EPRA
European Public Real Estate Association

Global REIT Survey

December 2008

A comparison of the major REIT regimes around the world

Edited by Ernst & Young
Quality In Everything We Do

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Preface

Since the last version of the *EPRA Global REIT Survey*, issued in August 2007, much has happened in the world of REITs and REIT-like investment vehicles. It goes without saying the REIT world is expanding, and this year's survey is evidence of that. What is most interesting is to track the emergence of new regimes such as Pakistan, Italy, and Spain, and the continuing adaptations of existing REIT legislation, as they respond to the ever evolving real estate market.

In this year's survey we have included some additional commentary on market performance and topical developments - the most obvious development in the last year being the extremely tough market conditions.

What this means is that we are now entering a particularly interesting time in the global REIT story. We are already seeing global trends emerge with the legislative developments in REIT regimes which suggest a certain amount of healthy competition between different country REIT regimes, a response to globalisation and the emergence of market-driven 'best practice'.

The strength of the various REIT models themselves will be fully tested as we go through these difficult economic conditions. I fully expect that future *EPRA Global REIT Surveys* will highlight the fact that legislative developments around the REIT world are gathering pace, as we emerge at the end of these tough times with a fight to attract global capital flows.

In this respect, there are certain characteristics of REIT regimes emerging from past surveys, that have not warranted much consideration in terms of the above-mentioned competition for capital. For example, distribution obligations and gearing restrictions haven't appeared to be major talking points when comparing the merits of various REIT regimes. These restrictions may of course have more prominence during times when operating conditions are suffering, and access to capital is difficult.

Other interesting developments are, and will continue to be around the aspects of the REIT legislation where the commercial reality of property investment interacts with the tax legislation - such as conditions relating to the permitted activity of a REIT and where that activity takes place. In other words, the extent to which a REIT is able to develop and refurbish properties, sell those properties and also invest in different markets, such as indirect property assets and overseas markets. We will also be closely monitoring the extent to which particular REIT regimes are able to capitalise on a more liquid, growing market. These include the costs/incentives for converting to REITs, costs and barriers associated with the organic growth of REITs; and also the actual scope of 'real estate' related assets which are able to benefit from the tax efficient regime – pub REITs, hotel REITs, supermarkets, residential and infrastructure to name but a few. The tax treatment of distributions to non-resident investors could also be a key differentiating factor between national REIT regimes and will clearly have an impact on the ability of particular REIT regimes to attract global investment.

We mustn't forget that in order to be successful, REITs must also achieve the objective of securing a sensible revenue stream for individual governments. Evidence of the ability of REITs to deliver this objective will always be difficult to gather, but over time we should see more examples of what works and what doesn't, as well as examples of countries working together to address common issues, as we are already seeing with REIT developments in the OECD Model Tax Treaty.

It will also be interesting to see the extent to which REITs can assist individual governments in meeting their differing political objectives. An obvious example being residential REITs, where in the space of the last two years we have seen the Finnish Government announce the intention to introduce REIT legislation for residential property only, the German Government place specific restrictions on the ability for REITs to invest in residential property, the Spanish Government announce plans for REITs connected with a plan to assist the residential market and the UK government desperately keen (although without success) to encourage residential REITs as part of the solution to the UK housing crisis!

EPRA is the voice of the European publicly traded real estate sector. It works to encourage greater investment in listed real estate companies in Europe through the provision of better information to investors, improvement of the general operating environment, encouragement of best practices and the cohesion and strengthening of the industry.

The 2008 Global REIT Survey is a snapshot of the current situation as at June 2008, and we trust you find the survey both interesting and informative. We are always pleased to hear your suggestions for improvements and plan to continuously improve and update the latest changes.

Finally, I would like to thank all contributing partners for this version of the *EPRA Global REIT Survey*. Special words of thanks must go to Matthias Roche, Tim Hackemann and Helge Schubert of Ernst & Young, who coordinated and completed the final editing of this survey.

Philip

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Caveat: All information in this paper is based on our research as at June 2008. No reliance should be placed on nor should decisions be taken on the basis of the contents of this brochure. Any party or individual involved in the preparation of this brochure shall bear no responsibility for the consequences of any action taken on the basis of information contained herein, including errors and omissions. Throughout this survey, all REIT data provided in the “Sector summary (end of June 2008)” have been kindly provided by **Macquarie Global Property Securities Analytics**.

Europe

Part 1

Belgium (SICAFI)

Metal roof details of the Court of Justice building in Antwerp, Belgium.

1 General introduction

	Enacted year	Citation	REIT type
SICAFI	1995	– Royal Decree of April 10, 1995 – Law of July 20, 2004 – Other tax laws	Corporate type

The Belgian equivalent to the REIT regime is known as the SICAFI (société d'investissement en immobilier à capital fixe), and forms part of the Belgian legal system. The SICAFI was enacted in 1995 based on the Act of December 04, 1990, which was abrogated by the Law of July 20, 2004 on certain forms of management of collective investment undertakings, and the Royal Decree of April 10, 1995. The law of June 16, 2006, which implemented the Prospectus Directive, modified the prospectus requirements of the Law of July 20, 2004. The SICAFI is also subject to specific tax rules.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
SICAFI	15	4.4	1.2

Top five REITs

	Market cap (€m)	Sector type
Cofinimmo	1,309	Healthcare, Leisure, Office
Befimmo SCA Sicafi	875	Office
Intervest Offices	330	Industrial, Office
Warehouses De Pauw SCA	328	Industrial, Logistic, Office, Parking, Retail
Wereldhave Belgium NV	275	Office, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Licence from the Belgian Banking, Finance and Insurance Commission – SICAFI Registration List

Firstly, the SICAFI must obtain a licence as a collective investment institution from the Belgian Banking, Finance and Insurance Commission (BFIC). Then it can be registered on the list of Belgian recognised investment institutions (SICAFI List). The BFC must approve the following:

- the articles of association;
- the appointment of a management company (as an alternative, the SICAFI may obtain a licence permitting it to act as its own management company);
- the internal regulations of the management company, which should comply with the "duty of care" – rules;
- the custodian appointed by the SICAFI.

The appointment of a custodian is mandatory for all Belgian SICAFI's. To register with the BFC, a foreign REIT is also obliged to appoint a custodian. However, the custodian is not required to be a citizen of Belgium. It is acceptable to appoint a custodian from the REIT's own home country.

Only the following institutions can be appointed as custodian of the SICAFI:

- Belgian credit institutions as defined in the law of March 22, 1993 (on the legal status and supervision of credit institutions);
- the Belgian National Bank;
- stockbroking firms and/or foreign investment firms established in Belgium (according to the law of April 06, 1995 on the legal status and supervision of investment firms).

2.2 Legal form / minimum share capital

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

Legal form

A SICAFI must be either a public limited liability company (société anonyme, SA) or a Belgian limited partnership with shares (société en commandite par actions, SCA). The statutory seat and general management of the SICAFI must be located in Belgium.

A foreign entity cannot qualify as a Belgian SICAFI. However, it may issue certificates in Belgium in accordance with the applicable European Prospectus Passport rules. However, these foreign entities must register with the BFC and comply with the aforementioned regulations.

Minimum share capital

The required minimum share capital amounts to EUR 1,250,000. In principle, each shareholder has an equal right to participate in the profits of the SICAFI. However, different categories of shares may be issued if allowed by the articles of association.

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	No requirements	Yes

Shareholder requirements

There are no specific shareholder conditions to fulfill in order to achieve SICAFI eligibility.

Listing requirements
For a Belgian SICAFI, there must be a 30% public offering within one year after inscription, and the entity must be listed on a Belgian stock exchange before it can obtain SICAFI status. Foreign entities may issue certificates in Belgium in accordance with the applicable European Prospectus Passport rules. In general, those entities may maintain their home stock exchange listing. Nevertheless, sometimes the BFC does require the foreign entities to have their certificates also listed on a Belgian stock exchange.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– The principal activity must be passive investments in real estate – A maximum of 20% of the total assets can be invested in one real estate project – Developments are allowed, but cannot be sold within five years of completion – The SICAFI is allowed to hold shares in subsidiaries investing in real estate – As an exception, the SICAFI is allowed to invest in transferable securities.

The SICAFI may only invest in 'immovable property'. This includes the following:
- real estate;
- option rights on real estate;
- shares in affiliated companies investing in real estate;
- real estate certificates;
- shares of another collective investment undertakings investing in real estate; and
- rights resulting from agreements pursuant to which one or more immovable good(s) is/are leased to the SICAFI.

The SICAFI is not obliged to invest in Belgian real estate. The Belgian Royal Decree of April 10, 1995 states that a SICAFI may not invest more than 20% of its total assets into one single property.

A SICAFI may develop real estate, provided that the SICAFI maintains the completed developments for at least five years.

SICAFIs are allowed to hold shares in subsidiaries investing in real estate. The subsidiary itself can also be a SICAFI, provided it is listed. If the subsidiary qualifies as a SICAFI, the 'parent' SICAFI must have control of the subsidiary. If the subsidiary does not qualify as a SICAFI, there are no specific requirements.

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

2.5 Leverage

	Leverage
	– Loans limited to 65% of the total assets – Interest expenses limited to 80% of the total income

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

2.6 Profit distribution obligations

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

Operative income
Belgian legislation requires that 80% of the net profits are distributed on an annual basis. Specific rules to calculate the net profit of the SICAFI are set out in the Belgian Royal Decree of June 21, 2006. The rules of profit distribution apply to the SICAFI, regardless whether it is domestic entity or not.

If the subsidiary of a SICAFI also qualifies as a SICAFI itself, the subsidiary is not subject to any profit distribution obligations.

Capital gains
Capital gains remain tax-free and are not included in the distribution obligation, provided the capital gains are reinvested within four years.

2.7 Sanctions

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

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

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

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

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

Due to the fact that SICAFIs enjoy their own favorable tax regime which allows for a very low tax basis, they are not entitled to other benefits. For example, they are not able to apply reduced tax rates. They are also not allowed to take advantage of the Belgian participation exemption nor the Belgian notional interest reduction regimes. Additionally, Belgian law explicitly excludes a SICAFI from the foreign tax credit on foreign source income.

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

Withholding tax
In principle, non-Belgian source dividends and Belgian and non-Belgian source interest distributed to a SICAFI are exempt from Belgian withholding tax. Any withholding taxes levied should be creditable and refundable. Belgian law strictly prohibits crediting foreign taxes withheld.

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

Other taxes
The special tax regime of the SICAFI does not affect applicable local income tax. Furthermore, the SICAFI is also subject to an annual tax of 0.08% on its inventory value at the end of the financial year.

The SICAFI is subject to Belgian real estate withholding taxes on the Belgian real estate that it owns, possesses, leases, has building rights to or enjoys the use thereof.

Accounting rules
The Belgian GAAP is laid down in the Act of July 17, 1975 (concerning book-keeping and the annual accounts) as well as the Belgian Royal Decree of October 08, 1976 (annual accounts). The GAAP rules also apply to the SICAFI. Even specific rules, such as drawing up an inventory or the expert appraisal of real estate, are applicable. The IFRS rules are applicable to SICAFI's keeping their books on a consolidated basis as of the financial year beginning on or after January 01, 2005. Other SICAFIs must be in accordance with the IFRS rules as of the financial year beginning on or after January 01, 2007.

3.2 Transition regulations

	Conversion into REIT status
	– Real estate assets are to be assessed at market value – 16.995% tax on capital gains

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

3.3 Registration duties

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

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

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Dividends and capital gains are fully taxable, but if dividend participation regime applies, dividends are 95% tax free and capital gains are fully tax-exempt	– Withholding tax on dividends is final levy – In principle, capital gains are tax-exempt	– 15% final Withholding tax – Special rules for SICAFI investing in Belgian real estate for private accommodation – Participation privilege for domestic corporate shareholders

Corporate shareholder
Dividends received and capital gains realised are fully taxable (33.99%). However, if the Belgian dividend participation exemption regime applies, dividends benefit from a 95% tax deduction while capital gains are fully tax-exempt.

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

- the domestic corporate shareholder's participation must be comprised of only fixed financial assets (non portfolio);
- the domestic corporate shareholder must have held the legal property for an uninterrupted period of at least 12 months, or commit to holding the property for the full 12-months period;
- the subject-to-tax requirement.

The only requirement that must be met in order to qualify for the participation exemption on capital gains, is the subject to tax requirement.

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

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

Individual shareholder
The 15% dividend withholding tax (if any) is the final levy. The withholding tax cannot be credited.

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

According to the Belgian CIT law, a return of capital is not taxable. This only applies if the capital decrease is performed on the basis of a regular decisions and behaviour in accordance with the Belgian Company Code or a similar non-Belgian company law. Nevertheless, a return of capital upon liquidation or redemption of the SICAFI's shares would be taxable if upon the public offering of the shares in Belgium, the SICAFI guarantees a certain repayment or rate of return for a period of eight years or less to its investors. In that case, the return is deemed to constitute an interest subject to a 15% (withholding) tax.

Withholding tax
Dividends distributed by the SICAFI to its shareholders are exempt from withholding taxes if the SICAFI invests more than 60% of its assets in real estate. In order to qualify for the exemption, the real estate must be located in Belgium and used as private accommodation. Otherwise a 15% dividend withholding tax will be levied.

If the conditions of the European Parent-Subsidiary Directive are met (e.g. a minimum participation of 15%), no withholding tax will be due on dividend distributions to a corporate domestic shareholder, provided that the latter is resident in a EU-Member State. As of January 01, 2007, this Belgian domestic withholding tax exemption is extended to dividends distributed to companies resident in countries with which Belgium concluded a Tax Treaty.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– 15% withholding tax – At certain conditions 0% Withholding tax – Capital gains tax- exempt	– 15% withholding tax – At certain conditions 0% Withholding tax – Capital gains tax-exempt	– Tax treaty relief available – Parent-Subsidiary Directive applicable

Corporate shareholder
Dividends distributed by the SICAFI to its shareholders are exempt from withholding taxes if the SICAFI invests more than 60% of its assets in real estate. In order to qualify for the exemption, the real estate must be located in Belgium and used as private accommodation. Otherwise a 15% dividend withholding tax will be levied.

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

Individual shareholders
Dividends distributed by the SICAFI to its shareholders are exempt from withholding taxes if the SICAFI invests more than 60% of its assets in real estate. In order to qualify for the exemption, the real estate must be located in Belgium and used as private accommodation. Otherwise a 15% dividend withholding tax will be levied.

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

Withholding tax
If the conditions of the European Parent-Subsidiary Directive are met (e.g. a minimum participation of 15%), no withholding tax will be due on dividend distributions to a corporate foreign shareholder. This is the case provided that the corporate foreign shareholder is a resident of another EU-Member State. As of January 01, 2007, the Belgian domestic withholding tax exemption is extended to dividends distributed to companies resident in countries with which Belgium concluded a Tax Treaty.

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

5 Tax treatment of foreign REITs and their domestic shareholders

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

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

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

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

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

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

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

Concerning a foreign fund with legal personality, the individual investor will not be deemed to have invested in real estate but in the fund itself. The income received from the fund will be taxed according to the rules of dividend taxation. Consequently, the dividends would be taxable at a rate of 25% to 15% plus communal surcharges. The foreign withholding tax levied on the dividend income would be deductible from the Belgian taxable basis. Capital gains realised on foreign real estate fund shares are treated in the same way as capital gains realised on SICAFI shares. ■

Bulgaria (SPIC)

The Cathedral of the Assumption in Varna, Bulgaria.

1 General introduction

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

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

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
SPIC	18	0.3	0.1

Top five REITs

	Market cap (€m)	Sector type
Elana Agricultural Land Opportunity	66	Agricultural
FairPlay Properties REIT	51	Hotel, Leisure, Office, Residential, Retail
Sopharma Properties REIT	48	Commercial, Residential
Advance Terrafund	43	Agricultural, Land
Prime Property BG	28	Office, Residential, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Licence from the Financial Supervision Commission – If listed, further Bulgarian Stock Exchange authorisation – Depository bank mandatory

In order to qualify as a SPIC, a company is required to obtain a licence from the Bulgarian Financial Supervision Commission. Within seven days after the SPIC registers in court, the Commission should be notified. Once the formal authorisation (licence) is granted, the SPIC may effectively increase capital if this is the decision of the shareholders, and the prospectus for the capital increase should also be approved by the Financial Supervision Commission.

Furthermore, the Bulgarian Stock Exchange must authorise the SPIC formation as well as the issuance of its shares.

2.2 Legal form / minimum share capital

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

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

The SPIC's registered seat and management address must be located in Bulgaria. The same requirement applies to its management company, which is required for certain SPIC activities.

Minimum share capital
The minimum share capital requirement for a SPIC (at the time of incorporation) is BGN 500,000 (EUR 255,646). This amount is to be fully paid in cash as of the date of SPIC application. The SPIC can issue only book-entry (dematerialise) shares.

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

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	– 30% or more should be owned by an institutional investor – No more than 50 founders	Yes

Shareholder requirements
No less than 30% of the capital should be owned by an institutional investor. An 'institutional investor' is not legally defined by the SPIC. However, according to FSC guidelines, an institutional investor is described as a bank, insurance company, licenced pension fund or other financial institution, which are subject to the supervision of the FSC. Foreign legal entities may also act as institutional investors if approved by the FSC. An institutional investor may also have a licence granted by the FSC. As an alternative to FSC supervision, banks are subject to special legal acts. It is not allowed for more than 50 persons or entities to be founders of a SPIC. It has not yet clearly been stated whether a SPIC may be owned by just one shareholder.

Listing requirements
Within six months after incorporation, the SPIC must apply for the approval of its IPO. A private SPIC is not permitted.

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

2.4 Asset levels / activity tests

	Restrictions on activities / investments
	– No more than 10% of the SPIC's assets can be invested in mortgage bonds – Real estate investments must be located in Bulgaria

SPICs can invest only 10% of their assets in mortgage bonds. For tax purposes, interest expenses may only exceed the interest income by 75% of the EBIT (earnings before interest and taxes).

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

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

SPICs investing in receivables must limit their investments to securitisation (sales and purchases) with only Bulgarian residents. The receivables must originate from Bulgarian tax residents, ie. SPICs cannot invest in foreign debt instruments.

The business activities of SPICs are limited to only the aforementioned activities.

SPICs can only hold shares in its management company. These investments should not exceed 10% of the authorised capital of the SPIC. No other investments in shares are allowed.

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

2.5 Leverage

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

The only introduced debt financing limitation concerns loans granted for less than a year which are used for interest payments. In that case, a SPIC may only borrow (from a bank) an amount not greater than 20% of its balance sheet asset value.

2.6 Profit distribution obligations

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

Operative income

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

Capital gains

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

2.7 Sanctions

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

The Finance Supervision Commission will cancel the SPIC's licence if:
- the SPIC does not begin activities within 12 months after receiving the licence;
- the SPIC has provided wrongful information (based on which the licence was granted);
- the SPIC does not fulfill all SPIC requirements;
- the SPIC systematically breaches SPIC rules.

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

If licence is cancelled by the Financial Supervision Commission, the company will be treated as an ordinary company for tax purposes.

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

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

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

Current income
The income of a SPIC is not subject to taxation.

Capital gains
Capital gains realised by a SPIC are not subject to taxation, as long as computed into the financial result of the SPIC, which is exempt from taxation.

Other taxes
Other taxes may be levied.

Withholding tax
Dividends received from another Bulgarian company (ie. the management company) shall not trigger withholding taxation.

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

3.2 Transition regulations

	Conversion into SPIC status
	N/A

3.3 Registration duties

	Registration duties
	– Transfer tax of 2% to – 4% – Land Registrar Entrance Fee of 0.,1%

A real estate transfer tax the rate of which varies between 2% and 4% (the exact rate applicable in the respective year is approved by the Municipal council as per the location of the real estate property) and a land registrar entrance fee of 0.1% are levied on the purchase price of the real estate. The purchase price may not be less than the tax value as defined by the tax authorities (in compliance with the Local Taxes and Fees Act).

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Distributions and capital gains are tax-exempt	- 5% withholding tax on distributions is the final levy - Capital gains are tax exempt	To credit withholding tax is not possible

Corporate shareholder
SPIC distributions received and capital gains realised from the sale of SPIC shares are tax-exempt.

Individual shareholder
If dividends are distributed to resident physical persons, a 5% domestic final withholding tax is applied. Capital gains realised on the sale of the SPIC shares are tax-exempt.

Withholding tax
For individual shareholders, a withholding tax of 5% applies. It is not possible to credit this withholding tax. Dividend distributions to corporate shareholders are exempt from withholding tax.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	- Dividends are subject to a 5% Withholding tax - Possibility of dividend tax reduction - Capital gains tax-exempt	- Dividends subject to a 5% withholding tax - Possibility of dividend tax reduction - Capital gains are tax-exempt	- Treaty relief might apply - Parent Subsidiary Directive not applicable

Corporate shareholder
A 5% domestic tax rate, or the lower respective DTT withholding tax rate, applies. DTT protection can be obtained following a successful completion of the advance clearance procedure of the Tax and Social Security Procedure Code. This option would only be selected if the DTT would offer a more favorable withholding tax than the domestic tax law. The EU Parent Subsidiary Directive is not applicable.

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

Withholding tax
A 5% withholding tax will be levied. Treaty relief is available.

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	Local rental income is subject to a withholding tax of 10%	No tax privileges	No tax privileges

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

Corporate shareholder
Corporate shareholders are taxed on the income from the foreign corporation.

Individual shareholder
Individual shareholders are taxed on the income from the foreign corporation.

France (SIIC)

Grand Arch in La Defense, Paris, France.

1 General introduction

	Enacted year	Citation
SIIC	2003	– Article 11 of the Finance Act for 2003 – Administrative Guidelines from the French Tax Office

Article 11 of the Finance Act for 2003 (Law #2002-1575 of December 30, 2002) introduced a pure tax regime applicable to listed real estate asset investment companies (*sociétés d'investissement immobiliers cotées***,** SIICs). This regime is governed by articles 208 C and 219 IV of the French tax code (FTC). The SIIC regime has been amended by the Amended Finance Act for 2004, the Finance Act for 2005 the Amended Finance Act for 2006, the Amended Finance Act for 2007 and the Finance Act for 2008. In addition, the French tax authorities (*FTA*) published administrative tax guidelines on September 25, 2003.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
French SIIC	47	45.9	12.2

Top five REITs

	Market cap (€m)	Sector type
Unibail-Rodamco	12,005	Office,Retail
Gecina SA	4,799	Healthcare, Hotel, Logistic, Office, Residential
KlépierreKlepierre	4,553	Industrial, Office, Retail
ICADE	3,642	Industrial, Logistic, Office, Residential, Retail
Foncière des RégionsFonciere Des Regions	3,190	Industrial, Logistic, Office, Parking, Residential, Retail

With no new legislation enacted during 2007/2008, the SIIC sector was anticipating a year of consolidation, and an opportunity to fully exploit the potential of the stabilised operating environment to increase the capitalisation of the sector. However, the difficulties in the international credit markets, rising interest rates and commodity prices and the spectre of inflation in the Eurozone have meant that many of these projects have been put on hold – as stock market pricing of the sector moved to a discount to published NAVs. Nonetheless the sector has remained active - with a number of new SIIC registrations, and further acquisition activity both inside France and internationally.

Over the coming year attention will be focused on the potential impact of the SIIC 4 legislation, which will penalise SIICs still controlled by more than 60% by a single shareholder at the end of calendar 2008. As the manner in which the penalty will be applied, and the companies to which it might apply, are not yet clear, much of this comment is speculative. But, as the issue is perceived to produce an overhang in current stock market conditions, the negative sentiment it has produced among international investors will not disappear until the impact is clearly established.

The very positive effects of the 210E tax-break, which allowed favorable treatment of capital gains on sales of property by corporates to SIIC purchasers *inter alia*, is also scheduled to expire at the end of 2008. The industry has been able to demonstrate the positive impact of this measure in encouraging the move in ownership of commercial property from the corporate to the public savings' market, and it is still hoped that the measure may be reintroduced in some effective form.

The approval of the first OPCI (unlisted tax flow-through property funds – successors to the earlier inflexible SCPI model) has stimulated an in-depth review of governance requirements in the sector both within the industry and by the market authorities (AMF). This has particularly focused on relationships with external managers (which is not the standard model in the French SIIC sector), on disclosure of conflicts of interest and transactions with related parties, and on valuation practice. The FSIF has demonstrated its attachment to transparency in this area by publishing in July 2008, with the approval of the AMF, a voluntary Code for its members based on EPRA best practice.

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

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– The election letter must be filed with the competent tax office for the parent company with a list of the subsidiaries which also elect – Subsidiaries' list must be updated once a year

In France, an eligible real estate investment company (i.e. the parent company) may elect to apply for the SIIC regime within the first four months of the financial year (assuming that the SIIC regime is applying for the first time). An election may also be made by any corporate subsidiary which engages in qualifying activities and is directly or indirectly held by one or several listed parent company that have themselves elected for the SIIC regime as parent. In order for such a subsidiary to qualify, the parent company(ies) must have, together, at least a 95% ownership.

The election letter must be filed with the competent tax office for the parent company with a list of the subsidiaries which also elect. The list must be updated every year, together with the company's annual corporation tax return.

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

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

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

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

In addition, capital gains earned upon the sale and/or the contribution of properties, rights over properties, financial lease agreements, shares in real estate companies, to a SIIC or its qualifying subsidiaries until December 31, 2008 are taxable at a reduced rate of 16.5%, provided that the SIIC or its qualifying subsidiaries keep the sold and/or contributed shares, properties or right over properties for at least five years and retains them within the tax exempt sector. If the purchaser, or the beneficiary company of the contribution is a qualifying subsidiary that elected for the SIIC regime, the 16.5% reduced rate is applicable, provided that the qualifying subsidiary remains in the SIIC regime for at least five years as from the sale or contribution.

2.2 Legal form / minimum share capital

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

Legal form
The parent company must be a corporation (*Société Anonyme*) or any other company with capital divided into shares that can be listed (e.g. *Société en Commandite par Actions* as opposed to *Société par Actions Simplifiée*). The SIIC regime does not contain specific conditions that the parent company must be incorporated under French law or that it must be a tax-resident in France.

In order to qualify for the SIIC regime, the subsidiary company must be directly or indirectly held by one or several listed SIIC parent companies. The parent companies must have validly elected for the SIIC regime and own at least 95% of the subsidiary. The subsidiary must also meet the activity requirements. The only other requirement for qualifying subsidiaries is that they must be subject to French corporate income taxes, either due to their legal form or tax election.

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

Minimum share capital
The share capital of the listed parent company must equal at least EUR 15 million.

2.3 Shareholder requirements / listing requirements

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

Shareholder requirements
Since January 01, 2007, the SIIC regime is characterised by these new conditions:

- An investor (other than a SIIC parent) or a group of investors acting in concert pursuant to article L. 233-10 of the French Commercial Code (i.e. persons who have entered into an agreement in order to buy or sell voting rights or to exercise voting rights in order to implement a policy in relation to a company) cannot hold, either directly or indirectly, more than 60% of the share capital and voting rights of the listed parent company. Any SIIC, already in existence on January 01, 2007 benefits from a two-year grace period to allow it to adapt to this new rule. After this period, the rule must be permanently complied with.

- At the time of the election, at least 15% of the listed parent company's share capital and voting rights must be held by investors who individually, directly or indirectly, own less than 2%. This test aims to ensure a minimum level of free float before the company can elect for the SIIC regime.

Listing requirements
The parent company must be listed on a French stock exchange. This condition does not prevent French SIICs from also being listed on foreign stock exchanges. Additionally, it is possible for foreign SIICs to be listed on the French stock exchange.

2.4 Asset level / activity test

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

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

The listed parent company and its subsidiaries may also engage in activities other than just passive investments. However, these activities must remain ancillary to the principal qualifying activity. Income from these activities would be fully taxable. Qualifying ancillary activities are most notably comprised of the following:
- the financial leasing of properties (*crédit-bail immobilier*) entered into before 2005, provided that the net book value of the outstanding portfolio of the properties does not exceed 50% of the total gross asset value of the company (financial leasing contracts entered into after January 01, 2005 is a qualifying leasing activity eligible to the SIIC regime). This applies to entities that are lessee under a financial lease and grant a sublease to tenants;
- other activities such as real estate development or real estate brokerage, provided that the gross book value of the relevant assets does not exceed 20% of the total gross asset value of the company. For the purpose of this 20% test, the value of properties subject to financial leases is disregarded. If these qualifying ancillary activities are performed through subsidiaries, then only the book value of the participation and current-account receivables would be considered for the purposes of the 20% test.

However if the SIIC parent company or subsidiary entered, after the year 2005, into a financial lease for a building that is sub-let to tenants, this activity is considered as an eligible activity. On the other hand, a financial lease which was entered into before 2005 does not qualify.

Since January 01, 2007, the regime is also applicable with respect to assets which the listed parent company and elected subsidiaries enjoy a usufruct right to, or which they leased under certain long-term leases (*baux emphythéotiques*) or building leases (*baux à construction*).

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

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

The SIIC regime may also apply to the listed parent company's subsidiaries provided that the subsidiaries are as follows:
- liable to French corporate income tax;
- at least 95% directly or indirectly owned by one or several listed SIIC parent company during the entire fiscal year (in which the SIIC regime was applied for);
- identical to a SIIC in terms of corporate business purpose (including ancillary activities).

Since January 01, 2007, it has been possible to create joint ventures between two SIIC groups. This is possible due to the fact that a subsidiary may elect for the SIIC regime only if its share capital is held by one or several listed parent companies, which have already elected for the SIIC regime.

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

2.5 Leverage

	Leverage
	Thin-capitalisation rules

The French SIIC regime does not provide specific leverage restrictions. However, new French thin-capitalisation rules apply to corporate taxpayers for taxable years as of January 01, 2007. These new rules also apply to companies that have elected for the SIIC regime. Under certain conditions, the rules limit the deduction of interest on group loans.

The new French thin-capitalisation rules only apply to related party loans. A related party is defined as (i) a company that controls (or having a *de facto* control), directly or indirectly, more than 50% of the capital of the French borrowing company, or (ii) any company that is under the direct or indirect control of a person that also controls, directly or indirectly, more than 50% of the capital of the French borrowing company.

The impact of the thin-capitalisation rules is to increase the amount of the SIIC's exempt realised income, which is subject to compulsory distribution to shareholders.

2.6 Profit distribution obligations

	Operative income	Capital gains	Dividends	Timing
	85% of tax-exempt profits	50% of capital gains	100% of dividends	Annually

Operative income
At least 85% of the tax-exempt profits from qualifying leasing activities (including profits realised by directly owned partnerships or pass-through entities), must be distributed before the end of the tax year following the year in which they are generated.

Capital gains
At least 50% of capital gains resulting from the sale of (i) rights relating to leasing contracts (ii) properties (includes the sale of property by directly held partnerships or pass-through entities) (iii) shares of qualifying partnerships or (iv) shares of corporate subsidiaries that have elected for the SIIC regime (this includes the sale of shares by a directly held partnership or a pass-through entity) must be distributed before the end of the second tax year following the year in which they have been realized.

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

2.7 Sanctions

	Penalties / loss of status rules
	– Profit and gain exemption is denied for the financial year in which the distribution shortfall appears – Latent gains could be retroactively subject to a corporate income tax rate of 34.43% (including the 16.5% exit tax deduction)

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

If the listed parent company no longer fulfills the conditions for the SIIC regime, then the rental income and capital gains would become fully taxable from the beginning of the financial year with respect to which the loss of status takes place. For instance, this could occur in the case of de-listing or if the non-qualifying ancillary activities exceed the applicable threshold. In addition, if the loss of status occurs within ten years after the initial SIIC regime election, then the latent gains would be retroactively subject to a corporate income tax at the standard rate (currently 33.33%, 34.43% with surcharges) after deduction for the 16.5% exit tax already paid on such latent gains.

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

If a loss of status were to occur (and by contrast to loss of status of the listed SIIC parent), there would be no recapture of the latent gains which were recognised upon the initial election and which benefited from the exit tax of 16.5%.

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

3 Tax treatment at the level of REIT

3.1 Corporate income tax

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

Current income

The listed parent company and its qualifying corporate subsidiaries that have elected for the SIIC regime are, in principle, subject to French corporate income tax. However, the following income is fully exempt from corporate income tax, provided that the distribution requirements are met:

- Income realised directly or through qualifying partnerships from qualifying leasing activities. The benefit of the exemption regime has been extended to financial lease contracts entered into after January 01, 2005. Since January 01, 2007, it has also been extended to certain long-term leases (*baux emphythéotiques*) or building leases (*baux à construction*).
- Dividends received from qualifying subsidiaries that have elected for the SIIC regime, and paid out of the tax-exempt income of such subsidiary.
- Since January 01, 2007, the listed parent company may acquire shares of another SIIC company and thus benefit from the dividend tax exemption provided by that SIIC. In order to receive this benefit, the parent company must hold at least 5% of the other SIIC's capital shares and voting rights for at least two years, and 100% of the dividends paid must be distributed before the end of the tax year during which they are granted. Since January 01, 2008, the listed parent

company may benefit from the dividend exemption in respect of dividends received from (i) *a Société de placement à prépondérence immobilière à capital variable* ("SPPICAV"), or (ii) a foreign REIT provided the parent company holds at least 5% of the distributing entity's capital shares and voting rights for at least two years.

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

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

Since January 01, 2007, the straight sales of properties among members of the same SIIC group may, however, benefit from an exemption under certain conditions (with a roll-over of the tax basis). In this respect, the tax treatment of the capital gain allocated to buildings will differ from the one allocated to land:

- Non-depreciable assets (e.g. land): for tax purposes, the acquirer takes over seller's basis. Capital gain upon a subsequent sale would therefore, for tax purposes, be computed from this rolled-over tax basis, which will increase the 50% distribution obligation;
- Depreciable assets (e.g. construction): for tax purposes, the acquirer has a stepped-up tax basis. However, the gain recognised in the transaction must be recaptured in the tax-exempt rental income (over 15 years generally, or over the residual useful life if construction represent more than 90% of the value of the depreciable assets). This recapture increases the exempt income and therefore the amount of the compulsory 85% distribution, which in practice offsets the increased depreciation allowances (which themselves reduce the exempt income and the distribution obligation).

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

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

3.2 Transition regulations

	Conversion into REIT status
	– Exit tax payment – Tax losses carried forward are deductible from exit tax basis – Remaining losses are cancelled

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

- The parent company and the corporate subsidiaries which elect pay a mandatory exit tax (16.5% flat rate) on latent capital gains on properties and on interest in qualifying real estate partnerships. The exit tax is payable in four instalments (every December 15, for the first four years after election). Conversely, there is no taxation of the latent capital gains on participation held in qualifying corporate subsidiaries. However, there is a roll-over of tax basis on these latent capital gains;

- The latent capital gains on other assets are tax-exempt, but subject to roll-over tax basis;
- The tax losses carried forward are deductible from the exit tax basis and remaining losses are cancelled.

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

3.3 Registration duties

	Registration duties
	– Notary and land registration fees – VAT and/or registration duties

The French tax costs arising from property acquisition are:
- Notary fees equal to 0.825% of the property purchase price. These fees are negotiable only if they exceed EUR 80,000;
- Land registration fees amounting to 0.1% of the purchase price of the property;
- Depending on the nature of the property, either (i) a 19.6% VAT plus a 0.715% reduced registration duty, or (ii) registration duties at the standard 5.09% rate.

Property acquisition is either subject to VAT or registration duties in France:
- Pursuant to article 257-7 of the FTC, the French standard VAT of 19.6% applies to (i) property transfers that have been completed less than five years before the transfer date and that have never been transferred to persons other than estate assets traders before, (ii) property transfers of either land on which a building will be erected by a purchaser within four years from purchase or building that require totally reconstruction by the purchaser;
- The sale is subject to French registration duties at a rate of 5.09% liquidated on a fair market value of the properties if (i) the properties were built more than five years ago, and (ii) there is no intent to fully refurbish or rebuild these properties.

The acquisition of shares or interests in French unlisted subsidiaries or partnerships is subject to registration duties at the rate of 5%. The 5% registration duty does not apply to the transfer of shares from the subsidiary to the parent company since the latter is listed.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– Dividends and capital gains are taxed at a standard rate of 34.43% – Return of capital is normally tax-free	– Capital gains and 60% of the value of the dividends are subject to French income tax – The return of capital is normally tax-free	N/A

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

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

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

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

The tax treatment of capital gains arising from the sale of the SIIC shares differs depending on whether the capital gains are earned upon the sale of the listed parent company or upon the sale of its qualifying subsidiaries that have elected the SIIC regime.

Capital gains earned on the sale of the listed parent company shares are subject to corporate income taxes at the standard rate of 33.33% (34.43% including surcharges). The rate could be reduced to 16.5% (17.044% including surcharges) pursuant to the long-term capital gain tax regime if the shares have been held for at least two years and can be considered qualified participation (e.g. treated as participating shares for accounting purposes, which generally requires shareholding of 5% at least).

Capital gains arising from the sale of qualifying subsidiaries shares are subject to corporate income tax at the standard rate of 33.33% (34.43% including surcharges).

Individual shareholder
Dividends paid out of tax-exempt income and gains are subject to French income tax at a progressive rate and also to the 11% additional social contribution tax. However, SIIC shares may be held within the framework of a favorable tax stock investment scheme (*plan d'épargne en actions: PEA*). If so, the dividends from these shares would be income tax-exempt. However, social contribution tax of 11% would still be applicable. The tax exemption would only apply if all PEA income and gains from share disposal would be reinvested into the PEA for a minimum of five years.

Dividends paid out of taxable income and gains are also subject to French income taxes at a progressive tax rate as well as to the 11% additional social contribution tax.

As of January 01, 2006, dividends (paid out of either taxable or tax-exempt income/gains) received from a SIIC are subject to income tax on 60% only of their amount. Such dividends benefit also from a yearly allowance of EUR 1,525 for taxpayers filing separately or EUR 3,050 for couples filing jointly. This also gives rise to a tax credit of up to 50% of the distributed dividends within the limit of EUR 115 for taxpayers filing single/separately or EUR 230 for couples filing jointly. The 11% social contribution tax still applies to the full amount received (before the 40% tax allowance).

Alternatively, as of January 01, 2008, dividends may be subject upon election to a withholding tax at a flat rate of 18% (plus 11% social contributions). The tax basis is the dividend income received (no tax basis reduction is available). The election is irrevocable, but may apply only to a portion of the dividends received. However, the taxpayer, who elects for the 18% withholding tax for a portion of the dividends, loses the benefit of the 40% allowance for all the dividends received in the same calendar year.

French individuals deriving capital gains from the sale of SIIC shares are subject to an income tax at a flat rate of 18% if the realiSsed global value of security dispositions during the calendar year exceeds a threshold currently set at EUR 25,000 (per fiscal household). In addition, the capital gains are subject to the 11% social contribution tax.

A return of capital distribution is normally tax-free. However, any reduction of capital shares or share premium distributions will be treated as a tax-free return of capital only to the extent that all reserves or profits have already been distributed. The latter condition is not applicable to share redemption.

Withholding tax
In principle, dividends paid to French tax residents are not subject to a withholding tax.

4.2 Foreign shareholders

	Corporate shareholder	Individual shareholder	Withholding tax
	– Final withholding tax for dividends – 15% in the case of substantial participation	– Final withholding tax for dividends – 15% in the case of substantial participation	– Generally 25% withholding tax (or a reduced treaty tax rate) – EU Parent-Subsidiary Directive not applicable

Corporate and individual shareholders
Subject to applicable double tax treaty, dividends distributed by a French parent company or a qualifying subsidiary having elected for the SIIC regime are subject to a withholding tax at the rate of 25% when paid to non-resident shareholders. If the shareholders are resident of a treaty country, they may benefit from an exemption or a reduced withholding tax rate which is generally equal to 15% and such withholding tax is often creditable against the income tax liability in their home jurisdiction.

EU corporate shareholders owning more than 15% of SIIC shares are not eligible for the withholding tax exemption pursuant to the EU Parent-Subsidiary Directive to the extent that the received dividends are paid out of the tax exempt SIIC income.

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

Capital gains realised on the sale of the listed parent company shares are taxable in France at a flat rate of 16.5% rate only in case of substantial participation (more than 10%) and subject to double tax treaty.

Capital gains realised on the sale of qualifying subsidiaries' share that have elected for the SIIC regime are taxable in France at a flat rate of 33.33% and subject to double tax treaty.

4.3 Anti-Abuse Measures

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

Since January 01, 2007, there is a specific levy regime applicable to the dividends paid by the parent company to domestic or foreign shareholders under certain circumstances.

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

5 Tax treatment of foreign REITs and their domestic shareholders

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

Foreign REIT
In principle, the double tax treaty states that the income and gains deriving from property located in a foreign state are taxable in that foreign state.

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

Germany (G-REIT)

Maine River and the spectacular skyscrapers of Frankfurt, Germany.

1 General introduction

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

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

The REIT law came into force on June 01, 2007 with retroactive effect as of January 01, 2007. The REIT law is supported by changes in various tax laws, such as the German Income Tax Act and the Investment Tax Act.

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

Up to now two REITs are listed, and 11 companies are registered at the Federal Central Tax Office (Bundeszentralamt für Steuern) as pre-REITs. The listed companies, Alstria AG and Fair Value AG, have together a market capitalisation of approx. EUR 0.7 billion.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
G-REIT	2	0.6	0.2

German REITs

	Market cap (€m)	Sector type
Alstria Office REIT-AG	576	Office, Residential, Retail
Fair Value REIT-AG	61	Industrial, Office, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– G-REIT: Registration with the Commercial Register – Pre-REIT: Registration with the Federal Central Tax Office

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

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

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

With the exception of the exit tax rules, the taxation of the Pre-REIT follows the general tax rules applicable for corporations.

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

The pre-REIT must fulfil at the end of the business year following the year of registration and each consecutive year the following requirements:
- objectives of the pre-REIT must be limited to the objectives of a G-REIT;
- 75% of total assets must consist of immovable property;
- 75% of its gross earnings must be derived from renting, leasing, letting and disposal of real estate;
- a pre-REIT service company's assets may not exceed 20% of the pre-REIT's total assets;
- a pre-REIT service company's gross earnings may not exceed 20% of the pre-REIT's gross earnings.

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

2.2 Legal form / minimum share capital

	Legal form	Minimum share capital
	Joint stock company	EUR 15 million

Legal form
The only legal form which is permitted for a G-REIT is the joint stock company (Aktiengesellschaft - AG). The company's name must include the words "REIT-Aktiengesellschaft" or any other reference, which contains the words "Real Estate Investment Trust" or the abbreviation "REIT". Because

of its qualification as a joint stock company, the G-REIT is subject to the standard regulations of the Joint Stock Company Act and the Commercial Code. This is the case, unless the REIT Act specifically indicates otherwise.

