one uniform EU-wide REIT withholding tax rate irrespective of the level of participation that the individual or corporate investor has in the REIT.

5.17. This approach is preferable because it removes the need for the Member States to introduce artificial cross border participation thresholds for an investment in a REIT to protect national tax revenues (see also the further discussion in Appendix I).

5.18. A further advantage of this approach is that it eliminates the administrative complexity and cost that results where the distinction between portfolio and large investors is important. For instance, with a large investor with various B1 investments, A-REIT would have to manage the calculation of these tax portions which are allocable to the various Country B's.

5.19. A reasonable uniform rate could, in the view of EPRA, be set in the range between 10% and 15% in the light of the fact that almost all income will be distributed regularly.

Tax-exempt investors (e.g. pension funds)

5.20. The tax treatment of a tax-exempt investor is relevant and important considering that, since the REIT is also tax-exempt, the investor could ultimately receive tax free income. However, that result is in line with generally accepted taxation principles and can be deduced from the ECJ's decision in the Stauffer[7] case.

5.21. Therefore, EPRA's view is that the position should be that where an investor is comparable in substance to a domestic tax-exempt entity, to avoid any discriminatory treatment, no withholding tax should be levied and the fact that the outcome is no taxation should be tolerated. In this context reference is made to a number of infringement procedures initiated by the European Commission against various Member States regarding domestic rules under which dividends paid to foreign pension funds are taxed more heavily than dividends paid to domestic pension funds.[8]

This result should also apply in relation to a direct or indirect real estate investment of A-REIT in Country B where the A-REIT shareholder is a tax-exempt investor.

[7] ECJ of 14. September 2006, C-386/04, Stauffer

[8] See European Commission press releases IP/07/616, IP/07/1152, IP/08/143, IP/08/334 and IP/08/712.

Appendix I

EC law issues

1. The Mutual Recognition principle and the fundamental freedoms

1.1. The ECJ decision in the Stauffer case[9] suggests that where a tax exemption is granted to a domestic entity, if it has specific characteristics, the same tax exemption should be granted to a non-resident entity if that entity meets the applicable domestic requirements (except for the residence requirement). If a Member State refuses to grant the same exemption in respect of similar income to a comparable entity solely on the grounds that, as it is established in another Member State, that entity has only limited tax liability in its territory, this contravenes the fundamental freedoms (free movement of capital or freedom of establishment).

1.2. While it is not completely clear that the Stauffer case would apply in the REIT context (on the basis that a non-profit organization, such as that considered in that case, is tax-exempt in itself and is a different legal structure and entity than a REIT) EPRA considers the better view to be that the Stauffer case probably would apply.

1.3. Regardless of the natural differences between a non-profit organization (like in the Stauffer case) and a corporate entity (like a REIT) with a clear business purpose of generating value for its shareholders, both entities are tax-exempt only for so long as they fulfil the various legal requirements laid down by the relevant legislation in relation to their tax-exempt status. Thus, the two tax-exempt entities are in a substantially comparable position, and the fact that the tax exemption of a REIT requires an annual dividend distribution at a legally set minimum level so that the REIT income will finally be subject to income taxation in the hands of its shareholders should not be material in the context of the fundamental freedoms. Both entities have to use their tax-free income in a certain way in order to maintain their tax-exempt status.

1.4. Thus, it seems probable that the principles outlined by the ECJ in the Stauffer case are also applicable in a REIT situation.

2. Participation threshold

2.1. Under the existing tax law framework, some countries, in order to avoid a further reduction of the domestic withholding tax under an applicable tax treaty, provide for a participation limit. An example of that approach would be a rule that prohibits any investor in A-REIT from holding 10% or more of its shares (be it directly and/or indirectly).

2.2. Under EC law it seems that even if the participation threshold ignores the nationality or the residency of the investors, it contravenes the free movement of capital. In particular, the ECJ stated in case C-367/98, Commission v Portugal (para. 44 et seq.) that such a participation threshold could contravene the free movement of capital.

[9] ECJ of 14 September 2006, C-386/04, Stauffer

2.3. Accordingly, in order to avoid the reduction of the withholding tax rate under the relevant tax treaty without breaching the fundamental freedoms, it would be necessary to amend the relevant treaty so that the reduction simply does not apply to distributions by a REIT. Alternatively, an appropriate treaty override might be implemented in domestic legislation.

2.4. A participation threshold is only an issue if the general rules under Article 10 OECD-MT apply, i.e. that investors exceeding a certain participation threshold are subject to a reduced, or nil, withholding tax rate. If, as suggested by the OECD, Article 10 OECD-MT is amended by excluding REITs from the reduced rate[10] and the same rate applies to large investors and to portfolio investors, there would no longer be a reason for Member States to determine a participation threshold.

3. Withholding tax

3.1. The fact that distributions by A-REIT to investors in Country C are subject to withholding tax should not raise an EC law issue comparable to that in the Denkavit Internationaal case (C-170/05) and in the Fokus Bank case (E-1/04) if in a domestic scenario the withholding tax is either final or can be credited against the tax on the non-exempt income from the REIT distribution.