Minimum share capital

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

2.3 Shareholder requirements / listing requirements

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

Shareholder requirements

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

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

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

Listing requirements

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

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

2.4 Asset levels / activity test

	Restrictions on activities / investments
	– 75% immovable property requirement – 75% immovable property income requirement

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

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

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

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

The G-REIT is allowed to hold German real estate via a German partnership, but not via a German corporation. A German corporation may only be held for such purposes if the company acts as an unlimited liable partner in a real property partnership without any participation in the property of the partnership (i.e. the corporation is a 0% general partner in the real estate partnership.) This refers to the structure of a GmbH & Co. KG, which is a partnership with an unlimited liable partner corporation. The partnership must have the same business objectives as the G-REIT itself.

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

2.5 Leverage

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

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

2.6 Profit distribution obligations

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

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

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

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

2.7 Sanctions

	Penalties / loss of status rules
	– Several penalties – Loss of REIT status

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

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

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

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

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

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

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

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

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

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

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

Withholding tax
Dividend distributions from REIT service companies to the G-REIT are in the first place subject to the standard withholding tax of currently 20%. 50% of this tax can be reclaimed by the G-REIT upon application.

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

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

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

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

3.2 Transition regulations

	Conversion to REIT status
	- 50% tax exemption on conversion into a G-REIT for eligible assets - 50% tax exemption on disposal of eligible assets to the G-REIT or pre-REIT

The G-REIT obtains tax exempt status at the beginning of the taxable year, in which the joint stock corporation has been registered as a G-REIT in the Commercial Register. This event is treated as a taxable liquidation of the (prior) taxable joint stock corporation. The conversion of a property company into a G-REIT is thus (always) a taxable event, and the REIT law does not provide for a tax-free conversion. However, in the case that real estate is transferred to a G-REIT by way of a conversion into G-REIT status, only 50% of the capital gain becomes taxable (so-called exit taxation) if the real estate asset was acquired/constructed by the converted entity before January 01, 2005, and further provided that the conversion is made with legal effect prior to January 01, 2010.

A seller is taxed on only 50% of the capital gain from the sale of German real property to a G-REIT or a pre-REIT, if (i) as of January 01, 2007, the property was an asset of a German business of the seller for a period of at least five years, (ii) the property was not considered inventory, and (iii) the purchase agreement was executed after December 31, 2006, and prior to January 01, 2010. The exit tax is also applicable for Sale-and-Lease-Back transactions.

The exit tax privilege will not be granted in case of certain transactions, which were tax privileged under other rules.

The exit tax privilege will retroactively be withdrawn if *inter alia* the G-REIT or pre-REIT disposes of the land and the buildings within four years of concluding the contracts as mentioned above or if the pre-REIT is not entered in the Commercial Register as a G-REIT within that time. The party acquiring the property will be jointly liable for the taxes, which arise as a result of losing the exit tax privilege.

3.3 Registration duties

	Registration duties
	Real estate transfer tax

The transfer of real estate to and from a G-REIT is not exempt from real estate transfer taxes of generally 3.5% of the sales price (Berlin: 4.5%). For real estate transfer tax the conversion of a corporation into a Pre-REIT or G-REIT is not regarded as a taxable event according to German tax principles. The same applies for the conversion of a limited liable company (GmbH) into a stock corporation (AG).

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

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

Corporate shareholder
The tax exemption rules for dividend income and capital gains from the disposal of shares are not applicable. Dividends received from a G-REIT and capital gains from the disposal of G-REIT shares are fully subject to corporate income tax at ordinary tax rates.

The taxation of dividends is irrespective of prior taxation of the underlying income. Prior taxation could include foreign G-REIT taxation or the taxation of a subsidiary or a partnership. Therefore in certain cases, the taxation of shareholders would result in double taxation from an economic point of view. It had been announced in the 2007 legislative process that certain double taxation should be avoided by an amendment of the REIT law in the course of 2007. Such changes were deferred into the year 2008 because of political differences how to deal with this issue.

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

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

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

Any dividends and capital gains realised by individuals as business income are fully subject to personal income tax.

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

4.2 Foreign shareholder

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

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

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

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

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

A double tax treaty may reduce the dividend withholding tax rate of totally 26.375% (25% withholding tax plus 5.5% surcharge on the tax). Most German tax treaties provide that foreign shareholders are entitled to a reduced withholding tax rate of 15% if they are domiciled in the other treaty state. An exemption to this rule is, for example, the double tax treaty with Ireland. It provides for a reduced withholding tax rate of 10% for portfolio investments. Entitlement to a refund also requires that the investor qualifies for the treaty benefit under the German anti-conduit rules.

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

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

5 Tax treatment of foreign REITs and their domestic shareholders

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

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

Corporate shareholder

As of January 01, 2008, dividends distributed from a qualified foreign REIT as defined by the REIT law are fully taxable at the corporate shareholder level (like in the case of dividends received from a G-REIT). A foreign REIT is qualified under the following cumulative requirements:

- the REIT is not domiciled in Germany;
- the gross assets of the REIT consists of more than 2/3 of immovable property;
- more than 2/3 of the gross earnings are derived from rental, leasing, letting and disposal of immovable property;
- the distribution of the REIT do not carry underlying foreign taxes like the German corporate income tax;
- the REIT is not under the supervision of a financial supervision commission;
- the shares of the REIT are listed at an organised market.

Dividends received from a non-qualifying foreign REIT are taxed according to general German tax principles depending on the qualifications of the foreign REIT as a corporation or transparent entity. If the non-qualifying REIT is under German tax principles a corporation, 95% of the dividends and capital gains from the disposal of the shares in the REIT would be tax-exempt at the level of the corporate shareholder.

Individual shareholder

As of January 01, 2009, dividends distributed from a qualifying foreign REIT as defined by the REIT Act, are taxable at the individual shareholder level with a flat rate of 25% plus solidarity surcharge (like in the case of dividends received from a G-REIT). Dividends received from a non-qualifying foreign REIT are taxed according to German tax principles depending on the qualifications of the foreign REIT as a corporation or transparent entity. If the non-qualifying REIT is under German tax principles a corporation, dividends and capital gains from the disposal of the shares would be subject to taxation at the level of the individual shareholder with a flat rate of 25% plus solidarity surcharge. ■

Greece (REIC)

Aerial view on Athens, Greece.

1 General introduction

	Enacted year	Citation	REIT type
REIC	1999	L.2778/1999 (REIT Law)	Corporate type (Shows some characteristics of a REIT)

Greek Law recognises the legal forms of Real Estate Mutual Funds (REMF) and Real Estate Investment Companies (REIC) which are basically regulated by L.2778/1999 (hereafter 'REIT law'). Although the exact term 'REIT' does not exist in the Greek legislation, the REIC could be qualified as such. It is to be discussed in greater detail in the following sections.

The REIT law was introduced in December 1999 and has been amended thereafter by L. 2992/ 2002.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
REIC	2	0.6	0.1

Top five REITs

	Market cap (€m)	Sector type
Eurobank Properties Real Estate Investment Co	469	Industrial, Logistic, Office, Parking, Retail
Piraeus Real Estate Investment Trust	90	Infrastructure, Office, Parking, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Prior operating licence issued by the Hellenic Capital Market Commission required – Functions are supervised and regulated accordingly

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

Its operating activity must solely consist of managing a portfolio of marketable securities and real estate. Its investments in securities (other than real estate) are monitored by a Greek-based custodian bank.

A thorough description of investment policy and real estate use must be submitted to the Hellenic Capital Market Commission for the issuance of the REIC's operating licence.

An REIC must file an application for its listing in the Greek Stock Exchange or in another EU Stock Exchange within one year of its incorporation.

For an REIC to be considered Greek and hence be regulated by REIT Law, its statutory seat must be in Greece. There are no provisions in Greek law, which define a company as foreign if its management is seated abroad. Nevertheless, this scenario should be avoided in order prevent the authorities from questioning the nationality of the company.

It should be noted that no foreign managing company (even an EU company) may be the manager of a Greek REIT. This is attributed to the fact that no EU regulatory legal framework regarding real estate investments exists. Thus, the EU 'passport' given to investment managing companies, banks, etc. does not apply for real estate investment management companies. In order for the REIT law to apply, the management company must be a Greek resident.

REICs investments in securities (not in real estate) must be supervised by a custodian bank operating in Greece.

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

2.2 Legal form / minimum share capital

	Legal form	Minimum hare capital
	Joint stock corporation	Approx. EUR 29 million

Legal form
An REIC must have the legal form of a *Société Anonyme* listed in the Greek Stock Exchange or another EU Stock Exchange.

Minimum share capital
The required minimum share capital amounts to EUR 29,347,028.61.

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	Acquisition of shares by founders, shareholders, Board Members, CEOs and their relatives is not allowed	Yes

Shareholder requirements
The acquisition of the REIC's shares by its founders, shareholders, Board of Director Members, CEOs, and by their relatives up to the third degree is forbidden.

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

Listing requirements
The REIC's stocks must be listed either on the Athens Stock Exchange or another EU Stock Exchange.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– At least 80% of the total assets must be real estate. – Investment in marketable securities should not exceed 10% of total assets – Greek REICs may invest in at least 90% of the shares of Societes Anonymes (A.E.) having as special purpose the real estate investments – Real estate assets serving its operational needs are limited to 10% of these assets plus real estate assets – May invest abroad. – Investments in non EU-members states may not exceed 10% of total real estate investments – May invest abroad. – May invest in a single property

At least 80% of the total assets must consist of real estate, cash, bank deposits and/or securities of equal liquidity.

Greek REICs may invest in at least 90% of the shares of *Sociétés Anonymes* (A.E.), having real estate investments as their special purpose, and of which the total capital is invested in real estate situated in Greece or the EU, which is owned by the company as full or bare owner, or as a beneficial owner (usufractuary) and that may be used for business facilities or for other commercial or industrial purposes. Real estate situated in third countries may also be included, provided that it does not exceed the 10% of total real estate investments of the company (art.17 par.3 L.3581/2007).

Greek REICs are no longer required to maintain the 10% of total assets in investments in cash, bank deposits and securities (art. 17 par.2 L.3581/2007).

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

For REIT law purposes, by ‘real estate’ is meant real estate situated in Greece or the EU, which is owned by the company as full or bare owner or as a beneficial owner (usufractuary) and that may be used for business facilities or for other commercial or industrial purposes. Real estate situated in third countries may also be included, provided that it does not exceed the 10% of total real estate investments of the company.

The REIC is only allowed to invest a maximum portion of 10% of the company’s assets in ‘securities’. There are no legal restrictions if the securities consist of a subsidiary’s shares. Regarding a partnership structure, the shares would no longer be considered ‘securities’. Hence, such investment is not allowed.

The word ‘securities’ means stocks, bonds, mutual funds, treasury bonds, deposit certificates etc.

A Greek REIC may invest in a single property.

2.5 Leverage

	Leverage
	– Must not exceed 50% of the REIC’s assets – Must not exceed 25% of total real estate investments – Specific 10% of total net equity rule for the purchase of real estate

Financing through either loans or credits must not exceed 50% of the REIC’s assets (art. 17 par. 5 Law 3581/2007).

Loans received by the REIC for the purchase of real estate must not exceed 10% of the total net equity of the REIC minus the total investments in real estate. The value of such loans is not included in the 25% threshold mentioned above.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	35% of its annual net profits	No obligation	Annually

Operative income
The REIC should generally distribute at least 35% of its annual net profits to its shareholders. The distribution of a lesser percentage or no distribution at all is only allowed pursuant to a Shareholders Meeting Resolution (provided a clause exists in the REIC Articles of Association for the creation of a tax-free reserve or for the distribution of free shares accompanied by a share capital increase).

Capital gains
The capital gains do not need to be distributed. By virtue of a resolution of the General Assembly of Shareholders of the REIC, the capital gains may be allocated in a special reserve for the coverage of losses from the sale of securities at a price lower than the acquisition price. Such allocation is obligatory terminated when the reserve reaches the 300% of the value of the REIC's investments in securities.

2.7 Sanctions

	Penalties / loss of status rules
	– Violations may trigger the imposition of penalties – No loss of REIT status

The REIC would not lose its tax status if it deviates from its obligations according to the applicable law.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Assets and funds taxes at 10% of European Central Bank (ECB) interest rates plus 1%	Tax-exempt	N/A

Current income
According to a recently approved law (L. 3522/2006), REICs are subject to a special taxation rate, which amounts to 10% of the European Central Bank (ECB) interest rates in force (Reference Interest Rate) increased by 1% and is calculated upon the average of their investments plus any available funds (cash and securities), at their current value, as depicted in their six-month investment tables (So at a 4% ECB interest rate, the tax rate would be 0.5%). The tax is payable by the REIC. Its shareholders have no further tax liability. Should a change of the Reference Interest Rate occur, a new taxation basis would be valid (starting the first day of the month following the stated amendment). The amendment above is valid for income received from January 01, 2007 onwards.

Capital gains
A REIC is not taxed on capital gains.

Other taxes
No real estate tax is imposed upon the real estate assets owned by the REIC, unless such real estate is self-used by the REIC for its own activities.

Following the listing stock exchange market, a transaction tax (not capital gains tax) will be levied upon the sale of any listed shares rated at 0.15% on the transfer value of the shares.

Withholding tax
According to a recently voted law (L. 3522/2006) the following has been introduced: Income generated from foreign or Greek securities is not subject to any Greek withholding tax upon repatriation. However, especially in case of interest from bond loans, the said tax exemption is valid, provided that the bonds were acquired at least 30 days before the due payment date of the interest (in case this condition is not met, then a 10% withholding tax is imposed on the interest income, exhausting the tax liability of the REIC). The above amendment is valid for income received as from January 01, 2007 onwards. Income tax treaties do not apply to reduce the rate of withholding.

Accounting rules
The REIC must observe Greek GAAP rules until it is officially listed on a stock exchange. Then, it has to start observing the IFRS rules.

3.2 Transition regulations

	Conversion into REIT status
	Tax benefits upon absorption of real estate companies.

Greek REICs enjoy the tax benefits provided by L.2166/1993 upon absorption of other Greek companies owning real estate (art.17 par.6 L.3581/2007).

3.3 Registration duties

	Registration duties
	Exemption from any Greek tax and stamp duties

The REIC is exempt from any Greek tax, duties, stamp duties, or any kind of liabilities *vis a vis* the State, public organisations or third parties.

The transfer of real estate by the REIC is subject to real estate transfer tax which is borne by the buyer, rated at 9% up to a tax base of EUR 15,000 and 9% for the amount exceeding the EUR 15,000.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Tax-exempt	Tax-exempt	N/A

Corporate shareholder
The dividends distributed by the REIC are tax-exempt. Capital Gains are also tax-exempt.

Individual shareholder
The dividends distributed by the REIC are tax-exempt. Capital Gains are also tax-exempt.

Withholding tax
N/A

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Tax-exempt	Tax-exempt	N/A

Corporate shareholder
The dividends distributed by the REIC are tax-exempt. Capital Gains are also tax-exempt.

Individual shareholder
The dividends distributed by the REIC are tax-exempt. Capital Gains are also tax-exempt.

Withholding tax
No withholding tax levied.

5 Treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	No specific tax privilege	No specific tax privilege for foreign corporate REIT type	No specific tax privilege for foreign corporate REIT type

Foreign REIT
The Greek REIT law only applies to Greek REICs and does not cover the cases of foreign rates. Thus, due to the lack of specific law provisions simulating the foreign REITs with the Greek REITs, a foreign REIT will be taxed for its Greek source income either pursuant to the General corporate tax provisions or pursuant to the tax regime of mutual funds, depending on whether the foreign REIT has the specifications of a mutual fund as set by Greek law or not. The exemptions provided by the special Greek REIT law may not be applicable as such in principle.

Specifically, where a foreign REIT fulfills the specifications provided in Greek law for the mutual fund status, the income from Greek or EU mutual funds as well as the capital gains from the sale of the participation in the mutual fund by the beneficiaries at a price higher than the acquisition price are in principle income tax-exempt (apart from certain exemptions).

On the contrary, where a foreign REIT may not qualify as a mutual fund as per Greek law provisions, it will be subject to 25% Greek corporate income tax for its Greek income, plus the special 3% tax on rental income as well as to all the Greek duties, Greek real estate transfer tax, Greek real estate tax etc. unless prevailing provisions of an applicable Treaty for the Avoidance of Double Taxation provide otherwise.

It should be remarked that issues of discrimination among Greek real estate mutual funds and REITs of other EU member countries arise from the above mentioned treatment.

To sum up, the exact treatment should be handled on a case-by-case basis.

Domestic corporate shareholder
The tax treatment in this case follows the regime of the REIT as analysed above. Namely, if the foreign REIT is considered as having a mutual fund status, dividend distributions to domestic shareholders will be tax-exempt.

On the contrary, where the REIT is treated as a foreign company, dividends received by domestic corporate shareholders will be considered as securities income and taxed at a rate of 25%, with the right to offset any withholding tax and underlying tax paid abroad up to the Greek tax rate (25%), unless prevailing provisions of an applicable Treaty for the Avoidance of Double Taxation provide otherwise.

Domestic individual shareholders
Again in this case the tax exemption applies in case the foreign REIT concentrates the characteristics of a mutual fund as per Greek law.

Otherwise, where the REIT is treated as a foreign company, dividends received by domestic individual shareholders will be considered as securities income and taxed according to the general tax scale (0-40%) along with the rest of the individual's Greek income, with the right to offset any withholding tax (not underlying tax) paid abroad up to the Greek tax rate, unless prevailing provisions of an applicable Treaty for the Avoidance of Double Taxation provide otherwise.

Again, the exact treatment should be handled on a case-by-case basis. ■

Israel (REIF)

Festival of Succot in the Old City of Jerusalem, Israel.

1 General introduction

	Enacted year	Citation	REIT type
REIF	2006	Sections 64A2-64A11 of the Israeli Tax Ordinance	Corporate type

The REIF (Real Estate Investment Fund) regime was introduced into the Israeli tax legislation in 2006. The Israeli REIF is a 'flow through' regime. As a result, each of the REIF investors is taxed on the distributed REIF incomes.

The REIF is governed by Sections 64A2-64A11 to the Israeli Tax Ordinance.

In this model, institutional investors are exempt from corporate tax on the income from the REIF, and corporations that invest in the REIF are subject to corporate taxes at ordinary rates (27% in 2008 as gradually reduced to 25% by 2010). Individuals are subject to ordinary individual tax rate, scheduled to be reduced to 44% by 2010.

Until May 2008, only one company elected for REIF status. The market capitalisation of this company is about 400 million NIS (US$ 115 million).

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Special purpose company required – Controlled and managed from Israel

The REIF regime applies only to a new company that is established for this purpose. The new company must be incorporated in Israel and must be controlled and managed from Israel.

2.2 Legal form / minimum share capital

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

Legal form
A REIF must be a public company listed for trade in the Israeli stock exchange (TASE). It must be tax-resident in Israel. It may not be a resident in another country. The REIF Subsidiaries can be resident outside Israel, but 75% of the value of the income-yielding real estate of the REIF must be located in Israel.

Minimum share capital
No minimum share capital required.

2.3 Shareholder requirements /listing requirements

	Shareholder requirements	Listing mandatory
	At least 50% of the company's means of control should be held by more than five shareholders	Yes

Shareholder requirements
At least 50% of the company's means of control should be held by more than five shareholders. 'Means of control' is defined as one of the following: the right to profit, the right to appoint director or manager in the company or similar function, voting rights, the rights to liquidation proceeds, or the power to order or instruct someone who holds any of the rights listed above to act on his behalf.

The company must meet these conditions on the testing dates, June 30 and December 31 of each year.

Listing requirements
The company must be list for trade in the Israeli stock exchange (Tel-Aviv) within a period of 12 months from the date of incorporation. The REIF may also dually list abroad.

2.4 Asset levels

	Restrictions on activities / investments
	– 95% or more of the value of the REIF's assets must consist of income-yielding real estate and liquid assets (cash, deposit etc.) – 75% or more of the value of the REIF's assets must consist of income-yielding real estate – The value of the income-yielding real estate exceeds 200 million NIS (approximately $50 million) – 75% of the value of the income-yielding real estate must be located in Israel

The REIF must meet the following conditions on the testing dates each year:
- 95% or more of the value of the REIF's assets must consist of income-yielding real estate and liquid assets (cash, deposit etc.);
- 75% or more of the value of the REIF's assets must consist of income-yielding real estate;
- The value of the income-yielding real estate exceeds 200 million NIS (approximately $50 million);
- 75% of the value of the income-yielding real estate must be located in Israel.

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

2.5 Leverage

	Leverage
	Debit is limited to 60% of the income-yielding real estate's value

The company's obligations (other than equity) do not exceed 60% of the income-yielding real estate's value.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	90% of its profits plus amount of depreciation	100% of its capital gain from disposal of real estate	– Distribution of the operating income must take place no later than April 30 of the following year – Distribution of the capital gain must take place in a period of 12 months from the sales date of the real estate

Operative income
The REIF is obliged to distribute 90% of its profits calculated based on accounting principles, including the amount equal to the depreciation.

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

Timing
Distribution of the operating income must take place no later than April 30 of the following year. Distribution of the capital gain must take place in a period of 12 months from the sales date of the real estate.

2.7 Sanctions

	Penalties / loss of status rules
	Loss of tax privilege

The REIT will be taxed like an ordinary company from the date that requirements are no longer met. If the company fails to meet the conditions on the testing dates in any given year but, within a period of up to three months, successfully meets the conditions and continues to do so for a consecutive year, the company will be considered a REIF throughout the entire period.

REIFs that do not meet the requirements or choose to discontinue REIF status will be taxed as ordinary company from the end of the year, in the case of election, or from the date that requirements are no longer met.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	– No taxation of distributed eligible income – Undistributed prohibited income subject to 60% tax rate. In case of distribution 70% tax rate	Distributed capital gains tax-exempt	– Deduction only if levied on taxable income – No domestic withholding tax

Current income
The REIF is a 'flow through' regime. However, the fund is subject to corporate taxes on undistributed income.

A 70% tax rate applies to 'prohibited income' upon distribution; 60% if not distributed.

'Prohibited income' is defined as income from business activities other than the following: income-yielding real estate; income from the sale of inventory (real estate or otherwise) or the sale of other real estate that is not income-yielding real estate; or income from traded securities, state bonds and deposits to the extent that such income exceeds 5% of the revenues of the fund in that tax year.

Prohibited income, which is not distributed is subject to 60% tax. Distribution of the prohibited income in later years will be consider as dividend distribution and is subject to 20%/25% withholding tax. No credit will be granted to the shareholders for the REIF taxation.

The REIF must submit an annual tax return which includes an accountant affirmation that the company has met all the conditions of an REIF.

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

Withholding tax
Foreign taxes paid by the REIF will be deducted from the foreign taxable income which was subject to the foreign taxes. Also, no foreign tax credit will be granted to the REIF or to the REIF shareholders. No withholding tax is levied on domestic distributions to a REIF.

Accounting rules
There are no special accounting rules for REIF. Listed REIF must follow the IFRS rules, as any other listed company.

3.2 Transition regulations

	Conversion into REIF status
	N/A

3.3 Registration duties

	Registration duties
	Reduced real estate 'purchase tax'

The purchase of real estate by a REIF is subject to a reduced real estate 'purchase tax', a special tax levied upon the acquisition of real estate.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– Corporate tax is 27% in 2008 – Capital gains tax is 25%	– Individual tax rate is 47% in 2008 – Capital gains tax is 20%	In principle, no final withholding tax

Corporate shareholder
The REIF income is subject to corporate tax. The corporate tax rate of 2008 is 27%. The corporate tax rate will be reduced gradually to 26% in 2009, and finally to 25% in 2010.

Individual shareholder
The REIF income is subject to individual tax. The maximum individual tax rate in 2008 is 47%. The individual tax rate will be reduced gradually to 46% in, 2009 and to 44% in 2010.

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

The withholding is not the final obligation – the shareholder must submit an annually tax return which reflects his real taxable income (including losses), credit will be granted for the withholding tax that was made by the REIF.

Distribution of prohibited income will be subject to 70% withholding tax. Distribution of the prohibited income in later years will be considered as dividend distribution and will be subject to 20%/25% withholding tax.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– Withholding tax subject to tax rates applicable for Israeli companies – 'Prohibited income' which is not distributed subject to 60% tax	– Withholding tax subject to tax rates applicable for Israeli individual – 'Prohibited income' which is not distributed subject to 60% tax	– Final withholding tax – Treaty relief available to distributions of 'Prohibited income' in later years

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

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

Withholding tax
Treaty relief should be granted for distribution of the prohibited income in later years which are considered as dividend distribution.

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	Taxed under normal Israeli tax rules	– Taxed at corporate tax rate of 27% in 2008 if REIT is a 'flow through entity' – Dividend is subject to 25% tax if the REIT is not a 'flow through entity'	– Taxed at 47% in 2008 if REIT is a 'flow through entity' – Dividend income will be subject to 20/25% tax if the REIT is not a 'flow through entity'

Foreign REIT

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

Corporate shareholders

A corporate shareholder in a foreign REIT, which derived taxable income from foreign sources should be subject to corporate income tax in the rate of 27% in 2008 as long as the REIT will be consider as 'flow through' entity for Israeli tax purposes (regardless of its election under foreign country rules).

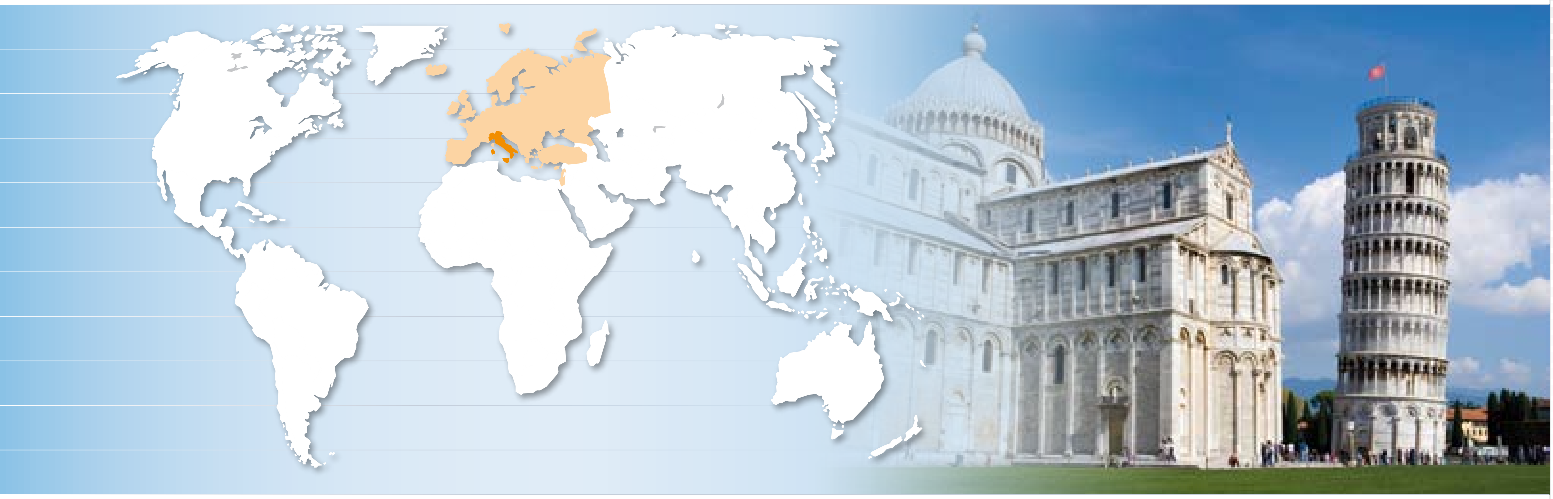
Dividend income should be subject to 25% tax. If the foreign REIT is not a 'flow through', a tax credit will be allowed.

Individual shareholder

An individual shareholder in a foreign REIT which derives taxable income from foreign sources, will be subject to individual income tax in the rate of 47% in 2008, as long as the REIT is considered as 'flow through' entity.

Dividend income will be subject to 20%/25% tax. If the foreign REIT is not a 'flow through' entity, a tax credit will be allowed.

Italy (SIIQ)



Leaning Tower of Pisa, Italy.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
SIIQ	2007	Italian Real Estate Investing Corporations with listed Shares (SIIQ)	Corporate type	To be established

In December 2006, a new real estate investment regime was implemented in the Italian legislation. The new regime, applicable to the *Società d'Intermediazione Immobiliari Quotate* 'SIIQ', is effective as of July 01, 2007. The introduction of this regime was aimed to attract investments in the Italian real estate market. Consequently, the new REIT regime is supplementary to the pre-existing real estate investment fund regime ('REIF'). The REIT allows investors to have greater influence in the effective management of the companies, especially in terms of investments and governance. According to the pre-existing REIF, investors were excluded from the decision making that concerned the investment fund.

The new SIIQ regime was introduced by the 2007 Italian Budget Law. However, the regulatory provisions were implemented on October 2007 by means of a Ministerial Decree. In addition, in November 2007, the Revenue's Office issued a measure that effectively introduced the possibility to opt for the application of the SIIQ tax regime.

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– The election form must be filed before the end of the fiscal year preceding the one in which it is intended to take effect. – The option must be jointly exercised by all the companies that elected the SIIQ fiscal unit regime.

The election for the SIIQ regime must be made thought the electronic filing of the specific authorised form published by the Italian Revenue. The electronic filing should be made before the fiscal year in which the option will be effective starts. It is not necessary that all the mandatory requirements for the adoption of the SIIQ are complied with at the date of the filing, but they must be met at the beginning of the first fiscal year in which the option will be effective.

If any of the formal requirements to benefit from the regime is no longer complied with, the taxpayer must inform the Revenue office by filing the specific form within 30 days of the relevant change. This communication will imply the exiting from the SIIQ regime.

2.2 Legal form / minimum share capital

	Legal form	Minimum share capital
	Joint stock company	EUR 40 million

Legal form
The joint stock corporation (*Società per Azioni*) is the only legal form which can apply for SIIQ status. The company's name must include the words "*Società d'Investimento Immobiliare Quotata*" or 'SIIQ'. According to the joint stock corporation qualification, SIIQs are subject to the regulations of the Italian Commercial Code.

Minimum share capital
The minimum capital required to constitute a joint stock corporation is currently EUR 120,000. However, only corporations which have at least a EUR 40 million capital share can be admitted to the quotation into the Italian stock exchange official market. It should be noted that certain exceptions are applicable in particular circumstances. Considering the nature of SIIQ entities, it is possible that the legislation will someday increase the minimum capital requirement.

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	– At least 35% of the shares must be "widely held" – A single shareholder is not allowed to own more than 51% of the voting rights	Yes

Shareholder requirements
At least 35% of the SIIQ shares must be widely held. This means that the shares must be owned by shareholders which individually - directly or indirectly - hold no more than 2% of both voting and dividend rights. It is worth nothing that the 2% threshold is only necessary for access to the SIIQ regime, but it does not affect the validity of the SIIQ regime once sit has started. In addition, a single shareholder may not hold, directly or indirectly, over 51% of the voting and dividend rights.

Listing requirements
SIIQ shares must be listed in the Italian stock exchange market (*Borsa Italiana*), or in the equivalent exchange markets of the EU and EFTA countries, provided that a sufficient exchange of information with the Italian tax authorities is allowed.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– 80% real estate asset requirement – 80% real estate income requirement

At least 80% of the SIIQ's assets must consist of real property and at least 80% of its income must result from rental and leasing activities of real property. Financial leased assets are included in the 80% asset ratio.

SIIQs are allowed to invest in other Italian listed or unlisted corporations as long as the above mentioned assets and activity test criteria are met. The companies must also apply for the REIT regime. A SIIQ, or a multiple SIIQs, must hold at least 95% of the shares of an unlisted corporation in order to allow the unlisted corporation to qualify for the REIT regime (the unlisted corporation should, in any case, meet the minimum assets and income requirements to be included into multiple SIIQs regime). The shared real estate asset values of the SIIQs can be combined to meet the 80% real estate asset requirement.

There are no specific restrictions regarding the activities that may be performed by the SIIQ. However, only the income deriving from rental and leasing activities would be exempt of taxation. SIIQ entities benefit from a favourable 'flow-through' tax treatment (20% or 15% substitutive taxation when distributed). Income derived from other activities, including income from trading real property assets, is subject to ordinary taxes.

Development income would not be eligible for the tax exemption. This also applies to investments in foreign assets.

2.5 Leverage

	Leverage
	No specific restrictions

There are no specific leverage limitations for SIIQs. However, SIIQ are subject to the general rule of interest deductibility. Interest payable is limited to a 30% of the EBITDA with certain adjustments (i.e. EBITDA disregarding the asset leasing and depreciation expenses).

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	85% derived from real estate rental or leasing	Capital gains distribution requirements not yet implemented	Annually

Operative income
SIIQs are obliged to distribute at least 85% of their income deriving from rental or leasing of real estate. SIIQs are also obliged to distribute dividend income received from other SIIQs or under a multi-SIIQ regime.

Capital gains
No SIIQ capital gains distribution requirement has been implemented.

2.7 Sanctions

	Penalties / loss of status rules
	Termination of tax benefits

There are no specific sanctions concerning the loss of SIIQ status. The only consequence deriving from a qualifying requirement violation consists of the termination of the SIIQ tax benefits from the year following the one in which the qualification requirement was violated.

The SIIQ can lose its status if it does not distribute at least 85% of the total net profit, if it fails to meet the abovementioned shareholder requirements, or if it does not meet the asset requirement for two consecutive years.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Eligible income is tax-exempt	Ordinary corporate taxation	N/A

Current income
The SIIQ income deriving from rental or leasing activities is not subject to corporate and local income taxes. The tax exemption applies as of the beginning of the business year in which the SIIQ regime was elected. The tax exemption also applies to the rental income of SIIQ subsidiaries (if they opted for the SIIQ regime jointly with the parent SIIQ). In this case, the subsidiary must also satisfy the SIIQ requirement (with the sole exception of the listing condition).

Income deriving from activities other than real property rental or leasing are subject to ordinary corporate and local tax provisions.

Capital gains
Capital gains are fully taxable according to the ordinary capital gain provision. However the entry tax would mitigate the incoming capital gains.

Other taxes
Excluding income taxes, rental income and other taxes will be ordinarily levied.

Withholding tax
No withholding tax is levied on distributions received by REIT.

Accounting rules
Since SIIQ's are Italian public listed companies, they must comply with IFRS standards.

3.2 Transition regulations

	Conversion into REIT status
	– 20% substitute tax on real property contributed to SIIQ – 20% substitute tax on conversion 'entry tax'

Real property contributed to a SIIQ (in exchange for shares) will be subject to a 20% substitute tax on realised gains, provided that the SIIQ will keep the acquired assets for a minimum three-year period.

Companies that choose to convert to SIIQs will benefit from the opportunity of increasing their real estate asset's tax value (effective as of the fourth period following the SIIQ election). The increase in value would be subject to a favourable 20% substitute tax payable in five annual equal instalments. If the assets were to be sold before the date of the step-up re-evaluation, the capital gain would be recapped at the ordinary tax rate (i.e. 27.5% Corporate Income Tax and ordinary 3.9% local tax). The local tax rates vary on a regional basis between 2.9% to 4,9%. Thus, applying for the SIIQ regime offers the opportunity of reducing the tax burden on latent capital gains.

3.3 Registration duties

	Registration duties
	– Industrial buildings: subject to a 20% VAT and to 8.5% transfer taxes – Residential buildings: subject to 8.5% transfer taxes with some exceptions – Registration duties can be avoided

Indirect taxes are applied to the transfers of real estate property to an SIIQ as follows:
- Industrial buildings (owned for business purposes) are subject to VAT at the regular 20% rate. In addition, a 1.5% mortgage tax and 0.5% cadastral tax are due.

- Residential buildings are subject to a 7% registration tax, 2% mortgage tax and to a 1% cadastral tax. The duties may be avoided if the residential buildings were transferred from their constructor. In this case, the constructor would be responsible for the VAT, which is generally 10% but it depends on the building qualification.
- They are normally due at 2% (mortgage tax) and 1% (cadastral tax) for residential buildings while if related to industrial buildings they are subject to a 3% mortgage tax and to a 1% cadastral tax but only in case of industrial buildings contributed to a SIIQ these taxes are reduced at 1.5% and 0.5%.

The most favourable treatment occurs in case of a transfer of more than one real estate property. If the majority of the properties have an existing rental or lease agreement, the transfer of all the assets involved would be only subject to mortgage and cadastral taxes at the fixed amount of EUR 168 each.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Fully taxable	– Generally withholding tax is the final levied for SIIQ exempted income – Dividends paid-out of the non-exempted income will be subject to ordinary dividend taxation rules – Possible taxation of capital gains	– 20% withholding tax of the distribution of exempted SIIQ income – Corporate and business shareholders can credit the withheld taxes

Corporate shareholder
Corporate shareholder dividends and capital gains are not tax-exempt. Dividend income and capital gains resulting from the disposal of SIIQ shares are fully subject to corporate and trade income taxes at regular tax rates.

Individual shareholder
Dividends paid-out of non-exempted income are subject to the ordinary applicable tax regime. Dividends deriving from exempted distributed earnings will be subject to final 20% withholding tax when distributed.

According to the ordinary personal income tax provision, dividends are fully taxable if the SIIQ shares are held for ordinary business purposes. The 20% taxes withheld at distribution may be credited against individual income taxes.

The general dividends and capital gains tax rules for individuals are as follows:
- non-affiliated shareholders will pay 12.5% substitute tax;
- capital gains realised by affiliated shareholders would be 60% tax-exempt from personal income taxes, the residual 40% would be taxed at regular individual income tax rates.

Other taxes
No other taxes are levied.

Withholding tax
A 20% withholding tax will apply on dividends paid out of the tax-exempt income. The withholding tax can be reduced to a 15% rate under certain circumstances, at dividends originating from residential building leases. Corporate and business shareholders can credit the withheld taxes. The withholding tax will be levied by the intermediate that maintains the SIIQ shares as an Italian investing agent.

4.2 Foreign shareholders

	Corporate shareholder	Individual shareholder	Withholding tax
	Withholding tax is the final levy	Withholding tax is the final levy	- Treaty relief benefits not yet verified - Applicability of Parent Subsidiary Directive not yet verified

Corporate shareholder
Dividends paid out of non-exempted income are subject to the ordinary tax regime that foresees a 27% withholding tax that may be reduced under certain circumstances. Said withholding tax rate may be reduced to a 1.375% rate where the dividends are paid to companies resident in the EU or in an EFTA country, provided that a sufficient exchange of information with Italian Tax authority exists.

Dividends deriving from exempted distributed earnings will be subject to a final 20% withholding tax when distributed. The withholding tax can be reduced to a 15% rate when the dividends derive from residential building leases income.

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

Individual shareholder
Dividends paid out of non-exempted income are subject to the ordinary applicable tax regime which provides for a 27% withholding tax that may be reduced under certain circumstances. Dividends deriving from exempted distributed earnings will be subject to a final 20% withholding tax when distributed. The withholding tax can be reduced to a 15% rate if the dividends derive from residential building leases.

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

It is not clear whether foreign shareholders may benefit from tax treaty relief on the dividends derived by exempted income of SIIQ. This would depend, among other circumstances, on whether the SIIQ may qualify as an eligible entity under the specific tax treaty provision. Moreover clearance may be obtained by submitting a specific ruling on this point.

The applicability of the Parent-Subsidiary Directive under the SIIQ regime has not been yet clarified. The application of the Directive may be conditioned by the liability-to-tax requirements. However, some scholars have already pointed out that the liability-to-tax requirements should be met in case the tax exemption would be referable only to a particular portion of the income (as occurs in the SIIQ regime).

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	It follows the ordinary source taxation rule at rate of 27.5%	1.375% final taxation	12.5% final tax or 60% of exemption depending on the number of the shares held

Foreign REIT
It follows the ordinary source income taxation rule applicable to non-residents. As a consequence, any income deriving from immovable property situated in Italy will be subject to the general 27.5% tax rate applicable to non-resident entities.

Corporate shareholder
Domestic corporate shareholder receiving dividend income from a foreign REIT will benefit of a 95% exemption. The remaining 5% will be taxed at the ordinary 27.5% corporate tax rate. Thus, domestic taxation of dividends received by a foreign REIT will be equal to 1.375%. The only exception concerns REIT that will be deemed resident in a black-listed country. In this case, the 95% exemption would no longer apply and the full amount of the dividend distributed will be subjected to a 27.5% ordinary corporate tax rate.

Individual shareholder
Domestic shareholders receiving dividends by foreign REIT will pay tax as follows:

- In case of non-affiliated shareholders, dividends received will be subject to a final 12.5% tax levied on the total amount. In this scenario, the withholding tax levied at source is not creditable under domestic taxation.
- In case of affiliated shareholder, dividends received will be subject to ordinary individual taxations brackets only on 40% of their amount. In this case foreign withholding tax may be credited.

Lithuania (REIT)

Vilnius Cathedral and belfry tower in the Cathedral square, central Vilnius, Lithuania.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
REIT	2008	Law on Collective Investment Undertakings	Corporate type	To be established

On the November 11, 2007, the Lithuanian Parliament amended the Law on Collective Investment Undertakings, which came into force on March 01, 2008. The law regulates management activities of collective investment undertakings, and therefore the activities of Real Estate Investment Trusts (the REIT).

Since the Law on Collective Investment Undertakings does not provide for a new form of entity, a REIT is incorporated as a joint stock company under the Lithuanian company law or an investment fund, managed by a management company.

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Special collective investment undertaking status required – Licence from the Lithuanian Securities Commission

In order to become eligible to the regime, companies are required to have special collective investment undertaking status, which could be either (1) a variable capital (open-ended) investment company or (2) a closed-ended investment company.

A variable capital (open-ended) investment company is defined as a company whose shareholders have the right to request at any time that their shares be redeemed, and the amount of whose capital varies depending on the issue and redemption of shares.

A closed-ended investment company is defined as a company with a fixed number of shares outstanding that are re-purchased after the end of its activity or any other event indicated in the articles of incorporation, and are not redeemed upon the request of the investor.

In order to have the status of the REIT, the company has to obtain a licence from the Lithuanian Securities Commission. The application for the licence shall be accompanied by the information about the company, its shareholders, members of the management bodies, the company's programme for of development activities, initial capital and other documents, information and explanations specified in the licencing regulations approved by the Securities Commission.

The bylaws of the REIT must contain a number of specific provisions that are verified by the Securities Commission during the procedure of granting a licence for the activities of the special collective investment company or closed-ended investment company.

The Securities Commission shall notify the applicant of its consent or refusal to grant a licence within six months from the filing of all documents, information and explanations. In case the applicant company is related to a management company, an intermediary of public trading in securities, a credit institution or an insurance company licenced in another European Union member state a licence may be granted only upon asking for the opinion of the foreign supervisory authority.

2.2 Legal form / minimum share capital

	Legal form	Minimum share capital
	Joint stock company or investment fund managed by a management company	150,000 LTL (approx. EUR 43,500) 431,600 LTL (EUR 125,000) for the management company

Legal form
A REIT should have a form of either (1) a joint stock company incorporated under the Lithuanian law, or (2) an investment fund managed by a management company. Additional statutory and management seat requirements apply.

Minimum share capital
The share capital (monetary contributions of founders) of a REIT as a joint stock company should be not less than 150,000 LTL (approx. EUR 43,500). However, the management company is required to have a share capital of 431,600 LTL (EUR 125,000).

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	No requirements	No

Shareholder requirements
There are no specific shareholder conditions that have to be fulfilled to become eligible for the REIT status.

However, restrictions apply for a distribution of REIT's units or shares in another Member State of the EU.

Listing requirements
Listing is not a mandatory requirement to obtain the REIT status. Private REITs are allowed.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– No more than 20% of its net assets in securities of other companies; – No more than 30% of its net assets in a separate real estate asset or real estate company; – No more than 20% of its net assets in real estate under development; – No more than 40% of its net assets in a single real estate property and any assets required for its maintenance; – No more than 30% of its net assets in securities issued by a single real estate company including liabilities arising from the transactions with real estate company involving derivatives; – No more that 30% of its net assets in securities of a single real estate company, and in the assets that such a real estate company has invested in. – May invest in real estate abroad – Further restrictions apply

The REIT is allowed to invest into the following real estate assets: land, buildings and (or) premises constituting separate real estate objects, registered in the name of the investment company, and other tangible assets that are necessary for the operation of the real estate.

Following the provisions of the Law on Collective Investment Undertakings, the assets of the REIT must consist from at least four separate real estate objects. For the purposes of the diversification of assets, the REIT is allowed to invest:

- no more than 20% of its net assets in securities of other companies or other liquid assets;
- no more than 30% of its net assets in a separate real estate asset or real estate company;
- no more than 20% of its net assets in real estate under development;
- no more than 40% of its net assets in a single real estate property and any assets required for its maintenance;
- no more than 30% of its net assets in securities issued by a single real estate company including liabilities arising from the transactions with real estate company involving derivatives;
- no more that 30% of its net assets in the securities of a single real estate company, and in the assets that such real estate company has invested in.

The investments are not permitted in:

- real estate assets that will be purchased under joint ownership when shares of ownership are not established;
- real estate assets whose ownership is restricted and this may result in the loss of the ownership;
- real estate assets not registered in the real estate or any other comparable registry.

The investment portfolio of a newly incorporated REIT is allowed - for four years from the approval of its instruments of incorporation - not to comply with the diversification requirements mentioned above. However, in all cases, this should not waive the obligation of a management company and a REIT to invest the assets of a REIT in compliance with the requirements set in the Law on Collective Investment Undertakings.

Restrictions apply regarding investment in the securities of foreign companies incorporated in non-EU or non-OECD member states.

The REIT is allowed to invest in real estate objects in development, if the development is to be finished during an acceptable time-frame.

The REIT is allowed to invest in:

- securities of companies whose primary business activity is purchase, reconstruction, lease, trade or development of real estate;
- shares or units of other REITs registered in other EU member states;
- other securities (including shares), money market instruments dealt on regulated markets.

Shareholdings are restricted to no more than 10% of the voting share capital. The REIT may also acquire no more than 10% of the total non-voting shares of a single issuer and/or 10% of the investment units or shares of another investment undertaking.

The net assets of the investment fund after a six-month period from the beginning of its activities should reach a level of EUR 1,000,000. The net assets of the REIT as a joint stock company should reach a level of EUR 2,000,000 within 12 months from the receipt of the licence from the Lithuanian Securities Commission.

2.5 Leverage

	Leverage
	Limited to 75% of the net assets

Leverage is limited to 75% of the net assets of the REIT. Net assets shall mean the difference between the value of the assets owned by an REIT and the short-term and long-term financial liabilities of the REIT.

2.6 Profit distribution obligations

	Operating income	Capital gains	Timing
	No requirement	No requirement	No requirement

There is no legal requirement for the profit distribution. The procedure of payment of dividends to the shareholders (periodicity, share of income allocated for dividends) must be defined in the bylaws or rules of investment of the REIT.

2.7 Sanctions

	Penalties / loss of status rules
	– No tax penalties – Administrative penalties – Revoking of the licence

There are no tax penalties. However the Securities Commission shall have the right to apply the following measures to an REIT:

- warn about the shortcomings and set a term for their elimination;
- impose administrative penalties;
- revoke the licence;
- suspend the distribution or redemption of shares;
- prohibit, for periods not longer than three months, to buy securities or money market instruments;
- appoint an interim representative of the Securities Commission for the supervision of the activity.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	– Investment income (e.g.rental income, capital gains upon disposal of property and shares) is tax-exempt – Dividend income or any other income from distributed profits and other business income subject to 15% profit tax. – Participation exemption might apply	Tax-exempt	In principle creditable

Current income
According to the provisions of the Law on Profit Tax, investment income of the REIT (rental income, capital gains upon disposal of shares) are treated as not taxable income, except for dividend income or any other income from distributed profits. Although there is no practice and clear legislation following the logic of the mentioned law, capital gains upon disposal of real estate should also be tax-exempt. Dividends received by the REIT are subject to 15% profit tax and may be reduced to 0% in case of qualified participation (not less than 10% of the shares for not less than 12 consecutive months, including the month dividends are paid). Other types of business income (if any) are subject to 15% profit tax.

Capital gains
The treatment is the same as for current income.

Withholding tax
Under the Lithuanian tax law and treaties, foreign withholding tax may, in general, be off-set against the profit tax payable by a resident company. As investment income of the REIT is non-taxable in Lithuania, in most cases it cannot benefit from the tax credit in respect of the investment income. However, foreign withholding tax paid on dividends may be credited against the profit tax payable on dividend income.

Accounting rules
Financial statements of the REIT should be drawn up in compliance with the Lithuanian GAAP which is very close to IFRS. However, REITs whose securities are traded on regulated markets should draw up financial statements according to IFRS. Lithuanian laws make a distinction between group and single financial statements; therefore, single statements must always be prepared, whereas those of the group only in case of mandatory consolidation.

A REIT whose securities are not traded on regulated markets has an option between Lithuanian GAAP and IFRS.

For the purposes of the income tax calculation financial result of the REIT (calculated according to IFRS or Lithuanian GAAP) would be decreased by non-taxable income, i.e., investment income, and increased by non-deductible expenses, i.e., expenses related to the non-taxable income etc.

3.2 Transition regulations

	Conversion into REIT status
	N/A

3.3 Registration duties

	Registration duties
	– Land registration fee and real estate registration fee apply – Notary fees are 0.45% of the value of property capped at approx. EUR 5,800

Land registration fee and real estate registration fee applies. It is calculated based on the value of the property. For example, when registering a building valued at 1,000,000 LTL (289,620 EUR), the fee is 615 LTL (approx. EUR 178).

Notary fees are 0.45% of the value of the property but not less than 100 LTL (approx. EUR 29) and not more than 20,000 LTL (approx. EUR 5,800).

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– In principle final withholding tax of 15% – Participation exemption might apply – Generally, capital gains are subject to 15% income tax	– Final withholding tax of 15% – Generally, capital gains are subject to 15% income tax	Creditable

Corporate shareholder
Dividends distributed to domestic corporate shareholders are subject to the final withholding tax at a rate of 15% which under the domestic law may be reduced to 0% in case of distribution to a qualified participation held by a corporation (no less than 10% of the shares for no less than 12 months, including the month the dividends are paid on). There is no difference in treatment between current income dividend and a capital gains dividend.

Capital gains realised on the sale of the REIT's shares are generally subject to a 15% profit tax rate. However, capital gains are non-taxable if shares have been held for at least two years and the holding represents at least 25% of the REIT throughout that period.

The return of capital distribution due to the redemption of shares shall be treated as capital gains from share sale and taxed accordingly.

Individual shareholder
Dividends distributed to domestic individual shareholders are subject to the final withholding tax at a rate of 15%.

Capital gains realised by an individual resident shareholder on the sale of the REIT shares are subject to 15% resident's income tax. However, capital gains are exempt from tax when the shares are sold after being held for more than 366 days and the shareholder has not controlled more than 10% of the share capital of the company during the previous three years.

Return of capital distribution due to the redemption of shares shall be treated as capital gains from share sale and taxed accordingly. However, no exemptions apply.

Withholding tax
The obligation to calculate and pay the tax falls on the REIT. The tax must be paid until the tenth day of the month that follows the dividend payment. It is possible to credit withholding tax against the taxes payable on the same income, however, the credit should not exceed the tax due.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– Final withholding tax of 15% on dividends (may be reduced to 0%) – Capital gains are tax-exempt	– Final withholding tax of 15% on dividends – Capital gains are tax-exempt	– Local participation privilege available – Treaty benefits available – Parent Subsidiary Directive applicable

Corporate shareholder
Dividends paid to foreign shareholders are subject to 15% withholding tax. Under domestic law, the withholding tax may be reduced to 0% in case of distribution to qualified participation held by a corporation (no less than 10% of the shares for no less than 12 months, including the month the dividends are paid on).

Capital gains are not subject to profit tax in Lithuania.

Return of capital distribution is not subject to profit tax in Lithuania.

Individual shareholder
Dividends paid to foreign shareholders are subject to 15% withholding tax.

Capital gains are not subject to the resident's income tax in Lithuania.

Return of capital distribution is not subject to the resident's income tax in Lithuania.

Withholding tax
Dividends distributed to foreign shareholders are subject to the 15% withholding tax at source which under the domestic law may be reduced to 0% in case of distribution to qualified participation held by a corporation (not less than 10% of the shares for not less than 12 consecutive months, including the month the dividends are paid). The obligation to calculate and pay the tax falls on REIT. The tax must be paid until the 10th day of the month that follows the dividend payment.

A non-resident shareholder may be entitled to a withholding tax reduction under a Treaty on Avoidance of Double Taxation. However, the provisions of the domestic law are generally more beneficial.

EU-Parent Subsidiary Directive is applicable.

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	Rental income shall be subject to 10% withholding tax	- Dividends are subject to 15% profit tax (may be reduced to 0%) - Generally, capital gains are subject to 15% profit tax	- Residents income tax of 15% on dividends - Generally, capital gains are subject to 15% income tax

Foreign REIT
Investment income is treated as non-taxable in the hands of the REIT, provided that its activity is regulated by the Law on Collective Investment Undertakings. Since it is not the case for a foreign REIT, its local rental income shall be subject to 10% withholding tax at source.

Corporate shareholder
Dividends received by domestic corporate shareholders from foreign REITs are subject to 15% profit tax. Under domestic law, the tax may be reduced to 0% in case of distribution to qualified participation held by a corporation (not less than 10% of the shares for not less than 12 months, including the month the dividends are paid on).

Individual shareholder
Dividends received by domestic individual shareholders from foreign REITs are subject to 15% Lithuanian resident's income tax.

Luxembourg (SIF)

The City of Luxembourg.

1 General introduction

	Enacted year	Citation	REIT type
SIF	2007	Law relating to specialised investment funds	– Contractual Type – Corporate Type

Although Luxembourg has not enacted a REIT regime *per se*, the specialised investment fund (**SIF**) regime enacted on the February 13, 2007 has developed into a specialised property fund regime in a little over a year. Although not outwardly labelled as a REIT regime, parliamentary history confirms its real estate fund purpose.

A SIF shall be any undertaking for collective investment situated in Luxembourg (i) the exclusive object of which is the collective investment of its funds in assets in order to spread the investment risks and to ensure for the investors the benefit of the results of the management of its assets, and (ii) the securities of which are reserved to one or several well-informed investors, and (iii) the constitutive documents or offering documents of which provide that it is subject to the provisions of the law of February 13, 2007, relating to specialised investment funds (the SIF Law). The SIF Law replaces the law of July 19, 1991 relating to undertakings for collective investment, the securities of which are not intended to be placed with the public.

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Authorisation and ongoing supervision by the Luxembourg supervisory authority – Requirement for a depositary

Every SIF must be authorised by the supervisory authority of the financial sector, the *Commission de Surveillance du Secteur Financier* (CSSF). The SIF's constitutive documents (i.e. the Articles of Association for the corporate form of SIF, or the management regulations for the contractual SIF, together with an issuing document) must be submitted to the CSSF for approval. The SIF may further be formed and launched prior to this CSSF application, provided the official application request is lodged within 30 days of the formation of the SIF. In practice, most initiators will seek prior CSSF registration, which in most cases may be obtained within two to four weeks. The application process is lighter than for retail funds, with the possibility of a fast track approval. The CSSF will review the SIF's constitutive documents, as well as screen and approve the directors/managers, the central administration agent, custodian bank and auditor.

Upon authorisation, each SIF is entered on the official SIF list maintained by the CSSF. Registration on this list signals that the SIF is subject to ongoing prudential supervision by the CSSF.

All Luxembourg undertakings for collective investment must entrust the custody of their assets to a depositary bank that is either a credit institution having its registered office in Luxembourg, or the Luxembourg branch of a credit institution having its registered office in another member state of the European Union. The role of the custodian bank does, however, amounts less to a safeguarding mission than a monitoring function; whereby the custodian must at all times know how the assets of the SIF are invested and how these assets are available.

For property investments, the custodian bank will monitor the acquisition and disposition process of either the property or property rights directly in an asset transaction, or of the intermediate special purpose vehicle(s) if the property is held via special purpose vehicles.

2.2 Legal form / minimum share capital

	Legal form	Minimum share capital/Net Assets*
	– Contractual form (FCP) – Corporate form (SICAV, SICAF)	– EUR 1,250,000* – EUR 1,250,000

Legal form

A Luxembourg specialised property fund may be organised under any of the following three categories:

i. Common Fund *(Fonds Commun de Placement* or FCP*):*
   The contractual type fund is a co-ownership of assets with no legal personality, which is managed, on behalf of the joint owners, by a management company based in Luxembourg. An investor in an FCP receives, as a counterpart for its investment, units of the FCP, which may be issued in registered or in bearer form and which represent a portion of the net assets of the FCP. Unlike shares of a corporate type fund, units of an FCP do offer statutory 'shareholder' rights (unless expressly provided for in the management regulations of the FCP). Unit holders are only liable up to the amount contributed by them.

ii. Investment Company with Variable Capital *(société d'investissement à capital variable* - SICAV*):*
   A SIF may be incorporated in the form of a public limited company (*société anonyme-SA*), a corporate partnership limited by shares (*société en commandite par actions-SCA*), a private limited liability company (*société à responsabilité limitée-Sarl*) or as a cooperative company organised as a public limited company (*société cooperative organisée sous forme de société anonyme-CoopSA*). The SICAV acronym only refers to the variable capital concept, whereby the variations in the capitalisation of the SIF are organised without any specific formal requirements.

iii. Specialised investment funds which are neither FCPs nor SICAVs

This third category is a residual category allowing the formation of a SIF under other legal forms or arrangements - such as a limited partnership (*société en commandite simple*), or any of the corporate forms mentioned under item (ii) though with a fixed capital (and then referred to as a SICAF), an association or even a fiduciary contract. Under this third category, all entities or arrangements will *inter alia* have to adopt the fixed capital concept. Though on the face of it this last category may offer less flexibility than the standard SICAV set-up, this is only partially true because the limited partnership (LP-SCS) form or fiduciary arrangements offer other structuring opportunities. The use of the limited partnership form may thus be particularly attractive when compared to the typical anglo-saxon limited partnership.

All of the above fund types may furthermore be organised as single funds or as umbrella (multi-compartment) funds. An umbrella fund (which merely exists through its compartments or sub-funds) is segregated into one or more compartments or sub-funds, each of which corresponds to a separate pool of assets and liabilities. Each compartment or sub-fund is linked to a specific pool of properties or property rights, which are ring-fenced from the properties or property rights in other compartments/sub-funds.

Although the umbrella fund constitutes a single legal entity (if a SICAV or SICAF) or a single contractual arrangement (if an FCP), unless otherwise provided for in the fund documentation, the assets of a compartment or sub-fund are exclusively available to satisfy the rights of investors and creditors existing in relation to that compartment or sub-fund only.

The umbrella structure and its terms must be detailed in the constitutive documents of the SIF. In addition to the umbrella structure, it is also possible to create various classes of units or shares in a SIF or within each compartment or sub-fund. Such classes of units or shares may differ, *inter alia*, as to their fee structure, distribution policy and type of target investors.

Minimum capitalisation
The minimum capitalisation for a specialised real estate fund organised under a corporate form is EUR 1,250,000. This minimum must be reached within 12 months from the authorisation of the SIF, and may be constituted by the share capital plus any issue premium paid. For contractual type specialised real estate funds, the same minimum capitalisation applies with respect to the net assets of the fund. In the case of an umbrella SIF, the capitalisation applies to the fund as a whole, not to the individual compartments/sub-funds.

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	Well-informed investors (SIFs only)	No

Shareholder requirements
Units, shares and other securities issued by SIFs are reserved to 'well-informed' investors. 'Well-informed' investors are institutional investors, professional investors as well as any other investor that

a. has declared in writing his adhesion to the status of well-informed investor, and
b. (i) invests a minimum of EUR 125,000 in the SIF, or
   (ii) has obtained a an assessment from a credit establishment as defined in directive 2006/48/CE, from an investment firm as defined in directive 2004/39/CE, or from a management company as defined in directive 2001/107/CE, certifying his expertise, his experience and his knowledge to appraise in an appropriate manner an investment in a SIF.

Listing requirements
There are no mandatory listing requirements to fulfil in order to achieve SIF eligibility.

2.4 Asset level / activity test

	Restrictions on activities / investments
	Principle of risk-spreading

A SIF may invest into any (transferable) real estate asset or right, and more particularly in (i) real estate (eg. lands and buildings) registered in the name of the SIF, (ii) participations in real estate companies (including loans to such companies) the exclusive object and purpose of which are the acquisition, development and sale together with the letting and tenanting of real estate, and (iii) various long-term real estate related interests such as rights to ground rents, long-term leases and option rights over real estate investments.

By and large, a SIF may invest in any type of real estate assets and pursue any type of real estate investment strategy subject to compliance with the principle of risk spreading. Although the SIF Law does not provide for quantitative investment restrictions, the CSSF has issued further guidance in its Circular 07/309.

Since all investors in specialised real estate investment funds must be institutional, professional or other well-informed investors, they are deemed to have sufficient experience to judge themselves on the concept of risk-spreading and the information they need to form an investment decision. Those investors do not require the same level of protection as investors in retail funds.

The SIF Law requires that the offering document includes the information necessary for investors to be in a position to make a well-informed judgment on the investment proposed to them. The CSSF considers that the offering document must include quantifiable restrictions evidencing the fulfilment of the principle of risk-spreading.

In general, the CSSF considers that the risk-spreading principle is complied with if a SIF does not invest more than 30% of its assets or subscription commitments into (i) a single property or (ii) the same property right or (iii) the same issuer of property rights. Property whose economic viability is linked to another property is not considered a separate item of property for this purpose. However, this 30% rule does not apply during a start-up period; which in principle may not extend beyond four years after the closing date of the initial subscription period.

2.5 Leverage

	Leverage
	No quantitative restrictions

Though the SIF Law does not provide for quantitative borrowing restrictions, the CSSF requires a clear disclosure of the contemplated borrowing ratio in the offering document. The CSSF will typically review borrowing ratios in light of market trends and may object to those ratios which are clearly outside those trends.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	No obligation	No obligation	N/A

There are no profit distribution obligations or restrictions applicable to SIFs for as long as the minimum capitalisation referred to above (under question 2.2) is complied with. The net assets may thus not fall below 2/3 of the legal minimum of EUR 1,250,000.

2.7 Sanctions

	Penalties / loss of status rules
	Withdrawal from the official list Dissolution and liquidation Criminal penalties

The non-compliance with the SIF Law, applicable CSSF Circulars and certain other rules or regulations, may result in the striking of the fund from the official SIF list by the CSSF, subsequently triggering a liquidation of the SIF. Criminal penalties may apply to those involved with the management or administration of a specialised real estate fund, although not to the fund itself.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Tax exempt	Tax exempt	Tax exempt (except Savings Directive)

Current income, Capital gains and Withholding tax
Luxembourg specialised real estate funds are fully exempt from income, wealth and withholding tax on the profits derived from investments, whether such profits constitute current income or capital gains.

Other taxes
Annual subscription tax.

Specialised real estate funds are subject to a 0.01% annual subscription tax (*taxe d'abonnement*), which is payable quarterly and is calculated on the aggregate net assets of the fund as valued on the last day of each quarter.

Capital duty
Capital contributions made to a specialised real estate fund are subject to a one-time fixed capital duty charge of EUR 1,250. This tax is expected to be repealed in 2009.

Withholding tax
Dividend distributions made by a specialised real estate fund are not subject to dividend withholding tax. Under specific circumstances, income (dividends and gains realised upon redemption or sale) from a specialised real estate fund structured as an FCP may fall under the scope of the Luxembourg implementation of the EU Savings Directive and thus trigger either an exchange of information with the country of residence of the beneficiary or a taxation at source of 20% on the taxable interest income.

Real estate tax
Specialised real estate funds owning Luxembourg real property may be subject to certain real estate taxes and transfer taxes in Luxembourg.

VAT
Management services provided to a Luxembourg specialised real estate fund in principle are exempt from Luxembourg VAT.

Accounting rules
Specialised real estate funds may either apply Luxembourg generally applicable accounting standards or IFRS.

3.2 Transition regulations

	Conversion into REIF (SIF) status
	Capital duty (EUR 1,250)
	Taxation of underlying assets or properties

The conversion may be a realisation event for tax purposes, and thus trigger the taxation of any underlying properties or assets. Each conversion thus requires a detailed analysis of the potential tax implications.

3.3 Registration duties

	Registration duties
	Luxembourg real estate transfer tax (Max. 10%)

Luxembourg specialised real estate funds are subject to registration duties such as real estate transfer tax (*droit de mutation à titre onéreux*) on real estate acquisitions and transfers located in Luxembourg (i.e. 7%/10% depending on the municipality and the type of real property). If real property is contributed to a fund in exchange for the issuance of shares, transfer taxes will in principle be replaced by the fixed capital contribution charge of EUR 1,250.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Corporate income tax (max. 22%) combined with municipal tax (max combined rate of 29.63%) Net worth tax (0.5%)	Income tax (max. 38%)	N/A

Corporate shareholder

A corporate domestic shareholder will be fully subject to tax on any income derived from a Luxembourg specialised real estate fund in the form of a SICAV or SICAF. Therefore dividends, capital gains and return of capital received by such shareholder are fully subject to Luxembourg corporate income tax (max. 22%) and municipal business tax, which may lead to an aggregate tax burden of up to 29.63% (Luxembourg-City). Income received from a Luxembourg specialised real estate fund in the form of an FCP or SCS in principle is also taxable, but not to the extent the corporate shareholder could apply the participation exemption in relation to the fund's underlying investments, if applicable.

A corporate domestic shareholder will also be subject to net worth tax levied on its net assets at a rate of 0.5%.

Individual shareholder

Income and profit received by an individual domestic shareholder from a Luxembourg specialised real estate fund will be fully subject to Luxembourg tax, and bourneborne by the recipient (max. 38%).

Interest paid by the fund to an individual domestic shareholder managing his or her own private wealth is subject to a final 10% withholding tax at the level of the fund, and is not included in the taxpayer's income tax return.

Capital gain on the disposal of shares of a Luxembourg specialised real estate fund earned by an individual domestic shareholder in the management of his or her own private wealth, is not subject to tax if the gain was realised at least six months after the acquisition of the shares, and provided that the investment in the fund does not represent a substantial (< 10%) shareholding in the fund.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	No taxation	No Taxation	N/A

Income derived by foreign shareholders who have neither a permanent establishment nor a permanent representative in Luxembourg to which or to whom the shares or units of the Luxembourg fund are attributable are not subject to taxes in Luxembourg.

Capital gain on the disposal of shares of a Luxembourg specialised real estate fund earned by a foreign shareholder is not subject to tax provided the shareholder does not hold a substantial participation and alienates such participation within six months. In case of disposal after six months or more, the disposal could be subject to tax in Luxembourg if the selling shareholder has been a Luxembourg resident taxpayer for more than 15 years and has become a non-Luxembourg taxpayer less than five years before the disposal takes place.

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	Net worth tax	Fully taxed	Fully taxed

5.1 Corporate shareholder

A corporate domestic shareholder will be fully subject to tax on any income derived from a foreign REIT, unless the foreign REIT would qualify under the Luxembourg participation exemption. Therefore dividends, capital gains and return of capital received by such shareholder may be fully subject to Luxembourg corporate income tax (max. 22%) and municipal business tax, which may lead to an aggregate tax burden of up to 29.63% (Luxembourg-City). Income received from a foreign REIT which is considered tax transparent from a Luxembourg tax perspective in principle is also taxable, but not to the extent the corporate shareholder could apply the participation exemption in relation to the fund's underlying investments.

The net worth tax (as referred to in par. 4.1) in principle also applies in relation to a foreign REIT.

Individual shareholder
Income and profit received by an individual domestic shareholder from a foreign REIT will be fully subject to Luxembourg tax in the hands of the recipient (max. 38%). ■

The Netherlands (FBI)

Areal view of the Rotterdam, The Netherlands.

1 General introduction

	Enacted year	Citation	REIT type
FBI	1969	FBI (art. 28 CITA)	In principle corporate type (pure tax regime)

The Netherlands introduced the regime for the Fiscal Investment Institution (*Fiscale Beleggingsinstelling*: FBI) in 1969. The FBI does not benefit from a pure tax exemption but it does enjoy a corporate income tax rate of 0% (a *de facto* full exemption). The FBI regime (a pure tax regime) has been incorporated in the Dutch Corporate Income Tax Act (*Wet op de vennootschapsbelasting 1969*: CITA) and may also apply to other investments than real property.

In 2007, the FBI regime was amended to better comply with EU law regulations. It has become possible for a foreign entity to apply for the regime. Further, certain restrictions with respect to foreign shareholders have been deleted.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
FBI	8	7.9	2.1

Top five REITs

	Market cap (€m)	Sector type
Corio NV	3,333	Industrial, Office, Retail
Wereldhave NV	1,389	Industrial, Office, Residential, Retail
Eurocommercial Properties NV	1,084	Industrial, Office, Retail
Vastned Retail NV	859	Retail
Nieuwe Steen Investments Funds NV	589	Industrial, Office, Residential, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	Election in the tax return

The FBI regime is a pure tax regime. Therefore, its application does not depend on satisfying certain regulatory requirements (such as security laws), even though reference is made to certain regulatory notions in connection with the shareholders' test (see below). FBIs, which are accessible to the public, fall under the supervision of the Dutch Financial Market Authority.

A Dutch company can simply elect to apply the FBI regime in its corporate income tax return, which is filed after the end of the year (assuming the conditions for application are fulfilled).

2.2 Legal form / minimum share capital

	Legal form	Minimum share capital
	– Dutch public company (BV) – Limited liability company (NV) – Open ended investment fund (FGR) – Comparable foreign legal entity	– BV: EUR 18,000 – NV: EUR 45,000 – FGR: None

Legal form

A Dutch public limited company (NV), a private limited liability company (BV), an open-ended investment fund (*fonds voor gemene rekening*: FGR), or comparable foreign legal entities may all apply the FBI regime. Foreign legal entities are no longer required to have Dutch residency.

If the FBI is in the form of an FGR, it is required to have a management company. An FBI may only be self-managed if it is in the form of a corporation, although a management company could also be used in that situation.

Minimum share capital

There is no minimum capital requirement specifically for an FBI. The minimum capital requirements for the various Dutch entities are as follows:
BV: EUR 18,000
NV: EUR 45,000
FGR: none

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	If listed or licenced: – Taxable corporate entities may hold up to 45% of the shares – Individuals may hold up to 25% – If not listed or licenced: – Individuals / non taxable corporate entities / listed FBIs must hold at least 75% of the shares – Single individuals may hold up to 5%	No

Shareholder requirements

The FBI shareholder requirements are more lenient if the FBI either is listed on any recognized stock exchange or has a licence pursuant to the 2006 Financial Supervision Act (*Wet op het financieel toezicht*), or benefits from an exemption there from. If the FBI is not listed or does not have the required licence, more stringent shareholder requirements must be met.

If the FBI is listed or licenced or benefits from an exemption there from, the shareholder requirements are the following:

- a corporate entity that is subject to any form of profit tax (except if it is a listed FBI), or a tax transparent entity of which property is taxed in the hands of its members, cannot own together with affiliated entities 45% or more of the shares;
- no single individual may own an interest of 25% or more.

If the FBI is not listed or licenced, the shareholder requirements are the following:

- at least 75% of the shares must be held by (i) individuals; (ii) corporate entities that are not subject to any form of profit tax or are exempt there from (and such profit is not taxed in the hands of the beneficial owner of those profits); and/or (iii) by listed or licenced FBIs directly or indirectly;
- single individuals may not own an interest of 5% or more.

Listing requirements
Listing is not required.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– FBIs are restricted to passive investment activities – Allowed to invest abroad

In order to qualify for the FBI regime, a company is required to limit its activities exclusively to portfolio investment activities (passive investments). Portfolio investment activities consist of regular investment activities such as investments in shares, bonds, other securities, and real estate.

The company must restrict its activities to 'passive' real estate investments. Real estate development activities are, in principle, not seen as 'passive' investment activities. However, development activities on behalf of the FBI itself are specifically permitted. These activities should be carried out by a subsidiary which is subject to tax at the common corporate tax rate.

The development subsidiary is not allowed to carry out any other activity than development for the FBI itself and it should charge the FBI for an arm's length fee. For practical purposes the law provides for a safe haven to avoid discussions about the nature of relatively small investment activities: improving and expanding real estate will not be considered 'development activities' as long as the investments involved do not exceed 30% of the Value of Immovable Property Act (*Wet waardering onroerende zaken*: WOZ) value of the real estate.

An FBI is allowed to invest in foreign assets. It would, however, still be subject to the same restrictions. It may hold shares and/or interests in subsidiary corporations and/or in partnerships.

2.5 Leverage

	Leverage
	– 60% of fiscal book value of real property; and – 20% of fiscal book value of all other investments

The loan capital may not exceed:

- 60% of the fiscal book value of directly held real properties; and
- 20% of the fiscal book value of all other investments.

Loan capital is defined as the total amount borrowed. Loan capital is, in principle, calculated on a non-consolidated basis.

Recently it has been proposed to limit the financing restrictions as from January 1, 2009. An important proposed amendment is the increase of the acceptable debt level for indirectly held real estate: investments in subsidiaries of which the assets usually consist for 90% or more of real properties may be financed with debt for 60% instead of 20%.

Further, loans taken up to, or lent to subsidiaries that invest in real properties, may be deducted from the total amount of debt for the purposes of the financing test.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	100% of taxable profit	Capital gains / losses can be allocated to a tax-free reserve	Within eight months after the end of its financial year

Operative income
Dutch law requires the FBI to distribute all of its profits to the shareholders within eight months after the end of its financial year. The profit is calculated according to the common rules, with only some minor adjustments provided for by the FBI regime. According to those common rules, depreciation on passively held real properties is severely restricted as from 2008. As a result, most FBI's will face a sharp increase of their taxable amounts that need to be distributed.

Capital gains
Capital gains/losses are not included in this distribution obligation; they can be allocated to a tax-free reserve.

2.7 Sanctions

	Penalties / loss of status rules
	Loss of REIT status

If during a given financial year, an FBI no longer complies with the above conditions, it will retroactively lose its FBI status. However, if the FBI does not comply with its profit distribution obligation, the loss of status will be applicable as of the beginning of the year in which the relevant profit was made. Consequently, the rental income and capital gains earned throughout the years of non-compliance will be fully taxed with corporate income tax at a general rate of 25.5% (the corporate income tax rate for a taxable amount up to EUR 25,000 is 20%, and for a taxable amount from EUR 25,000 up to EUR 60,000, 23.5%). The 2008 rates will be slightly less.

3 Tax treatment at REIT level

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Real property income forms part of the taxable profit and is taxed at a 0% rate (full exemption)	Capital gains/losses can be allocated to a tax-free reserve and are thus exempt from tax	Taxes withheld are refunded

Current income
The taxable profit of an FBI is subject to a corporate income tax rate of 0%. All investment income/losses and all capital gains/losses resulting from the investment disposal constitute taxable FBI income (subject to the 0% rate).

Capital gains
Capital gains and losses may be excluded from the taxable income and allocated to the tax-free reinvestment reserve. The remaining taxable income constitutes the annual distribution obligation (see above).

Withholding tax
Tax withheld on distributions to the FBI, regardless of whether the distribution is made by a Dutch corporate or a foreign entities, is not refundable to the FBI. Instead, the FBI may deduct the (Dutch

and foreign) withholding tax on the dividend withholding tax it is required to withhold on its own distributions. The deduction of foreign taxes, however, is subject to certain limitations.

The dividend withholding tax not paid forms part of the taxable profit of the FBI which is subject to distribution.

FBI's shareholders are allowed to credit the full withholding tax, i.e. the dividend withholding tax that would have been paid by the FBI without the above mentioned deduction.

Accounting rules
There are no special accounting rules for FBIs. An FBI is required to follow IFRS rules, just like any other listed company.

3.2 Transition regulations

	Conversion into REIT status
	– All assets/liabilities are assessed at market value – Tax-free reserves should also be added to the taxable income – The 'built-in' capital gain is subject to CIT at a normal rate

At the end of the year prior to the year that the entity converted to FBI status, all assets and liabilities are assessed at market value. The 'built-in' capital gain is subject to the regular corporate income tax rate. Tax-free reserves should be added to the taxable income. The exit tax is levied at the ordinary Dutch corporate income tax rates (i.e. no special conversion regime).

3.3 Registration duties

	Registration duties
	– No capital duties – A real property transfer tax rate of 6% is applied if the FBI acquires, or disposes of, real property or shares from/to real estate companies

A 6% real estate transfer tax is imposed if the FBI itself acquires or disposes of real estate and/or shares with real estate companies. In addition, an acquisition leading to an interest of at least one third in a Dutch real estate company may be subject to registration duties.

4 Tax treatment at shareholder level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Dividends and capital gains are taxable	Taxpayer is taxed on the basis of a deemed income	– In principle, withholding tax of 15% – Creditable

Corporate shareholder
A Dutch corporate investor of an FBI cannot invoke the participation exemption on the FBI's investments.

- dividend income is subject to Dutch corporate income tax (rate 25.5% for the year 2007);
- capital gains realised by a corporate shareholder from the disposal of FBI shares are included in the taxable profit. Therefore, they are also subject to corporate income tax;
- Dutch corporate investors can credit the Dutch withholding tax on dividends against their Dutch corporation tax liability. Any excess is refundable;
- a capital loss realised by a corporate shareholder on an investment in FBI shares is deductible.

Individual shareholder
The income tax treatment of a Dutch individual shareholder depends on the qualification of the FBI

investments for the investor. In most cases, the investment qualifies as an ordinary portfolio investment. In that case, the income tax will be levied on a 'deemed income basis'. Rather than taxing the actual dividends received, the taxpayer is taxed on the basis of an estimated income. This results in the following tax treatment:

- An effective income tax burden of 1.2% of the average value of the investment during the calendar year.
- Capital gains resulting from the disposal of FBI shares are deemed to be covered by this forfeited income tax (provided the capital gains are not considered 'income from work').
- The taxes withheld can be credited against the income tax. Any excess will be refunded.

An individual owning, alone or together with certain family members an interest of 5% or more in an FBI is subject to the so-called 'substantial interest' taxation rules. Basically, all results from the shareholdings are taxed at a flat rate of 25%, if and when received.

An individual owning FBI shares in the course of his enterprise, could be subject to tax at progressive income tax rates (up to 52%).

Withholding tax
Distributions made by an FBI are subject to 15% Dutch dividend withholding tax. Bilateral tax treaties may in some cases provide for a lower rate. Distributions from the reinvestment reserves are considered to be capital for tax purposes and, therefore, under certain circumstances free from Dutch dividend withholding tax. The redemption of nominal share capital is generally tax-free, however, the redemption of share premium is tax-free only if there are no profit reserves or hidden reserves.

Corporate and individual shareholders can credit the Dutch withholding tax against the corporate income tax and personal income tax due. Dutch and certain foreign tax-exempt entities and FBIs can claim a refund in the Netherlands of Dutch dividend withholding tax on distributions by an FBI, provided they are the beneficial owner of the dividend. The refund may not be equal to the dividend tax withheld on their dividend. If the FBI was allowed to deduct foreign taxes from the dividend withholding tax obligation the refund will be limited.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Only 15% withholding tax is levied	The 15% withholding tax is levied	– Tax treaty relief might apply – Parent-Subsidiary Directive not applicable

Corporate shareholder
Generally speaking, foreign investors should not be liable for a Dutch income or corporate income tax with respect to an investment in an FBI. The only exception is the Dutch taxes withheld on FBI dividend distributions (subject to tax treaty application). Moreover, a foreign investor holding a so-called 'substantial interest' in a Dutch FBI (e.g. 5% or more of the share capital) may become subject to corporate income tax on the dividends received and capital gains made (be it that many tax treaties protect foreign shareholders against such taxation).

Individual shareholder
See above for corporate shareholders. For individual shareholders owning a substantial interest in the Dutch FBI, a 25% flat income tax rate applies to income and gains (subject to tax treaty application).

Withholding tax
Distributions made by an FBI are in principle subject to 15% Dutch dividend withholding tax. Bilateral tax treaties may in some cases even provide for a lower rate. Distributions from the reinvestment reserves may be free from Dutch dividend withholding tax (as this reserve is considered to be capital for tax purposes). The redemption of nominal share capital is generally tax-free, however, the redemption of share premium is tax-free only if there are no profit reserves or hidden reserves.

Foreign tax-exempt entities and foreign entities benefiting from the Dutch FBI regime can claim a full refund in the Netherlands of Dutch dividend withholding tax on distributions by an FBI, provided the (foreign) shareholder is the beneficial owner of the dividend.

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	A foreign REIT is tax-exempt	No specific tax privileges	No specific tax privileges

Foreign REIT

A foreign entity that is comparable to the qualifying Dutch FBI and that complies with all the requirements (shareholder, leverage, etc) can obtain FBI status in respect of its qualifying Dutch sources of income (Dutch real property, etc.). In that case, qualifying FBI income derived from Dutch taxable source will be subject to a corporate income tax rate of 0%.

Corporate shareholder

In the Netherlands, the participation exemption is explicitly excluded in respect of a participation in a Dutch resident or foreign resident company with Dutch FBI status. Hence, a Dutch shareholder owning a participation in a foreign entity with Dutch FBI status is not entitled to the participation exemption in respect of income and gains derived from the participation. However, a participation made by a Dutch resident taxable entity in a foreign REIT is in principle eligible for participation exemption (provided certain conditions are met).

Individual shareholder

There is no specific tax privilege. ■

Spain (RECII)

The leaning Kio Towers in Madrid.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
RECII	1984/ 2003	Law 46/1984 of Dec. 26	Corporate and trust type (Shows some characteristics of a REIT)	– 9 FIIs – 8 SIIs

There are two vehicles for collective investments in real estate, which may be likened to what is generally referred to as REIT regimes. These regimes are currently regulated by the Collective Investment Institution Law (Law 35/2003, of November 04), which approves two different types of vehicles for collective investments in real estate: the Real Estate Investment Corporations (*Sociedades de Inversión Inmobiliaria*, or SII) and the Real Estate Investment Funds (*Fondos de Inversión Inmobiliaria*, or FII). Hereinafter, such Real Estate Collective Investment Institutions are referred to as RECIIs or RECII-regime.

The RECII regime was initially introduced in 1984 (Law 46/1984, of December 26). Law 46/1984 was then substituted by the current law in 2003 (Law 35/2003). Law 35/2003 has been further developed by the Royal Decree 1309/2005, as of November 04. The tax regime of these vehicles (as summarised below) is fairly basic and is mainly dealt with in the Spanish Corporate Income Tax Law (as enacted by Royal Legislative Decree 4/2004, of March 05).

Currently there are nine FIIs and eight SIIs. This is due to the existing limitations on the type of real estate properties permitted for investments.

The Spanish Government announced on September 14, 2008, their intention to introduce new REIT legislation in Spain along the lines of the other regimes in Europe. Very little information is currently available on the timetable for bringing forward the legislation but it is expected to be in a relatively short timeframe.

2 Requirements

2.1 Formalities / procedures

	Key requirements
	– National Securities Exchange Commission (CNMV) authorization – Administrative Registry

The National Securities Exchange Commission (the *Comisión Nacional del Mercado de Valores*, or the CNMV) has to authorise the project in order for RECII incorporation. Specific formal procedures exist. Furthermore, the listing of the RECII on the CNMV Administrative Registry is mandatory.

2.2 Legal form / minimum share capital / initial capital

	Legal form	Minimum share capital / initial capital
	– Fund – Corporation	EUR 9 million

Legal form
As mentioned, the permitted legal forms are funds and corporations.

i. SII or REIC: Organised as a corporation that must have the legal form of a *Sociedad Anónima* (SA) (a normal *per se* corporation). The statutory/management seat must be in Spain.
ii. FII or REIF: It is a structure without legal personality similar to a 'trust' but with special features. It is administered by a separate managing company jointly with the entity holding the investment deposits. The statutory/management seat of the managing company must be in Spain.

Minimum share capital / initial capital
The minimum capital is EUR 9 million, for REICs. REIFs must have a initial investment amount of EUR 9 million.

The Spanish Corporate Law regulating SAs generally permits the issuance of both voting and non-voting rights. A general reference is made to Spanish Corporate Law in the RECII regime law (insofar as REIC are concerned).

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	100 shareholders/investors minimum	No

Shareholder requirements
A minimum of 100 shareholders/investors is generally required. Also, the RECII's assigned capital may be divided into different investment categories. In this case, the minimum number of shareholders/investors per each of these may not be less than 20 and the minimum capital would have to be EUR 2.4 million.