3.2. The withholding tax issues in those cases arose because in the domestic scenario the withholding tax was creditable or refundable whereas in certain cross border scenarios the withholding tax was not creditable in the country of residence (because the income was tax-exempt) and the source country did not grant a refund to the foreign investor.

3.3. Thus, if no withholding tax refund on a REIT distribution is granted in any case (and in particular whether the investor is a domestic or a foreign investor) there should be no EC law issue.

4. Third country issues

4.1. Real estate investments in a third country (D Investments) may not be taxed less favourably by Country A or Country B than respective domestic investments, because the free movement of capital is a principle that applies also to third country real estate investments[11] and because, since the end of 1993, it has been difficult for EU Member States to introduce tax rules that are disadvantageous for third countries.

4.2. However, Country D is not bound by EC law and will, therefore, generally tax the real estate income from D Investments by A-REIT in conformity with Article 6 OECD-MT.

4.3. Investors resident in a third country may not be subject to less favourable tax treatment either in Country A or in Country B than comparable respective

[10] Cf. suggested amendment to para. 67.4 of the Commentary on Article 10: " (other than a paying company that is a REIT)".

[11] Regarding the application to third country investments cf. ECJ of 18 December, C-101/05, A and of 20 May 2008, C-194/06, Orange European Smallcap Fund.

domestic investors.[12] This should apply to investors irrespective of their actual participation in the REIT because the scope of the withholding tax provision is not limited to holdings which give the investor definite influence over the company's decisions and allows him to determine its activities. Provisions which would exclusively or at least predominately apply to that situation fall within the substantive scope of the provisions of the Treaty on freedom of establishment[13] and would therefore not be applicable to third country investors.[14] As this is not the case, under current ECJ case law, there should be no restriction for third country investors, even if they have a majority holding in the REIT.[15] Consequently, Country A may not impose more restrictive rules on third country investors than on domestic or EU investors.

4.4. This reasoning can be deduced from the ECJ's decisions in the A case and the Orange European Smallcap Fund case. In the latter case the Court stated:

> "88. The Court also held that the argument that, if the concept of restrictions on movements of capital were interpreted in the same manner with regard to relations between Member States and third countries as it is with regard to relations between Member States, the Community would unilaterally open up the Community market to third countries without retaining the means of negotiation necessary to achieve such liberalisation on the part of those countries, cannot be regarded as decisive (see A, paragraph 38).
>
> 89. However, the Court found that movements of capital to or from third countries take place in a different legal context from that which occurs within the Community (see A, paragraph 36). Indeed, because of the degree of legal integration that exists between Member States of the European Union, in particular by reason of the presence of Community legislation which seeks to ensure cooperation between national tax authorities, such as Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15), the taxation by a Member State of economic activities having cross-border aspects which take place within the Community is not always comparable to that of economic activities involving relations between Member States and third countries (Test Claimants in the FII Group Litigation, paragraph 170, and A, paragraph 37).
>
> 90. It may also be that a Member State will be able to demonstrate that a restriction on the movement of capital to or from third countries is justified for a particular reason in circumstances where that reason would not constitute a valid justification for a restriction on capital movements between Member States (Test Claimants in the FII Group Litigation, paragraph 171, and A, paragraph 37).

[12] Cf. ECJ of 20 May 2008, C-194/06, Orange European Smallcap Fund.

[13] Cf. ECJ of 12 September 2006, C-196/04, Cadbury Schweppes.

[14] Cf. ECJ of 10 May 2007, C-492/04, Lasertec.

[15] Cf. ECJ of 20 May 2008, C-194/06, Orange European Smallcap Fund.

91. In the present case, both the Netherlands Government and the Commission submitted inter alia that the Member States must be able to rely on the need to guarantee the effectiveness of fiscal supervision as an overriding requirement of general interest capable of justifying a restriction on the movement of capital to or from third countries.

92. In that regard, it must be noted, on the one hand, that the Kingdom of the Netherlands imposes a dividend tax on dividends distributed by a fiscal investment enterprise established in the Netherlands to shareholders who are resident or established in third countries. On the other hand, the concession granted to such an enterprise is reduced in proportion to the interest in that fiscal investment enterprise held by shareholders resident in third countries, without the fiscal treatment of those shareholders in the third countries being relevant in that regard. The need to guarantee the effectiveness of fiscal supervision cannot therefore be relied upon in the present case."