There is no difference between resident and non-resident shareholders.

Listing requirements
Listing is not required.

2.4 Asset levels / activity test

	Restrictions on activities / investments
	– 50% of assets must consist of residential real estate and/or residence for students or the elderly – Minimum of three-year investment period – 35% of value of total assets may be invested in a single real estate asset – Development for rental purposes allowed – 15% threshold for investments in real estate subsidiaries – 10% (REIFs) and 20% (REICs) of total assets may be invested in listed companies

A RECII must have the sole corporate purpose of investing in urban real estate for rental activities. At least 50% of the assets must consist of residential real estate and/or residences for students or elderly people. Furthermore, a minimum investment period of three years is generally required (unless there is an expressed CNMV authorisation).

As of the end of 2005, RECIIs which engage in residential property development for rental purposes in addition to complying with the aforementioned conditions also benefit from the special tax regime. However, some additional requirements have to be met. Mainly, such investments may not exceed the 20% threshold. According to this threshold, 20% of the total assets of this type of RECII (including residential real estate) have to be rented or offered for rental during a minimum seven-year period. The legislative source for this rule is the Royal Decree 1309/2005, of November 04, and the Spanish Corporate Income Tax Law contained in Royal Legislative Decree 4/2004, of March 05.

Furthermore, REIFs are generally allowed to invest up until 10% of their total assets in listed companies. Insofar as REICs are concerned, up until 20% of their total assets may be invested in listed companies and, additionally, are required to keep a liquidity ratio of, at least, 10%.

Finally, for both REIFs and REICs, maximum value of a single real estate asset may not exceed 35% of their total assets.

RECIIs are allowed to invest in other companies. The condition is that its assets are mainly composed of real estate property to be rented. This kind of investment may not exceed a 15% threshold over its total assets.

2.5 Leverage

	Leverage
	Third-party financing limited to 50% of the RECIIs assets

Generally speaking, mortgage loans are permitted. With respect to specific gearing limits, third-party financing may not at any given moment exceed the threshold of 50% of the RECIIs assets.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	No requirement	No requirement	No requirement

No profit distribution is required.

In certain cases, as called for by the general rules set forth by SA legislation, advanced profit distributions are allowed.

2.7 Sanctions

	Penalties / loss of status rules
	– Loss of tax benefits – Loss of RECII status

The penalties include the non-application of the special tax regime (aside from general penalties applicable to all Spanish taxpayers). Essentially, the application of the reduced 1% corporate tax rate would be lost. A specific set of penalties are applicable if infringements exist. These are regulated by the Collective Investment Institutions Law (Law 35/2003, of November 04). For instance, severe penalties apply if asset investment criteria are not met.

In conclusion, the loss of all RECII status tax benefits would take place with the loss of RECII status.

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	1% income tax rate	1% income tax rate	General withholding tax rules

Current income
The qualifying RECII income obtained (e.g. qualifying rental income, qualifying capital gains, etc.) is subject to a Spanish corporate income tax at the rate of 1% (the regular rate is 30% to 32.5%, as of 2008). Due to the fact that RECIIs enjoy their own favorable tax regime (especially the very low tax rate) they are not entitled to benefits from regular tax credits. Other than that, the general rules apply.

Capital gains
Also subject to the tax rate of 1%.

Other taxes
There is an exemption for the 1% capital duty in regards to qualifying RECIIs upon formation, share capital increases, mergers or spin-offs. Also see under 3.3.

Withholding tax
Excess of withholding tax suffered by RECIIs are refunded automatically.

Accounting rules
No specific particularities apply. The local GAAP should be observed. The same applies for single and group accounting principles.

3.2 Transition regulations

	Conversion to REIT status
	N/A

3.3 Registration duties

	Registration duties
	95% exemption on Transfer Tax and Stamp Duty

There is also a 95% exemption on the Transfer Tax (between 6% or 7%) and the Stamp Duty (between 0.5% and 1.5%) in regards to residential real estate acquired for rental purposes. Also register and notary fees, etc. are due in connection with real estate acquisitions.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Dividends and capital gains taxed at general rate	– Dividends and capital gains are taxed at the same 18% rate – Capital gains personal income tax applies. Exemption possible if reinvested in RECII	Generally creditable

Corporate shareholder
All types of income must be included in the corporation's taxable basis which is taxed at the general Spanish corporate income tax rates. This includes dividends paid by the RECII.

If capital gains are realised on the sale of RECII shares, such income must be included in the corporation's taxable basis and is taxed at the general rate (30%). Upon fulfilling certain conditions (such as the sale of a RECII interest of at least 5%) the general reinvestment tax credit may be available. This would potentially reduce the tax effective rate to 18%. Nonetheless, confirmation of the availability of this tax facility requires further analysis.

No double taxation relief credits are available.

In the case of a return of capital distribution, the general corporate income tax rules apply. Therefore, the taxable income amounts to the difference between the fair market value of the assets returned and the accounting value of the investment.

Individual shareholder
As of January 01, 2007, dividend distributions paid by the REIT are taxed at an 18% rate. The same rate applies to both capital gains and dividends. A minor difference could be that dividend income may be exempt with an annual limit of EUR 1,500.

In the case of a return of capital distributions, general personal income tax rules apply. That is, the difference between the fair market value of assets returned and the acquisition cost of interest is deemed to constitute capital gains.

If capital gains are realised on the sale of RECII shares, general personal income tax rules apply, with the following exception. Capital gains from the sale of shares or a RECII interest may benefit from a particular tax rollover relief provided that the proceeds obtained are reinvested in another RECII. In connection with SII shares, stricter conditions apply. Namely, the number of shareholders of the transferred RECII has to exceed 500 and the taxpayer may not have held a RECII interest greater than 5% over the previous 12-month period. With respect to participation in FIIs, the main restriction applicable is their non-listed condition.

Withholding tax
See above.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Dividend and capital gains are subject to the same 18% withholding tax rate	Same as corporate foreign shareholders	– Tax treaty relief might apply – Parent-Subsidiary Directive might apply

Corporate shareholder
The following relates to foreign corporate shareholders not acting in Spain through a permanent establishment. In such cases, the applicable fiscal treatment would be the same as for corporate domestic shareholders.

As of January 01 2007, a dividend paid by the RECII is subject to an 18% withholding tax rate, which is the same rate for capital gains taxation. This is the general treatment in the absence of tax treaties, which may vary the effects on the tax treatment of corporate shareholders.

In the case of a return of capital distribution, the difference between the fair market value of the assets returned and the acquisition cost of the interest is deemed to constitute a capital gain. Nevertheless, if applicable, tax treaty provisions have to be analysed.

Capital gains realised on the sale of RECII shares are taxed at a rate of 18%. Applicable tax treaties may provide for an exemption. Also, a general domestic exemption applies to tax treaty residents if the RECII is listed on a Spanish stock exchange.

Individual shareholder
The same tax treatment as corporate foreign shareholders applies. An exception is the EUR 1,500 dividend income exemption, also mentioned in case of domestic individual shareholders above. It is also applicable to individual EU-residents.

Withholding tax
See above. There is no reason why the Parent/Subsidiary Directive should not apply in the context of REICs.

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	Case by case basis	Subject to taxation in Spain. Specific analysis of foreign REIT is required	Subject to taxation in Spain. Specific analysis of foreign REIT is required

Foreign REIT
The taxation of foreign REITs varies on a case by case basis. Many factors are taken into consideration such as whether the foreign REIT operates in Spain through a permanent establishment, a local special purpose vehicle, etc. All in all, no special rules apply except for foreign REITs formed in blacklisted tax havens, in which case special anti-abuse rules apply (similar to CFC rules).

Domestic corporate shareholder
Subject to taxation in Spain. Double taxation relief credit may be available, Specific analysis of foreign REIT is required though.

Domestic individual shareholder
Subject to taxation in Spain. Double taxation relief credit may be available, Specific analysis of foreign REIT is required though.

Turkey (REIT)

Suleiman The Magnificent Mosque and Golden Horn in Istanbul, Turkey.

1 General introduction

	Enacted year	Citation	REIT type
REIT	1995	– Capital Markets Law – Communiqué on Principles Regarding Real Estate Investment Companies, Serial VI No. 11	Corporate type National Stock Exchange Commission

A REIT (Real Estate Investment Company) regime exists in Turkey primarily under the administrative supervision of the CMB (Capital Markets Board), a regulatory and supervisory agency.

REIT practices in Turkey started in 1995. REIT shares have been traded on the Istanbul Stock Exchange since 1997. Due to the rapid increase in the population and to internal migration, housing demands have expanded in direct proportion to real estate investment. Along with the new regulations regarding mortgage loans introduced in 2007, it is expected that the demand for real estate will increase. These developments will have a positive effect on the future of REITs.

The REIT regime is regulated in Capital Markets Law and in the related Communiqué. The regulations took place initially with the modification in the Capital Markets Law which confirms the scope of actions of REITs in 1992. After the amendment in Capital Markets Law, the detailed arrangement of REITs was made in the Communiqué *on Principles Regarding Real Estate Investment Companies*, Serial VI No. 11 in 1995. Furthermore in respect to tax treatment to the REITs, various provisions are presented in Corporate Income Tax Code and Income Tax Code.

Currently, there are 13 REITs registered with the Capital Markets Board and with shares quoted on the Istanbul Stock Exchange.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
REIT	13	1.1	0.3

Top five REITs

	Market cap (€m)	Sector type
Sinpas Gayrimenkul Yatirim Ortakligi AS	315	Residential
Akmerkez Gayrimenkul Yatirim Ortakligi AS	249	Hotel, Office, Residential, Retail
Is Gayrimenkul Yatirim Ortakligi AS	203	Hotel, Land, Office, Residential, Retail
Alarko Gayrimenkul Yatirim Ortakligi AS	54	Land, Leisure, Residential, Retail
Yapi Kredi Koray Gayrimenkul Yatirim Ortakligi	49	Office, Residential, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Regulated and closely monitored by the Capital Markets Board (CMB) – Statutes must be in accordance with the law and the procedures of the Communiqué – Founders must have no records of legal prosecution due to bankruptcy or other offences – The statutory auditors of the company must be Turkish citizens

A REIT can be established immediately. Furthermore, existing companies can convert to REIT status by simply amending their Statutes in accordance with the legal procedures of the Communiqué. A REIT can be established for a limited time to undertake a certain project, for a limited or unlimited time to invest in certain areas, and for a limited or unlimited time without any limitation or purpose.

The CMB's pre-conditions required for an REIT to obtain permission for establishment are as follows:
- REITs should be established in the form of a joint stock company under the registered capital system. The board of directors may increase the share capital of the company by issuing new shares up to the amount of registered capital stated in the statute. Compliance with the provisions of the Turkish Commercial Code concerning capital increases is not mandatory;
- the initial capital may not be less than the specific amount determined by the Board (currently TRY 8,400,000),
- 100% of the share capital must be fully paid;
- the commercial title is to include the phrase "Real Estate Investment Company";
- the statute must be in compliance with the provisions of the law and the regulations of the CMB;
- the founders must be certified of never having been subject to legal prosecution due to bankruptcy or other offences.

The investment companies are classified according to asset types, valuation principles, portfolio restrictions, management principles, profit distribution principles, depository procedures and obligation principles in the event of their liquidation. All of the above shall be determined by the CMB. The members of the board of directors and the auditing board are elected and serve in accordance with the related articles of the Turkish Commercial Code. However, at least 1/3 of the members appointed to the Board must be independent as defined in the Turkish Commercial Code.

In accordance with Article 347 of the Turkish Commercial Code, the statutory auditor of the company should be a Turkish citizen. If there is an auditing board, at least one more than half of the auditing board members must be Turkish citizens. Besides this, there should be an independent audit firm to be assigned by the General Assembly in order to audit the financials of the company on predetermined intervals.

REITs are required to prepare portfolio tables displaying the cost of the assets and rights along with their market values. Additionally, a board of director's report must be prepared every three months. These statements are to be submitted to the Capital Markets Board.

2.2 Legal form / minimum share capital

	Legal form	Minimum share capital
	Joint stock company	TRY 8.4 million

Legal form
The REIT must be a joint stock company. The general guidelines of joint stock companies are regulated with the Turkish Commercial Code. REIT specifics shall be determined by the Capital Market Laws and the Communiqué. The company's name must include "real estate investment company".

Share capital
The required minimum share capital for a REIT is 8,400,000 TRY (approx. EUR 4.4 million). The CMB has the authority to redefine the minimum capital requirement on a yearly basis. If the initial capital is less than TRY 50,000,000, 10% of the shares representing the initial capital must be issued for cash. If the initial capital exceeds TRY 50,000,000, the shares that represent the TRY 50,000,000 of initial capital must be issued for cash.

The REIT may issue shares in registered or bearer forms. However, the shares representing capital in kind should be in registered form and an appraisal report should be drawn by an expert in accordance with the Commercial Code. The capital amount is to be in accordance with this report. Although the Turkish Commercial Code restricts the transfer of capital in kind shares for two years, REIT shares in connection with capital in kind can be transferred without any time limitation. However, transfer of shares both representing cash or capital in kind is subject to the pre-approval of the Board and requires certain formalities when certain thresholds are met.

Companies shall not issue any privileged securities or real estate certificates other than shares. The nomination of candidates for Board of Directors membership is permitted. After the initial public offering, no privileges can be created (including the Board of Directors membership nominations).

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	Only for company founders	Yes

Shareholder requirements
The Communiqué and related Capital Market Laws state certain conditions for only company founders. The conditions are as follows;
- the founder shareholders may not have any payable taxes or insurance premium debt;
- there may not be any history of bankruptcy or other debt announcements against the natural person shareholders or their unlimited partner institutions;
- the founder shareholders must not have been sentenced for illegal offences such as theft, fraudulent act, forgery, and etc;
- natural and legal person founders must have the sufficient financial capacity, a good reputation, and the experience required by their status;
- they should not be forbidden for operations in the meaning of Capital Market Law (this provision is valid for establishment and share transfers).

Listing requirements
The main objective of the CMB is to establish a consistent and far-reaching Turkish Capital Market. Thus, the listing requirement is domestic listing. Although the wording of the Communiqué and the Law does not provide a clear statement concerning the matter, the intention of the legislation strengthens the view that the company should be domestically listed.

The REIT must apply to the CMB to register shares, which must equal at least 49% of the REIT's issued capital. The REIT must also complete the public offering application form. The format and the procedures of this form are to be determined by the CMB. The form is to be completed with the trade registry as follows:
- if the REIT's paid in capital is less than TRY 50 million, the form is to be completed within one year following the registration of the REIT's articles of association;
- if the REIT's paid in capital is greater than TRY 50 million but less than TRY 100 million, the form is to be completed within three years following the registration of the articles of association;

if the REIT's paid in capital is equal to or greater than TRY 100 million, the form is to be completed within five years following the registration of the articles of association.

The CMB has the authority to reassess these amounts in accordance with the Communiqué. It is possible for companies to offer their shares equal to at least 49% of their issued capital by performing one or more public offering within the specified time periods. The companies that do not complete the public offering application forms within the specified time periods, or whose applications were found inappropriate (due to failure to fulfill the necessary conditions), shall lose the right to operate as REITs. Such companies are obliged to amend the provisions of their articles of association to exclude real estate investment activities. Within three months after disqualification, the companies must also approach to the Board to deregister. According to the provisions of the Turkish Commercial Code, companies which do not fulfill the requirements for amending the activities and/or approach to the Board to deregister will be regarded as dissolved.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– Only transactions permitted by the Communiqué are allowed – Must primarily deal with portfolio management – 75% of the assets must consist of assets mentioned in their titles and/or articles of association – Cannot be involved in the construction of real estate – Cannot commercially operate any hotel, hospital, shopping center, etc. – Cannot provide services by its personal to individuals or institutions

A REIT must deal primarily with portfolio management. In accordance with the Communiqué, the REIT's portfolio is required to be diversified based on industry, region and real estate and is to be managed with a long-term investment purpose. 75% of the portfolios of the companies, established with the purpose of operating in certain areas or investing in certain projects, must consist of assets mentioned in their titles and/or articles of association. A REIT must invest at least 50% of its portfolio value in real estate, rights to real estate and real estate projects. At most, 10% of its portfolio value may be invested in time deposits or demand deposits. Investments in foreign real estate and capital market instruments regarding may constitute no more than 49% of REIT's portfolio value. The land and lots in the portfolio of the REIT, on which any project has not been realised for five years as of the acquisition date, may not exceed 10% of its portfolio value.

According to the Communiqué, REITs;

- cannot engage in a deposit business or conduct business and operations resulting in deposit collection as defined by Turkish Banking Laws
- cannot engage in commercial, industrial or agricultural activities other than the transactions permitted by the Communiqué,
- cannot engage in capital market activities other than its own portfolio management, limited to the investment areas permitted by the Communiqué,
- cannot in any way be involved in the construction of real estate, and cannot recruit personnel and equipment for this purpose.
- cannot commercially operate any hotel, hospital, shopping center, business center, commercial parks, commercial warehouses, residential sites, supermarkets, and similar types of real estate and employ any personnel for this purpose. However, if any real estate exits in the portfolio for the purpose of generating rental revenue, companies can provide the security, cleaning, general management and similar services to tenants for such real estates or independent parts thereof, or can execute contracts with any operating firm for performance of these services.
- cannot provide services by its personnel to individuals and institutions for project development, project control, financial feasibility and follow-ups of legal permission (except for the projects related to the portfolio or will be related to the portfolio).

REITs can only participate in operator companies, other real estate investment companies, companies established within the context of the Build-Operate-Transfer model, companies established abroad, or companies in the operational field of real estates. The purpose of such participation would be to include certain real estate, or rights to real estate, as well as certain Turkish companies in the REIT's portfolio. However, the expertise acquisition date value of the real estate to be included in the portfolio must equal at least 75% of the value of Turkish balance sheet assets. However, the value of REIT participation in the operating companies may not exceed 10% of the REIT's portfolio value (as specified by the most recent quarterly portfolio table drawn up and disclosed to the public at the end of the accounting period).

A REIT cannot on its own, in any way, carry out the construction of real estates and cannot recruit personnel and equipment with this purpose.

2.5 Leverage

	Leverage
	Short-term credits limited to three times the net asset value

In order to meet the short-term fund demands or costs related to the portfolio, a REIT can obtain credits at a rate of three times the net asset value (as described in the quarterly portfolio table). In order to calculate the maximum limit of such credits, the obligations of the company arising from financial leasing transactions and non-cash credits shall be taken into account.

A REIT can issue debt instruments within the restrictions of the capital market legislation. As for the issued debt securities, the aforementioned credits shall be deducted from the issue limit calculated according to the capital market legislation.

Companies can issue asset-backed securities based sales contracts on or on the promises to sell real estates from the portfolio.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	– Minimum 20% as first dividend ratio – Articles of association indicate the dividend ratio	Will be regarded within the distributable profit	Annually

Operative income
According to the Communiqué specifications regarding dividend distributions by publicly held joint stock corporations, it is required that the articles of association indicate the dividend ratio. The first dividend ratio cannot be less than 20% of the remaining distributable profit (the profit left over after the necessary deductions of legal, tax, fund and financial payments, as well as prior-year loss deductions, are made). The dividend distribution may not exceed half of the amount remaining, after subtracting the reserves required to be set aside according to law and the articles of association, as well as funds designated for taxes.

Dividend distributions shall be completed by the companies by the end of the fifth month following the end of their accounting periods. Under normal conditions, the general assembly may decide to distribute the yearly income of the company to its shareholders in the form of advance dividends prior to the year-end closing. However, the Capital Markets Law has a specific provision for the listed companies which, under certain conditions, enables them to distribute dividends prior to the year's end.

Capital gains
Capital gains from the disposal of shares or real estate fall under the income of REIT. For this reason, the profit generated from such operations will be included in the income and will be regarded within the distributable profit. Furthermore, all of the income from such operations is exempt from corporate tax at REIT level.

2.7 Sanctions

	Penalties / loss of status rules
	– Modification of the articles of association to exclude real estate investment trust operations – Possible company liquidation

There are no specific provisions within the legislation. However, it may be considered that the exemptions provided to REITs will be lost by the loss of the REIT status. Each case has to be examined on its own.

If companies cannot meet the requirements of investing in real estate, the rights supported by real estate and real estate projects in the ratio of at least 50% of their portfolio value, they should apply to the CMB. After making an evaluation, the Board may provide a single extension period of one year. However, if companies still fail to achieve this minimum 50% ratio at the end of this extension period, they are required to apply to the Board in order to modify their articles of association to exclude real estate investment trust operations. If companies do not fulfill these changes, they shall be regarded as dissolved in accordance with the Turkish Commercial Code. The specific REIT exemptions will no longer be applicable. To determine whether REIT exemptions will apply to the period before the loss of status, the specifics of each case will be considered.

In case the REIT dividend distributions are incomplete according to the legal procedure, the CMB can enforce the REIT to distribute the shortfall amount to the shareholders in cash, along with interest which would be calculated using the Turkish Central Bank's short-term advance interest rate. If legal requirements are met, the right is reserved to pursue legal actions against the REIT's members of the Board of Directors for the incomplete distribution of dividends.

3 Tax treatment at the level of the REIT

3.1 Corporate tax

	Current income	Capital gains	Withholding tax
	Tax-exempt	Tax-exempt	Credit/refund may be possible

Current income
REITs established in Turkey are exempt from the general applicable 20% corporate income tax for all of their income. The exemption is applied to all of REITs income without disparity. There may also be income subject to a withholding tax.

Dividends
Dividends derived from REIT are exempt from withholding tax.

Capital gains
Capital gains are, in principle, deemed the commercial income of an REIT and are thus regarded as corporate tax-exempt.

Withholding tax
REITs may have income subject to withholding taxes to be taxed at source. Credit/refund may be possible.

Other taxes
The tax exemption applies to corporate income tax, withholding tax on dividends and stamp tax.

Accounting rules
Since REITs should be listed on the Turkish Stock Exchange, the accounting rules designated by the Capital Markets Board and the Turkish Board of Accounting Standards are be applicable to REITs. In principle, income recognition for tax purposes is on accrual basis.

3.2 Transition regulations

	Conversion into REIT status
	In principle, no tax privilege

There is no privileged exit taxation rule for capital gains realised on real estate if sold to a REIT. However, there is a specific limited exemption rule stipulated in the Corporate Income Tax Code and applicable only for resident companies. According to this rule, under some certain conditions, 75% of the gains derived from the disposal of real estate may be exempted from corporate taxes. This is not a special rule for real estate disposals to REITs. However according to Corporate Tax Code the earnings that a company, which is engaged in the trading of real estate property or their rental, obtained from the sale of such assets, is not eligible to the exception.

3.3 Registration duties

	Registration duties
	– Title deed fee of 3% – Stamp tax exemption – Transfer may be subject to VAT

Real estate disposal is subject to a Title Deed Fee of 3%. Both the seller and the buyer are obliged to pay this fee equally (50% - 50%) before the disposal can be made at the Title Deed Office. This fee is calculated over actual consideration to be paid for such real estate; however the consideration shall not be less than the tax value of such real estate. Real estate transfer could also be subject to VAT. Real estate purchase and sale agreements and promise to purchase and sale agreements concerning the portfolio of REITs are exempt from stamp tax. Except these agreements, the agreements concluded by the REIT such as leasing agreements should be subject to tax.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Dividends and capital gains from share disposal subject to standard corporate income tax rate (20%)	– 50% of dividend subject to individual income tax (15% to 35%) – Capital gains in principle tax exempt	General view: N/A

Corporate shareholder
Dividends from a REIT are subject to taxation at the level of the corporate shareholder at standard corporate income tax rate (20%). Capital gains from REIT share disposal by fully taxable companies are subject to a corporate tax of 20%.

Individual shareholder
Dividends distributed to resident individuals are subject to taxation at individual income tax of up to 35%. Tax rate applied on income obtained from dividends varies from 15% to 35% according to the income level (progressive tax). 50% of the income is exempted from the income tax.

Capital gains from REIT share disposal by fully taxable individuals are not subject to a withholding tax, nor must be declared, if held for more than two years.

Withholding tax
In principle, the income generated by REIT is exempted from corporate tax and exempted income would be subject to corporate withholding tax, which in return replaces the dividend distribution withholding tax. Specifically for REIT the corporate withholding tax rate as well as the dividend distribution withholding tax is 0%.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	0% withholding tax	0% withholding tax	0% withholding tax

Corporate shareholder
See above explanations for domestic shareholder.

Individual shareholder
See above explanations for domestic shareholder.

Withholding tax
See above explanations for domestic shareholder.

5 Tax treatment of foreign REITs and their domestic shareholders

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

Foreign REITs
As a general rule, non-resident corporations deriving rental income in Turkey will be subject to a 20% withholding tax.

Corporate shareholder / Individual shareholder
In general distributions are subject to taxation in Turkey, but credit of foreign levied withholding tax may be possible. However the Controlled Foreign Company Regime should be taken into account. ■

United Kingdom (UK-REIT)

The City of London's skyline, including The Gerkin and Lloyd's of London.

1 General introduction

	Enacted year	Citation	REIT type
UK-REIT	2007	Finance Act 2006, and subsequently issued regulations	Corporate entity

The UK-REIT was implemented in UK with the Finance Act 2006 of July 19, 2006 with effect from January 01, 2007. On January 01, 2007 nine REITs elected for REIT status – a number which has steadily grown since the launch of UK REITs.

On May 31, 2008 the UK REIT market consisted of 19 property groups that had elected for REIT status, all of which are FTSE listed companies. Yet more property groups are likely to follow suit over the coming months and years, as investors become more confident in the UK REIT market and as investors seek the opportunity to invest in REITs specialising in specific property classes. It is thought that as the advantages of REIT status are more widely exploited, the size and diversity of the UK REIT market will expand.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
UK-REIT	19	26.3	7.0

Top five REITs

	Market cap (€m)	Sector type
Land Securities Group	7,237	Leisure, Office, Retail
British Land Co	4,573	Industrial, Leisure, Office, Retail
Liberty International	3,939	Office, Residential, Retail
Hammerson	3,263	Office, Retail
SEGRO	2,170	Industrial, Land, Office, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Election must be filed prior to conversion – Certain conditions for REIT status

Election must be filed prior to conversion. REIT has to confirm that:
- it is UK resident;
- its shares are listed on a recognised stock exchange;
- the company is not an open-ended investment company;
- it is not a close company;
- there is one class of ordinary shares (other than non-voting fixed rate preference shares);
- it has no performance-related loans.

Two tax returns (relating to tax-exempt business and non-tax-exempt business) and three sets of 'financial statements' (which demonstrate that the REIT fulfils the various qualifying tests and conditions) need to be filed annually.

2.2 Legal form / minimum share capital

	Legal form	Minimum share capital
	Listed closed-ended company	GBP 50,000 (if listed in UK)

Legal form
A UK-REIT must be a listed closed-ended company incorporated anywhere. It must be tax resident in UK. It may not be a resident in another country. Subsidiary entities can be resident outside the UK, but such entities are likely to suffer tax in that overseas jurisdiction.

Management may be internal or external.

Minimum share capital
As regards level of share capital, no specific rules other than normal listing requirements are applicable. REIT may have only one class of ordinary shares, and the only other class of shares it may issue is non-voting fixed rate preference shares.

A UK company that lists on the UK stock exchange must have a share capital of GBP 50,000.

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	– Not 'close company' – A single corporate shareholder may not own more than 10% of the shares/voting rights – No restriction on foreign shareholders	Yes

Shareholder requirements
A UK-REIT may not be classified as a 'close company'. Such a company is a company where five or fewer shareholders have control of the company.

No corporate shareholder may hold more than 10% of the shares, obtain more than 10% of the dividends or possess more than 10% of the voting rights, otherwise a penalty tax charge will arise. UK REITs have all changed Articles of Association to provide powers to force shareholders to sell, or withdraw distribution rights to greater than 10% shareholders.

No restriction on foreign shareholders.

Listing requirements
Listing on the LSE or any other 'recognised stock exchange' is required. HM Revenue & Customs maintain a list of recognised exchanges across the world.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– More than 75% of the net income profit must be derived from the property rental business – More than 75% of the assets must be used in the property rental business – Must hold at least three separate assets[1] – No one asset may exceed 40% of the total assets – May invest outside the UK

Restrictions are imposed by virtue of the Balance of Business Tests which restricts the volume of 'other' activities, other than property investment activities. However, all regular activities are permitted subject to these restrictions. Essentially, only rental profits and gains on properties used in the UK property rental business will be exempt from tax.

The Balance of Business tests are:
- at least 75% of the net income profit must be derived from the property rental business;
- at least 75% of the assets must be used in the property rental business.

A REIT must hold at least three separate assets, and no one asset can exceed 40% of the market value of the total portfolio. Qualifying properties may be residential or commercial and in any location worldwide. Owner occupied (i.e. by the REIT) assets do not count for the business test.

Development by the REIT for its own account is permitted, and is generally included within the tax-exempt business unless development costs exceed 30% of the acquisition cost and the property is sold within three years (see 3.1). Property trading is permitted but is taxable, and falls outside of the property rental business for the purpose of the Balance of Business restrictions.

Subsidiaries greater than 75% are permitted to be part of a REIT group, and certain joint ventures are also able to be part of the regime. However, interest in subsidiary companies of less than 40% will not be able to be within the REIT tax-exempt ring fence. For REITs which are partners in a partnership with less than a 20% share, this is also outside the ring fence (i.e. eligible income).

2.5 Leverage

	Leverage
	Interest cover test

Borrowing of money is limited by the 'Interest cover' ratio. Interest cover is defined as taxable profits before interest / financing costs. The result of the above formula should not fall below 1.25 for an accounting period. Where this does occur, a tax charge will arise based on the amount of financing costs that cause the ratio to exceed 1.25. As the test looks only at the taxable profits of the REIT against the interest that it has to pay, a sudden unexpected increase in interest rates or a drop in income may result in a tax penalty. The test is based on the accounting measure of interest, so interest-free or low interest loans will not need to be adjusted.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	90% of tax-exempt profits	Not included in the distribution obligation	Within 12 months

1 The definition of "asset" for these purposes includes a leasehold interest. So for example a building leased to three unconnected tenants would satisfy this particular requirement.

A distribution out of the tax-exempt income of the REIT (rental income and capital gains) is called a Property Income Distribution - a 'PID'.

Operative income
90% of the tax-exempt rental income must be distributed within 12 months of the end of the accounting period (i.e. profit from taxable income after deduction of tax depreciation does not have to be distributed).

Capital gains
Income from the disposal of real estate does not have to be distributed. However, if within two years the cash receipt is not either reinvested or distributed; it will count as a bad asset for the Balance of Business Asset test.

2.7 Sanctions

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

Failure to meet the 75% assets test could result in the following depending on the severity of the breach:
- less than 75% but more than 50% = 'minor breach' (two are allowed in any ten-year rolling period, before a notice is issued by UK Tax authorities (Her Majesty's Revenue & Customs, HMRC);
- less than 50% = 'major breach'. (HMRC can issue a notice immediately).

Where HMRC issue a notice, the REIT rules will cease to apply for the current and future years.

Where the profit distribution obligation is not complied with, a tax charge (20%) will arise on the REIT and will be based on the shortfall of the distribution.

The REIT will incur a 20% tax charge on the amount equivalent to a dividend paid to a corporate shareholder, holding greater than or equal to 10% of shares in REIT.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	– Rental income from tax-exempt property. – Non tax-exempt business is taxable in the ordinary manner (30%)	Eligible property is tax-exempt	– In principle, no withholding tax levied on domestic distributions (only on tax-exempt profit distributions) – If foreign income is taxable credit of foreign withholding tax possible

Current income
So called 'ring-fenced business' (i.e. rental income from tax-exempt property) is generally not subject to tax. Non tax-exempt business is taxable in ordinary manner with a tax rate of 30%. Non-exempt business includes income from participation of other REITs.

Capital gains
Capital gains or losses that arise on disposal of property used in property rental business (i.e. eligible business) are tax-exempted. The sale of 'developed properties' may be subject to tax if they are disposed of within three years of the completion of any development activities conducted by the REIT. Any property whose cost of development (conducted by the REIT) exceeds 30% of the fair value of the property's acquisition cost is deemed to be a 'developed property'. The disposal of property which is used for non-eligible business is taxable. Property used for eligible business, and also for taxable business, may be partially exempt.

Withholding tax
The UK does not levy dividend withholding taxes in case of a normal distribution to a UK resident person, but in the case of a distribution by a REIT out of its exempt profits (a PID), tax of 20% will be withheld for most shareholders. If an overseas jurisdiction levies a withholding tax on payment of a dividend to a REIT, the REIT is unlikely to be able to obtain a credit for such tax if the income is exempt in the UK. If, however, the income is taxable it may be possible for the REIT to credit this against the UK tax due.

Accounting rules
The REIT is taxed based on UK solus accounts for each group company (either UK GAAP or IFRS). Group REITs have a requirement to present financial statements under IFRS for the purposes of calculating the Balance of Business Tests.

3.2 Transition regulations

	Conversion into REIT status
	Conversion charge of 2% of the gross market value of property rental business assets

For UK tax purposes, only a new accounting period begins, and the base cost of property rental assets are re-based to market value. A 2% conversion charge is levied on the gross market value of property rental business assets held at the day of conversion. This entry charge extinguishes any latent capital gains within the REIT at the date of conversion. The conversion charge can be spread over four years from the year of conversion into the REIT, in which case the charge increases to 2.19% based on the following percentages: Yr1: 0.5%, Yr2: 0.53%, Yr3: 0.56%, Yr4: 0.6%.

3.3 Registration duties

	Registration duties
	Stamp Duty Land Tax of between 1% and 4%

Stamp Duty Land Tax is levied at between 1% and 4% on most land purchases in the UK. This is payable by the purchaser at the time of completion.

4 Tax treatment at the shareholder level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– Distributions of tax exempt profits (PIDs) are treated as rental profits taxable at 20% – In most cases distributions of taxed income at level of REIT will be tax-exempt – Capital gains on disposal of REIT shares are taxable under normal capital gains rules	– 20% tax on PIDs (collected by way of the withholding tax) – Higher rate tax payers pay additional 20% through their tax returns – Capital gains on disposal of REIT shares taxable in ordinary manner	Withholding tax is deducted at 20% on PIDs to individual shareholders. REIT shares held via a 'tax wrapper' such as an ISA can be paid gross.

Corporate shareholder
Distributions from exempt assets (PIDs) are treated as rental profits ('Schedule A Business'). This is taxed at the corporation tax rate of 30%. Distribution of taxed profits will likely be tax-exempt in the hands of UK corporate shareholders.

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

Individual shareholder
PIDs are taxed as if rental profits received from direct property, whether the PID represents distributed rental profits or capital gains. The shareholder will be taxed at either 20% (already levied with the withholding tax) or at 40% for higher rate tax payers In this case the shareholder will pay the remaining 20% through his tax return.

Capital gains on disposal of REIT shares are fully taxable in the ordinary manner (rates up to 40%, and subject to annual exemptions).

A share buy-back will be a disposal for capital gains purposes and taxable in the ordinary manner.

Withholding tax
Withholding tax is not deducted where a PID payment is made to a UK corporate shareholder. A withholding tax at 20% is levied on PIDs to individual shareholders by the REIT.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– 20% final withholding tax for PIDs – Disposal of shares in a UK REIT are outside the scope of UK capital gains tax	– 20% final withholding tax for PIDs – Disposal of shares in a UK REIT are outside the scope of UK capital gains tax	– Tax treaty relief available if claimed following receipt. Will be treated as a dividend distribution under most treaties – Parent-Subsidiary Directive not applicable

Corporate shareholder
Foreign shareholders receive dividends from the tax-exempt business (PIDs) net of basic rate income tax (20%).

Individual shareholder
Foreign shareholders receive dividends from the tax-exempt business (PIDs) net of basic rate income tax (20%).

Withholding tax
A non-resident shareholder suffers the withholding tax of 20% no matter if corporate or individual. Treaty relief can be claimed retrospectively. The PID is only taxed as rental income in the UK, otherwise we expect the exempt dividend to be treated as a dividend distribution under most treaties. EU Parent Subsidiary Directive not applicable (see under no. 2.3 above).

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	Taxed under normal UK tax rules	30% tax on foreign income	20% or 40% tax on foreign income

Foreign REIT
A foreign REIT will be taxable under normal UK rules.

Corporate shareholder
A foreign REIT distribution of income from property in the UK to a UK corporate shareholder is likely to be treated as a normal dividend (30% tax) from the overseas company (will depend on structure of foreign REIT).

Individual shareholder
A foreign REIT distribution of income from property in the UK to a UK individual shareholder is likely to be treated as a normal dividend (20% or 40%) from overseas company (will depend on structure of foreign REIT).

Asia

Part 2

Australia (LPT)

The Sydney Opera House and Sydney CBD on Port Jackson.

1 General introduction

	Enacted year	Citation	REIT type
Unit Trust (esp. listed Property Trust); **Public Trading Trust**	1985	– (Public) Unit Trust and Equity law – 'Trust Income', Division 6, ITAA 1936 – 'Public Trading Trusts' Regime, Division 6C, ITAA 1936	Trust type

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

Unit trusts are legally established pursuant to Unit Trust and Equity law. Certain public unit trusts may also qualify as Managed Investment Schemes regulated under Corporations Law. Unit trusts are taxed under Division 6 of the ITAA 1936 (Trust Income rules), or under Division 6C of the ITAA 1936 (Public Trading Trust Regime).

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
LPT	67	46.7	12.4

Top five REITs

	Market cap (€m)	Sector type
Westfield Group	19,263	Retail
Stockland	4,747	Hotel, Industrial, Office, Residential, Retail, Retirement Housing
GPT Group	2,965	Hotel, Industrial, Office, Retail, Retirement Housing
Dexus Property Group	2,547	Industrial, Logistic, Office, Parking, Retail
CFS Retail Property Trust	2,540	Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	No special legal or regulatory requirements

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

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

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Unit trust	No

Legal form
A unit trust generally qualifies for ‘flow through’ tax treatment. The ‘flow through’ treatment is not limited to resident trusts.

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

However, a trust which is treated as a public unit trust (e.g. listed or at least 50 investors) does not qualify for ‘flow through’ treatment if it is carrying on ineligible trading activities.

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

Minimum initial capital
There is no minimum initial capital required.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	No requirements	No

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

Listing requirements
Listing is not mandatory in Australia to obtain ‘flow through’ status. However, large property trusts are typically listed in Australia for commercial purposes (known as ‘listed managed investments’ or ‘listed property trusts’).

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

2.4 Asset levels / activity test

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

There exist no restrictions on the type of activities that can be undertaken by a property trust, unless the trust qualifies as a public unit trust. Unit trusts, other than public unit trusts, can engage in trading activities, e.g., managing and developing real estate, without losing the benefits of 'flow though' treatment.

Public unit trusts must carry on only an 'eligible investment business' in order to be eligible for 'flow through' treatment. "Eligible investment business" covers investing in land for the purpose (or primarily for the purpose) of deriving rent, and/or investing or trading in various financial instruments including units in unit trusts, shares in companies, loans, and derivatives. Ineligible activities are regarded as trading activities. If the public unit trust carries on a trading business it will be taxable akin to a company and its unit-holders as shareholders.

There exists some uncertainty as to the interpretation of the public trading trust rules, including the extent to which a public unit trust can engage in non-eligible land related activities. Provided the public unit trust carries on primarily, i.e. predominantly, eligible land investment activities and non-eligible activities are incidental and relatively insignificant, the public unit trust should however retain the 'flow through' treatment. The Government is considering extending the definition of "land" to cover non-land equipment that is integral to the land's use.

A property trust may invest in a single real property.

A public unit trust may not control an entity that carries on ineligible trading activities. As a consequence, it is common for Australian property trusts to form part of a stapled security with a stapled company/trading trust undertaking a range of activities relating to passive property holdings (i.e., management, redevelopment, funds management etc.). This allows the management function to be "internalised".

A property trust can hold property investments offshore. Property trusts can hold investment properties indirectly through SPVs. However, the key benefits arising for an investor from a trust structure may be lost where the interposed SPV does not qualify for look through tax treatment.

2.5 Leverage

	Leverage
	Unlimited, subject to general thin capitalisation rules

There are no specific gearing limits for unit trusts under Australian tax law. The general thin capitalisation rules may apply however, to effectively impose a gearing limit where the property trust is controlled by non-resident unit holders and/or if the property trust controls a foreign entity. Exemptions from the thin capitalisation rules apply where total debt deductions (including associates' deductions) are $250,000 or less, or where an Australian outbound investor that is not foreign controlled has average Australian assets (including its associates' assets) that represents 90% or more of its average total assets (including its associates' assets).

Subject to the thin capitalisation rules, a tax deduction should be available for interest expense incurred in connection with loans used to acquire the income yielding property.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	Typical distribution of 100% of trust's income	Typical distribution of 100% of capital gains realised on disposal of property, including interests held in other sub-trusts or other entities	Annually

There are no prescribed minimum distribution rules. However, in order to ensure that the trustee is not subject to tax on the property trust's taxable income at 45%, the unit holders must be presently entitled to all of the trust's trust law income at year end. Property trusts therefore typically distribute their trust income (including tax deferred amounts) on at least an annual basis, and listed trusts distribute generally on a quarterly basis.

2.7 Sanctions

	Penalties / loss of status rules
	N/A

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Not taxable in the hands of the trustee provided the unit holders are presently entitled to the trust's income	– Tax treatment of capital gains similar to that of ordinary income – 50% CGT discount may be available	N/A

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

If there is a portion of property trust's trust income that unit holders are not presently entitled to at year end, then the trustee is subject to tax on the same proportion of the trust's taxable income at 45%. Where the taxable income includes capital gains, the trustee may be able to apply the 50% CGT (capital gains tax) discount.

Tax losses are quarantined in the trust and cannot be distributed to unit holders. They can be carried forward for offset against future income and capital gains subject to satisfying the trust loss recoupment tests (these provisions do not apply to capital losses however), the most important of which is a greater than 50% continuity of ownership test. A trust that does not satisfy the requisite trust loss tests cannot offset those income losses in future years. There is no loss carry-back.

Withholding tax
An Australian resident property trust is generally not subject to any domestic withholding tax on income earned in Australia. However the property trust may have tax deducted from its income in accordance with section 4 below, if it is a beneficiary of another trust.

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

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

Accounting
Australian LPT's are required to prepare accounts under IFRS.

3.2 Transition regulations

	Conversion into REIT status
	N/A

3.3 Registration duties

	Registration duties
	– No duty on capital contributions – Stamp duty of up to 6.75% on the transfer of property or transfer of units in unlisted property trust. – No duty on transfers of units in listed trusts

There is no duty on capital contributions.