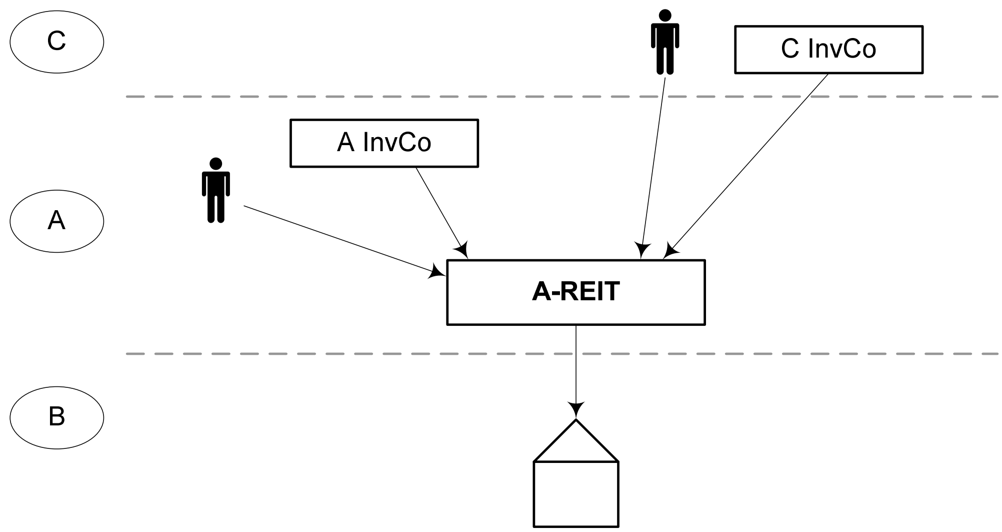
4.5. From this reasoning it can be deduced that it is not open to Country A to justify a breach by relying on the need to guarantee the effectiveness of fiscal supervision, because in order to levy withholding tax, the country of source generally does not need any further information about the investor in Country C (whether individual or corporate), at least not if a uniform withholding tax is applied.

4.6. If the investor is a tax-exempt entity (e.g. a pension fund), and that entity would in a domestic scenario not be subject to withholding tax, Country A may, in order to verify the comparability of the entity, rely upon the need to guarantee the effectiveness of fiscal supervision and on that basis apply withholding tax if no exchange of information is possible.

Tax Allocation - Illustrative Examples

<u>Example 1: REIT investing directly into foreign real estate</u>

Domestic and foreign investors being individuals and corporations (each of them either resident of Country A or Country C) make an investment in real estate in Country B via A-REIT which is tax-resident in Country A. A-REIT owns the real estate directly (or via a transparent partnership structure).



Allocation of taxation rights under Alternative 1 "Indirect" approach

Taxation Rights of Country B

1.1. Since the property is located in Country B, it will as a matter of principle claim the right for taxation on the rental income. The foreign A-REIT will – as a starting point – be considered as an entity liable to tax in Country B.

1.2. However, due to the **Mutual Recognition Principle** the tax exemption of the A-REIT will also be valid in Country B. As a consequence, the tax liability is not charged in Country B by way of a regular tax assessment, but exclusively in Country A, through the withholding of tax by A-REIT and the subsequent sharing of this tax withheld between both countries.

In other words, A-REIT will effectively not pay any taxes in the situs state. Nevertheless, Country B as the situs state of the property still maintains the right to receive the corresponding portion of taxes from Country A.

1.3. The main advantage of the Mutual Recognition principal is as follows: A-REIT being a tax-exempt entity in Country A would not have any possibility to credit the foreign tax liability if such a liability arises when Country B exercises its taxation rights. This taxation mechanism would, therefore, negatively impact the overall profit of the investment since the foreign tax portion would remain final without the possibility of a tax credit either at the A-REIT level or at the shareholder level (double or multi taxation issue).

Taxation Rights of Country A

1.4. Taxation of A-REIT

From the perspective of Country A, A-REIT is a taxable person on its worldwide income, but due to the special REIT regime it is a tax exempt entity.

A-REIT has the obligation to raise withholding tax upon any distribution which it will make based on the typical mandatory distribution requirements stipulated for REITs.

1.5. Taxation of Investors

Generally, the income of A-REIT as distributed to its investors, qualifies as dividend income (unless capital was repaid). The REIT is obliged to pay withholding tax in the name of the investors. According to the principle of Mutual Recognition, the amount of taxes will then be divided between Country A and Country B as already mentioned above (pls. see Sec. 2.3 in the main report) on the basis of allocable net profits derived from the investments in the respective countries.

Since no tax liability arises in the situs state, the overall dividend amount increases. Therefore, the taxable base at the investor level will also increase. However, whilst the corresponding withholding tax will increase as well, the overall tax position of the investor improves since the withholding tax liability - in contrast to the tax liability that would arise without the application of the Mutual Recognition procedure - will be directly creditable against the investors' overall tax liability. Thereby the REIT-typical single level of taxation will be preserved.

Domestic Investors

In case of a domestic investor liable to tax on his world-wide income in Country A, any withholding tax will typically be credited against his overall income tax liability. This applies to both individual and corporate shareholders of A-REIT.

If, however, the withholding tax amount exceeds the overall tax liability of a domestic investor (e.g. because of its own tax exempt or tax preferential status), the difference can in many instances be claimed back from the tax authorities.

Foreign Investors

WHT derived in Country A remains final unless a tax treaty reduction can be claimed.

Taxation Rights of Country C

1.6. The dividend income derived from the A-REIT distributions will be taxed in Country C as the country of fiscal residence of the C investor. REIT withholding tax should be creditable against the domestic tax liability but only to the extent that the foreign tax liability corresponds to the amount payable in Country C on such foreign dividend income. Any exceeding amount is not creditable in Country C.

Calculation of tax burden

1. Overall profit – profit only in Country B

A-REIT net income	1000		
		Country A share	0
		Country B share	1000
Country A Withholding tax			
50% Country A investors 25% w/h tax	125		
50% Country C investors 15% w/h tax	75		
Overall tax revenue (to be shared between Country A and Country B)	200	Country A share	0
		Country B share	200

2. Overall profit – profit in both Country A and B

A-REIT net income	1000		
		Country A share	300
		Country B share	700
Country A Withholding tax			
50% Country A investors 25% w/h tax	125		
50% Country C investors 15% w/h tax	75		
Overall tax revenue	200	Country A share	60
		Country B share	140

Potential issues calling for comparable levels of withholding taxes:

- Even though the profit is generated in Country B only (Example 1) or in both Country A and Country B (Example 2), it is only Country A that influences the withholding tax rate:

    - due to domestic tax law: in regard of the domestic shareholders,

    - due to the double tax treaty between Country A and Country C: in regard of the foreign shareholders,

  and, therefore, determines the tax revenues collected by Country B as the situs state.

Possible tax position of Country B:

- Higher tax revenues will arise if the attributable withholding tax amount charged in Country A is higher than the corporate tax rate in Country B (this would be the case if the property is located in a low-tax country and A-REIT is resident in a high-tax country),

- Lower tax revenues will arise if the attributable withholding tax amount charged in Country A is lower than the corporate tax rate in Country B (this would be the case if the property is located in a high-tax country and A-REIT is resident in a low-tax country).

3. Overall profit – profit in Country A, loss in Country B

A-REIT net income	1,000		
		Country A share	1,200
		Country B share	(200)
Country A Withholding tax			
50% Country A investors 25% w/h tax	125		
50% Country C investors 15% w/h tax	75		
	200	Country A share	200
		Country B share	0

4. Overall profit – loss in Country A, profit in Country B

A-REIT net income	1,000		
		Country A share	(200)
		Country B share	1,200
Country A Withholding tax			
50% Country A investors 25% w/h tax	125		
50% Country C investors 15% w/h tax	75		
	200	Country A share	0
		Country B share	200

5. Overall loss – profit in Country A, loss in Country B

A-REIT net income	(200)		
		Country A share	100
		Country B share	(300)
Country A Withholding tax	0		
		Country A share	0
		Country B share	0

Allocation of taxation rights under Alternative 2 "Direct" taxation

Taxation Rights of Country B

1.7. Since the property is located in Country B, it will as a matter of principle claim the right for taxation on the rental income. The foreign A-REIT will – as a starting point – be considered as an entity liable to tax in Country B.

1.8. However, due to the **Mutual Recognition Principle**, the investment of A-REIT in Country B will be viewed in Country B as a REIT investment subject to tax in Country B at a favourable reduced corporation tax rate becoming due in the year after the underlying allocable net profits are earned : the "deemed Country B withholding tax. In other words, A-REIT will effectively pay taxes in the situs state.

Taxation Rights of Country A

1.9. Taxation of A-REIT

From the perspective of Country A, A-REIT is a taxable person on its worldwide income, but due to the special REIT regime it is a tax exempt entity. Country B source income would then be tax exempt as the other A-REIT incomes.

A-REIT has the obligation to raise withholding tax upon any distribution which it will make based on the typical mandatory distribution requirements stipulated for REITs.

1.10. Taxation of Investors

Generally, the income of A-REIT as distributed to its investors, qualifies as dividend income (unless capital was repaid). The REIT is obliged to pay withholding tax in the name of the investors. According to the principle of Mutual Recognition, the amount of taxes withheld by Country B will then be creditable against the withholding tax levied by Country on the dividend distributed by A-REIT and taken out of Country B profits.

Thereby the REIT-typical single level of taxation will be preserved.

Domestic Investors

In case of a domestic investor liable to tax on his world-wide income in Country A, any withholding tax will typically be credited against his overall income tax liability. This applies to both individual and corporate shareholders of A-REIT.

If, however, the withholding tax amount exceeds the overall tax liability of a domestic investor (e.g. because of its own tax exempt or tax preferential status), the difference can in many instances be claimed back from the tax authorities.

Under Alternative 2, it is assumed that the local legislation will allow such credit or refund for the full amount of the theoretical withholding tax, disregarding the fact that a portion of the withholding may have been offset by a tax credit corresponding to the tax levied in Country B.

Foreign Investors

WHT derived in Country A remains final unless a tax treaty reduction can be claimed.

Taxation Rights of Country C

1.11. The dividend income derived from the A-REIT distributions will be taxed in Country C as the country of fiscal residence of the C investor. The full REIT theoretical withholding tax should be creditable against the domestic tax liability but only to the extent that the foreign tax liability corresponds to the amount payable in Country C on such foreign dividend income. Any exceeding amount is not creditable in Country C.