Stamp duty of up to 6.75% will be levied of the higher of market value or consideration paid on the transfer of property or transfer of units in unlisted property trusts.

There is no duty on transfers of units in a listed trust.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– 30% tax on share of the trust's worldwide taxable income, including capital gains – Capital gains on disposal of units taxed at 30%	– Tax at rates of up to 46.5% on share of the trust's worldwide taxable income – 50% CGT discount may be available on capital gains distributed and on disposal of units	– There is no final withholding tax imposed – Trustee may pay tax on behalf of beneficiary in certain circumstances – Withholding at 46.5% is required where an Australian tax file or business number is not quoted

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

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

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

Individual unit holder
An individual unit holder is subject to tax at the prevailing tax rate of up to 46.5% on its share of the property trust's worldwide taxable income. However, to the extent that the trust's taxable income is made up of capital gains, the unit holder may be entitled to a 50% CGT discount.

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

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

Withholding tax
Withholding from property trust distributions or from a present entitlement to trust income is required at the rate of 46.5% where an Australian tax file number (TFN) or Australian business number (ABN) or other exception is not quoted to the property trust. Unit holders are entitled to a tax credit for the amount withheld.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– Non-resident unit holders are subject to Australian tax at corporate tax rate of currently 30% on their share of the trust's taxable income that is attributable to sources within Australia – Capital gains on non real property are tax-exempt	– Non-resident individual unit holders are subject to Australian tax on a progressive scale starting at 29% on their share of the trust's taxable income that is attributable to sources within Australia – Non-resident unit holders in a "managed investment trust" are subject to a flat non-final Australian tax at 30% – Capital gains on non real property are tax-exempt and taxable capital gains may be eligible for a 50% discount	Dividend and interest paid to non-resident unit holders is subject to a final withholding tax in accordance with domestic rules/treaty rules, on dividends or interest

Different rules apply for "managed investment trusts" and other trusts.

General Position
In general, for non-resident beneficiaries that are presently entitled to the property trust's trust income, the trustee will be subject to tax on Australian-sourced income, other than income which is subject to a final withholding tax (e.g. interest/dividend withholding tax, as withholding tax is a final tax) and certain capital gains that are not in respect of 'taxable Australian property'.

Tax is paid in accordance with the type of unit holder - companies at 30%, individuals on a progressive scale starting at 29%, and non-resident trustee beneficiaries at 45%. The unit holder is taxed on the income and is entitled to lodge a tax return and claim a tax credit for tax paid by the trustee.

Managed Investment Trusts
A non-final flat 30% withholding tax applies on distributions, made by certain widely held "managed investment trusts", of taxable income attributable to Australian sources (either directly or through certain Australian intermediaries) to all types of non-residents including trustees. Dividend, interest and royalty income will generally continue to be excluded and subject to the specific withholding tax

rules. Capital gains on assets other than 'taxable Australian property' will also continue to be generally excluded (discussed below). The ultimate non-resident beneficiary continues to be taxed on the income and receives a credit for the tax withheld.

The Government has proposed reducing the 30% withholding rate on distributions from managed investment trusts to: 22.5% (non-final tax) for 2008/09, 15% (final tax) for 2009/10, and 7.5% (final tax) thereafter. These amendments had not been passed at the time of writing. The reduced withholding rates are proposed only to apply to unit holders resident in countries with which Australia has effective exchange of information arrangements.

Tax Deferred Distribution / CGT

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

Trustees of property trusts that distribute capital gains on assets that are not 'taxable Australian property' are not required to withhold tax from that amount and foreign resident beneficiaries will not be taxable on the gains distributed. Gains from investments held by the trust in other trusts are eligible for the exemption provided at least 90% of the market value of CGT assets of the other trust (or trusts in which the other trust has an interest), are not 'taxable Australian property' at the relevant CGT event time. Taxable Australian property includes real property held directly or indirectly that is situated in Australia, therefore it usually follows that capital gains distributions from Australian property trusts remain taxable.

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

Withholding tax

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

Withholding from other property trust distributions (or from a present entitlement to other trust income) is required at the rate of 45% where an Australian tax file number (TFN) or Australian business number (ABN) or other exception is not quoted to the fund. Unit holders are entitled to a tax credit for the amount withheld. Amounts that have tax withheld under the 30% "managed investment trust" withholding tax provisions discussed above are exempted from this requirement.

5 Tax treatment of foreign REITs and their domestic unit holders

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

Foreign REIT

Foreign REITs are taxed on Australian sourced income and capital gains on taxable Australian property, broadly in accordance with 3.1 and 4.2 above.

Trust present entitlement rules are modified however.

Corporate unit holder

Corporate unit holders are taxed on income broadly as above with a credit for foreign tax paid.

Australia's foreign investment fund (FIF) or controlled foreign company (CFC) accrual taxation rules may apply.

Individual unit holder

Individual unit holders are taxed on income broadly as above with a credit for foreign tax paid.

Australia's foreign investment fund (FIF) or controlled foreign company (CFC) accrual taxation rules may apply.

Dubai (REIT)

The Gate building, DIFC, Dubai.

1 General introduction

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

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

The REIT market is still in its infancy, and as of May 30, 2008 there are no listed REITs in Dubai.

Nakheel PJSC, the Dubai-based developer, said it may sell US$ 1.5 billion of REITs in Dubai and Singapore this year as part of a plan to expand into investment management. The possible listing of two real estate investment trusts, or REITs, by Dubai-based real estate developer Nakheel by the end of 2008 will set the ball rolling for the listing of more such instruments on the Dubai International Financial Exchange (DIFX).

Although no REIT has yet been formed within the DIFC, the US$ 200 million Cayman Island-organised Arabian Real Estate Investment Trust was jointly developed and launched by HSBC Bank Middle East and asset management company Daman.

2 Requirements

2.1 Formalities / procedure

	Key requirements
	Detailed information not yet available

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

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Public Property Fund	No

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

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

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	Detailed information not yet available	Yes

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

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

2.4 Asset level / activity test

	Restrictions on activities / investments
	– REIT is primarily aimed at investments in income generating real property – Property under development must not exceed 30% of the net assets value – REIT must derive income from two tenants or lessees – REIT can only invest up to 40% of its total assets in assets other than real property or property related assets – REIT should receive the total income generated by the SPV (Special Purpose Vehicle) if it holds a real property via an SPV – REIT should own and control a minimum of 50% if entered into a joint property ownership arrangement – REIT's property ownership is restricted to the designated areas, which are available only to non-nationals – REIT's ownership of property outside Dubai and other GCC countries is bound by the same ownership restrictions mentioned above

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

1. An Operator of a REIT must ensure, subject to (2), that any investment made in respect of property under development, whether on its own or in a joint venture, is undertaken only where the REIT intends to hold the developed property upon completion.
2. The total contract value of the property under development in (1) must not exceed 30% of the net asset value of the Fund Property of the REIT. Property developments do not include refurbishments, retro-fitting or renovation.
3. The REIT is allowed to hold shares and/or interest in a subsidiary corporation and/or in a partnership structure. The restriction pertains to development activity. On a consolidated level, no more than 20% of the REIT's assets can be invested in development activities.

According to The Investment Trust Law No. 5 and DFSA Consultation paper No. 33, a REIT must derive income from at least two types of tenant or lessee; each type of tenant or lessee must produce 25% of the total income, and the Operator must invest no more than 40% of the fund in any one property type.

2.5 Leverage

	Leverage
	Limited to 70% of the total net asset value

In Dubai, an Operator of a REIT may borrow either directly or through its SPV up to 70% of the total net asset value of the fund.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	80% of annual net income	At discretion of the overseeing body	Annually

Operative income
REITs in Dubai are required to distribute an amount no less than 80% of audited annual net income to the unit holders.

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

2.7 Sanctions

	Penalties / loss of status rules
	Detailed information not yet available

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

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

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

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

Capital gains
Not taxable except where the above applies.

Withholding tax
N/A

Accounting rules
IFRS rules are applicable.

3.2 Transition regulations

	Conversion into REIT status
	N/A

3.3 Registration duties

	Registration duties
	– Transfer fee of 1.5% – 7% – Land registration fees

There is no stamp duty or transfer tax levied on acquisition of freehold property in Dubai. However there are land registration fees and transfer fees. For property under development, the purchaser pays 1.5% of the value of the property and the developer pays 0.5% to the land registry.

If the property changes hands, the seller has to pay a transfer fee (depending on the developer, approximately 1.5% to 7.0% of the price of the property) to the developer.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

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

Corporate unit holder
No taxation for domestic corporate unit holders.

Individual unit holder
No taxation for domestic individual unit holders.

Withholding tax
Dubai does not levy withholding taxes.

4.2 Foreign unit holder

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

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

Individual unit holder
No taxation for foreign individual unit holders.

Withholding tax
Dubai does not levy withholding taxes.

5 Tax treatment of foreign REITs and their domestic unit holders

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

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

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

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

* Double Taxation Treaties only apply to resident corporations or individuals as defined in the double tax treaty. The place of incorporation or listing of the REIT is only one of the factors when assessing application of the Double Tax Treaty.

Hong Kong (HK-REIT)

Hong Kong Island across Victoria Harbour.

1 General introduction

	Enacted year	Citation	REIT type
HK - REIT	2003	Code of Real Estate Investment Trusts	Trust type

The Code for REITs was introduced in July 2003. REITs in Hong Kong are structured as trusts. They have to comply with the Code of Real Estate Investment Trusts (Code of REITs) issued by the Securities and Future Commission (SFC), for authorisation.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
HK - REIT	42	24.1	6.4

Top five REITs

	Market cap (€m)	Sector type
Link REIT/The	3,120	Parking, Retail
Champion REIT	1,299	Office, Parking, Retail
Regal Real Estate Investment Trust	408	Hotel
Sunlight Real Estate Investment Trust	236	Office, Retail
GZI Real Estate Investment Trust	230	Office, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– To be authorised by the Securities and Futures Commission (SFC) of Hong Kong – Appointment of a trustee – Appointment of a management company

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

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

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

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

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

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Unit trust	No

Legal form
REITs have to be in the legal form of a trust.

Minimum initial capital
No formal minimum capital requirements exist in the Code of REITs.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	No requirements	Yes

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

As part of the listing conditions, the general requirement to maintain a minimum value of the units being in the hands of the public may be included as a term in the trust deed of a REIT.

Listing requirements
REITs that are advertised or offered to public in Hong Kong must be listed on the Hong Kong Stock Exchange. Only the Code of REITs governs the REITs authorised by the SFC in Hong Kong.

2.4 Asset levels / activity test

	Restrictions on activities / investments
	– Must invest in real estate – Must hold the real estate for at least two years – Must not invest in vacant land or engage in property development activities – Must not acquire any asset that involves the assumption of any unlimited liability – May invest in foreign assets

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

A REIT must not acquire any asset that involves the assumption of any liability that is unlimited. Also, the REIT must hold its real estate for a period of no less then two years, unless otherwise approved by its unit holders.

REITs must not invest in property development activities, or in vacant land. However, there are property development exceptions, such as refurbishments, retro fittings or renovations.

It is permitted to establish and own special purpose vehicle companies (SPVs) to hold the REIT's real estate properties. Under the Code of REITs, SPVs must be either wholly or mostly owned by a REIT. Generally, no more then two layers are allowed unless specifically approved by the SFC.

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

There are no limitations to the holding of units in a REIT in Hong Kong.

REITs may invest in foreign assets.

2.5 Leverage

	Leverage
	Limitation to 45% of gross asset value

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

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	– 90% of annual net income after taxes	Specified in the trust deed	Annually

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

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

2.7 Sanctions

	Penalties / loss of status rules
	– De-listing – Loss of authorisation

If the asset levels are not met, the listing or the authorization of the REIT may be jeopardized.

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	– 16.5% at SPV level – Dividends from SPV tax-exempt – Foreign sourced income tax-exempt	N/A	N/A

Current Income

For Hong Kong tax efficiency consideration, authorised REITs in Hong Kong would generally hold real estate through SPVs. Normal Profit Tax rules apply to SPVs that carry on business in Hong Kong. Income is recognised on an accrual basis and the current profit tax is 16.5%. Rental income derived from properties located in Hong Kong is subject to the Hong Kong Profit Tax. Dividends are exempt in the hands of the recipient based on general applicable tax principles in Hong Kong. Foreign sourced income not subject to taxation in Hong Kong.

Capital gains

There is no capital gains tax in Hong Kong.

Withholding tax

A Hong Kong resident trust is generally regarded as a tax resident person for Hong Kong's Double Taxation Treaty with other countries or territories.

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

Other taxes

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

Accounting rules

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

3.2 Transition regulations

	Conversion into REIT status
	N/A

3.3 Registration duties

	Registration duties
	Stamp duties

The transfer of Hong Kong investment property or shares of Hong Kong incorporated property-holding companies would generally encompass transaction costs in the form of stamp duties in the amount of up to 3.75% of the value of Hong Kong real estate and 0.2% of the value of shares in Hong Kong SPVs.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

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

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

Gains on the disposal of REIT units are not subject to profit taxes in Hong Kong unless the unit holder is carrying on a trade, profession or business in Hong Kong and holds the units for trading purposes.

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

Gains on the disposal of REIT units are not subject to profit taxes in Hong Kong unless the unit holder is carrying on a trade, profession or business in Hong Kong and holds the units for trading purposes.

A return of capital in the form of redemption of units is not subject to taxation.

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

4.2 Foreign unit holder

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

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

Gains on the disposal of REIT units are not subject to profit taxes in Hong Kong unless the unit holder is carrying on a trade, profession or business in Hong Kong and holds the units for trading purposes.

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

Gains on the disposal of REIT units are not subject to profit taxes in Hong Kong unless the unit holder is carrying on a trade, profession or business in Hong Kong and holds the units for trading purposes.

Withholding tax
There is no withholding tax in Hong Kong. The non-resident unit holder will not experience any withholding taxes in Hong Kong because Hong Kong, except for certain royalty payments, does not impose any withholding tax.

5 Tax treatment of foreign REITs and their domestic unit holders

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

Foreign REIT

Local tax rules apply. Rental income derived from properties in Hong Kong is subject to either the profit tax (for businesses in Hong Kong) or to the property tax (if the holding of the properties is not considered a business).

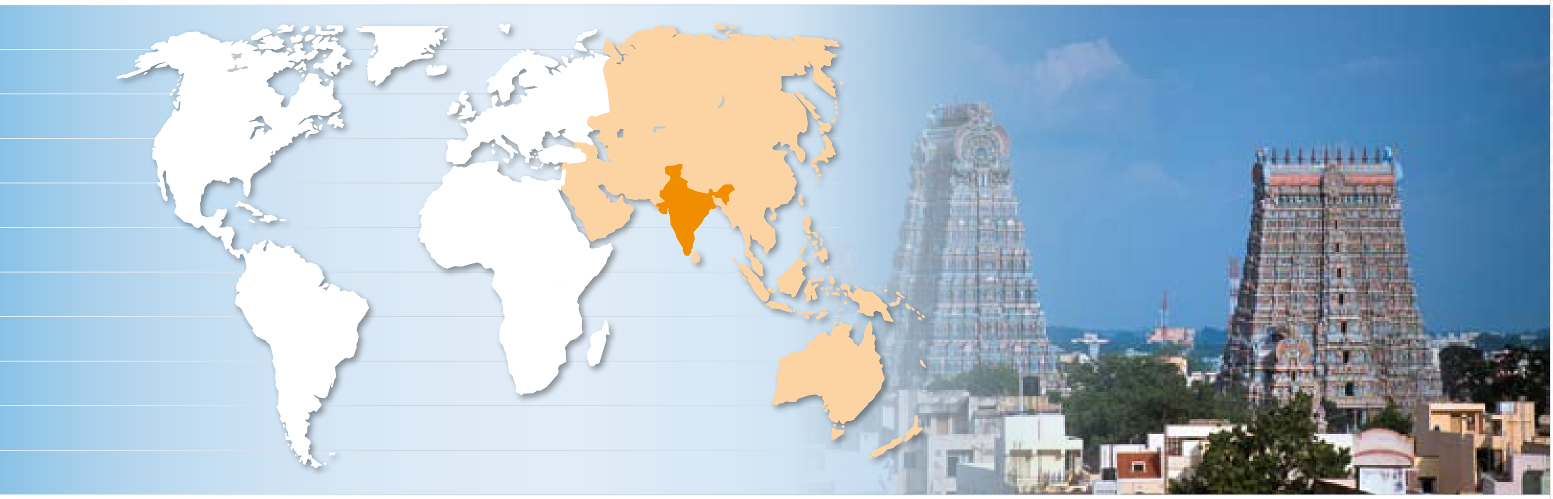
Corporate unit holder

No taxation.

Individual unit holder

No taxation.

India



Meenakshi temple in Tamil Nadu, India.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
	Draft for public comment stage	Draft for Public Comments SEBI (REIT) Regulations	Trust type	Not yet established

On December 28, 2007, the Securities and Exchange Board of India ('SEBI' or 'Board') issued the draft SEBI (Real Estate Investment Trust) Regulations, 2008 for public comments.

The Regulations are still at the draft stage and are yet to be formalised/enacted. Since the draft guidelines were announced in December, no further development has taken place on the REIT Regulations. Further, on April 16, 2008, SEBI amended the existing SEBI (Mutual Fund) Regulations to introduce Real Estate Mutual Funds ('REMFs') in India.

Currently, there is no REIT market in India.

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Net worth of INR 50 million – 50% of the trustees independent – Real Estate Investment Management Company required – Official appraisal required

REIT shall be required to be constituted as a trust with its trust deed providing for undertaking real estate investment schemes as per the Regulations.

REIT is required to be registered with the Board and comply with the applicable provisions of SEBI Act, Securities Contract (Regulation) Act, 1956 and other applicable laws.

Conditions for eligibility of REIT are as under:
- Shall have a minimum net worth of INR 30 million (approx US$ 705,000) at the time of making the application, which shall be increased to INR 50 million (approx US$ 1.2 million) within a period of three years from the grant of registration;
- The conditions outlined in the SEBI (Criteria for Fit and Proper Person) Regulations, 2004 (as far as applicable) are complied with by the REIT and its trustees, directors and key personnel;
- At least 50% of the trustees of the REIT to be independent and not directly or indirectly associated with persons controlling the REIT;
- No person connected directly or indirectly with the REIT applicant should have been refused registration in the past;
- The management of the REIT and management of the Real Estate Investment Management Company ('REIMC') are required to be independent;
- The REIT shall enter into an agreement with REIMC for managing its scheme property.

Schemes to be floated by REIT will be 'close-ended' and listed on a stock exchange (as specified in its offer document).

Prior to floating the scheme:
- Rating of scheme to be obtained from a credit rating agency; and
- The scheme to be appraised by an appraising agency (i.e. an agency empanelled with SEBI for conducting technical or financial appraisal of the scheme).

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Trust	INR 50 million

Legal form
REITs are required to set up as trusts.

A foreign entity cannot qualify as a REIT. Provisions with respect to statutory seat/ management seat requirement as applicable to trusts.

Minimum initial capital
Under the Regulations, a REIT is required to have a minimum net worth of INR 50 million. However, at the time of application, REIT may have a net worth of INR 30 million, provided the same is increased to INR 50 million within a period of three years from the grant of registration

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	No foreign participation	Yes

Unit holder requirements
Currently, there are no enabling provisions in the foreign investment regime for foreign participation in REITs.

Listing requirements
The Regulations require the schemes of a REIT to be listed on a stock exchange (as specified in its offer document) immediately after allotment of units and not later than six weeks from date of closure of scheme.

REITs are required to be listed on a stock exchange (as specified in its offer document).

2.4 Asset levels / activity test

	Restrictions on activities / investments
	– Only allowed to invest in real estate – Prohibited to invest in vacant land or engage in property development – No more than 15% exposure in a single real estate

- Schemes permitted to invest only in real estate.
- The real estate should generally be income generating.
- Schemes not to acquire any asset which involve assumption of unlimited liability.
- Scheme prohibited from investing in vacant land or engaging/ participating in property development which does not include refurbishment, retrofitting and renovations.
- Schemes may acquire uncompleted units in a building which is unoccupied and non-income producing or is in the course of substantial development, redevelopment or refurbishment. Aggregate contract value of such real estate should not exceed 20% of the total net asset value of the scheme at the time of acquisition.
- REIT under all its schemes shall not have an exposure of more than 15% of a single real estate project.
- The REIT under all its schemes shall not have an exposure of more than 25% of all real estate projects developed, marketed, owned or financed by a group of companies.

Regulations indicate that REIT may invest only in real estate assets and not in securities of real estate companies.

Investment in foreign real estate is restricted under Indian exchange control guidelines. No specific exemption permits REITs to invest overseas.

2.5 Leverage

	Leverage
	20% of total gross assets

Scheme cannot borrow more than 20% of the total gross assets of the scheme

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	90%	90%	Annual

- At least 90% of the scheme's annual net income after tax to be distributed to unit holders.
- Net income for distribution to unit holders to include:
  - Revaluation surplus credited to income.
  - Gains on disposal of real estate.

The regulations do require the annual net income after tax to be distributed to the unit holders.

Accounting
- Proper books of accounts, records and documents to be maintained.
- The financial year of all schemes to be March 31 of each year.

2.7 Sanctions

Contraventions shall be dealt with in the manner provided in SEBI Act and/or SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	No information available	No information available	No information available

Current income and capital gains
The SEBI (REIT) Regulations are currently at the draft stage. Neither the draft Regulations nor Income Tax Act, 1961 have any provisions with respect taxation of REITs or its unit holders.

Further, the draft Regulations specify that at least 90% of the scheme's annual **net income after tax** is to be distributed to its unit holders. This suggests that the REIT could potentially be subject to tax. However, the taxation of REITs and its unit holders needs to be clarified.

Accordingly, currently there is no clarity on the taxation of REITs or its unit holders.

Withholding tax

3.2 Transition regulations

	Conversion into REIT status
	N/A

No specific provisions

3.3 Registration duties

	Registration duties
	– Stamp duty between 5% to 15%

There are no specific exemptions available to REITs.

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

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

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– No information available	No information available	No information available

The SEBI (REIT) Regulations are currently at the draft stage. The draft regulations do not have any provisions with respect taxation of REITs or its unit holders. Further, subsequent to the issue of the draft Regulations, there have been no amendments to the Income Tax Act, 1961 with respect to the taxation of either REITs or its unit holders.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	No information available	No information available	No information available

The SEBI (REIT) Regulations are currently at the draft stage. The draft regulations do not have any provisions with respect taxation of REITs or its unit holders. Further, subsequent to the issue of the draft Regulations, there have been no amendments to the Income Tax Act, 1961 with respect to the taxation of either REITs or its unit holders.

5 Tax treatment of foreign REITs and their domestic unit holders

	Foreign REIT	Corporate unit holder	Individual unit holder
	N/A	N/A	N/A

Foreign REIT
Under Indian exchange control regulations, a foreign REIT cannot directly own real estate assets in India. It is required to invest in an Indian company (subject to specified conditions) which in turn owns the assets.

A foreign REIT would be taxable in India like any other non resident. Accordingly, the REIT would be taxable at 42.23% (net income basis) on its business income and 21.12%/42.23% on its capital gains accruing or arising or deemed to be accruing or arising in India. The same would be subject to any treaty benefits that may be available.

Corporate unit holder
Under Indian exchange control regulations, a resident company is prohibited from making investment in a foreign entity engaged in real estate without the prior approval of Reserve Bank India (RBI). Accordingly, where a resident company wishes to invests in units of an overseas REIT, it would need to obtain prior approval from RBI.

A resident corporate unit holder of a foreign REIT (i.e. a resident/ Indian company that invests in units of an overseas REIT) would be liable to tax on its worldwide income including income from a foreign REIT as per the domestic income tax provisions. The same would be subject to any treaty benefits that may be available.

An Indian company is taxable at 33.99% (net income basis) on its business income. Further, its capital gains are liable to tax at 22.66%/33.99% depending on the period of holding of the capital asset.

Individual unit holder
Under Indian exchange control regulations, resident individuals are permitted to remit up to US$ 200,000, per financial year, under the Liberalized Remittance Scheme for Resident Individuals, for any permitted current or capital account transaction or a combination of both. Accordingly, a resident individual may invest in units of a foreign REIT under the above-mentioned Scheme.

A resident individual unit holder of a foreign REIT (i.e. a resident individual who invests in units of an overseas REIT) would be liable to tax on his worldwide income including income from a foreign REIT. Under domestic tax provisions he would be liable to tax as per applicable slab rates with a maximum marginal rate being 33.99%. The same would be subject to any treaty benefits that may be available.

Japan (JREIT)

Shinjuku Station - a major Tokyo commercial and administrative center.

1 General introduction

	Enacted year	Citation	REIT type
JREIT	2000	Investment Trust law	Trust or corporate type (in practice corporate type)

A REIT in Japan is known as a Japanese Real Estate Investment Trust (JREIT) and was introduced with the amendment of the Investment Trust and Investment Corporation Law in November 2000 (Investment Trust Law or 'ITL'). ITL provides two different types of investment vehicles including 'investment trusts' and 'investment corporations (*toshi hojin*)'. To date, all JREITs have been formed as investment corporations, therefore only this type of structure shall be discussed below. ITL adopts an external management structure with respect to investment corporations.

Under the tax law, a JREIT, in principle, is subject to Japanese corporate tax. However, a JREIT can deduct dividends paid to its shareholders from its taxable income if the JREIT complies with certain requirements, including the requirement that at least 90% of the JREIT taxable income must be distributed as a dividend.

The first two JREITs were listed on the Tokyo Stock Exchange in September 2001, sponsored by two of the largest real estate corporations in Japan. The JREIT market has significantly expanded and there are currently 42 listed JREITs with a market value of approximately JPY 4.1 trillion (about US$ 41 billion) as of March 31, 2008.

A few recent amendments to the JREIT regime and brought some positive news to the sector. Firstly, the Tokyo Stock Exchange (TSE) recently lifted the restrictions for JREITs on investing into overseas real estate. This change became in effect from May 2008. Secondly, the requirements for each JREIT to benefit from the JREIT privilege to deduct dividend distribution have been revised. It had been one of such requirements that the three largest unit holders and their affiliates do not collectively hold more than 50% of the outstanding units of the JREIT at the end of the fiscal year. However, this requirement has been eased. Under the revised rule, one largest unit holder must not collectively hold more than 50% of the outstanding units of the JREIT at the end of the fiscal year. Under the former version of the requirement before this revision, there were cases that the former requirement failed to been met such that the cash dividends of the JREIT decreased sharply. Thanks to this revision, it is expected that such instances will be reduced.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
JREIT	42	24.1	6.4

Top five REITs

	Market cap (€m)	Sector type
Nippon Building Fund Inc	4,049	Office
Japan Real Estate Investment Corp	2,965	Office
Nomura Real Estate Office Fund Inc	1,456	Office, Retail
Japan Retail Fund Investment Corp	1,414	Retail
Japan Prime Realty Investment Corp	1,172	Office, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Building Lots and Building Transactions Agent License – Discretionary Transaction Agent License – Registration of the Asset management company with Financial Services Agency – Registration of the JREIT with the Financial Services Agency

As stated above, JREITs are typically investment corporations that must be managed by a registered asset management company. As of September 30, 2007, the Financial Instruments and Exchange Law (FIEL) became effective as comprehensive regulations for financial services. Although the ITL continues to exist as regulations applicable to JREITs, FIEL superseded ITL with respect to regulations for the asset management company of an investment corporation.

Under FIEL, registration as a financial instruments trading business is required for an asset management company. As such, FIEL replaced the previous approval process with a new registration process. However this process is relatively the same as the former approval procedures.

The first step is to establish an asset management company and acquire a 'Building Lots and Building Transactions Agent Licence' and a 'Discretionary Transaction Agent Licence' from the Ministry of Land, Infrastructure and Transportation (MLIT). After these licenses are obtained, the asset management company may register as a financial instruments trading business with the Financial Services Agency (FSA) by filing a notification accompanied with the by-laws of the JREIT. Once the registration is completed, the Asset Management Company can begin incorporating a JREIT by filing the appropriate documents with a legal affairs bureau. After the JREIT is set up, the JREIT must be registered with the FSA in order to commence its business as a JREIT and is subject to the reporting and inspection requirements of the FSA and the local financial bureau.

2.2 Legal form / minimum share capital

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

Legal form
A JREIT must be formed as a domestic corporation in compliance with the ITL. As described above, a JREIT can either be a 'trust type' or a 'corporate type' under the ITL. When the first JREITs were formed, the trust type was administratively cumbersome and more expensive to establish. In addition, the corporate governance rules applicable to the corporate type were considered to be more attractive to investors. As a result, the present publicly listed JREITs are all the corporate type as of March 31, 2008.

Minimum share capital
JREIT shares have only one class with voting rights. The minimum investment capital for a JREIT is JPY 100 million under the ITL.

2.3 Shareholder requirements / listing requirements

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

Shareholder requirements

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

Listing requirements

In regards to both the ITL and for tax purposes, as there is no requirement for a JREIT to be listed on a stock exchange, a private JREIT is allowed.

The Tokyo Stock Exchange established the infrastructure for a JREIT market in March 2001, after JREITs were introduced under the ITL in 2000. The listing requirements for JREITs include the following:

1. The JREIT under the ITL must be a close-ended fund;
2. At least 70% of the JREITs assets must be invested in or expected to be invested in real estate assets including; (1) real estate, (2) leasehold rights in real estate, (3) surface rights, (4) easement and (5) trust beneficiary rights in (1) – (4) for three months after its listing;
3. At least 95% of the JREITs total assets must be invested in, or expected to be invested in real estate assets, cash and cash equivalents for three months after its listing;
4. Net assets and total assets must exceed JPY 1 billion and JPY 5 billion, respectively;
5. The number of investors must exceed 1,000.

The listing rule previously required the real estate described in No. 2 above to be located in Japan. However, such restrictions were removed due to amendments to the Tokyo Stock Exchange listing rules as of May 2008. As such, JREITs are now allowed to invest in foreign real estate.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– Merely an asset holding vehicle – Investment primarily in ‘Qualified Assets’

Under the ITL, a JREIT is established for investments primarily in ‘Qualified Assets’. In principle, a JREIT is merely an asset holding vehicle: it is not allowed to hire employees and it is required to delegate assets management, asset custody and general administrative functions to independent professionals.

‘Qualified Assets’ include: (1) securities, (2) real estate, (3) leasehold rights in real estate, (4) surface rights, (5) monetary debts, (6) promissory notes, (7) trust beneficiary rights (money, securities, monetary debts, real estate, leasehold rights and surface rights for land), (8) interest in a tokumei kumiai partnership, and (9) trust beneficiary rights to monies in which the purpose is to manage an investment in a tokumei kumiai interest primarily consisting of trust property etc. “Primarily” means more than 50% of the total assets.

Under the ITL, a JREIT cannot own 50% or more of the voting shares of another corporation. Furthermore, there is a restriction on owning an interest in another corporation in order to deduct distributed dividends for tax purposes (see no. 3.1 B f) below).

As discussed in no 2.3 above, the listing rules of the Tokyo Stock Exchange, also, have asset holding requirements (See no. 2.3, 2 and 3).

2.5 Leverage

	Leverage
	May only receive loans from qualified institutional investors

Under the ITL, there is no restriction concerning borrowings.

In order to deduct distributed dividends under the Japanese tax law, JREITs may not receive loans from lenders other than institutional investors as defined in the tax laws. The institutional investors generally include securities companies, banks, insurance companies, pension funds, etc.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	Greater than 90% of net income	Same as ordinary income	For the fiscal year

Under Japanese tax law, in order to deduct distributed dividends, a JREIT is required to pay its investors 90% of its distributable income relating to the fiscal year of taxation, as defined in the Special Taxation Measures Law. A capital gain is treated the same as operating income, and is, therefore part of the distributable income. Under the ITL, there is no requirement regarding the amount of distribution, however, the ITL requires that a distribution only be made based on the approval of a Directors' meeting with its audited financial statements for each relevant fiscal year. The fiscal year of a JREIT is generally for a period of six months. No advanced distribution is allowed.

2.7 Sanctions

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

In principle, a JREIT is created under the ITL and is required to register with the FSA in order to operate its business as a JREIT. If a JREIT does not comply with the ITL, a JREIT may ultimately be disallowed. All activities of a JREIT are subject to regulatory scrutiny, and any deviation may result in regulatory action (i.e. ordered to improve, withdrawal of licence, etc.).

Even if the listing requirements or the dividend deduction requirements are not met, the JREIT status can remain. However, a JREIT, properly operated under the ITL, should comply with all listing requirements on the Tokyo Stock Exchange (See 2.3) in order to continue being listed, as well as all dividend deduction requirements under the tax law in order to deduct its distributed dividends for each relevant fiscal year.

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	– Corporate tax of 42% – Dividends are deductible from taxable income	Follows the same system as ordinary income	– Japanese withholding tax can be credited (refundable) – Foreign income taxes including withholding tax can be credited against Japanese withholding tax imposed on distributions to the shareholders

Current Income

Japanese corporations are generally subject to corporate income taxes at an effective rate of approximately 40% to 42%. Although a JREIT is a special corporation incorporated under the ITL, a JREIT, in principle, is not a special corporation under the tax law, so it is subject to corporate taxes at an effective rate of 42% in the same manner as a regular Japanese corporation. However, under the Special Taxation Measures Law, a JREIT is allowed to deduct distributed dividends from its taxable income if all of the following requirements are met. Any remaining taxable income after the deduction of distributed dividends will be subject to regular corporate taxes in Japan.

Under Japanese corporate tax law, there is no distinction among rental income, business income and capital gains/losses.

The requirements for deducting dividend distributions are as follows:

A. Requirements for elligible JREIT:
a. The JREIT is registered under Article 187 of the ITL;
b. One of the following conditions is met:
  i. There is a public offering of the JREIT shares with a total issue price of JPY 100 million or more at the time the JREIT is established;
  ii. There are at least 50 or more shareholders at the end of the fiscal year; or
  iii. Qualified institutional investors hold 100% of the JREIT shares at the end of the fiscal period;
c. The offer for investment in the shares of the JREIT is made mainly in the domestic market (the by-laws of the JREIT state that more than 50% of the shares offered are offered in the domestic market); and
d. The JREIT has a fiscal period of one year or less.

B. Requirements relating to the applicable fiscal year:
a. The JREIT does not engage in any business other than asset management, has not opened any place of business other than its head office and has not hired any employees;
b. The asset management function has been outsourced to an asset manager as defined in Article 198 of the ITL;
c. The custody function for the assets owned by the JREIT has been outsourced to a custodian as defined in Article 208 of the ITL;
d. One shareholder and its affiliates does not collectively hold more than 50% of the outstanding shares or/and voting rights of the JREIT at the end of the fiscal year;
e. The JREIT distributes to investors more than 90% of its distributable income as defined in the Special Taxation Measures Law;
f. The JREIT does not hold 50% or more of the equity of another corporation; and
g. The JREIT does not receive loans from parties other than institutional investors, as defined by the tax law.

If the JREIT meets all the requirements listed above and pays out all of its income for the taxable period in the form of a dividend distribution to its shareholders, corporate tax on the JREIT is likely not to be significant. Therefore, the investors can avoid double taxation on income generated from the JREITs investment.

Withholding tax
Japanese withholding tax is imposed on interest and distributions paid to a JREIT. As with a regular corporation, the Japanese withholding tax is either creditable against the income tax or refundable if the amount exceeds the income tax. For foreign withholding taxes see "Other taxes" below.

Other taxes
Foreign income taxes paid by or imposed on the JREIT can be credited against Japanese withholding tax imposed on dividends distribution to the shareholders.

Accounting rules
A JREIT must comply with Japanese accounting rules (J-GAAP). A JREIT can make a dividend distribution from profits calculated based on J-GAAP. Under the tax law, in order to deduct distributed dividends, a JREIT should distribute more than 90% of its taxable income (See B e) above) as dividends. Therefore, a JREIT is required to carefully monitor its accounting treatments under both J-GAAP and the tax law in order to meet the 90% distributable income requirement.

Neither US-GAAP nor IFRS is allowed for a JREIT. JREITs financial statements are prepared on a single entity basis only since it cannot own subsidiaries.

3.2 Transition regulations

	Conversion into REIT status
	N/A

3.3 Registration duties

	Registration duties
	– Real property acquisition tax (favourable rate can be applied) – Registration tax (favourable rate can be applied) – Consumption tax

Real property acquisition tax, registration tax and consumption tax are levied on the acquisition of real estate. Among them, real property acquisition tax and registration tax can be reduced under special treatments for a JREIT, if the JREIT satisfies certain requirements.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Standard corporate tax rate	– In practice, final withholding tax of 10% for individual shareholders	– In principle, withholding tax of 7% for corporate shareholders – In principle, withholding tax of 10% for individual shareholders – Shareholders can credit the withholding tax levied, if withholding tax is not final

Corporate shareholder
For corporate investors, dividends from a public JREIT are subject to withholding tax at the rate of 7% until March 31, 2009 and thereafter at 15%. Dividend income is aggregated with other income and is subject to tax at regular corporate rates generally at the effective rate of 40% to 42%. The withholding tax can be credited against their corporate income tax liability. Unlike dividends from other Japanese companies, the dividends from a JREIT do not qualify for the dividend received exclusion, i.e. tax exemption at the corporate shareholder level.

Capital gains are subject to tax at the effective rate generally at 40% to 42%. There is no withholding tax on capital gains.

Individual shareholder
Dividends income received from public JREITs should principally be filed in a tax return and taxed as ordinary income. The tax withheld on dividends income can be credited against their individual income tax liability. Unlike dividends from other Japanese companies, the dividends from a JREIT do not qualify for the dividend received credit. However, individual investors, except for those who own 5% or more of the total shares of a public JREIT, can receive the following special favourable treatments on dividends from public REITs:

Dividends received by December 31, 2008
For individual investors, dividends from a public JREIT are subject to withholding tax at the rate of 10%. This withholding tax can be elected to be a final tax.

Dividends received after December 31, 2008
For individual investors, dividends from a public JREIT are subject to withholding tax at the rate of 10% from January 01, 2009 to December 31, 2010 and thereafter at 20%. When filing the tax return, individual investors can either elect to be subject to income tax separately from other income at the rate of 20%, or elect to treat the withholding tax as the final tax. However, for the period from January 01, 2009 to December 31, 2010, if the individual investors receive more than JPY 1,000,000 of the total amount of any dividends from public corporations (including public JREITs) during a calendar year, they are required to file an income tax return. For these periods the 20% tax rate is applicable to dividend income exceeding JPY 1,000,000 and the 10% tax rate is applicable to dividend income below this amount.

Capital gains from the sale of listed shares through securities companies are subject to individual income tax separately from other income at the rate of 10% until December 31, 2008 and thereafter at 20%. However, for the period from January 01, 2009 to December 31, 2010, the 20% tax rate is applicable to capital gains exceeding JPY 5,000,000 per year and the 10% tax rate is applicable to capital gains below this amount. This tax is paid by filing a tax return.

Withholding tax
For corporate investors, dividends from a public JREIT are subject to withholding tax at the rate of 7% until March 31, 2009, and thereafter 15%.

For individual investors, dividends from a public JREIT are subject to withholding tax at the rate of 10% until December 31, 2010 and thereafter 20%. However, if individual investors own 5% or more of the total shares of a JREIT at the end of the tax year of the JREIT, they are subject to 20% withholding tax.

Domestic investors can credit the withholding tax against their own income tax liability when filing their tax returns.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Withholding tax is the final levy	Withholding tax is the final levy	– In principle 7% withholding tax for corporate and individual shareholders – May benefit from tax treaties

Corporate shareholder
For non-Japanese investors, dividends from a public JREIT are subject to a final withholding tax at the rate of 7% until March 31, 2009 and thereafter 15%. The rate of withholding tax could be reduced or exempted by the application of a relevant income tax treaty.

Capital gains arising from the sale of the JREIT shares are treated in the same way as capital gains arising from the sale of shares of ordinary Japanese corporations. Under Japanese domestic tax laws, a JREIT is treated as a Japanese Real Property Holding Corporation (JRPHC) if at least 50% of its total assets consist of real estate located in Japan. A non-Japanese investor generally will be subject to

Japanese tax on the capital gains arising from the transfer of the shares of a JREIT that is considered to be a JRPHC. However, if the shares of a JREIT are listed and the non-resident investor does not fall into one of the following two categories, the capital gains are tax-exempt:

- If the non-Japanese investor, together with its affiliates including a partnership in which the investor is a partner, owns or owned more than 5% of the total shares in the listed JREIT as of December 31 (for a non-Japanese individual) or on the last day of the tax year (for a non-Japanese corporation) immediately prior to the year during which the transfer of the JREIT shares takes place; or
- If the non-Japanese investor, together with its affiliates including a partnership in which the investor is a partner, owns or owned at any time 25% or more of the total shares of the JREIT within a period of three years on or before the end of the tax year in which the transfer of the JREIT shares takes place, and sells 5% or more of the outstanding shares in the current tax year.

If the capital gain derived on the sale of the shares of a JREIT that is considered to be a JRPHC falls into either of the above cases, the non-Japanese investor must file a Japanese corporate tax return or a Japanese income tax return with the appropriate Japanese tax authorities. In the case of a non-Japanese investor that is a corporation, the corporate tax rate will be 30% under Japanese domestic tax laws. In the case of a non-Japanese investor that is a non-resident individual, taxation separate from other income at the rate of 15% will be applied to the capital gains under Japanese domestic tax laws.

Capital gains from sales of shares in a JREIT considered a JRPHC may be exempted from tax by the application of a double tax treaty.

Individual shareholder

For non-Japanese investors, dividends from a public JREIT are subject to a final withholding tax at the rate of 7%, until March 31, 2009 and thereafter at 15%. However, a final 20% withholding tax is imposed on distributions to only non-Japanese individual investors that own 5% or more of the total shares of a JREIT at the end of the tax year of the JREIT. The rate of withholding tax could be reduced or exempted by the application of a relevant income tax treaty.

Capital gains arising from the sale of the JREIT shares are treated in the same way as capital gains arising from the sale of shares of ordinary Japanese corporations. See above.

Withholding tax

From the Japanese point of view a non-resident shareholder is entitled to a withholding tax reduction under the Double Taxation Treaty between Japan and his/her country of residence as described above.

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	No favorable treatment	No favorable treatment	No favorable treatment

Foreign REIT

A JREIT must be a Japanese corporation incorporated under the ITL. A foreign REIT cannot receive any special favourable treatments (deduction of distributed dividends) which may be applicable to JREITs under the Japanese tax law, and it, therefore, is subject to corporate income tax in the same manner as regular foreign entities.

Corporate shareholder

No favorable tax treatments are applicable: If a foreign REIT is in the form of a corporation, the Japanese tax treatments for a regular foreign corporation are applicable on the distribution and sales of shares. If a Foreign REIT is a trust type, the Japanese tax treatments for a foreign trust are applicable.

Individual shareholder

No favorable tax treatments are applicable: If a foreign REIT is in the form of a corporation, the Japanese tax treatments for a foreign corporation are applicable on the distribution and sales of shares. If a Foreign REIT is a trust type, the Japanese tax treatments for a foreign trust are applicable. ■

Malaysia (Unit trust)

The Petronas Twin Towers in Kuala Lumpur, Malaysia.

1 General introduction

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

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

MALAYSIAN ISLAMIC REIT:
The Islamic REIT is known as an Islamic Real Estate Investment Trust. The Islamic REIT is a collective investment scheme in real estate, by which the unit holders conduct permissible activities according to the Islamic Shariah law. Specific Islamic REIT guidelines were issued in 2005.

Currently there are 13 REITS operating. Market capitalisation is aproximately RM 5.2 billion (approximately US$ 1.625 billion), as at June 02, 2008.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
MREIT	13	1.0	0.3

Top five REITs

	Market cap (€m)	Sector type
Starhill Real Estate Investment Trust	195	Hotel, Office, Parking, Retail
Al-Hadharah Boustead REIT	130	Agricultural
Axis Real Estate Investment Trust	83	Commercial, Industrial, Office
Amanah Raya Real Estate Investment Trust	81	Education, Hotel, Industrial, Office
Hektar Real Estate Investment Trust	81	Leisure, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Registered trust – Trustees must be approved by the SC – Management company – Real estate held by the trust must be managed by a qualified property manager – Appoint a Shariah committee or a Shariah advisor (Islamic REIT)

In Malaysia, trusts have to be registered. Malaysian trustees must be approved by the Securities Commission (SC).

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

Foreigners can only hold up to 49% of the equity of the management company. At least 30% of the equity must be held by Bumiputra (indigenous) investors.

Real estate held by the trust must be managed by a qualified property manager.

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

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Unit trust	RM 100 million

Legal form
A REIT takes the form of a unit trust fund. The establishment of a REIT is required to be approved by the SC. Please see below for the various requirements that need to be complied by a REIT.

Minimum initial capital
The minimum fund size is RM 100 million (approximately US$ 31 million, based on an exchange rate of US$ 1 = RM 3.22).

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	No requirements	No

Unit holder requirements
There are no requirements.

Listing requirements
A REIT can be either listed or unlisted. A REIT seeking a listed status must make reference to the minimum listing requirements and comply with the relevant shareholding spread requirements stipulated in the prevalent Listing Requirements issued by the Malaysian Stock Exchange (MSE). These requirements include the following:

- the applicant must have at least 25% of the total number of units for which listing is sought in the hands of a minimum number of 1,000 public unit holders holding not less than 100 units each;
- for the purpose of calculating the required minimum public holding, holdings by the manage-

ment company, its directors and any person connected with such management company or directors shall be disregarded;
- the applicant must ensure that at least two directors or 1/3 (or the nearest number) of the board of directors of the applicant, whichever is higher, are independent directors;
- the management company of the REIT must file with the MSE a listing application comprising the prescribed forms and required supporting documentation.

2.4 Asset levels / activity test

	Restrictions on activities / investments
	– Different thresholds apply for unlisted and listed REITs and the Malaysian Islamic REIT – Additional restrictions for Islamic REITs

For unlisted REITs:
- at least 70% of the total assets must be invested in real estate, single purpose companies or real estate-related assets;
- at least 50% of the total assets must be invested in real estate or single-purpose companies;
- at least 20% of the total assets must be invested in liquid assets at all times;
- a balance of 10% may be invested in either real estate-related assets, non-real estate-related assets or asset-backed securities.

For listed REITs:
- at 75% of the total assets must be invested in real estate, single purpose companies or real estate-related assets;
- at least 50% of the total assets must be invested in real estate or single-purpose companies;
- there are no requirements that assets must be invested in liquid assets at all times;
- a balance of 25% may be invested in either real estate-related assets, non-real estate-related assets or asset-backed securities.

For real estate, only a listed REIT may acquire real estate located outside Malaysia where the real estate is viewed as a viable investment, subject to the approval of the SC and other relevant Malaysian authorities.

All REITs may invest in real estate-related assets and non-real estate-related assets, and these assets may consist of foreign investments traded in or under the rules of a foreign market approved by the SC.

Only a listed REIT may enter into an arrangement at any stage in the development of a real estate to purchase the real estate upon its completion, where the real estate is viewed as a viable investment, provided that certain criteria listed in the SC Guidelines are met.

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

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

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

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

2.5 Leverage

	Leverage
	Borrowing may not exceed 35% of the net asset value

The basic rule is that the total borrowings may not exceed 35% of the net asset value of the fund unless otherwise approved by the SC.

2.6 Profit distribution obligations

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

Operative income
Malaysian REITs are not required to make any minimum distribution of income but REITs will not be taxed on their income, provided that at least 90% of their total income for the year is distributed to its investors.

Capital gains
There is no requirement in the MITA that the capital gains are required to be distributed every year. The 90% threshold applies to total income of the REIT. Total income refers to income of a REIT that would ordinarily be chargeable to tax.

2.7 Sanctions

	Penalties / loss of status rules
	Various sanctions possible. Revocation of approval possible

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

- direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, condition or guideline;
- impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding RM 500,000;
- reprimand the person in breach;
- require the person in breach to take such steps as SC may direct to remedy the breach;

or any other actions in accordance with the CMSA.

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Tax-exempt if 90% of total income is distributed	Tax-exempt	– Creditable for taxable income – Not refundable for non-taxable income

Current Income
REITs will not be taxed on their income, provided that at least 90% of their total income for the year is distributed to its investors. Otherwise, the REIT is subject to income taxes on its total income, while the investors are eligible to claim tax credits. The amount distributed is taxable in the hands of shareholders.

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

Capital gains
Generally, gains from the disposal of properties and shares in real property companies would have been subject to a Real Property Gains Tax at rates ranging from 5% to 30%, depending on how long the property was held. There was previously a specific exemption for properties acquired by approved REITs.

However, effective April 01, 2007 there is a general exemption for all taxpayers from all the provisions of the Real Property Gains Tax legislation.

Tax suffered at source on dividend income
Malaysia does not levy dividend withholding taxes.

With effect from January 01, 2008, Malaysia operates a single tier tax system with respect to dividends distribution. Under this system, tax paid on profits of a company is a final tax and dividends distributed by the company are exempt in the hands of the REIT.

There is a transitional period which allows companies with franking credits as at December 31, 2007 to distribute franked dividends under the previous dividend imputation system for a period of six years, i.e. until December 31, 2013. Where dividends are distributed under this system, there may be a tax deducted at source from dividends received by the REIT. Such tax will be available for set-off against the tax liability of the REIT. Should the tax deducted at source exceed the tax liability of the REIT, the excess is refundable to the REIT.

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

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

3.2 Transition regulations

	Conversion to REIT status
	N/A

3.3 Registration duties

	Registration duties
	Stamp duty exemption

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

4 Tax treatment of the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	- 26% income tax on distributions (reduced to 25% in the tax year 2009 and onwards) - No capital gains tax	- 15% withholding tax final levy - for distributions on income not taxed at level of REIT - Tax rates of 0-28% on gross income from distributions of income taxed at level of REIT. Such income carry a tax credit - No capital gains tax	No withholding tax levied on distributions to corporate unit holder. 15% withholding tax on resident individual investors.

Corporate unit holder
Distribution from income on which the REIT is exempt from tax:
Income distributed from the REIT will be taxed at 26% (25% for the year of assessment 2009 onwards). Corporate unit holders with paid-up capital in respect of ordinary shares of not more than RM 2.5 million at the beginning of the tax basis period will be subject to tax at 20% on the first RM 500,000 of chargeable income and 26% (25% for the year of assessment 2009 onwards) on the balance.

There is no capital gains tax in Malaysia.

Distribution from income on which the REIT has been taxed:
Same as above.

Individual unit holder
Distribution from income on which the REIT is exempt from tax:
Distributions made by a REIT to individual unit holders are subject to a final withholding tax of 15%. Individual unit holders who receive the net amount distributed need not account for any further income tax liability.

There is no capital gains tax in Malaysia.

Distribution from income on which the REIT has been taxed:
The amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT and the individual unit holder will be taxed on the gross distribution at progressive tax rates ranging from 0% to 28%. Such distributions carry a tax credit, which will be available for set-off against the tax chargeable on the unit holder.

There is no capital gains tax in Malaysia.

Withholding tax
Withholding tax of 15% for individual unit holders and resident institutional investors is a final tax. A REIT does not need to withhold tax when making distributions to a resident company – such companies would need to declare the REIT distributions as taxable income and the income will be taxed at the relevant rate discussed above.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– 26% for 2008 (reduced to 25% in the tax year 2009 and onwards) – 20% for institutional investors	15% for individuals	No specific relief available

Corporate unit holder
Distribution from income on which the REIT is exempt from tax:
Distributions to non-resident companies are subject to a final withholding tax of 26% for the year 2008, and 25% from the year 2009 onwards.

Distributions to non-resident institutional unit holders are subject to a final withholding tax of 20%.

Distribution from income on which the REIT has been taxed:
Non-resident companies – same as above.

Non-resident institutional unit holders – The amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident institutional unit holder will be taxed on the gross distribution at 26%.

Individual unit holder
Distribution from income on which the REIT is exempt from tax:
Distributions to non-resident individuals are subject to a final withholding tax of 15%.

Distribution from income on which the REIT has been taxed:
The amount distributed from the REIT will be grossed up to take into account the underlying tax of the REIT, and the non-resident individual unit holder will be taxed on the gross distribution at 28%.

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

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

5 Tax treatment of foreign REITs and their domestic unit holders

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

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

Corporate unit holder
Distributions received from foreign REITs would be regarded as foreign-sourced income and exempt from Malaysian tax pursuant to Paragraph 28, Schedule 6 of the Malaysian Income Tax Act, 1967.

Individual unit holder
Same as corporate unit holders.

New Zealand (Unit trusts and PIEs)

New Zealand's parliment buildings in capital city, Wellington.

1 General introduction

	Enacted year	Citation	REIT type
Unit trust	1960	– The Trustee Act 1956 – Unit Trusts Act 1960 – Income Tax Act 2007 (from the 2008-09 income year)[1]	– Trust type – Corporate type – (Shows some characteristics of a REIT)
Portfolio Investment Entity ("PIE")	2007		

New Zealand does not have any specific REIT regime and it is not expected that any such specific regime will be introduced in the near future. Some unit trusts and companies investing in real property interests and meeting the eligibility criteria may elect to enter the 'Portfolio Investment Entity' (PIE) regime with effect from October 01, 2007. As noted below, income derived by a PIE may be able to be allocated to individuals and taxed once at the PIE level at a 30% (33% up to the 2007-08 year) or the 19.5% prescribed investor rate for some New Zealand resident individual investors, with no further New Zealand tax on distribution.

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

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

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

[1] The PIE provisions were first enacted in 2006, being inserted into the Income Tax Act 2004 by the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 with various subsequent amendments.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
PIE	8	1.3	0.3

Top five REITs

	Market cap (€m)	Sector type
Kiwi Income Property Trust	422	Industrial, Office, Retail
AMP NZ Office Trust	389	Office
ING Property Trust	220	Industrial, Office, Retail
Property for Industry Ltd	119	Industrial, Office, Retail
ING Medical Properties Trust	73	Healthcare

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Registration of the trust with the Registrar of Companies – Issue of a registered prospectus

Unit trusts are generally established by means of an initial settlement on terms expressed in a trust deed. Where units in a unit trust are offered to the public, the Unit Trusts Act 1960 requires registration of the trust deed with the Registrar of Companies and issue of a registered prospectus complying with the Securities Act 1978 and Securities Regulations 1983. The trust must have a corporate manager, which deals with investors and manages the trust's investments, and a trustee, who must not be under the same control as the manager.

Some companies and unit trusts investing in real property interests and meeting the eligibility criteria may elect to enter the PIE regime with effect from October 01, 2007. No specific licence or approval is required to enter the PIE regime, but the entity must meet the various statutory criteria as to investors' rights to investment proceeds, the number and type of investors, the extent of each investor's interests, and the types of investment and income.

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	– Unit trust – Portfolio Investment Entity (PIEs)	No

Legal form
Unit trusts or companies investing in real property interests.

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

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

2.3 Unit holder requirements / listing requirements

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

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

Unit holder requirements for PIEs
If the entity is not listed on the NZ Stock Exchange, the portfolio investor class must generally include one or more of the following:
- at least 20 non-associated persons, none of whom holds more than 20% of the total portfolio investor interests in the class;
- a PIE or a foreign investment vehicle;
- an entity which would meet the PIE criteria but has not elected to become a PIE;
- a life insurer;
- the NZ Superannuation Fund;
- the Accident Compensation Corporation or a Crown entity subsidiary of same;
- the Earthquake Commission;
- less than 20 persons in the particular class if the entity has one or more classes with at least 20 non-associated persons. No person other than management or a trustee can control investment decisions relating to that class, and each investor has a total portfolio investment interest in the entity of less than 10%.

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

If the entity is listed on the NZ Stock Exchange, all the following investor criteria must be met:
- the entity must not have more than one portfolio investor class; and
- each investor must be a member of that class; and
- each portfolio investor interest must be a share/unit traded on the stock exchange.

The general 20% maximum holding for investors is extended to 40% for certain institutional investors where the entity is a listed company or unit trust and no maximum limit will apply to such investors where the entity is not a listed company or unit trust. A transitional provision may protect PIE eligibility where interests of between 20% and 40% in a listed company or unit trust have been held since May 17, 2006. Interests held by associated persons may need to be taken into account in determining whether the investor interest size limits are exceeded.

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

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

2.4 Asset level / activity test

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

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

At least 90% of the value of a PIE's assets must be one or more of the following:
- land;
- financial arrangements (such as debts and debt-type instruments);

- excepted financial arrangements (such as shares and units in unit trusts);
- rights or options over the above types of assets.

At least 90% of the income derived by a PIE must be derived from the above types of property and must consist of any one or more of the following:

- dividends (or equivalent payments under certain share-lending arrangements);
- financial arrangement accrual income (including interest and related premiums and foreign exchange variations);
- rent;
- property disposal proceeds;
- income under the 'foreign investment fund' (FIF) rules;
- allocated PIE income;
- distributions from superannuation funds.

Investments by the PIE in shares in a company or units in a unit trust must generally:

- carry voting interests of no more than 20% in a company or have a market value of no more than 20% of the total market value of the units in a unit trust; or
- where the PIE's interest exceeds 20%, the total market value of that and all the PIE's other investments of more than 20% in companies or unit trusts must be less than 10% of the total market value of all the PIE's investments.

The 20% interest or 10% investment value limitation does not apply to investments by the PIE in any of the following:

- another PIE;
- a foreign investment vehicle;
- an entity that meets the PIE criteria but has not elected PIE status;
- a portfolio land company (a company or unit trust which is not a PIE and which owns land (directly or indirectly through another company) representing at least 90% of the market value of all the portfolio land company's property for certain periods during the relevant income year).

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

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

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

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

2.5 Leverage

	Leverage
	No specific restriction

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

- The need for arm's length terms where any related party debt is provided; and
- Possible thin capitalisation limitations for interest (and related foreign exchange) deductions if a single overseas person (together with associates) holds (directly or indirectly) or controls at least 50% of the New Zealand company or unit trust; and
- For trusts other than unit trusts, there must be sufficient connection between the borrowings and the derivation or possible derivation of New Zealand taxable income.

2.6 Profit distribution obligations

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

Operative income

PIEs will allocate taxable income to investors. If taxable income is not allocated to investors for each period, it will be taxed at the PIE's tax rate with possible further tax on distribution at the investors' marginal tax rates.

Capital gains

PIEs are able to allocate capital gains to investors without a tax cost on allocation or subsequent distribution.

2.7 Sanctions

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

If an entity loses PIE status, the income tax treatment of its disposals of certain Australasian shares would generally become taxable again and distributions to New Zealand resident individual investors would revert to being fully taxable at their marginal tax rates.

3 Unit Trust Tax treatment

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Subject to standard corporate tax rate (30%)	Gains may be taxable depending on circumstances	Generally subject to resident withholding tax of 33%, reduced by the amount of imputation (franking) credits attached

Current Income

Unit trusts treated as companies for income tax purposes are subject to income tax at the standard corporate rate (30%, 33% up to the 2007-08 year), and, if solely tax resident in New Zealand, are subject to the imputation (franking) regime, whereby they can pass the benefit of income tax paid to unit holders by attaching imputation credits to distributions.

For trusts other than unit trusts, the trustees are subject to tax at 33% on income that is not paid, applied to or vested in beneficiaries on a current year basis. The extent to which income from non-New Zealand sources is taxable in New Zealand generally depends on complex rules relating to the residence of settlors or deemed settlors of such trusts. Where trusts meet certain ('complying trust'[1]) criteria (including being liable to full New Zealand income tax on all income flowing through the trust which is not treated as current year beneficiary income), no further New Zealand income tax or withholding tax will apply to subsequent distributions of retained earnings or capital gains.

PIEs which are listed companies or unit trusts will be taxed on all taxable income at 30% (33% up to the 2007-08 year).

[1] Previously called "qualifying trust"

PIEs (other than listed companies or unit trusts) will allocate their taxable income to investors and account for tax at an investor's elected rate of either 30% (33% up to March 31, 2008), 19.5% or 0%. For investors on the 30% or 19.5% rates who have notified the correct tax rate to the PIE, the tax paid by the PIE on their behalf will be a final tax and represents a favourable tax treatment for New Zealand resident individual investors with a marginal personal tax rate of 33% or 39%. The PIE regime is also intended to remove effective over taxation for individuals investing through companies or unit trusts where their marginal personal tax rate is less than the current corporate or unit trust tax rate of 30%, although this outcome may be impacted for low income earners by personal tax cuts applying from October 01, 2008.

Capital gains
While New Zealand has no specific capital gains tax, gains on disposal of property interests can be taxable in a number of situations specified in the income tax legislation.

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

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

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

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

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

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

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

Other taxes
The 'Goods and Services Tax' (GST) treatment of investment trusts and related costs needs to be considered and managed. This tax is a VAT.

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

3.2 Transition regulations

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

A PIE will be taxable at the general corporate/unit trust rate of 30% (33% up to 2007-08) on taxable gains arising from the deemed disposal of certain Australasian share investments at market value immediately before its election to become a PIE is effective. The PIE may spread the resulting tax liability evenly over three years, and will not be liable for provisional tax penalties or tax interest charges in respect of that liability.

3.3 Registration duties

	Registration duties
	None

No stamp duties or other levies apply where an entity elects to become a PIE.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– Distributions of companies and unit trusts taxed at normal income tax rate. – Distribution of a PIE: allocated PIE income taxed at normal income tax rate, with no tax on distributions from unlisted PIEs. – Distributions from listed company or unit trust PIEs may be taxable dividends to the extent imputation or foreign dividend payment credits are attached.	– Distributions of companies and unit trusts taxed at normal income tax rate. – Distribution of a PIE: allocated PIE income taxed at 19.5 % or 30% final levy with no tax on distributions unless NZ resident individual or trustee taxpayers elect to treat as taxable.	Up to 33% on distributions, reduced by imputation credits attached.

Corporate unit holder
Distributions from companies and unit trusts are generally treated as dividends for New Zealand income tax purposes.

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

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

Individual unit holder
Distributions from companies and unit trusts are generally treated as dividends for New Zealand income tax purposes. Distributions from listed PIEs to New Zealand resident individual or trustee holders are not taxable unless those holders choose to treat them as taxable dividends (for example, if the imputation or foreign dividend payment credits attached would exceed their personal income tax liability). Distributions from unlisted PIEs to New Zealand resident individual holders will not be taxed further where the PIE income has been allocated and taxed at the appropriate 19.5% or 30% (33% to March 31, 2008) rate at the PIE level.

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

Withholding tax
Dividend distributions from New Zealand companies or unit trusts to resident investors are generally subject to 33% withholding tax, reduced to the extent imputation (franking) credits are attached. Such withholding tax (but not the imputation credits) may be refunded if the recipient's annual tax liability is less than the tax deducted on their behalf.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	30% tax rate	30% tax rate	– In principle 30% withholding tax, reduced to 15% to the extent imputation (franking) or similar credits are attached. – Tax treaty relief available

Corporate unit holder
Where a company or unit trust is eligible for and elects to be a PIE after October 01, 2007, as noted above, non-resident investors will have a 30% (33% up to March 31, 2008) tax rate applied by the PIE to their allocated income. Actual distributions by unlisted PIEs will not be taxed further. Distributions by New Zealand listed PIEs to non-resident corporate investors are intended to be treated as dividends, subject to withholding tax and potentially supplemented under the supplementary dividend tax credit (SDTC) regime,[2] to the extent imputation or foreign dividend payment credits are attached. No further New Zealand income tax or withholding tax applies to any excesses over the dividend amounts which are distributed by New Zealand listed PIEs.

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

Individual unit holder
Where a company or unit trust is eligible for and elects to be a PIE after October 01, 2007, as noted above, non-resident investors will have a 30% (33% up to March 31, 2008) tax rate applied by the PIE to their allocated income. Actual distributions by unlisted PIEs will not be taxed further. Distributions by New Zealand listed PIEs to non-resident individual investors are intended to be treated as dividends, subject to withholding tax and potentially supplemented under the SDTC regime, to the extent imputation or foreign dividend payment credits are attached. No further New Zealand income tax or withholding tax applies to any excesses over the dividend amounts which are distributed by New Zealand listed PIEs.

Withholding tax
'Non-resident withholding tax' (NRWT) is deductible from dividends (including distributions from unit trusts) at 30%, unless:
- Limited by an applicable double tax treaty, (typically to 15%); or
- Imputation (franking) or similar credits are attached to the dividend, in which case the NRWT rate is reduced to 15% to the extent the dividend is so credited.

NRWT may be at a zero rate if fully imputed (franked) non-cash dividends, such as certain bonus issues (if allowed by the terms of the trust deed), are made. The cost of NRWT can be offset by credits arising under New Zealand's SDTC regime.

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

[2] Previously called "foreign investor tax credit" or FITC regime

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

Where a company or unit trust is eligible for and elects to be a PIE after October 01, 2007, as noted above, non-resident investors will have a 30% (33% to March 31, 2008) tax rate applied by the PIE to their allocated income. Any actual distributions to non-resident investors are intended to be subject to NRWT only to the extent imputation (franking) or similar credits are attached.

5 Tax treatment of foreign REITs and their domestic unit holders

	Foreign REITs	Corporate unit holder	Individual unit holder
	– 30% Corporate tax – Treaty relief might apply	May be taxable under CFC or FIF regime	May be taxable under CFC or FIF regime

Foreign REITs
Overseas Investment Office consent may be required for overseas investors in New Zealand land or other assets.

Where units in a unit trust are offered to the public:
- The Unit Trusts Act 1960 regulates structural matters and requires (i) a management company to manage the investments and issue units and (ii) a trustee company (which is not controlled by the same persons who control the management company) to hold legal title to the assets;
- The Securities Act 1978 regulates the offering of units to the public, prospectus and related requirements;
- The Financial Reporting Act 1993 regulates accounting and audit requirements;

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

New Zealand sourced rentals or business income will be taxable under New Zealand domestic law at the basic corporate income tax rate of 30% (33% up to the 2007-08 year), subject to any limitation by an applicable double tax treaty.

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

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

A New Zealand resident corporate unit holder would generally be exempt from New Zealand income tax on any distribution. However, under current legislation it would have to pay a 'foreign dividend payment' (FDP[3]) amount to Inland Revenue, effectively on account of its own unit holders' future income tax liabilities. The FDP amount could be reduced by any foreign withholding tax deducted on the distribution and, in some circumstances, by an allowance for an underlying foreign tax credit. If the New Zealand corporate holder has non-resident unit holders, the FDP liability may also be reduced under the conduit tax relief regime. Credits arising from tax paid on any attributed income under the CFC or FIF regimes may also be offset against the FDP liability. The government has announced proposals to change the CFC rules, to remove FDP obligations in some circumstances and to repeal the conduit tax relief regime. Legislation for the first stage of the CFC reforms is expected to be introduced into Parliament in late June 2008.

[3] Previously called "foreign dividend withholding payment" or "FDWP"

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

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

Pakistan (REIT)

The Centaurus is a mixed-use development project currently under construction in Islamabad, Pakistan.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
Pakistan REITs	January 31, 2008	Pakistan Companies Ordinance, 1984	Trust type	To be established

The Securities and Exchange Commission of Pakistan (SECP) has enacted Real Estate Investment Trust Regulations 2008 (the Regulations) vide S.R.O. 94(I)/2008 dated January 31, 2008 for the regulation of REIT management companies, and the registration and regulation of REIT schemes and matters connected therewith. The Regulations were made within the framework of the Non-Banking Finance (NBF) business, which is an activity regulated directly by SECP under Part VIII A of the Companies Ordinance, 1984 for the promotion of real estate sector.

REITs in Pakistan will be closed-ended trusts with tax treatment similar to that of mutual funds in Pakistan in terms of tax exemptions.

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– License application to the Security & Exchange Commission of Pakistan – Appointment of a trustee & property valuer in accordance with the Regulations

In first place, the promoters of a REIT management company would need to submit an application together with the prescribed application fee to seek prior permission of SECP to incorporate a REIT management company under the provisions of the Companies Ordinance, 1984.

The promoters will then submit a copy of permission letter issued by the SECP together with prescribed incorporation documents and information to the Registrar of Companies for incorporation of the said company. The Registrar of Companies will issue a certificate of incorporation to the REIT management company, which will be conclusive proof of the incorporation of the REIT management company in Pakistan.

Consequent upon incorporation, the REIT management company would need to apply for a licence from SECP in accordance with the Regulations to undertake its business. At the time of submission of application with the SECP for obtaining license, the minimum paid-up capital of the REIT management company would be at least Rs 50 million. The SECP may grant a licence to the company as a Non-Banking Finance Company (NBFC) to launch closed-end REIT schemes and provide REIT management services which shall include development REIT scheme and rental REIT scheme.

Subject to prior approval of the SECP, the REIT Management Company will appoint its directors or chief executive.

A trustee of the REIT scheme shall not be a connected person, associated company or associated undertaking of the REIT management company. All REIT assets are to be held by the trustee on behalf of the unit holders. All real estate and other assets of the REIT scheme shall be acquired in the name of the trustee. A trustee & property valuer must be appointed with the prior approval of SECP for every REIT scheme.

A trustee of a REIT scheme may be a schedule bank, development financial institution, a subsidiary of a scheduled bank, a foreign bank, central depository company or any other person as the SECP may notify from time-to-time.

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

The promoters of a REIT management company must have at least 25% of the paid-up share capital, and should not withdraw their investment without prior approval of SECP and shall be kept unencumbered. Promoter refers to a person (as defined by the NBFC's Rules) who as made an application to the SECP to form a REIT management company under the proposed Rule-4.

The license issued by the SECP shall be valid for one year from the date of issuance to the REIT Management Company, and shall be renewable upon expiry of the said period.

2.2 Legal form / minimum share capital

	Legal form	Minimum initial capital
	- Management company: Public Limited Company	Rs.50 million as prescribed by the SECP at the time of applying for licence. The paid-up capital shall be further increase to at least Rs. 500 million within 30 working days of the registration of the REIT scheme.

Legal form
The REITs will be established as close-ended trusts.

A REIT management company shall be incorporated as a public limited company under the Companies Ordinance, 1984 having at least three directors. At least one third of its directors shall be independent directors. At least two directors shall be from its promoters and one director who have at least five years experience of developing or managing real estate projects.

It must commence its business within one year from the date of issuance of licence.

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

The REIT management company shall make a public offering of at least 25% of units of the REITs scheme.

The par value of the units to be offered shall be Rs. 10.

Management fee
The REIT management company will be entitled to receive an annual management fee not exceeding 1% of the initial REIT fund for the life of the REIT scheme. In case of a rental REIT scheme, it shall be entitled to an annual management fee not exceeding 3% of the annual operating income of the REIT scheme. Annual operating income means annual revenue minus operating cost.

Annual monitoring fee
In case of development REIT scheme, the annual monitoring fee shall be 0.20% and in the case of rental REIT scheme, it shall be 0.10% of the initial REIT fund and paid annually to the SECP for the life of the REIT scheme.

Trustee fee
In case of a developmental REIT scheme, a **trustee fee** shall be an annual fee not exceeding 0.20% of the initial REIT fund. In case of rental REIT scheme, an annual fee not exceeding one-fifth of the fee charge by the REIT management company.

Quality assurance manager or property manager
Fee as negotiated by the REIT management company.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	None	Yes

The maximum number of units may be subscribed by investor through initial public offering shall not exceed 5% of the REIT fund.

Listing requirements
A REIT Management company must apply for listing of units of REIT fund at the stock exchange(s). The units of the REIT fund shall be listed in accordance with the listing regulations of the stock exchanges and shall be freely tradable.

2.4 Asset level / activity test

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

Restriction on activities
A REIT Management Company - which manages the assets of a trust - shall only invest in real estate, real estate related assets and non-real estate assets in ratios prescribed by the SECP.

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

The REIT scheme shall not invest in such assets which are specified by the SECP through notification in the *Official Gazette*.

The REIT Funds or REIT Assets shall not be used directly or indirectly for:
- Lending or making an advance not connected to objects or furtherance of the REIT Scheme;
- Acquiring any asset that involves the assumption of any liability that is unlimited;
- Effecting a short sale in any security;
- Purchasing any asset in a forward contract;
- Purchasing any asset on margin;

- Participating in a joint account with others in any transaction;
- Trading in commodities or becoming involved in commodity contracts;
- Acquiring any security of which another REIT Fund.

2.5 Leverage

	Leverage
	Not yet prescribed by the SECP

2.6 Profit distribution obligations

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

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

2.7 Sanctions

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

	Penalties / loss of status rules
	– Cancellation or suspension of registration of REIT scheme – Remove trustee in the circumstances as stipulated in the Regulation – Remove valuer in the circumstances as stipulated in the Regulation – Impose fine

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Tax-exempt, if 90% of net income distributed	Capital gains on immovable property are tax-exempt	– Tax exempt for received dividend, profit on debt (interest) or commission. – Other withholding tax due can be avoided by exemption certificate

Current Income
Income of a duly registered REIT company is exempt from tax subject to distribution of a minimum of 90% of its accounting income of that year, as reduced by capital gains whether realised or unrealised, is distributed amongst the unit holders

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

Capital gains
Generally, capital gains on moveable assets held for 12 months or less are taxable at full corporate tax rate. Capital gains on sale of moveable assets held for more that 12 months is exempt from tax up to 25% of the total gain. The remaining 75% gain is taxable at corporate tax rate.

As a general rule in Pakistan, capital gains on sale of immovable property is not liable to income tax. However, a stamp duty is charged based on a schedule of charges, at the time of transfer of property. However, if the immovable property is purchased and sold for business purpose, the gains would be liable to corporate income tax.

Withholding tax
No withholding is required to be made from payment to registered REIT companies on account of any dividend, profit on debt (interest) or commission.

Other withholding obligations would be applicable on payments received by registered REIT companies. However, based on the general exemption from tax (subject to 90% distribution of profits) an exemption certificate from withholding of tax can be obtained from the tax authorities by the registered REIT company. A refund is possible.

Other taxes
No other taxes are levied. But an annual supervision fee equal to 1/20 of 1% of the average annual net asset value of the REIT Assets shall be payable to the SECP.

Accounting rules
No accounting Rules prescribed.

3.2 Transition regulations

	Conversion into REIT status
	N/A

No rules prescribed.

3.3 Registration duties

	Registration duties
	Stamp duty

There is a state stamp duty on transfer of real estate. However, this can vary state to state.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– 5% (10%) withholding tax final levy – Capital gains tax-exempt	– 10% withholding tax final levy – Capital gains tax-exempt	No credit possible

Corporate unit holder
Subject to tax on dividend received at 5%. The Tax rate will change on July 04, 2007 to 10%.
Capital gain is exempt from tax.

Individual unit holder
Subject to tax on dividend received at 10%.
Capital gain is exempt from tax.

Withholding tax
The registered REIT company would be required to withhold tax at the rate of tax applicable to the unit holder, the tax so withheld would be considered the full and final discharge of tax liability of the unit holder in respect of dividend income from registered REIT company.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– 10% withholding tax final levy – Capital gains tax-exempt	– 10% withholding tax final levy – Capital gains tax-exempt	No tax treaty relief available

Corporate unit holder
Subject to tax on dividend received at 10%.
Capital gain is exempt from tax.

Individual unit holder
Subject to tax on dividend received at 10%.
Capital gain is exempt from tax.

Withholding tax
The registered REIT company would be required to withhold tax at the rate of tax applicable to the unit holder, the tax so withheld would be considered the full and final discharge of tax liability of the unit holder in respect of dividend income from the registered REIT company.

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

5 Tax treatment of foreign REITs and their domestic unit holders

	Foreign REIT	Corporate unit holder	Individual unit holder
	35% tax on Pakistan source income	10% tax on dividend received	10% tax on dividend received

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

A foreign REIT would be taxable with is Pakistan source income at a tax rate of 35%

Corporate unit holder
Resident companies receiving dividend from foreign REIT companies would be liable to tax at 5% tax rate. The tax rate will change on July 04 2007 to 10%.

Individual unit holder
Individual unit holders would be liable to tax on dividend received from foreign REIT companies at 10%.

Philippines (REIC)

A view over central Manila and Manila Bay.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
	Pending in Congress	Will be passed as a statute (Republic Act)	Corporate type	– To be established

REITs are not yet established in the Philippines. REIT law is pending in Congress, subject to the deliberations by the duly constituted committees of the Senate and the House of Representatives.

REIT law shall be passed as a statute (Republic Act).

2 Requirements

2.1 Formalities / procedure

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

Shall register as a stock corporation with the Securities and Exchange Commission (SEC).

2.2 Legal form / minimum share capital

	Legal form	Minimum share capital
	Stock corporation	PHP 100 Million (approx. TEUR 210)

REIT shall be set up as a stock corporation, ie, as a Real Estate Investment Company (REIC).

Minimum paid-up capital of PHP 100 million.

2.3 Shareholder requirements / listing requirements

	Shareholder requirements	Listing mandatory
	– At least 1,000 shareholders with at least 100 shares (must sum up to 30% of the outstanding capital stock)	Yes

It is envisioned that a REIC must at all times be a public company and to be considered as such, the REIC must, upon and after listing: (a) have at least 1,000 shareholders each owning at least 100 shares of a class of shares who in the aggregate own at least 30% of the outstanding capital stock of the REIC; and (b) must not be considered a closely held corporation.

REIC shall be required to be listed.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– At least 75% income producing real property in the Philippines required – Must not undertake property development – May hold real estate through unlisted SPV

The draft Congressional bills provide that:

a. At least 75% of the Deposited Property of the REIC must be invested in, or consist of, Income Producing Real Property located in the Philippines;
b. A REIC must not undertake property development activities whether on its own, in a joint venture with others, or by investing in unlisted property development companies, unless it intends to hold the developed property upon completion. The total contract value of property development activities undertaken and investments in uncompleted property developments should not exceed 10% of the Deposited Property.

The draft Congressional bills also provide that a REIC may only invest in:

a. Income-producing Real Property, whether freehold or leasehold. An investment in Real Property may be by way of direct ownership or a shareholding in an unlisted special purpose vehicle constituted to hold or own Real Property;
b. Real estate related assets, wherever the issuers, assets, or securities are incorporated, located, issued, or traded;
c. Managed funds, debt securities, and shares issued by listed local or foreign non-property corporations;
d. Government securities issued on behalf of the Philippine Government, governments of other countries, and securities issued by supra-national agencies;
e. Cash and cash-equivalents.

2.5 Leverage

	Leverage
	Shall not exceed 35% of deposited property

The draft bills provide that the total borrowings and deferred payments of a REIC shall not exceed 35% of its Deposited Property: Provided, however, That the total borrowings and deferred payments of a REIC that has publicly disclosed investment grade credit rating by a duly accredited or internationally recognized rating agency may exceed 35%, but not more than 70% of its Deposited Property.

2.6 Profit distribution obligations

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

Operative income
A REIC must distribute annually at least ninety percent (90%) of its Distributable Income to its Investors.

'Distributable Income' is defined according to the draft congressional bills as "Net Income as adjusted for unrealized gains and losses/expenses and impairment losses, as prescribed by the SEC."

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

Unrealised gains are not included in the Distributable Income. Also capital gains realised from the transfer of shares of stock of domestic corporations are not included in taxable income since they have already been subjected to final tax. Income from the sale of real property will not treated as capital gains on the part of a REIC.

2.7 Sanctions

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

The draft bills provide that:
a. if the REIC is delisted from the local exchange, whether voluntarily or involuntarily, its tax incentives shall be ipso facto revoked and withdrawn as of the date of de-listing;
b. any tax incentives that may have been availed of by the REIC thereafter shall immediately be refunded to the Government; and
c. the REIC shall also be liable to the surcharges and penalties prescribed under the Tax Code.

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

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

Current Income

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

The Taxable Net Income is subject to regular corporate income tax (RCIT), currently at the rate of 35% but which will be reduced to 30% beginning January 01, 2009.

Capital gains

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

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

Withholding tax

Any foreign withholding tax may be utilised as either a deduction from gross income or a tax credit (subject to the applicable limitations). Local withholding taxes are creditable against the RCIT liability of a REIC.

Other taxes

1. The gross sale of properties and services (e.g. rental receipts) of a REIC will be subject to value added tax (VAT) at the rate of 12% ('Output VAT'), the amount of which is passed on to the buyers/lessees of the REIC. The REIC can claim, as credit against its Output VAT, the amount of the VAT passed on to it by its local suppliers of goods and services ('Input VAT'). The REIC's VAT Payable is the excess of its Output VAT over its Input VAT.
2. A REIC will be subject to the stock transaction tax (STT) on its transfers of shares of stock listed and traded at the local stock exchange, at the rate of ½ of 1% of the gross selling price or the gross value in money of the shares of stock. If the REIC transfers the listed shares outside the stock exchange, then it will be subject to the capital gains tax at the rate of 5% for the first PHP 100,000 of net capital gains and 10% for net capital gains in excess of PHP 100,000.
3. A REIC will be subject to the documentary stamp tax (DST) on such documents and transactions enumerated in the Tax Code, such as the issuance of shares or investor securities, and the transfer of such shares or investor securities (subject to specific or time-bound exemptions provided for under various laws).
4. A REIC will be subject to local business tax at the rates provided in the Revenue Code of the province/city/municipality where the principal office of the REIC is located.
5. A REIC will be subject to local transfer tax on its transfers or real property, at the rate provided in the Revenue Code of the province/city/municipality where the real property is located.

Accounting rules

The Philippines has adopted International Financial Reporting Standards.

3.2 Transition regulations

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

The draft Congressional bills do not exempt from capital gains tax or regular income tax any gains realised from the transfer of properties to a REIC, although the transferor may opt to structure the same as a tax-deferred exchange pursuant to the provisions of the Tax Code. A REIC must be a newly incorporated entity; the draft bills do not allow an existing property company to merely amend its Articles of Incorporation in order to achieve REIC status.

3.3 Registration duties

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

The transfer of properties to a REIC, unless structured as a tax-deferred exchange under such conditions specified in the Tax Code, will give rise to liability for VAT, DST, local withholding tax, and local transfer taxes. The registration of the deed of sale with the Register of Deeds requires the payment of registration fees. The draft Congressional bills propose to exempt such transfers from DST and the local withholding tax, and to reduce the registration fees paid to the Register of Deeds by 50%.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

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

Corporate shareholder
Dividends paid by a REIC to a domestic corporation or a resident foreign corporation are tax-exempt.

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

a. stock transaction tax of ½ of 1% of the gross selling price or the gross value in money of the shares of stock transferred, if the REIC shares are transferred through trades on the stock exchange; or
b. capital gains tax of 5% (on the first PHP 100,000 of net capital gains) or 10% (on net capital gains exceeding PHP 100,000), if the REIC shares are transferred outside the stock exchange.

Individual shareholder
The 10% tax on dividends received by a Filipino citizen or a resident alien from a REIC is a final tax, withheld and remitted to the BIR by the REIC.

Since the REIC's shares are listed on the local stock exchange, the transfer of the REIC shares by a Filipino citizen or a resident alien shall be subject to the following taxes:

a. stock transaction tax of ½ of 1% of the gross selling price or the gross value in money of the shares of stock transferred, if the REIC shares are transferred through trades on the stock exchange; or
b. capital gains tax of 5% (on the first PHP 100,000 of net capital gains) or 10% (on net capital gains exceeding PHP 100,000), if the REIC shares are transferred outside the stock exchange.

Withholding tax
The draft Congressional bills propose that dividends received by an Overseas Filipino Investor from a Philippine REIC be exempt from Philippine income tax.

4.2 Foreign shareholder

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

Corporate shareholder
The draft Congressional bills propose a 10% final withholding tax on dividends to foreign corporate shareholders, which is better than the rates prescribed under most tax treaties. The default rate under the Tax Code is 35%, reduced to 15% under a tax sparing provision of the Tax Code, and to 10% under certain tax treaties.

Since the REIC's shares are listed on the local stock exchange, the transfer of the REIC shares by a foreign corporate shareholder shall be subject to the following taxes:

a. stock transaction tax of ½ of 1% of the gross selling price or the gross value in money of the shares of stock transferred, if the REIC shares are transferred through trades on the stock exchange; or
b. capital gains tax of 5% (on the first PHP 100,000 of net capital gains) or 10% (on net capital gains exceeding PHP 100,000), if the REIC shares are transferred outside the stock exchange, unless an applicable tax treaty provides for exemption from Philippine capital gains tax. Treaty exemption does not extend to the stock transaction tax.

Individual shareholders

The draft Congressional bills propose a 10% final withholding tax on dividends paid to foreign individual shareholders. The default rate under the Tax Code is 20% for non-resident engaged in trade or business in the Philippines, and 25% for non-resident not engaged in trade or business in the Philippines. Most tax treaties reduce these rates to 10% or 15%.