Calculation of tax burden

1. Overall profit – profit only in Country B

A-REIT net income	850		
		Country A share	0
		Country B share	850
Country B			
Gross income	1000		
Country B deemed w/h tax (15%)	150		
Country A Withholding tax			
50% Country A investors 25% theoretical w/h tax	125	(gross income 500 x theoretical w/h tax rate)	
Tax credit for Country B tax	75		
Country A actual w/h tax	50		
50% Country C investors 15% theoretical w/h tax	75	(gross income x theoretical w/h tax rate)	
	75		
Tax credit for Country B tax			
Country A actual w/h tax	0		
Overall tax revenue	200	Country A share	50
		Country B	150

2. Overall profit – profit in both Country A and B

A-REIT net income	1000			
			Country A share	300
			Country B share	700
Country B				
Gross income	824			
Country B deemed w/h tax (15%)	124			
Country A				
Withholding tax				
50% Country A investors 25% theoretical w/h tax	140,5	(gross income 562 x theoretical w/h tax rate)		
Tax credit for Country B tax	62			
Country A actual w/h tax	78,5			
50% Country C investors 15% theoretical w/h tax	84,3	(gross income 562 x theoretical w/h tax rate)		
	62			
Tax credit for Country B tax				
Country A actual w/h tax	22,3			
Overall tax revenue	224,8		Country A share	100,8
			Country B	124

Potential issues calling for absence of redistribution of country B income by A-REIT and comparable levels of withholding taxes:

- If there is not redistribution by A-REIT of Country B dividend, the tax paid in Country B cannot be credited.

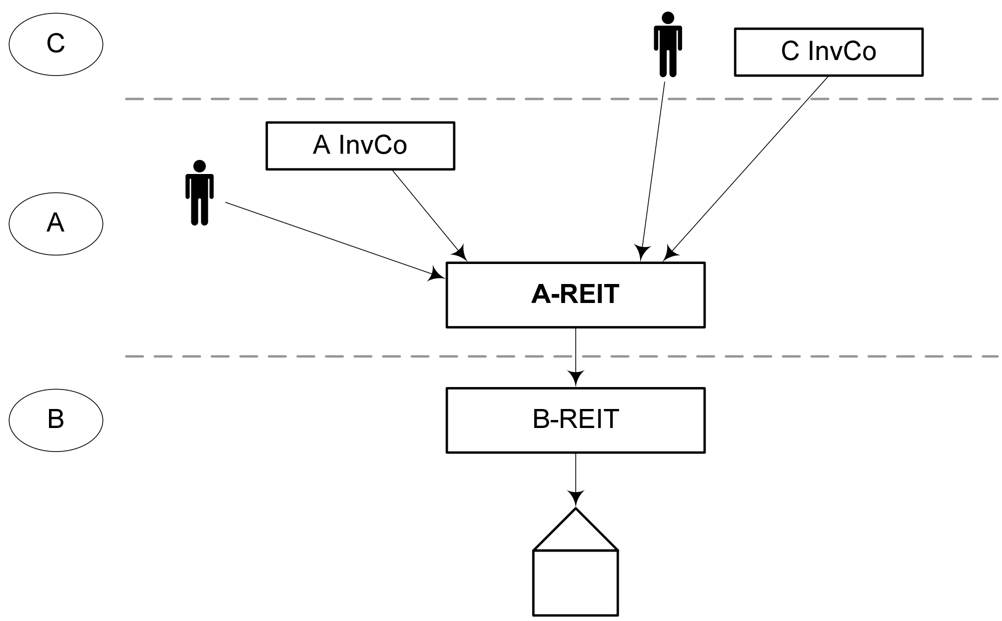
- If the taxation rate of Country A withholding tax is lower than the deemed Country B withholding, a portion of Country B tax will not be creditable.

3. Overall profit – loss in Country A, profit in Country B

A-REIT net income	1000			
			Country A share	(200)
			Country B share	1200
Country B Gross income	1412			
Country B deemed w/h tax (15%)	212			
Country A Withholding tax				
50% Country A investors 25% theoretical w/h tax	147	(gross income 588 x theoretical w/h tax rate)		
Tax credit for Country B tax	88,3			
Country A actual w/h tax	58,7			
50% Country C investors 15% theoretical w/h tax	88,3	(gross income 588 x theoretical w/h tax rate)		
	88,3			
Tax credit for Country B tax				
Country A actual w/h tax	0			
Overall tax revenue	270,7		Country A share	58,7
			Country B	212

<u>Example 2: REIT investing indirectly into foreign real estate through a subsidiary REIT</u>

Domestic and foreign investors being individuals and corporations (each of them either resident of Country A or Country C) make an investment in real estate in Country B via A-REIT which is tax resident in Country A. A-REIT owns the shares in B-REIT which is tax resident in Country B and qualifies as a tax exempt REIT. B-REIT owns the real estate located in Country B.



Allocation of taxation rights under Alternative 1 “Indirect” approach

Taxation Rights of Country B

1.12. Since B-REIT constitutes a tax-exempt entity for taxation purposes in Country B this investment scenario is comparable to the investment structure illustrated in Example 1 above (i. e. direct investment) so that the implications of Sec. 1.1 - 1.6 and the calculations demonstrating the tax sharing model apply accordingly.

Again, the full amount of withholding taxes is to be levied in Country A and must be shared between the situs state of the real estate (Country B) and the state of residence of the A-REIT (Country A).

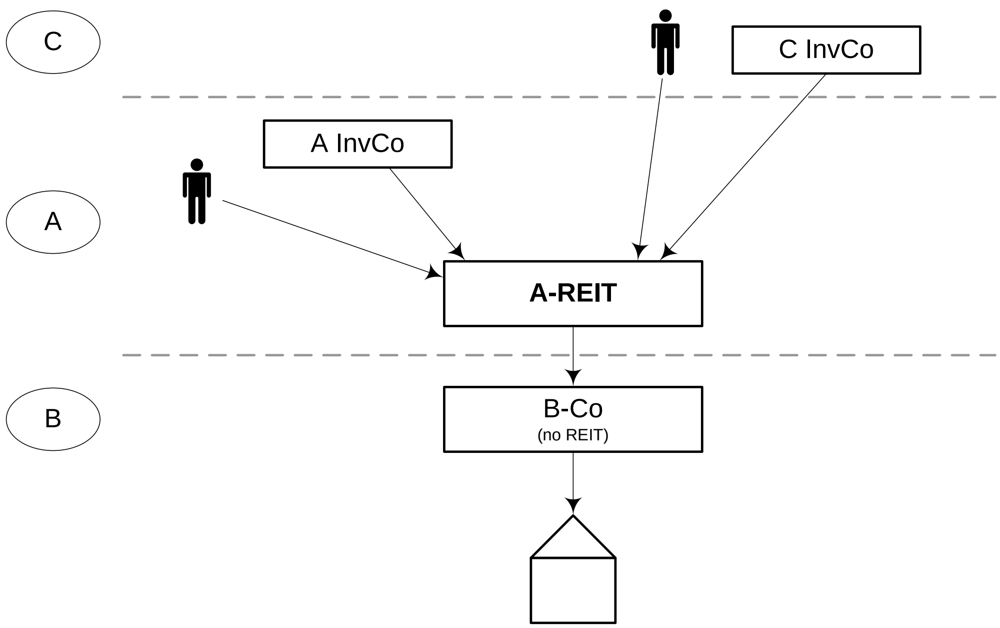
Allocation of taxation rights under Alternative 2 “Direct” approach

1.13. Since B-REIT constitutes an entity for taxation purposes in Country B this investment scenario is comparable to the investment structure illustrated in Example 1 above (i. e. direct investment) so that the implications of Sec. 1.7 - 1.11 and the calculations demonstrating the tax sharing model apply accordingly.

Again, an amount of withholding taxes is to be levied in Country B and credited against withholding tax levied in the state of residence of the A-REIT (Country A).

<u>Example 3: REIT investing indirectly into foreign real estate through a subsidiary which does not qualify as a REIT</u>

Domestic and foreign investors being individuals and corporations (each of them either resident of Country A or Country C) make an investment in real estate in Country B via A-REIT which is tax resident in Country A. A-REIT owns the shares in a subsidiary company B-Co which is tax resident in Country B and which is subject to regular taxation in Country B. B-Co owns the real estate located in Country B.



Allocation of taxation rights under both Alternatives

Taxation Rights of Country B

1.14. B-Co. qualifies as an entity which is liable to corporate income tax on its worldwide income in Country B. It will thus pay its taxes in County B on the rental income derived from the property located in Country B.

1.15. B-Co and A-REIT constitute separate legal entities, The net rental income distributed by B-Co to A-REIT is a tax exempt dividend at the A-REIT level.

Depending on its domestic law, Country B will levy its withholding taxes (subject to any reduction under the applicable tax treaty between Country A and Country B) on the B-Co dividend distributions.

Taxation Rights of Country A

1.16. Taxation of A- REIT

Dividends received from B-Co are tax exempt due to the special REIT regime in Country A. The income derived from A-REIT is taxed in the hands of the A-REIT shareholders.

1.17. However, at this point it should be noted, that the tax sharing principle does not apply in this instance since Country B was able to tax the rental income already at the level of the B-Co.

1.18. Consequently, A-REIT would not withhold tax on its dividend distribution on behalf of Country B, on any pre-taxed B-Co income which is part of the A-REIT dividend distribution.