Since the REIC's shares are listed on the local stock exchange, the transfer of the REIC shares by a foreign individual shareholder shall be subject to the following taxes:

a. stock transaction tax of ½ of 1% of the gross selling price or the gross value in money of the shares of stock transferred, if the REIC shares are transferred through trades on the stock exchange; or
b. capital gains tax of 5% (on the first PHP 100,000 of net capital gains) or 10% (on net capital gains exceeding PHP 100,000), if the REIC shares are transferred outside the stock exchange, unless an applicable tax treaty provides for exemption from Philippine capital gains tax. Treaty exemption does not extend to the stock transaction tax.

Withholding tax

Tax treaty relief available.

5 Tax treatment of foreign REITs and their domestic shareholders

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

Foreign REIT

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

Corporate shareholder

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

Individual shareholder

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

Singapore (SREIT)

Modern architecture and landmarks of Singapore city state.

1 General introduction

	Enacted year	Citation	REIT type
SREIT	1999	– Securities and Futures Act – Code on Collective Investment Schemes – Property Funds Guidelines	Trust type or corporate type (in practice trust type)

The SREIT is principally regulated by the Securities and Futures Act, Chapter 289 of Singapore and the Code on Collective Investment Schemes issued by the Monetary Authority of Singapore including the Property Funds Guidelines issued there under.

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

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

The first REIT that was listed on the Singapore Exchange took place in July 2002. There are now 19 REITs listed on the Singapore Exchange with a market capitalisation of approximately US$ 20 billion.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
SREIT	21	11.9	3.2

Top five REITs

	Market cap (€m)	Sector type
CapitaMall Trust	2,320	Retail
Ascendas Real Estate Investment Trust	1,371	Industrial, Logistic, Office, Retail
CapitaCommercial Trust	1,234	Hotel, Office, Parking, Retail
Suntec Real Estate Investment Trust	969	Office, Retail
CDL Hospitality Trusts	677	Hotel

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Formal advance ruling and/or tax exemption application has to be submitted – Listing for tax exemption

A REIT that is listed on the Singapore Exchange is eligible for certain favourable tax treatments. To be listed on the Singapore Exchange, a REIT must comply with the applicable rules, regulations and guidelines set out in Securities and Futures Act, Chapter 289 of Singapore, the Code on Collective Investment Schemes (including the Property Funds Guidelines) and the Singapore Exchange Listing Manual.

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

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Company or unit trust	S$ 20 million

Legal form
The legal forms can be a company or a unit trust. But all the 19 REITs listed on the Singapore Exchange are constituted as unit trusts as this legal form offers certain advantages over a corporate form. For example, the granting of tax transparency treatment is only available to a REIT constituted as a unit trust. A trust structure also provides flexibility for distribution as unlike a company its distribution is not restricted to the amount of its distributable profits.

Might be managed externally or internally, but are in practice externally managed.

Minimum initial capital
For listing on the Singapore Exchange, a REIT, if it is denominated in Singapore Dollars, must have a minimum asset size of at least S$ 20 million.

2.3 Unit holders requirements / listing requirements

	Unit holder requirements	Listing mandatory
	At least 25% of the REIT’s capital has to be held by at least 500 public unit holders for listing	In principle not, but required for the various tax concessions

Unit holder requirements
To be listed on the Singapore Exchange, there is requirement for at least 25% of the capital of the REIT to be held by at least 500 public unit holders. There is no difference between resident and non-resident unit holders in regard of ownership.

Listing requirements
The SREIT needs not be listed but to be eligible for the various tax concessions, it has to be listed on the Singapore Exchange. A REIT listed on a foreign exchange will not be eligible for the various tax concessions.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– At least 75% of the REIT's deposited property should be invested in income-producing real estate – No property development activities unless the REIT intends to hold the developed property upon completion – May invest in foreign assets – Should not derive more than 10% of its revenue from sources other than rental and other specified sources

The Property Funds Guidelines states that a REIT may invest in:
- real estate;
- real estate-related assets;
- listed or unlisted debt securities and listed shares of or issued by non-property corporations;
- government securities and securities issued by a supra-national agency or a Singapore statutory board; and
- cash and cash equivalent items.

At least 75% of the REIT's deposited property should be invested in income-producing real estate. No distinction is made between domestic and foreign real estate.

A REIT should not undertake property development activities whether on its own, in a joint venture with others, or by investing in unlisted property development companies, unless it intends to hold the developed property upon completion. The total contract value of property development activities undertaken and investments in uncompleted property developments should not exceed 10% of the property fund's deposited property. A REIT should also not invest in vacant land and mortgages.

A REIT should not derive more than 10% of its revenue from sources other than:
a. rental payments from the tenants of the real estate held by the REIT; or
b. interest, dividends, and other similar payments from special purpose vehicles and other permissible investments of the REIT.

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

There are no requirements/restrictions on shareholdings although there is restriction on how much of the REIT's deposited property can be invested in listed or unlisted debt securities and listed shares of or issued by property and non-property corporations and other locally-registered property funds. Currently not more than 5% of a REIT's deposited property can be invested in securities issued by a single party.

2.5 Leverage

	Leverage
	Aggregate leverage should not exceed 35% of REIT's deposited property (this leverage limit may be increased to a maximum of 60%)

Aggregate leverage of a REIT should not exceed 35% of its deposited property. The 35% limit may be exceeded (subject to a maximum of 60%) only if a credit rating of the REIT from Fitch Inc., Moody's or Standard and Poor's is obtained and disclosed to the public.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	90% of qualifying income	Not required	– Annually or – Semi-annually or – Quarterly

Operative income
For investment in Singapore properties, one of the conditions for granting tax transparency status (so that the REIT is not taxed on its taxable income) is that the REIT must distribute at least 90% of its taxable income to unit holders in the year the income is derived except for the last distribution of a year which is usually paid only two months after the end of that year. For investment in overseas properties, there is generally no such requirement as tax transparency is not applicable. Instead, the REIT may qualify for tax exemption on certain foreign-sourced income that is remitted into Singapore. Under certain circumstances, the tax exemption is granted subject to the condition that the REIT distributes at least 90% of the foreign-sourced income remitted to Singapore to its unit holders.

Capital gains
Not required.

2.7 Sanctions

	Penalties / loss of status rules
	De-listing of REIT and withdrawal of tax exemption

If the profit distribution obligation is not complied with there is a high probability that tax transparency status granted to the REIT will be withdrawn. If the required asset level is not met and this leads to a de-listing of the REIT from the Singapore Exchange, then all tax concessions granted will cease to apply.

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

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

Current Income
For rental and property related income (e.g. car park charges, service fees) no tax is imposed at the SREIT level (under tax transparency status). If this income is not distributed (which should not be more than 10%) it is taxed at the prevailing corporate tax rate, currently 18%.

Foreign dividends or interest received in respect of investment in foreign properties are exempt from Singapore income tax.

Capital gains
Singapore does not impose tax on capital gains. Capital gains or losses (unless the REIT's activities are such that it can be said to be carrying on a business of dealing in properties) from sale of any of its properties are likely to be treated as capital gains or losses. If the REIT is indeed dealing in properties, then the gains would be taxed at the REIT level at the prevailing corporate tax rate, currently 18%.

Withholding tax
Foreign-sourced income of the SREIT may qualify for tax exemption under general tax rules. A foreign withholding tax on such income will not be credited or refunded.

Other taxes
See under no. 3.3 below.

Accounting rules
Local GAAP apply. The income will be determined on accrual basis.

3.2 Transition regulations

	Conversion into REIT status
	N/A

3.3 Registration duties

	Registration duties
	– Stamp duties from 0.2-3%, remission under certain requirements – Goods and Service Tax may be applicable – No capital duty

A stamp duty at approximately 3% is payable on acquisition of real estate. This tax is payable by the buyer, unless agreed otherwise by the parties. However, remission of stamp duty is granted on transfer of Singapore properties to a REIT listed on the Singapore Exchange, or to be so listed within one month from the transfer or such longer period as may be allowed. This remission is applicable to transfers executed during the period from February 18, 2005 to February 17, 2010.

In respect of Singapore properties, the transfer of the properties may qualify to be treated as a transfer of a going concern and hence not subject to Goods and Services Tax or SREIT may avail of a concession that allows it to self-account for the Goods and Services Tax otherwise payable on the acquisition.

The SREIT may also apply for remission of stamp duty payable (0.2%) on transfer of shares in Singapore companies owning foreign properties.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– 18% corporate tax – Distribution out of capital gains generally not taxable – Capital gains are generally tax-exempt (exception for example trading assets)	– Current income distributions in principle tax-exempt – Distribution out of capital gains generally not taxable – Capital gains are generally tax-exempt (exception for example trading assets)	Generally no

Corporate unit holder
Current income distributions are taxed at prevailing corporate tax rate of 18%.

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

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

Singapore does not impose tax on capital gains. So generally capital gains realised on the sale of the REIT units are not taxable, unless the gains are considered to be trading gains or gains or profit of an income nature, for example if unit holder holds the units as trading assets. Corporates who hold REIT units as trading assets are subject to Singapore income tax at the prevailing corporate tax rate, currently 18%.

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

If capital gains are determined to be 'capital gains' and hence not taxed at REIT level, distribution is also not taxed in the hands of individual unit holders; if capital gains are determined to be 'trading gains' and hence taxed at the REIT level, distribution is exempt from tax.

Return of capital distribution is not taxed.

Singapore does not impose tax on capital gains. So generally capital gains realised on the sale of the REIT units are not taxable, unless the gains are considered to be trading gains or gains or profit of an income nature, for example if unit holder holds the units as trading assets. Individuals who hold REIT shares as trading assets are subject to Singapore income tax at their respective tax rates.

Withholding tax
Withholding tax of 18% is applicable on distribution of taxable income by a REIT to unit holders who do not qualify for gross distribution (e.g. domestic unit trusts) or who did not submit the requisite declaration forms for their status to be ascertained. Distributions to domestic unit holders are not subject to withholding tax if certain conditions and procedures are complied with.

To ascertain if a unit holder is eligible for gross distribution, unit holders are required to submit a declaration form prior to each distribution. Where tax is withheld when making payment of the distribution, the REIT must pay the tax withheld to the Singapore tax authorities by the 15th of the month following the date of payment.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	- Final withholding tax on current income distribution - Withholding tax is not applicable on distribution of tax-exempt income (e.g. foreign dividends) - Distribution out of capital gains generally not taxable	Distribution and capital gains in principle, exempted from tax	- 10% until February 17 2010 on distributions to non individuals - No treaty relief available

Corporate unit holder
Current income distribution is subject to withholding tax at prevailing corporate tax rate, currently 18%. Reduced rate of 10% applies for distributions made during the period from February 18, 2005 to February 17, 2010.

If capital gains are determined to be 'capital gains' and hence not taxed at REIT level, distribution is also not taxed in the hands of corporate foreign unit holders; if capital gains are determined to be 'trading gains' and hence taxed at the REIT level, distribution is exempt from tax.

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

A return of capital distribution is not taxed.

Capital gains are generally not taxable, unless gains are considered to be trading gains or gains or profit of an income nature, for example if unit holder holds the units as trading assets.

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

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

If capital gains are determined to be 'capital gains' and hence not taxed at REIT level, distribution is also not taxed in the hands of individual foreign unit holders; if capital gains are determined to be 'trading gains' and hence taxed at the REIT level, distribution is exempt from tax.

Return of capital distribution is not taxed.

Generally capital gains are not taxable, unless gains are considered to be trading gains or gains or profit of an income nature, for example if unit holder holds the units as trading assets.

Withholding tax
Distribution to a foreign non-individual unit holder is subject to withholding tax at the prevailing corporate tax rate (this is reduced to 10% for distributions made during the period from February 18, 2005 to February 17, 2010). Withholding tax at 10% applicable to distributions to foreign non-individuals is a final tax.

Tax treaty rate is not applicable as the payment is a distribution from a unit trust (and not a dividend) and the tax withheld is a tax in lieu of tax payable by the REIT.

5 Tax treatment of foreign REITs and their domestic unit holders

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

Foreign REIT
A foreign REIT will be taxable under normal Singapore tax rules. Therefore, if it invests in Singapore properties, it will not be eligible for tax transparency status.

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

Individual unit holder
Distribution made by a foreign REIT (only if it is constituted as a trust) out of income derived from direct holding of Singapore properties which has been assessed to tax as income from a trade or business is treated as capital in the hands of its unit holders. In other words, no further tax is imposed on the distribution received by an individual Singapore unit holder. ■

South Korea (REIC)

Incheon International Airport, Seoul, is the largest airport in South Korea.

1 General introduction

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

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

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

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
REIC	9	0.4	0.1

Top five REITs

	Market cap (€m)	Sector type
Korea Real Estate Investment Trust Co	191	Land
MCO CR-REIT	92	Office
KOCREF CR-REIT 7	53	
Kocref Cr-Reit 3	40	Office
KOCREF REIT VIII	38	

2 Requirements

2.1 Formalities / procedure

	Key requirements
	Approval from the Ministry of Land, Transport and Maritime Affairs

A REIT must obtain a business license from the Ministry of Land, Transport and Maritime Affairs.

2.2 Legal form / minimum share capital

	Legal form	Minimum share capital
	– Joint-stock company (General REIT, REIC) – CR-REIT: Special purpose company	KRW 10 billion

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

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

The seat of a REIT must be established in Korea.

Minimum share capital
Under REICA, KRW 1 billion is required as the minimum capital for obtaining a business license. After this official permission, REIT should increase its equity capital up to KRW 10 billion within six months.

2.3 Shareholders requirements / listing requirements

	Shareholder requirements	Listing mandatory
	A shareholder may not own more than 30% of the shares	Yes

Shareholder requirements
There are shareholding limitations as follows:
1. One shareholder and anyone who is specially related with the former shall not possess in excess of 30% (hereinafter referred to as the “upper limit of possession of stocks per person”) of the total stocks issued by a REIT with an exception provided by Enforcement Decree of REICA;
2. Where a stockholder and the specially related person (hereinafter referred to as the “same person”) possess stocks of a REIT in excess of the upper limit of possession of stocks per person in violation of paragraph (1), the extent of exercise of voting right shall be limited to the upper limit of possession of stocks per person.
3. At least 30% of the shares must be offered to the public within six months from official permission.

However, the above limitations do not apply to the case where certain shareholders (ex. Korean National Pension Corporation, etc) holds 30% or more shares in REICA.

Listing requirements
REIT must list its stocks on the securities market of the Korea Stock Exchange or register them with the Korea Securities Dealers Association and make them traded either in the securities market of the Korea Stock Exchange or in the association brokerage market of the Korea Securities Dealers Association.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– 70% must be invested in real estate – 80% must be invested in real estate, real estate related securities and cash – Can invest in real estate development within 30% of its assets if listed – Cannot acquire more than 10% of voting shares in other companies

As of the end of each quarter, 80% or more of the total assets of a REIT must be real estate, real estate related securities and cash, and 70% or more of total assets of a REIT must be real estate (including buildings under construction).

In addition to those requirements, 70% or more of total assets must be corporate recovery-related real estate in the case of a CR-REIT. Corporate recovery-related estate includes real property which a company sells to repay its debts to a financial institution, real property which a company sells to implement agreements with a financial institution providing debts to the company and real property which a company sells for corporate recovery under relevant laws.

The minimum real estate holding period of a REIT is three years. For CR-REIT's there are no restrictions.

A REIT can invest in a real estate development project within 30% of its total assets, after its stocks are listed on the securities market of the Korea Stock Exchange or registered with the Korea Securities Dealers Association. In spite of this restriction, a REIT specially established for developing business can invest in developing business without limitation.

A REIT is not allowed to hold more than 10% of voting shares in other companies with an exception including a merger and an acquisition of a business.

Currently, there is no clear rule on a REIT's holding real estate in foreign jurisdiction and thus, legal advice is required.

2.5 Leverage

	Leverage
	Maximum Debt: Equity ratio of 2:1

A REIT can borrow funds or issue bonds within two times the equity value. If there is a special resolution by the general stockholders' meeting, a REIT can borrow funds or issue bonds within ten times the equity value.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	90% or more of distributable income	Included in operative income	Depends on Articles of Association

Operative income
A REIT must distribute 90% or more of distributable income.

There is no difference between a domestic and a cross-border profit distribution. The timing of the distributions depends on the Articles of Association.

Capital gains
Capital gains are subject to the distribution obligation.

2.7 Sanctions

	Penalties / loss of status rules
	– Imprisonment penalty – Fine not exceeding KRW 50 million – Revoke the establishment of REIT

If the required asset level is not met, there is imprisonment penalty and a fine not exceeding KRW 50 million. Also, the Minister of Land, Transport and Maritime Affairs may revoke the establishment of REIT status if the required profit distribution is not met.

Any deviation from its obligations according to the applicable law results in regulatory action (i.e. penalty, withdrawal of licence, etc.).

Where the same person possesses stocks in excess of the upper limit of possession of stocks per person, the Minister of Construction and Transportation may order him to dispose of the stocks that are in excess of the upper limit of possession of stocks per person.

In case where the same person holds stocks in excess of the upper limit of possession of stocks per person after making his investment in kind, notwithstanding the provisions of paragraph (3), the Minister of Construction and Transportation may order him to dispose of his stocks that are in excess of the upper limit of possession of stocks per person during the period ranging from not less than one year to not more than one year and six months from the date on which the stocks are issued after the investment in kind is made.

Where the Minister of Construction and Transportation finds that a REIT fails to list its stocks on the securities market of the Korea Stock Exchange, or register with the Korea Securities Dealers Association without sound reasons, he may order the REIT to be listed or register its stocks within a period of time to be designated by him.

3 Tax treatment at level of the REIT

3.1 Corporate income tax

	Current income	Capital gains	Withholding tax
	Income technically tax-exempt, if 90% distribution requirement met.	Income technically tax-exempt, if 90% distribution requirement met, but in certain cases 33% capital gains surtax	– No withholding tax levied on domestic distribution – Entitled to claim a foreign tax credit with a certain ceiling of tax credit

Current Income
A Paper-company Type REIT and CR-REIT can claim a dividend paid deduction, if 90% of the distributable income is distributed as dividends and thus, technically, the corporate income tax of REIT can be nil.

Otherwise (REIC) the company is subject to corporate income tax at a rate of 13% for the first taxable income up to KRW 100 million and 25% for over the KRW 100 million threshold. 10% of corporate income tax is additionally levied as local resident surtax.

Capital gains
Under Korean Corporate Income Tax Law, the treatment of capital gains constitutes as ordinary income subject to the ordinary corporate income tax rate. There is no tax on capital gains if the 90% distribution obligation is met.

In addition, the capital gains surtax at a rate of 33% could be imposed on the sale of certain tainted assets such as housing or non-business purposes land. The 33% capital gains surtax should be imposed additionally also if the 90% distribution obligation is met.

Withholding tax
If a REIT receives a distribution of a domestic company no withholding tax is levied. The REIT is entitled to claim a foreign tax credit with a certain ceiling of tax credit.

Other taxes
There are no other taxes levied on the corporate income.

Accounting rules
A financial statement single (not consolidated) should be prepared in accordance with Korean GAAP.

3.2 Transition regulations

	Conversion into REIT status
	N/A

3.3 Registration duties

	Registration duties
	– Acquisition tax – Registration tax

In general, when real estate in Korea is purchased by a company in Korea, a 0.96%/2.2% acquisition tax and a 2.4% registration tax are imposed on the purchase price. However, the acquisition tax will be tripled to 2.88% or 6.6% if the real estate is newly constructed or is used for head office in Seoul Metropolitan Area (SMA), and the registration tax will be tripled to 7.2%, if the real estate acquired by a company which has been registered in SMA for less than five years and is located in the SMA.

Compared to a regular company, a REIT would enjoy a 50% reduction in acquisition and registration tax if real estate in Korea is purchased by December 31, 2009.

In addition, the capital registration tax is levied at the rate of 0.48% to 1.44% of the total par value amount of paid-in capital.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– Subject to corporate income tax and resident surtax – No difference between current income dividend and capital gains dividend – Capital gains on disposal subject to ordinary income tax rate	– Withholding tax of 15.4% final levy if interest and dividend income does not exceed KRW 40 million – Capital gains tax exempt if certain thresholds are met	– No withholding tax for domestic corporation – Final withholding tax of 15.4% for Korean individual residents on distributions

Corporate shareholder
A dividend is subject to corporate income tax. There is no difference between current income dividend and a capital gains dividend under the Korean tax law.

A return of capital distribution (capital redemption/retirement) may be a deemed dividend: the sum of funds and the value of other assets acquired by a shareholder in return for the retirement of stocks and redemption of capital in excess of the acquisition costs of the capital would be deemed as dividends. The deemed dividend is subject to corporate income tax.

"Under Korean Corporate Income Tax Law, the treatment of capital gains constitutes as ordinary income subject to the ordinary corporate income tax rate."

Individual shareholder
There is no difference between current income dividends and a capital gains dividend under Korean Law. The withholding tax of 15.4% is a final levy if interest and dividend income does not exceed KRW 40 million. If the aggregate interest and dividend income exceeds KRW 40 million, the individual is subject to the ordinary individual income tax rates ranging from 8.8% to 38.5%.

A return of capital distribution (capital redemption/retirement) may be a deemed dividend: the sum of funds and the value of other assets acquired by a shareholder in return for the retirement of stocks and redemption of capital in excess of the acquisition costs of the capital would be deemed as dividends. The deemed dividend is subject to withholding tax.

Individuals who hold less than 3% of listed REIT shares and proceeds from the sale of the listed REIT shares is less than KRW 10 billion are exempted from the income tax on capital gains. Otherwise individuals are subject to income tax.

Withholding tax
If its shareholder is a domestic corporation, then the dividend paid by a REIT is not subject to withholding tax.

If its shareholder is Korean individual residents, then the dividend paid by a REIT is subject to 15.4% withholding tax.

In general, withholding tax should be collected when the dividend paid and the dividend which is declared by a REIT but not paid to its shareholders within three months from the date of declaration of the dividend is deemed to be paid at the end of such three-month period.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– Withholding tax of 27.5% – Can be reduced according to a tax treaty	– Withholding tax of 27.5% – Can be reduced according to a tax treaty	Tax treaty relief available

Corporate shareholder
A dividend is subject to Korean withholding tax at a rate of 27.5%, and can be reduced according to a tax treaty. There is no difference between current income dividend and a capital gains dividend.

A return of capital distribution (capital redemption/retirement) may be a deemed dividend: the sum of funds and the value of other assets acquired by a shareholder in return for the retirement of stocks and redemption of capital in excess of the acquisition costs of the capital would be deemed as dividends. The deemed dividend is subject to Korean withholding tax at a rate of 27.5%, and can be reduced according to a tax treaty.

Capital gains realised on the sale of the REIT shares are subject to the Korean withholding tax. The withholding tax rate for residents in non-treaty countries for REIT shares is the lesser of 27.5% of the gain or 11% of the gross proceeds, and the foreign shareholder is required to file a tax return on the capital gains taxed at the rate of 27.5% (the withheld tax is creditable). However, there is an exception. That is, the capital gains earned by a non-resident from the transfer of listed REIT shares through the Korean Stock Exchange or KOSDAQ are not taxable if such non-resident, together with its certain related parties, hold or have held less than 25% of the REIT shares at all times during the calendar year of the share transfer and the immediately proceeding five calendar years.

Individual shareholder
For a foreign individual, the dividend paid by a REIT is subject to 27.5% withholding tax, but the withholding tax can be reduced depending on a tax treaty. There is no difference between current income dividend and a capital gains dividend.

The treatment of a return of capital distribution and capital gains realised on the sale of REIT shares earned by an individual shareholder is not different to a corporate shareholder except for the capital gains tax rate ranging from 9.9% to 39.6%.

Withholding tax
For a foreign individual or company, the dividend paid by a REIT is subject to 27.5% withholding tax, but the withholding tax can be reduced depending on a tax treaty.

In general, withholding tax should be collected when the dividend is paid, but the dividend which is declared by a qualified REIT but not paid to its shareholders within three months from the date of declaration of the dividend is deemed to be paid at the end of such three-month period.

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	Tax privileged with its Korean rental income	No specific tax privilege	No specific tax privilege

Foreign REIT
A foreign REIT should report its Korean sourced rental income to the Korean tax authorities and should pay Korean income tax as if the REIT is a Korean resident (i.e. a Korean permanent establishment of the foreign REIT is created).

Corporate shareholder
A Korean corporate shareholder of a foreign REIT is subject to corporate income tax on the distribution received by the foreign REIT and can claim a foreign tax credit.

Individual shareholder
A Korean individual shareholder of a foreign REIT is subject to individual income tax on the distribution received by the foreign REIT and can claim a foreign tax credit.

Taiwan (REIT)

Taipei 101, a 101-floor landmark skyscraper, Taipei, Taiwan.

1 General introduction

	Enacted year	Citation	REIT type
Taiwan REIT	2003	Real Estate Securitization Act	Trust type

In Taiwan the Real Estate Securitization Act (RESA) was enacted in 2003. The REIT is legally regulated by RESA. The REIT structure is a trust type.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
T-REIT	8	1.2	0.3

Top five REITs

	Market cap (€m)	Sector type
Cathay No 1 REIT	306	Hotel, Office, Retail
Shin Kong No 1 REIT	240	Commercial, Office, Retail
Cathay No 2 REIT	171	Office
Fubon No 2 REIT	162	Hotel, Office, Residential, Retail
Fubon No 1 REIT	139	Hotel, Office

2 Requirements

2.1 Formalities / procedure

	Key requirements
	Trustee shall submit certain documents to the competent authority (the Ministry of Finance) for approval or effective registration

According to Article 6 of the RESA, to public offer or privately place REIT Beneficial Securities, the Trustee shall submit the following documents to the competent authority for approval for effective registration:

- REIT plan;
- REIT contract;
- Comparison tables of the REIT contract and the model of a standard contract;

- Prospectus or investment memorandum;
- Documentations evidencing that the operating and managerial personnel of the REIT Funds are in compliance with the regulations prescribed by the competent authority;
- Name list, documentation of qualifications, and appointment agreement of the Trust Supervisor, if any;
- Minutes of the resolution adopted by the Trustee's board of directors for publicly offering or private placement of REIT Beneficial Securities;
- Explanations regarding the method of managing and disposing of the trust property: Where a real estate management institution is appointed to manage or dispose of trust property, the appointment agreement or other documentary proofs are needed;
- Case examination tables filled out by the Trustee and reviewed by a CPA or lawyer;
- Legal opinions of a lawyer; and
- Other documents as required by the competent authority.

For companies purely engaged in the businesses of real estate investment trust or real estate asset trust, the competent authority may set forth rules for the minimum outstanding capital, shareholders' structure, qualification of the person responsible for the company, the expertise and experience of the company's management, and business activities.

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Public company	Depending on the scope of business engaged by the trustee (ranging from NT$ 300 million to NT$ 2 billion)

Legal form
'Trustee' shall refer to an institution that may manage and dispose of the trust property and publicly offer or privately place Beneficial Securities, and shall be limited to the trust enterprises defined in the Trust Enterprise Act. In practice, up-to-date trustees are local banks or branch offices of foreign banks.

According the Trust Enterprise Act, except for banks approved by the Competent Authority to conduct a trust business, a trust enterprise may only be a company limited by shares. The trustee institution must meet the following criteria:
- Be engaged in the trust business pursuant to the Taiwan Trust Law;
- Be established for at least three years;
- Meet the standards set by credit rating institution recognized by competent authority.

A trust company shall be a public company.

Minimum initial capital
To apply to establish a trust company, minimum paid-in capital of NT$ 2 billion is required. The capital contributions shall be made in cash only. The minimum paid-in capital required for a trust company engaging only in real estate investment trust (REIT) business under the RESA is NT$ 1 billion; the minimum paid-in capital for a trust company engaging only in real estate asset trust (REAT) business is NT$ 300 million; and the minimum paid-in capital for a trust company engaging only in REIT and REAT business is NT$ 1 billion.

2.3 Shareholder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	– Certificates shall be held by at least 50 persons for at least 335 days during a fiscal – Any five certificate holders shall not own more than ½ of the total value of the certificates issued	No

Unit holder requirements
Certificates shall be held by at least 50 persons for at least 335 days during a fiscal year – except for independent professional investors, it is not required for the 50 persons to be the original holders of certificates. Any five certificate holders shall not own more than ½ of the total value of the certificates issued

According to Article 6 of the Standards for the Establishment of Trust Enterprises (SETE), the same person or same related parties respectively may not hold shares in the same trust company in an amount exceeding 25% of the total number of shares issued. The term “same person” means a same natural person or a same juristic person; the term “same related parties” includes the person, his or her spouse, blood relatives within the second degree, and enterprises of which the person or his or her spouse is a responsible person.

Listing requirements
According to Article 3 of the SETE, a trust company shall be a public company, but there are no mandatory listing requirements.

Meanwhile, the beneficial securities can be publicly offered or privately place.

2.4 Asset level / activity test

	Restrictions on activities / investments
	Investment in real estate, related rights of real estate, securities of real estate, as well as other investment objects approved by the competent authority.

According to Article 17 of the RESA, the investment or utilisation of REIT funds shall be limited to the following objects:
1. real estate with stable income;
2. related rights of real estate with stable income shall refer to the superficies and other rights approved by the central competent authority;
3. other Beneficial Securities or Asset-Backed Securities issued or delivered by the Trustee or special purpose company pursuant to RESA or the Financial Asset Securitization Act;
4. the utilisation range as prescribed in Article 18 hereof; or
5. other investment or utilisation objects approved by the competent authority.

The total investment in short-term commercial paper of any company shall not be greater than 10% of the net worth of the real estate investment trust at the investment date.

The total amount of bank deposit, bank guarantee, bank acceptance, short-term commercial papers in one financial institution shall not be greater than 20% of the net worth of the REIT, and 10% of the net worth of the financial institute at the investment date.

The total investment in certificates or asset-backed securities issued or delivered by trustee institutions or special purpose companies shall not be greater than 20% of the net worth of the REIT at the investment date.

According to Article 18 of the RESA, the utilisation of idle funds of the REIT Funds shall be limited to the following objects:
1. bank deposits;
2. purchase of government bonds or financial bonds;
3. purchase of treasury bills or negotiable certificates of time deposits;
4. purchase of commercial papers with a credit rating above certain level or guaranteed or accepted by banks with a rating above the level stipulated by the competent authority; or
5. purchase of other financial products approved by the competent authority.

2.5 Leverage

	Leverage
	The competent authority may prescribe an upper limit of the ratio regarding the money borrowed by the Trustee

The Trustee may borrow money with the trust property pursuant to the REIT Fund contract; however, the purpose of the borrowed money shall be subject to needs of real estate operation, or that of the distribution of profits, interests or other proceeds.

The Trustee may determine the real estate mortgage rights or other security interests for the trust property within the scope of the borrowed money.

To ensure the financial health of the REIT Funds, the competent authority may prescribe an upper limit of the ratio regarding the money borrowed by the Trustee. When the money borrowed exceeds the upper limit of the ratio, the Trustee shall make adjustments within the time prescribed by the competent authority.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	Pursuant to the REIT contract	Pursuant to the REIT contract	Within six months after the closing of the fiscal year

According to Article 26 of the RESA, the proceeds derived from the REIT investment shall be distributed pursuant to the REIT contract, within six months after the closing of the fiscal year.

2.7 Sanctions

	Penalties / loss of status rules
	Transfer REIT to other trustee

According to Article 55 of the RESA, if the trustee is not in compliance with the related law and regulations, it may be requested to transfer REIT to other trustee recognised by the competent authority.

3 Tax treatment at level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capita gains	Withholding tax
	Tax-exempt	Tax-exempt	Refundable

Current Income
The Trustee is considered as a pass-through entity in terms of tax. Therefore, the income generated from the operation of the REIT funds is not subject to corporate income tax at the trustee level.

Capital gains
The Trustee is considered as a pass-through entity in terms of tax. Therefore, the income generated by the operation of the REIT funds is not subject to corporate income tax at the trustee level.

Withholding tax
According to Article 89-1 of Income Tax Act, withholding tax on the revenue arising from the trust property shall be withheld at source under the name the trustee with prescribed rate in Income Tax Act. The withholding rate applied depending on the category of the income. Generally, the interest income will be subject to 10% withholding rate. The rental revenues received by the trustee will not be subject to withholding if the GUIs (Government Uniform Invoice) are issued.

Under executive order No. 09504081330 dated October 19, 2006, the withholding tax paid under the name of trustee for the incomes generated by the trust property, may apply for a tax refund.

Other taxes
The trustee institution is the taxpayer of land value tax.

3.2 Transition regulations

	Conversion into REIT status
	N/A

3.3 Registration duties

	Registration duties
	– There are registration fees for the formality of the Trustee – There are no tax/fee/duty imposed on the issuance of the beneficial securities

No duty imposed on the issues of beneficial securities.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– Current: Withholding tax final levy on distributions – Future: the distribution may be consolidated into gross corporate income if the draft is approved by the Legislative Yuan – Capital gains corporate tax-exempt, but subject to alternative minimum tax	– Withholding tax final levy on distributions – Capital gains tax-exempt	– Current: Final withholding tax of 6% – Future: WHT rate of 10% may apply if the draft is approved by the Legislative Yuan

Corporate unit holder
The distributed amount shall be the beneficiary's interest income.

Capital gain from transactions of beneficiary certificate is exempt from corporate income tax; however, such gain will be subject to the alternative minimum tax (AMT). Taiwan companies or foreign companies having permanent establishments (PE) entitling them to tax-exempt capital gains, claiming tax holidays or other tax incentives in Taiwan must calculate AMT income by using taxable income calculated in accordance with regular income tax system, plus certain tax-exempted income. Taiwan companies are required to compare the regular income tax versus the AMT income tax, and pay whichever is higher. The AMT rate for companies is currently at 10% with a deduction of NT $2 million.

Individual unit holder
The distributed amount shall be the beneficiary's interest income.

Capital gain from transactions of beneficiary certificate is exempt from individual income tax and AMT.

Withholding tax
The distribution will be subject to 6% withholding tax, which is the final tax for the unit-holders of REIT (the distributions received by the unit-holders are not included in the unit-holders' personal income tax returns or corporate income tax returns). The 6% withholding tax is not creditable against the unit-holders individual (or corporate) tax payable resulted from other sources of income.

According to the draft that is currently waiting for review by Legislative Yuan, the WHT rate on the distribution will be revised to 10%. Moreover, the distribution will not be consolidated into the gross personal income for individual beneficiaries, but will be consolidated into gross corporate income of the beneficiaries. The draft set the effective date on January 01, 2009.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	Final withholding tax of 6%	Final withholding tax of 6%	No tax treaty relief available

Corporate unit holder/individual unit holder
The tax treatment is the same as above for the domestic beneficial owners.

Withholding tax
The 6% withholding tax is the final tax for the foreign unit-holders. The tax treaty does not provide a better withholding tax rate for the foreign unit-holders under the DTA, the treaty preferential withholding tax rate for interest normally is 10%, which is still higher than the 6% withholding tax.

5 Tax treatment of foreign REITs and their domestic unit holders

	Foreign REIT	Corporate unit holder	Individual unit holder
	– Investment income subject to withholding tax – Capital gains are tax free	Corporate income tax	Need further clarification

The tax implications for foreign REIT and its domestic unit holders are not clear under the current tax regulations. The following analysis is for reference purpose only.

Foreign REIT
The tax implications will depend on the nature of the investment income. Except for the preferential rate provided under the treaty protection, investment income (including interest, dividends from approved investments) will be subject to a 20% withholding rate. The capital gains attributable to Taiwan securities investments (including government bonds, corporate bonds and shares) are tax-exempt.

Corporate unit holder
For Taiwanese profit-seeking enterprise having its head offices in Taiwan, the corporate income is taxed on the world-wide basis. Thus, the Taiwanese companies shall include the income distributed by the foreign REIT for the income tax purpose. The foreign tax relief is applicable under Article 3 of Taiwan Income Tax Act.

Individual unit holder
Individual income tax is imposed only on the Taiwan sourced incomes. Individuals' overseas investments revenues are not subject to income tax, and are not subject to AMT before January 01, 2009 or January 01, 2010. (If the Executive Yuan deems it is necessary to postpone the implementation of the provision in consideration of the needs of economic development, AMT on overseas income may come into force on January 01, 2010). However, whether the incomes received from a foreign REIT investing in Taiwan assets would be considered as the individual unit holder's non-Taiwan sourced income is in question. Further clarification is required from the Ministry of Finance. ■

Thailand (PFPO)

Office buildings along the Chao Phraya River, Bangkok, Thailand.

1 General introduction

	Enacted year	Citation	REIT type
PFPO	1992	Securities and Exchange Act B.E. 2535	Fund type

Only the Type I Property Fund, the property fund for public offering (PFPO), is available in Thailand. This is a type of mutual fund and is listed on the Stock Exchange of Thailand (SET).

The PFPO is established for the purpose of raising funds from the public to invest in income-producing real property (office buildings, service apartments, industrial factories, etc.).

The law regulating the PFPO is the Securities and Exchange Act B.E. 2535. It was enacted in 1992.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
PFPO	6	0.2	0.1

Top five REITs

	Market cap (€m)	Sector type
TICON Property Fund	116	Industrial
MFC Nichada Thani Property Fund	27	Residential
ING Thai Industrial Fund 1	16	Industrial
Bangkok Commercial Property Fund	15	Office
UOB Apartment Property Fund I	13	Residential

2 Requirements

2.1 Formalities / procedures

	Key requirements
	– PFPO can only be established and managed by an Asset Management Company (AMC) through a Public Offering – AMC must be licensed by the Thailand Ministry of Finance

The Type I Property Fund can only be established and managed by an Asset Management Company (AMC) through a Public Offering (PO)

The AMC must be licensed by the Thailand Ministry of Finance and regulated by the Office of Securities and Exchange Commission of Thailand.

While Asset AMC is responsible for setting up and managing the fund, there is a fund supervisor ensuring that the AMC will operate the fund in accordance with the scheme. Also, expert property service provider is occasionally appointed by AMC to carry on a day-to-day operation of the property.

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Closed-ended fund	Baht 500 million

Legal form
The PFPO can only be established as a closed-ended fund.

Minimum initial capital
A capital of minimum Baht 500 million is required.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	– At least 250 unit holders are required for an IPO – At least ten unit holders are required after SET listing – No more than 33.33% of unit holders can be related persons	Yes

Unit holder requirements
The minimum number of unit holders is 250 unit holders for an IPO and ten unit holders after listing in the Stock Exchange of Thailand (SET).

Former property owners and related persons i.e. three layers above and below (of at least 10% shareholding at each layer) the institutional investors, shall not acquire more than 1/3 of total units sold.

The 'small lot first' practice is in place for units allocation. This practice means the fund units will be allocated to those subscribed in small lots first, before being allocated to those subscribed in 'big' lots.

Listing requirements
Listing at the Stock Exchange of Thailand (SET) is mandatory.

2.4 Asset levels / activity test

	Restrictions on activities / investments
	– 75% of the net asset value invested in property – Property must be at least 80% complete – Property must be located in Thailand – The PFPO cannot purchase real property in dispute – Property insurance required – AMC must conduct feasibility studies before investment decisions are made – AMC must appoint a property appraiser, property prices are based on appraisals – Property re-evaluation every two years

No less than 75% of the net asset value must be invested in property. The fund may only invest in completed property or property that is at least 80% complete. Also, the PFPO may only invest in property which is located in Thailand. Real property in dispute is not allowed to be purchased or leased. Additionally, property insurance is required.

The fund can generate capital gain income of at most 25% of the total income.

The AMC is required to conduct feasibility studies for investment decision-making. Acquisition and disposal prices must be based on an appraisal price. To purchase/dispose property, the AMC must appoint a property appraiser approved by the SET to appraise the property and disclose the results to investors. Properties must be revalued every two years.

A PFPO may invest in subsidiaries.

2.5 Leverage

	Leverage
	Borrowing is prohibited

The PFPO is prohibited from borrowing.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	90% of net profit	90% of net profit	Within 90 days of the end of each accounting period

Operative income
At least 75% of the total income of the fund must be generated from rental income. At least 90% of the net profit must be distributed to unit holders within 90 days after the end of each annual accounting period.

Capital gains
Also at least 90% of capital gains are to be distributed. Only at most 10% of the net profit can be retained by the fund without being distributed to the unit holders.

2.7 Sanctions

	Penalties / loss of status rules
	N/A

3 Tax treatment at the level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Not subject to income tax, but a 12.5% Land and Building tax on rental income of immovable properties levied	Tax-exempt	N/A

Current Income
PFPO is not subject to income tax, but it pays a 12.5% Land and Building Tax on the annual rental income of immovable properties.

Capital gains
Capital gains are not taxed at the level of PFPO.

Withholding tax
On distributions to a PFPO, no withholding tax is levied.

Other taxes
Service income from movable and immovable properties as well as income from the disposal of properties is exempt from the VAT. Likewise, interest income and the income from the disposal of immovable properties are exempt from the Specific Business Tax (SBT). The PFPO is also exempt from the Stamp Duty.

The PFPO is to pay a once-off registration fee of 1% on the amount of rental fee of immovable properties (only if the lease period is more than three years); and 2% (reduced to 0.01% for one year commencing March 29, 2008) transfer fee of the official appraised price for the income on disposal of immovable property. The official appraised price refers to the value of the immovable properties (according to its type and location) assessed by the Land Department. The 2% transfer fee is reduced to 0.01% for the transfer of immovable properties to the property fund.

Accounting rules
The PFPO is to observe the Thai Generally Accepted Accounting Principles.

3.2 Transition regulations

	Conversion into REIT status
	No direct conversion to property fund status is allowed

No direct conversion to property fund status is allowed. However, an existing entity with real estate assets can sell its assets to the property fund.

The real estate assets must be sold by an existing entity to the property fund at market value.

3.3 Registration duties

	Registration duties
	Reduced transfer tax of 0.01%

Under the Land Code, a property transfer fee at rate of 2% (reduced to 0.01% for one year commencing from March 29, 2008) of the official appraised value of the property transferred is due on property transfers. However, if the real estate property is acquired by a property fund, such transfer fee is reduced to 0.01%.

In the case of selling an immovable property, there will be a 2% (reduced to 0.01% for one year commencing from 29 March 2008) transfer fee levied on the appraised value of the property. However, if the property is sold to a property fund, such fee can be reduced to 0.01%.

In practice, the responsibility of this property transfer fee would depend on the negotiation between the seller and the buyer, and if the negotiation is finalised, the clause regarding this property transfer fee should be stipulated in the sale and purchase agreement.