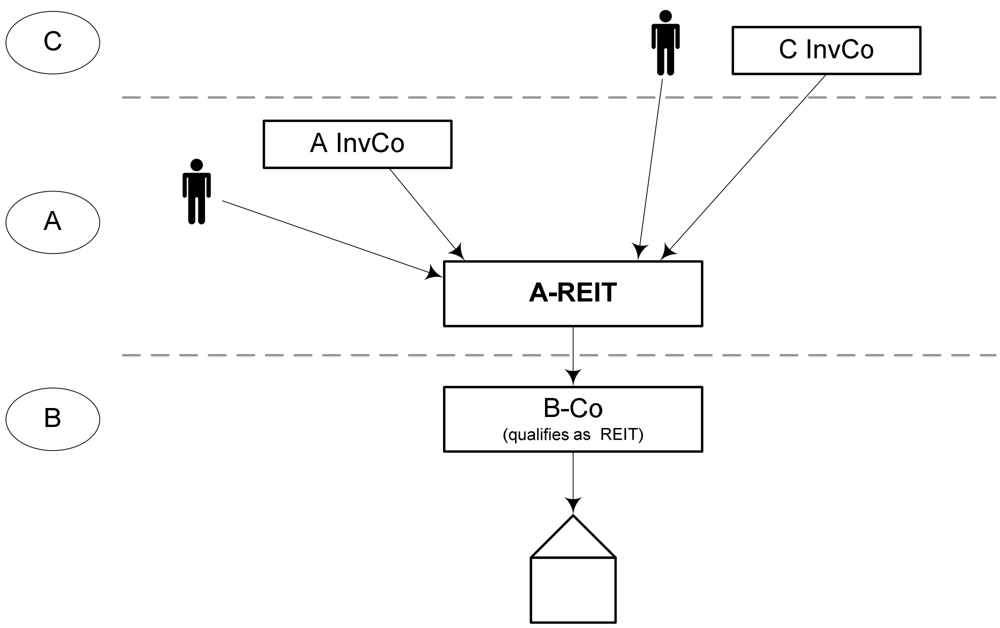
1.19. Taxation of Investors

Taxation of investors in Example 3 generally follows the principles outlined in Example 1(Sec. 1.5 -1.6. above), but any income arising from pretaxed B-Co dividends should be exempt or benefit from a tax credit at the level of the A-REIT shareholders to preserve a single level taxation which occurred already at the level of B-Co.

<u>Example 4: REIT investing indirectly into foreign real estate through a qualifying REIT-subsidiary</u>

Domestic and foreign investors being individuals and corporations (each of them either resident of Country A or Country C) make an investment in real estate in Country B via A-REIT which is tax resident in Country A. A-REIT owns the shares in B-Co which is tax resident in Country B and which is a qualifying REIT-subsidiary and owns the real estate located in Country B.

Contrary to Example 3, the subsidiary company B-Co qualifies as a tax-exempt REIT-subsidiary according to Country B's REIT legislation.



Allocation of taxation rights under Alternative 1 "Indirect" approach

Taxation Rights of Country B and Country A

1.20. If Country B accepts the qualification of B-Co. as tax-exempt subsidiary company of A-REIT, the rental income derived from the property located in Country B will neither be subject to corporate tax nor to withholding tax in Country B, but will flow through to A-REIT.

1.21. For that reason the allocation process of the tax revenues is comparable to the process illustrated in Example 1 and Example 2, respectively, so that only Country A levies taxes on the rental income if and when the A-REIT makes a dividend distribution to its investors. Any collected taxes are then to be shared with Country B according to the comments made in Sec. 1.1 – 1.6. above.

Allocation of taxation rights under Alternative 2 “Direct” approach

1.22. If Country B accepts the qualification of B-Co. as tax-exempt subsidiary company of A-REIT, the rental income derived from the property located in Country B will neither be subject to corporate tax nor to withholding tax in Country B, but will flow through to A-REIT.

1.23. For that reason the allocation process of the tax revenues is comparable to the process illustrated in Example 1 and Example 2, respectively, so that only Country A levies taxes on the rental income if and when the A-REIT makes a dividend distribution to its investors. Any collected taxes are then to be shared with Country B according to the comments made in Sec. 1.1 – 1.6. above.

1.24. B-REIT is exempt to corporation tax in Country B, but it dividend distributions to its parent A-REIT will be subject to withholding tax in Country B. This investment scenario is comparable to the investment structure illustrated in Example 1 above (i. e. direct investment) so that the implications of Sec. 1.7 - 1.11 and the calculations demonstrating the tax sharing model apply accordingly.

Again, an amount of withholding taxes is to be levied in Country B and credited against withholding tax levied in the state of residence of the A-REIT (Country A).

Appendix III

EPRA membership

EPRA MEMBERS

AS OF MARCH 2009

AUSTRALIA
- Orchard Funds Management
- MacarthurCook
- Stockland
- Univ. of Western Sydney, Property Research Centre
- Valad Property Group
- Vanguard Investments Australia

AUSTRIA
- CA Immobilien Anlagen
- Conwert Immobilien Invest
- Immofinanz Immobilien Anlagen
- Meinl European Land

BELGIUM
- Befimmo
- Cofinimmo
- ING Real Estate Capital Advisors
- Leasinvest Real Estate
- Solvay Brussels School of
- Economics & Management

BRAZIL
- Iguatemi Empresa De Shopping Center SA

BRITISH VIRGIN ISLANDS
- Dolphin Capital Investors

CANADA
- Presima (CDP Capital)

FINLAND
- Citycon
- CREF Center for Real Estate Investment & Finance/Hanken
- KTI Finland
- Sponda

FRANCE
- Acanthe Developpement
- Affine
- AffiParis
- Altarea SCA
- AXA REIM France
- Baker & McKenzie
- BNP Paribas
- Credit Agricole Immobilier
- EUROSIC
- Foncière des Régions
- Foncière Paris France
- Gecina
- ICADE
- Klépierre
- Mercialys
- Silic
- Société de la Tour Eiffel
- Société Foncière Lyonnaise
- Société Générale
- Unibail-Rodamco
- Université Paris Dauphine

GERMANY
- AIG Bank
- AIG International Real Estate
- Alstria Office
- Beiten Burkhardt
- Colonia Real Estate
- RREEF Investment
- Deutsche Euroshop
- Deutsche Wohnen
- DIC Asset
- Eurocastle Investment
- Fair Value REIT
- GBWAG Bayerische Wohnungs-Aktiengesellschaft
- Heitman
- HSH Nordbank
- HypoVereinsbank
- IRE|BS Immobilienakademie
- IVG Immobilien
- MEAG MUNICH ERGO AssetManagement GmbH
- PATRIZIA Immobilien
- POLIS Immobilien
- PricewaterhouseCoopers
- Real Estate Management Institute at the European Business School
- Rothschild
- SEB Asset Management
- TAG Tegernsee
- Vitus
- Vivacon

GREECE
- Babis Vovos - International Construction Group
- Eurobank Properties REIC
- Lamda Development
- National Bank of Greece
- Pasal Development

GUERNSEY
- RGI International

HONG KONG
- University of Hong Kong, Dept. of Real Estate & Construction

ISRAEL
- Gazit-Globe

ITALY
- Beni Stabili
- IGD
- Pirelli & C. Real Estate

LUXEMBOURG
- Orco Property Group

NETHERLANDS
- ABP Investments
- Amsterdam School of Real Estate
- Bouwfonds Asset Management
- BPF Bouwinvest
- CB Richard Ellis
- CITCO
- Clifford Chance
- Cordares Real Estate
- Corio
- Deloitte Real Estate
- Ernst & Young European Real Estate Group
- Eurocommercial Properties
- Fortis Investment Management
- Kempen & Co
- KPMG Accountants
- LaSalle Investment Management
- Loyens & Loeff
- MN Services
- NIBC Bank
- Nieuwe Steen Investments
- PGGM
- ProLogis
- Redevco Europe Services
- Spazio Investment
- SPF Beheer
- University of Maastricht
- VastNed Group
- Wereldhave

NORWAY
- Norwegian Property

RUSSIA
- AFI Development
- Eastern Property Holdings
- PIK Group
- Renaissance Capital
- Russian Land
- Sistema Hals

SINGAPORE
- GIC Real Estate
- Keppel Land
- National University of Singapore, Dept. of Real Estate

SPAIN
- Fundación ESADE
- Inmobiliaria Colonial
- Metrovacesa
- Parquesol Inmobiliaria y Proectos
- Reyal Urbis
- TESTA (Grupo Sacyr Vallehermoso)

SWEDEN
- Aberdeen Property Investors
- Castellum
- Klövern AB

SWITZERLAND
- CUREM
- PSP Swiss Property
- Sal. Oppenheim Real Estate
- Strategic Capital Management
- Swiss Capital Alternative Investments AG
- Swiss Prime Site
- Züblin Immobilien Holding

UNITED ARAB EMIRATES
- Abu Dhabi Investment Authority
- Al Qudra Real Estate
- MAF Investments

UNITED KINGDOM
- AMP Capital Redding Investors
- Asset Value Investors
- Aviva Investors
- Barclays Capital
- BDO Stoy Hayward
- Big Yellow Group
- Berwin Leighton Paisner
- British Land
- Brixton
- Cambridge Place IM
- Cass Business School
- Citigroup
- Credit Suisse First Boston
- Derwent London
- Deutsche Bank
- DTZ International
- Fortress
- Goldman Sachs
- Grainger
- Grosvenor
- Hammerson
- Henderson Global Investors
- Hines Europe
- Invista Real Estate IM
- JPMorgan
- JPMorgan Cazenove
- Land Securities
- Liberty International
- Linklaters
- M3 Capital Partners
- Macquarie Real Estate
- Mapeley Estates
- Morgan Stanley
- Nabarro Nathanson
- Nomura
- Principal Global Investors
- ProLogis European Properties
- Prudential Property IM
- RGI International
- Quintain Estates & Development
- Safestore
- Schroders
- Scottish Widows Investment Partnership
- Shaftesbury
- SEGRO
- Speymill Group
- Standard Life Investments
- Thames River Capital
- UBS Investment Bank
- UK Commercial Property Trust
- University of Cambridge, Dept. of Real Estate
- University of Reading, Centre for Real Estate Research
- Westfield Group
- Workspace Group

USA
- ABN AMRO Asset Management
- AEW Capital Management
- Cohen & Steers Capital Management
- Cornerstone Real Estate Advisors
- Duff & Phelps
- European Investors
- Fidelity Mgmt & Research
- Forum Partners IM
- FPL Advisory Group
- Green Street Advisors
- High Rise Capital Management
- ING Clarion Real Estate Securities
- Kensington Investment Group
- MIT Center for Real Estate
- Real Capital Analytics
- Real Foundations
- Rockefeller Group Investment Management Corp.
- Russell Investment Group
- Simon Property Group
- SNL Financial
- Starwood Capital Group
- Stifel Nicholas & Co
- Taberna Realty Finance Trust
- The Tuckerman Group
- The Wharton School, Zell-Lurie Real EstateCenter, Univ. of Pennsylvania