In the case of leasing an immovable property, there will be a 1% registration fee levied on the total rental income if the lease period is more than three years.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– Generally distributions 50% (unlisted company) or 100% (listed company) tax exempt – 30% income tax on capital gains	– Income tax of 5-37% – If unit holder allows the fund to deduct 10% withholding tax , this withholding tax final levy – Capital gains tax-exempt	– 10% or 0% withholding tax on distributions to an individual unit holder – No withholding tax levied on distributions to a corporate unit holder

Corporate unit holder
Corporate unit holders may receive a 50% or a 100% exemption on income taxes on profit distribution. A corporate unit holder is 100% exempt if it is a listed company in SET, and 50% exempt if it is a non-listed company and the company holds units in the fund at least three months before and after the distribution of the share of profit. Otherwise normal corporate tax rules apply.

A 30% income tax is levied on capital gains.

Individual unit holder
Individual unit holders are to pay 5-37% income taxes on profit distribution. If the unit holder allows the fund to deduct 10% withholding tax upon payment, the withholding tax is final levy.

Individuals are exempt from income tax on capital gains made from disposal of the fund units.

Withholding tax
If the individual unit holder allows the fund to deduct 10% withholding tax upon payment, the withholding tax is final levy. Otherwise individual rates are applicable. Capital gains made by an individual are exempt from withholding tax. Withholding tax is not applicable to corporations.

4.2 Foreign unit holder

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

Corporate unit holder
No Thai taxes are imposed on foreign corporate unit holders on income or on capital gains. The income is viewed by the Revenue Department as commercial income under Section 40(8) of the Revenue Code and not subject to withholding tax when it is paid to a beneficiary overseas. There is no specific exemption, but foreign companies are outside the Thai tax regime.

Individual unit holder
No Thai taxes are imposed on foreign individual unit holders on income or on capital gains. The income is viewed by the Revenue Department as commercial income under Section 40(8) of the Revenue Code and not subject to withholding tax when it is paid to a beneficiary overseas. There is no specific exemption, but foreign individuals are outside the Thai tax regime.

Withholding tax
No withholding taxes are imposed on overseas investors.

5 Tax treatment of foreign REITs and their domestic unit holders

	Foreign REIT	Corporate unit holder	Individual unit holder
	Same as other foreign companies	N/A	N/A

Foreign REIT
The Thai tax treatment of a foreign REIT will be the same as that of another foreign individual or company, provided that it is considered as a non-resident entity as supported by the certificate of residency issued by the relevant foreign tax authority.

Corporate unit holder
Given that it is a foreign unit holder of foreign REIT, no Thai tax would be applicable on any types of income paid from foreign REIT to its foreign unit holders.

Individual unit holder
Given that it is a foreign unit holder of foreign REIT, no Thai tax would be applicable on any types of income paid from foreign REIT to its foreign unit holders. ■

Africa

Part 3

South Africa (PUT and PLS company)

Cape Town, South Africa.

1 General introduction

	Enacted year	Citation	REIT type
PUT	No specific year	Part V of the Collective Investment Schemes Control Act No 45 of 2002	Trust (Shows some characteristics of a REIT)
PLS		Companies Act No 61 of 1973	Company

In the South African context, REITs operate in the form of a Property Unit Trust (PUT) or a Property Loan Stock Company (PLS company)[1].

A PUT holds immovable property and shares in property companies. A PUT is managed by a management company, which makes a market in the participation units. A South African PUT is legally regulated by the Collective Investment Schemes Control Act No 45 of 2002 ('the Collective Investment Schemes Act').

The main difference between a PUT and a PLS company, is that a PLS company is a company regulated by the Companies Act No 61 of 1973 ('the Companies Act') and is not required to comply with the Collective Investment Schemes Act. Unlike a unit holder in a PUT, an investor in a linked unit in a PLS company holds both equity and a debenture.

The South African National Treasury is currently considering the introduction of the internationally adopted REIT structure into the South African environment. Key drivers in this process are observations that the existing property investment vehicles are "partly regulated and the regulatory framework is too restrictive and not internationally competitive[2]" and that there are inconsistencies in the tax treatment of PLS companies and PUTs[2].

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
PUT	5	1.5	0.4

[1] Discussion paper on Reforming the Listed Property Investment Sector in South Africa: "*Introduction*"
[2] Discussion paper on Reforming the Listed Property Investment Sector in South Africa: Part 1 "*A need for change*"

Top five REITs

	Market cap (€m)	Sector type
SA Corporate Real Estate Fund	423	Industrial, Office, Retail
Fountainhead Property Trust	369	Industrial, Office, Retail
Emira Property Fund	327	Industrial, Office, Retail
Sycom Property Fund	221	Office, Retail
Capital Property Fund	176	Industrial, Office, Retail

2 Requirements

2.1 PUT: Formalities / procedure

	Key requirements
	– Managed by a management company incorporated or registered in terms of the Companies Act – A collective investment scheme is required to have an association licence – Compliance with the JSE Limited regulatory requirements for securities exchange listing

A PUT holds a portfolio of investment grade properties and is listed on the JSE Limited ('the JSE') under the 'Real Estate' sector. To date there are six listed PUTs on the JSE.

PUTs are highly regulated vehicles in that they are governed by the Collective Investment Schemes Act and must comply with the JSE listing requirements.

The affairs of the PUT are managed by a management company ('the manager') incorporated or registered in terms of the Companies Act and approved as the manager by the Registrar of Collective Investment Schemes ('the registrar'). The functions of the manager include the buying and selling of 'units' in the PUT from or to the public, the day-to-day operations of the PUT, and defining and managing the investment strategy of the PUT.

The operations of the management company are governed by a Trust Deed between the manager and the Trustees. The Trust Deed and the selected Trustees must be approved by the registrar.

A collective investment scheme is required to have an association licence, which is issued and renewed annually by the registrar[3]. In South Africa, the Association of Property Unit Trusts is the established association for PUTs.

PLS: Formalities / procedure

	Key requirements
	– Registered in terms of and compliance with the Companies Act – Compliance with the JSE regulatory requirements for securities exchange listing

A PLS company holds a property portfolio and is required to be incorporated or registered in terms of the Companies Act. A PLS company is not subject to the provisions of the Collective Investment Schemes Act. Unlike a PUT, the management activities of a PLS company rest with the PLS company itself and not with an external management company.

The conditions and terms of debentures issued to investors (which include the interest payable and the repayment terms) must be prescribed in a debenture trust deed. Independent trustees must be appointed to oversee the interests of the debenture holders.

The listing of a PLS company on the JSE is not a requirement. However, those PLS companies listed on the JSE are required to comply with the JSE listing requirements.

The registration of a PLS company with the Property Loan Stock Association (PLSA) is voluntary.

[3] Section 25((3) of the Collective Investment Schemes Act

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
PUT	Usually unit trust	No
PLS	Company	No

Legal form
The PUT is a unit trust, regulated by the Collective Investment Schemes Act. A PUT is not a legal person as defined for the purposes of South African law.

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

Minimum initial capital
There is no minimum initial capital amount required for the establishment of a PUT or a PLS company.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
PUT	No requirements	Yes
PLS	No requirements	No

Unit holder requirements
There are no specific requirements for the unit holders of a PUT, other than compliance with the JSE trading requirements.

There are no specific requirements for the holder of a linked unit in a PLS company, other than compliance with the JSE trading requirements in the case of a listed PLS company.

The sale and acquisition of units in a PUT or a listed PLS company must comply with the JSE regulatory requirements for securities exchange. Such requirements include compliance with the Financial Intelligence Centre Act (FICA) and the Securities Services Act. The purchase and sale of units in a PUT or a listed PLS company, is only done through a stockbroker. Units in PUTs or PLS companies may only be purchased in tranches of a minimum of 100 shares.

Listing requirements
A PUT must be listed on the JSE under the 'Real Estate' sector.

The listing of a PLS company on the JSE is voluntary. Where a PLS company is listed on the JSE, the requirements will be the same as for PUTs listed on the JSE.

2.4 Asset level / activity test

	Restrictions on activities / investments
PUT **PLS**	– PUTs may invest in the shares of property companies, in immovable property and other property as determined by the registrar – May invest in foreign assets – No restrictions other than those imposed in terms of the memorandum and articles of association

PUTs may invest in shares of property companies, in immovable property and other assets, as determined by the registrar[4].

[4] Section 47(2) of the Collective Investment Schemes Act

Investment in the following other assets are subject to certain limitations, as prescribed by the registrar[5]:

- Participatory interests in a collective investment scheme in property;
- Linked units in property loan stock companies; and
- Shares or interests in companies or concerns that derive their income solely from property related investments listed on an exchange in South Africa.

A PUT may only invest in property in a foreign country and property shares or participatory interests in a collective investment scheme in property in a foreign country, if that foreign country has a foreign currency sovereign rating by a rating agency. The rating and rating agency must be determined by the registrar. Currently the requirement is a rating of 'Baa2' or higher by Moody's Investors Service Limited, or 'BBB' or higher by Standard and Poor's, or by Fitch Ratings Limited, or by Fitch Southern Africa (Pty) Limited[6]. Where the country has been rated by more than one agency, the lower of the ratings applies.

There are no restrictions on the activities of a PLS company, other than those prescribed by the Companies Act and the PLS company's articles and memorandum of association. A PLS company can invest in another PLS company, a PUT, property development companies or any other security, both locally or abroad[7].

2.5 Leverage

	Leverage
PUT	Debt financing is limited to 30% of the value of the underlying assets
PLS	Debt financing is limited by the memorandum and articles of association, and the Companies Act

PUTs are permitted to gear up to levels of 30% of the value of the underlying assets[8]. It has been suggested that this could be increased to 60%[9].

The debt financing of a PLS company is limited in terms of the company's memorandum of association and the Companies Act.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
PUT	No requirement	Capital gains must be reinvested	N/A
PLS	No requirement	No requirement	N/A

Operative income
There are no minimum distribution requirements.

The deed of the Collective Investment Scheme in Property must stipulate the manner in which distributions are to be determined and settled[10]. Income distributed by the PUT to unit holders is not taxed in the trust. However, income not distributed by the PUT will be taxed within the trust if not vested in the unit holder.

A PLS company typically distributes all of its revenue profits through interest on issued debentures and the balance as dividends.

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5 "Determination Of Assets Which May Be Included In A Portfolio of Collective Investment Scheme in Property" Published under General Notice 572 in *Government Gazette* 31041 of May 16, 2008
6 "Foreign Countries In Which Collective Investment Scheme In Securities Or In Property May Invest" Published under General Notice 2073 in *Government Gazette* 25283 of August 01, 2003
7 Discussion paper on *Reforming the Listed Property Investment Sector in South Africa*: 4.2 "Income and asset rules"
8 The Financial Services Board model deed has limited gearing to 30%
9 Discussion paper on *Reforming the Listed Property Investment Sector in South Africa*: 4.4 "Gearing limits"
10 Section 97 of the Collective Investment Schemes Act: Schedule 2 "Matters Which Must Be Provided For In Deed Of Collective Investment Scheme In Property"

Capital gains
Capital gains are to be reinvested and cannot be distributed to unit holders (except on termination of the PUT).

The distribution of capital gains by a PLS company will be determined by the provisions of the company's memorandum and articles of association.

2.7 Sanctions

	Penalties / loss of status rules
PUT and PLS	– Non compliance with the Collective Investment Schemes Act – Non compliance with the JSE requirements – Non compliance with the Companies Act

There are specific sanctions for non compliance with the Collective Investment Schemes Act, the Companies Act and the JSE requirements, which may result in the renunciation of the PUT's or PLS company's approved status.

3 Tax treatment at the level of PUT and PLS

3.1 PUT: Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	– Distributed income tax-exempt – Undistributed income is subject to a tax rate of 40%	– Distributed income tax-exempt – Undistributed capital gains are taxed at an effective tax rate of 20%	Foreign withholding tax depending on tax treaty creditable

Current income
It is generally accepted that a property collective investment scheme is treated for tax purposes in a similar manner to that of a trust. The key aspect of this is that the conduit principle applies to income that is distributed to the unit holders, in that it retains its original nature. Therefore, a property collective investment scheme would have all income that is received by it for its own benefit included in its gross income. To the extent that income vests in or is distributed to a unit holder during the year that it was earned, that income is taxable in the hands of the unit holder.

It should be noted that where the underlying investment is a property company as defined in the Collective Investment Schemes Act, in terms of the Income Tax Act No 52 of 1962 ('the Income Tax Act'), any dividend received from the property company is not exempt from tax, unlike other dividends. This dividend retains its non-exempt nature on distribution to the unit holder.

Any income that is retained in the property collective investment scheme attracts tax at a rate of 40%.

Capital gains
No specific exemptions are included in the Eighth Schedule to the Income Tax Act, which governs the way in which capital gains are taxed in South Africa. To the extent that the capital gain does not vest in or is not distributed to a unit holder, the property collective investment scheme will be subject to tax at 40% on 50% of the taxable capital gains that arise during the year (i.e. an effective rate of 20%). The taxable capital gain of the property collective investment scheme is determined after taking into account all capital gains arising during that fiscal year, all capital losses suffered during that fiscal year and the aggregate capital loss (if any) carried forward from the previous year.

A capital gain or capital loss that is vested in or distributed to a unit holder will be accounted for tax purposes in the hands of the unit holder.

The issuing of participatory interests in that property collective investment scheme for acquisition by the general public does not give rise to any capital gains tax consequences as it falls outside of the definition of a disposal[11].

Withholding tax
If the PUT invests in a foreign corporation and receives income, foreign withholding taxes would be credited depending on the legislation of the relevant country.

Accounting Rules
South African GAAP will apply. The interest, rental or dividend income will be recognized when it is accrued to the PUT.

PLS: Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	– Corporate tax rate of 28%	– Capital gains are taxed at an effective tax rate of 14%	– Foreign withholding tax depending on tax treaty creditable

Current income
The income tax provisions relating to companies apply to a PLS company. A PLS company is taxed on taxable income at the corporate rate of 28%.

PLS companies typically earn the following income:
- Rental income where the PLS company owns property;
- Interest income from subsidiary PLS companies; and
- Dividend income from investments in property companies.

Interest incurred in respect of debentures issued to investors is tax deductible.

Dividends declared by a PLS company are subject to STC at a rate of 10% of the net dividend distributed, unless the dividend is distributed to a collective investment scheme and the distribution is made from revenue profits. A property company may deduct such dividends (paid to a collective investment scheme) that are not subject to STC.

Capital gains
PLS companies are subject to capital gains tax at an effective rate of 14%.

Withholding tax
If a PLS company invests in a foreign corporation and receives income, foreign withholding taxes would be credited depending on the legislation of the relevant country.

Accounting Rules
South African GAA P will apply. The interest, rental or dividend income will be recognized when it is accrued to the PLS company.

3.2 Transition regulations

	Conversion into PUT or PLS status
	N/A

A company cannot be converted into a PUT. The acquisition of assets by the PUT is not tax privileged in any way.

[11] Paragraph 11(2)(c) of the Eighth Schedule of the Income Tax Act

3.3 Registration duties

	Registration duties
	No specific rules

There are no specific registration duties applicable to a PUT or PLS company.

4 Tax treatment at the unit holder's level

4.1 PUT: Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
PUT	– Distributed interest and rental income taxed as if income was directly received – Taxation of capital gains on disposal (if not dealer) 50% of the gain is included in taxable income (resulting in an effective rate of 14%)	– Distributed interest and rental income taxed as if income was directly received – Taxation of capital gains on disposal (if not dealer) 25% of the gain is included in taxable income (resulting in an effective rate of 7%)	N/A

Corporate unit holder
As previously stated the conduit principle is applied to the PUT. As a result, where a unit holder has invested in the scheme and any income is vested in or distributed to that unit holder during the year that it was earned, that income will retain its original nature in the hands of the unit holder.

There are three major types of income that could be earned:
- Interest;
- Rental; and
- Dividends from property companies.

Interest and rental income that is vested in or distributed to the unit holder is fully taxable in that taxpayer's hands.

Dividends vested in or distributed to the unit holder are taxable to the extent that they were originally distributed by a property company in the property collective investment scheme's portfolio out of revenue income (i.e. dividends out of capital profits of the property company are exempt).

A deduction can be claimed for expenditure actually incurred by the unit holder to the extent that the unit holder has incurred that expenditure in order to earn the taxable income.

The taxation of any profit on disposal of the participatory right by the unit holder will depend on whether that unit holder is a dealer in such participatory rights. If so, the full profit on sale of such participatory right is taxed at the corporate tax rate (currently 28%). If the unit holder is an investor rather than a dealer, 50% of the gain is included in taxable income (resulting in an effective rate of 14%).

Income that was retained in the PUT will have attracted tax at a rate of 40% in the hands of the PUT, and will also be taxed at the level of the unit holder once distributed.

Individual unit holder
The taxation is the same as for corporate unit holders with the following differences:

An individual unit holder has an additional exemption that relates to interest and dividends received that are not otherwise exempt in terms of the Income Tax Act. This exemption is in respect of the first R 18,000[12] (or R 26,000 in the case of an individual who is 65 years or older[12]) of interest and non-exempt dividends (other than foreign dividends) received during the fiscal year.

[12] Section 10(1)(i) of the Income Tax Act

The taxation of any profit on disposal of the participatory right by the unit holder will depend on whether that unit holder is a dealer in such participatory rights. If so, the full profit on sale of such participatory right is taxed at the marginal tax rate of the unit holder (currently between 18% and 40%). If the unit holder is an investor rather than a dealer, 25% of the gain is included in taxable income (resulting in an effective rate of 10% at the maximum marginal rate). An individual is entitled to reduce the amount of capital gains included in his taxable income by R 15,000[13] each year.

Income that was retained in the PUT will have attracted tax at a rate of 40% in the hands of the PUT. When the income is distributed to the unit holder, it will again be subject to tax at the level of the unit holder.

Withholding tax
South Africa does not levy a withholding tax on income from collective investment schemes.

PLS: Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
PLS	– Interest income received taxed at corporate rate of 28% – Dividend income exempt if unit holder is not a collective investment scheme – Taxation of capital gains on disposal (if not dealer) 50% of the gain is included in taxable income (resulting in an effective rate of 14%)	– Interest income received taxed as individual tax rate – Dividend income exempt – Taxation of capital gains on disposal (if not dealer) 25% of the gain is included in taxable income (resulting in an effective rate of 7%)	N/A

Corporate unit holder
A unit holder in a PLS company will receive interest income in respect of the issued debentures, and dividend income in respect of the shares held. The interest income is taxable in the hands of the unit holder. Dividend income distributed by a PLS company is exempt from tax in the hands of the unit holder, except if the unit holder is a collective investment scheme and the dividends are paid out of revenue profits, in which case the dividend income is taxable in the hands of the unit holder.

A deduction can be claimed for expenditure actually incurred by the unit holder to the extent that the unit holder has incurred that expenditure in order to earn the taxable income.

The taxation of any profit on disposal of the participatory right by the unit holder will depend on whether that unit holder is a dealer in such participatory rights. If so, the full profit on sale of such participatory right is taxed at the corporate tax rate (currently 28%). If the unit holder is an investor rather than a dealer, 50% of the gain is included in taxable income (resulting in an effective rate of 14%).

Individual unit holder
The taxation is the same as for corporate unit holders with the following differences:

An individual unit holder has an additional exemption that relates to interest and dividends received that are not otherwise exempt in terms of the Income Tax Act. This exemption is in respect of the first R 18,000[14] (or R 26,000 in the case of an individual who is 65 years or older) of interest and non-exempt dividends (other than foreign dividends) received during the fiscal year.

The taxation of any profit on disposal of the participatory right by the unit holder will depend on whether that unit holder is a dealer in such participatory rights. If so, the full profit on sale of such participatory right is taxed at the marginal tax rate of the unit holder (currently between 18% and 40%). If the unit holder is an investor rather than a dealer, 25% of the gain is included in taxable income (resulting in an effective rate of 10% at the maximum marginal rate). An individual is entitled to reduce the amount of capital gains included in his taxable income by R 15,000[15] each year.

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13 Paragraph 5(1) of the Eighth Schedule of the Income Tax Act
14 Section 10(1)(i) of the Income Tax Act
15 Paragraph 5(1) of the Eighth Schedule of the Income Tax Act

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
PUT and PLS	– Interest distribution tax-exempt – Rental income fully taxable – Capital gains taxed like domestic unit holders – Dividend income exempt if unit holder is not a collective investment scheme	– Interest distribution tax-exempt – Rental income fully taxable – Capital gains taxed like unit holders	Tax treaty relief available

Corporate unit holder

A non-resident is only taxed in South Africa on income from a source within the country. It is considered that if the property collective investment scheme has invested in South African assets, the source of the income that accrues to the foreign unit holder will be in South Africa.

As previously stated the conduit principle is applied to the property collective investment scheme. As a result, where a unit holder has invested in the scheme and any income is vested in or distributed to that unit holder during the year that it was earned, that income will retain its original nature in the hands of the unit holder.

There are three major types of income that could be earned:
- Interest;
- Rental; and
- Dividends from property companies.

Interest that is vested in or distributed to the foreign corporate unit holder will be exempt from tax in South Africa if that unit holder does not have a permanent establishment in South Africa (in this context permanent establishment means that as defined in the current OECD model tax treaty).

Rental income that is vested in or distributed to the foreign corporate unit holder is fully taxable in that taxpayer's hands.

Dividends vested in or distributed to the foreign corporate unit holder are taxable to the extent that they were originally distributed by a property company in the property collective investment scheme's portfolio out of revenue income (i.e. dividends out of capital profits of the property company are exempt).

The tax treatment of the income of a unit holder in a PLS company is different to that of a unit holder in a PUT. A unit holder in a PLS company will receive interest income in respect of the issued debentures, and dividend income in respect of the shares held. The interest income is taxable in the hands of the unit holder. Dividend income distributed by a PLS company is exempt from tax in the hands of the unit holder, except if the unit holder is a collective investment scheme and the dividends are paid out of revenue profits, in which case the dividend income is taxable in the hands of the unit holder.

A deduction can be claimed for expenditure actually incurred by the unit holder (in either a PUT or a PLS company) to the extent that the unit holder has incurred that expenditure in order to earn the taxable income.

The taxation of any profit on disposal of the participatory right by the foreign unit holder (in either a PUT or a PLS company) will depend on whether that unit holder is a dealer in such participatory rights. If so, and the source of the profit is from South Africa, the full profit on sale of such participatory right is taxed at the corporate tax rate (currently 28%). If the unit holder is an investor rather than a dealer, 50% of the gain is included in taxable income (resulting in an effective rate of 14%), no matter where the source of such profit is located.

The foreign corporate unit holder (in either a PUT or a PLS company) is entitled to treaty benefits.

Individual unit holder
A non-resident is only taxable in South Africa on income from a source within the country. It is considered that if the property collective investment scheme has invested in South African assets, the source of the income that accrues to the foreign unit holder will be in South Africa.

As previously stated the conduit principle is applied to the property collective investment scheme. As a result, where a unit holder has invested in the scheme and any income is vested in or distributed to that unit holder during the year that it was earned, that income will retain its original nature in the hands of the unit holder. There are three major types of income that could be earned:
- Interest;
- Rental; and
- Dividends from property companies.

Interest that is vested in or distributed to the foreign individual unit holder will be exempt from tax in South Africa if that unit holder has not been in South Africa for more than 183 days during the fiscal year and does not have a permanent establishment in South Africa (in this context permanent establishment means that as defined in the current OECD model tax treaty).

Rental income that is vested in or distributed to the foreign individual unit holder is fully taxable in that taxpayer's hands.

Dividends vested in or distributed to the foreign individual unit holder are taxable to the extent that they were originally distributed by a property company in the property collective investment scheme's portfolio out of revenue income (i.e. dividends out of capital profits of the property company are exempt).

The tax treatment of a unit holder in a PLS company is different to that of a unit holder in a PUT. A unit holder in a PLS company will receive interest income in respect of the issued debentures, and dividend income in respect of the shares held. The interest income is taxable in the hands of the unit holder. Dividend income is exempt from tax in the hands of the unit holder, except if the unit holder is a collective investment scheme and the dividends are paid out of revenue profits, in which case the dividend income is taxable in the hands of the unit holder.

An individual unit holder (in either a PUT or a PLS company) has an additional exemption that relates to interest and dividends received that are not otherwise exempt in terms of the Income Tax Act. This exemption is in respect of the first R 18,000 (or R 26,000 in the case of an individual who is 65 years or older) of interest and non-exempt dividends (other than foreign dividends) received during the fiscal year.

A deduction can be claimed for expenditure actually incurred by the unit holder (in either a PUT or a PLS company) to the extent that the unit holder has incurred that expenditure in order to earn the taxable income.

The taxation of any profit on disposal of the participatory right by the unit holder (in either a PUT or a PLS company) will depend on whether that unit holder is a dealer in such participatory rights. If so, and the source of the profit is in South Africa, the full profit on sale of such participatory right is taxed at the marginal tax rate of the unit holder (currently between 18% and 40%). If the unit holder is an investor rather than a dealer, 25% of the gain is included in taxable income (resulting in an effective rate of 10% at the maximum marginal rate). An individual is entitled to reduce the amount of capital gains included in his taxable income by R 15,000 each year. The capital gain will be taxable in South Africa irrespective of the location of the source of the gain.

The foreign individual unit holder (in either a PUT or a PLS company) is entitled to treaty benefits.

Withholding tax
South Africa does not levy a withholding tax on collective investment schemes.

5 Treatment of foreign REITs and their domestic unit holders

	Foreign REIT	Corporate unit holder	Individual unit holder
	Same tax treatment as PUT and PLS company	Same tax treatment as income from PUT and PLS company	Same tax treatment as income from PUT and PLS company

Foreign REIT

South African source income of a foreign REIT is comparable to a PUT or a PLS company. A foreign REIT will be subject to the same principles as the local REIT.

Corporate unit holder

It is assumed for this discussion that the Foreign REIT earns South African source income. The tax treatment would be the same as for unit holders of a PUT or a PLS company.

Individual unit holder

It is assumed for this discussion that the Foreign REIT earns South African source income. The tax treatment would be the same as for unit holders of a PUT or a PLS company. ■

Americas

Part 4

Brazil (FII)

Corcovado, the focal point of central Rio de Janeiro, Brazil.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
FII	1993	Federal Law 8.668/93, and subsequently issued regulations CVM 205/94 and 206/94 and CVM 389/03 and 418/05	Fund type	72 FII (21 listed) R$ 3.4 billion on investments

In Brazil, an investment trust for real estate endeavors is called a Fundo de Investimento Imobiliário (FII). This vehicle has been enacted since 1993.

The regime is governed by the Federal Law 8.668/93, and subsequently issued regulations CVM 205/94 and 206/94 and CVM 389/03 and 418/05.

As of March 30, 2008, there were 72 FII's in operation in Brazil, accounting for more than R$ 3.4 billion of Net Asset Values. Among them, 24 are traded on stock exchange markets or organised through over-the-counter markets.

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Must be approved by the Securities and Exchange Commission – Managed by a financial institution – All units' subscription must be assured by the CVM

The FII is regulated and control by Comissão de Valores Mobiliários – CVM (Brazilian Securities and Exchange Commission), the Brazilian equivalent of US SEC.

The FII must be formed and managed by institutions duly authorised by CVM, which must exclusively be financial institutions with investment portfolios, real estate assets, credit portfolios or other financial instruments.

Requirements to the financial institution:
- must obtain the due register for the FII formation;
- must register the units' offering and distribution;
- must assure the units' distribution in 180 days after the register's approval;
- must register the constitution of such a FII in the register office of acts and bonds.

The CVM must approve the following events:
- adjustments to the FII's regulations;
- issuing of new units;
- indications / substitutions of the person responsible for trust's management;
- mergers, spin-offs or liquidations;
- units' secondary emissions.

2.2 Legal form / minimum initial capital

	Key requirements
	– Must be approved by the Securities and Exchange Commission Managed by a financial institution – All units' subscription must be assured by the CVM

Legal form
The FII is not a legal person.

Minimum initial capital
No minimum initial capital requirement exists.

The capital is divided in units and must be all paid for. The payment of capital may be in the form of real estate or usufruct rights that must first be market-value evaluated. All units must be paid for within 180 days otherwise, the capital must be proportionally returned to investors.

2.3 Unit holder requirements / listing requirements

	Listing mandatory
	No

Unit holder requirements
The only restriction is: Construction companies may not hold a greater than 25% participation in an FII, otherwise the FII will be taxed as a corporation for income tax purposes.

Unit holder may may be persons or legal entities in Brazil or abroad.

Listing requirements
The FII must be register on CVM. Quotas are traded in the capital market upon payment of the issuance price. Quotas may be negotiated on the Stock Exchange or on the over-the-counter market.

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

The term of the FII may or may not be pre-determined. In the case where the term is not determined, a unit holder has no other means of realising the value of the units unless there is a unanimous decision of all the unit holders to return capital.

2.4 Asset level / activity test

	Restrictions on activities / investments
	– 75% of equity must be invested in real estate – Other investments only in financial fixed income funds or fixed income securities – The FII may not manage or receive dividends from the business within its real estate investments

Income must be derived from qualifying investments.

At least 75% of the FII's equity must be invested in real estate assets, otherwise it must get special approval from CVM.

The part of the FII's equity that is not invested in real estate (maximum 25%) must be invested only in financial fixed income funds or fixed income securities.

The FII may not manage or receive dividends from the business within its real estate investments.

2.5 Leverage

	Leverage
	N/A

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
		Minimum of the 95% of the profit (cash basis) Every six months	Minimum of the 95% of the profit (cash basis)

Operative income
At least 95% of the realised cash profits must be distributed each semester (June 30 and December 31).

Capital gains
Minimum of the 95% of the profit (cash basis).

2.7 Sanctions

	Penalties / loss of status rules
	Loss of tax exemption

Loss of status rules would subject the FII's net income to a 34% corporate tax.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	– Revenue from real estate activities are tax-exempt – Revenue from other investments are subject to withholding income tax	– Revenue from real estate activities are tax-exempt	– Revenue from real estate activities are tax-exempt

Current Income
Revenue from real estate activities are tax-exempt. Revenue from other investments are subject to withholding income tax.

Capital gains
Revenue from real estate activities are tax-exempt.

Withholding tax
15% to 22.5% on a cash basis over the fixed or variable income investments.

Other taxes
No other tax levied.

Accounting Rules
Financial statement must be audited and published.

3.2 Transition regulations

	Conversion into REIT status
	N/A

3.3 Registration duties

	Registration duties
	N/A

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	Final withholding tax of 15% to 22.5% over units' revenue Final withholding income tax of 20% over capital gains	Final withholding tax of 20% over units' revenue and Capital gains Income may be exempt from withholding tax if special conditions are met	Unit holders may credit witholding tax paid by the FII on revenues other than from real estate activities. Credit not possible if Laws 11.033/04 and 11.196/05 applicable

Corporate unit holder
Final withholding income tax of 15% to 22.5% over units' revenue and final withholding income tax of 20% over capital gains.

Laws 11.033/04 and 11.196/05: Units' revenue may be exempt to individual unit holders from the withholding income tax if:
- All the trust investors are individuals;
- Units have been negotiated in stock market or free market;
- There are at least 50 unit holders.

This exemption is not applicable to individuals with more than 10% participation on the units or trusts revenues.

Individual unit holder
Final withholding income tax of 20% over units' revenue and capital gain.

Laws 11.033/04 and 11.196/05: Units' revenue may be exempt to individual unit holders from the withholding income tax if:

- All the trust investors are individuals;
- Units have been negotiated in stock market or free market;
- There are at least 50 unit holders.

This exemption is not applicable to individuals with more than 10% participation on the units or trusts revenues.

Withholding tax
Unit holders may credit withholding tax paid by the FII on revenues other than from real estate activities. Credit not possible if Laws 11.033/04 and 11.196/05 applicable.

Foreign Unit holders

	Corporate unit holder	Individual unit holder	Withholding tax
	Withholding tax of 15% over the units' revenue Withholding tax of 15% over the capital gains	Equal to the corporate unit holder	Tax treaty relief available

Corporate unit holder
Withholding tax of 15% over the units' revenue.
Withholding tax of 15% over the capital gain.

Laws 11.033/04 and 11.196/05: Units' revenue may be exempt to individual unit holders from the withholding income tax if:

- All the trust investors are individuals;
- Units have been negotiated in stock market or free market;
- There are at least 50 unit holders.

This exemption is not applicable to individuals with more than 10% participation on the units or trusts revenues.

Individual unit holder
The foreign investors are subject to withholding income of 15% over the unit's revenue made in foreign assets.

The foreign investors are subject to withholding income of 15% on capital gains.
In summary, the same rules apply for corporate unit holders.

Laws 11.033/04 and 11.196/05: Units' revenue may be exempt to individual unit holders from the withholding income tax if:

- All the trust investors are individuals;
- Units have been negotiated in stock market or free market;
- There are at least 50 unit holders.

This exemption is not applicable to individuals with more than 10% participation on the units or trusts revenues.

Withholding tax
Treaty relief on distributions is not available as the FII is transparent. As the distribution qualifies as rental income at the level of the unit holder, the right to taxation only applies in Brazil.

Unit holders may credit withholding tax paid by the FII on revenues other than from real estate activities. Tax credit is not possible if Laws 11.033/04 and 11.196/05 are applicable.

5 Tax treatment of foreign REITs and their domestic unit holders

	Foreign REIT	Corporate unit holder	Individual unit holder
	Taxed with 15% withholding tax on income and capital gains	Information not available	Information not available

Foreign REIT

Taxed with 15% withholding tax on income and capital gains. Specifically for capital gains, the base for taxation is the acquisition cost in US$.

Canada (MFT)

Science World, Vancouver, BC.

1 General introduction

	Enacted year	Citation	REIT type
MFT	1994	Income Tax Act	Trust type

In contrast to the US Internal Revenue Code, there is not a distinct regime for REITs in the Income Tax Act (Canada) (ITA).

The so-called 'SIFT Rules', enacted in 2007, may have a significant negative impact on certain REITs and their unit holders. However, 'real estate investment trusts' (as specifically defined for this purpose) are exempted from the SIFT Rules. While the exception, as enacted, is too narrow for some Canadian REITs, late in 2007, the Minister of Finance (Canada) announced that the exception will be broadened so that more REITs can benefit from it.

Canadian REITs qualify as 'mutual fund trusts' (MFTs) under the ITA for which there are comprehensive and detailed rules. An MFT provides for a flow through of income and capital gains and, in addition, has many tax benefits necessary for a publicly traded vehicle which are not available to trusts that do not qualify as MFTs.

The definition of 'unit trust' was amended in 1994 to include a unit trust investing in real estate without any requirement for a redemption feature, provided the units are listed on a prescribed stock exchange. This change has encouraged the proliferation of REITs.

The MFT regime is governed by the ITA, and generally an MFT that is a REIT is not a mutual fund under applicable securities legislation. As a publicly traded vehicle, an MFT is subject to provincial securities legislation.

Amendments to the ITA which received Royal Assent on June 22, 2007 (the SIFT Rules) introduced significant changes to the federal income tax treatment of publicly-traded trusts (such as income trusts and certain REITs) and partnerships. The changes were originally announced on October 31, 2006. The amendments apply to a publicly-traded trust or partnership that is a specified investment flow-through entity (a SIFT) (subject to an exception for certain REITs discussed below) and its investors.

The SIFT Rules generally do not apply to a publicly traded trust that qualifies as a 'real estate investment trust' (as defined in the SIFT Rules) throughout a taxation year (the 'REIT Exception'). For purposes of the SIFT Rules, a trust will be a 'real estate investment trust' for a particular taxation year if:

- the trust is resident in Canada throughout the taxation year;
- the trust at no time in the taxation year holds any 'non-portfolio property' other than 'qualified REIT properties';
- not less than 95% of the trust's revenues for the taxation year are derived from one or more of the following: (i) 'rent from real or immovable properties' (as defined in the SIFT Rules), (ii) interest, (iii) capital gains from dispositions of 'real or immovable properties' (as defined in the SIFT Rules), (iv) dividends, and (v) royalties;
- not less than 75% of the trust's revenues for the taxation year are derived from one or more of the following: (i) rent from real or immovable properties, to the extent that it is derived from real or immovable properties situated in Canada, (ii) interest from mortgages, or hypothecs, on real or immovable properties situated in Canada, and (iii) capital gains from dispositions of real or immovable properties situated in Canada; and
- at no time in the taxation year is the total fair market value of all properties held by the trust, each of which is a real or immovable property situated in Canada, cash, or (generally) a debt obligation of a government in Canada or certain other public bodies, less than 75% of the 'equity value' of the trust at that time.

For the purposes of the REIT Exception, 'qualified REIT property' of a trust means real or immovable property situated in Canada, a security of a 'subject entity' that derives all or substantially all of its revenues from maintaining, improving, leasing or managing real or immovable properties that are capital properties of the trust (or of an entity of which the trust holds a share or interest), a security of a 'subject entity' that is a nominee holder of legal title to real or immovable property of the trust, or property ancillary to the earning by the trust of rent from, and capital gains from the disposition of real or immovable property. 'Real or immovable property' includes a security of an entity that would itself satisfy the REIT Exception if such entity were a trust, but does not include any depreciable property, other than (i) a property included, otherwise than by an election permitted by regulation, in Class 1, 3 or 31 of Schedule II to the *Income Tax Regulations* (generally, buildings), (ii) a property ancillary to the ownership or utilisation of a property described in (i), or (iii) a lease in, or a leasehold interest in respect of, land or property described in (i).

Most Canadian hotel and seniors living REITs would appear to not qualify for the REIT Exception, and accordingly, unless further changes are made in the future, such REITs will become subject to entity-level tax beginning in 2011.

On December 20, 2007, the Minister of Finance announced proposed changes to the SIFT Rules which would, if enacted, provide relief to many REITs from the application of the SIFT Rules by expanding the availability of the REIT Exception. In particular, the 75% revenue and equity value tests described above will be amended to remove the distinction between Canadian and foreign properties. This would permit REITs that hold substantial interests in foreign properties to qualify for the REIT Exception provided the other requirements described above are satisfied.

The December 20 announcement also included proposed amendments that would (i) clarify that revenue from real or immovable property will not lose its character simply because it is paid through an intermediary trust; (ii) expand the list of short-term investments that qualify for the 75% equity value test described above to include amounts on deposit with a financial institution, bankers' acceptances and possibly other highly liquid short-term investments; and (iii) permit a REIT to hold securities of nominee companies that hold legal title not only to property of the REIT, but also to property held by other subsidiaries of the REIT.

If the changes in the December 20 announcement are implemented as proposed, many REITs may require no, or significantly lesser, restructuring in order to qualify for the REIT Exception. However, Canadian REITs that do not qualify for the REIT Exception under these new rules may still be expected to re-structure so as to qualify for the REIT Exception by 2011, when the transitional period for the new SIFT tax ends.

On July 14, 2008, the Minister of Finance released draft legislation that mirrors the proposals in the December 20, 2007 announcement. When substantially enacted, this draft legislation will implement the proposals announced on December 20. Once enacted, any REITs that qualify under the legislation will be able to reverse provisions for paying the SIFT tax in their financial statements. It is anticipated that this legislation will pass in the late fall of 2008 or early in 2009.

The current philosophy of the rules seems to be to generally allow passive real estate income, and the rules are structured to eliminate businesses that use real estate from squeezing into the REIT exemption (e.g. restaurants).

Hotel and seniors living REITs currently do not qualify under the rules, and no changes have yet been proposed that would address this. One potential solution is a stapled REIT structure, which the Ministry of Finance is being encouraged to consider.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
MFT	32	14.3	3.8

Top five REITs

	Market cap (€m)	Sector type
RioCan Real Estate Investment Trust	2,711	Office, Retail
H&R Real Estate Investment	1,627	Industrial, Office, Retail
Boardwalk Real Estate Investment Trust	1,310	Residential
Calloway Real Estate Investment Trust	1,129	Industrial, Retail
Canadian Real Estate Investment Trust	1,110	Industrial, Office, Retail

2 Requirements

2.1 Formalities / procedure

	Key requirements
	Election in tax return

Generally, a trust will not meet the requirements of an MFT at the time of its formation because of the distribution requirements discussed below. If a trust qualifies as an MFT before the 91st day after the end of its first taxation year, and elects in its tax return for that year, the trust will be deemed to be an MFT from the beginning of its first taxation year.

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Unit trust	No

Legal form

In Canada, the MFT has developed into the most popular publicly traded investment vehicle for Canadian real estate investment. While other tax-efficient vehicles have been considered, the MFT provides the most favourable tax treatment. Unit holders of MFTs (including REITs), however, have not been granted statutory limited liability; except that Ontario, Alberta, Manitoba, Saskatchewan and British Columbia have enacted statutes providing a statutory limitation on unit holder liability, as discussed below. The Quebec Civil Code also provides for limited liability protection.

The declaration of trust for a REIT will generally provide that no unit holder will be subject to any liability in connection with the REIT or its obligations and affairs and, in the event that a court determines unit holders are subject to any such liabilities, the liabilities will be enforceable only against, and will be satisfied only out of the REIT's assets.

The declaration of trust for a REIT also will generally provide that all written instruments signed by, or on behalf of, the REIT must contain a provision to the effect that obligations under those instruments will not be binding upon unit holders personally. Personal liability may however arise in respect of claims against the REIT that do not arise under contracts, including claims in tort, claims for taxes and possibly certain other statutory liabilities. The possibility of any personal liability of this nature is considered unlikely, even in the absence of the protection of the provincial statutes.

The *Income Trusts Liability Act* (Alberta) came into force on July 01, 2004. The legislation provides that a unit holder of a trust created by a trust instrument governed by the laws of Alberta, and that is a 'reporting issuer' under the *Securities Act* (Alberta) will not be, as a beneficiary, liable for any act, default, obligation or liability of the Trustee that arises after the legislation came into force. The *Investment Trust Unitholders' Protection Act* (Manitoba), which came into force on June 16, 2005, the *Income Trust Liability Act* (British Columbia), which came into force on March 30, 2006 and the *Income Trust Liability Act* (Saskatchewan), which came into force on May 19, 2006, contain similar provisions.

The *Trust Beneficiaries' Liability Act* (Ontario) came into force on December 16, 2004. The legislation provides that a unit holder of a trust that is a 'reporting issuer' under the *Securities Act* (Ontario) and is governed by the laws of Ontario will not be, as a beneficiary, liable for any act, default, obligation or liability of the Trustee(s) that arises after the legislation came into force.

As mentioned above, the *Quebec Civil Code* also provides for the limitation of beneficiary liability for the acts of the trustees of a trust in absence of fraud.

Minimum initial capital
No minimum initial capital required.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	– Minimum of 150 unit holders each of whom holds not less than one 'block of units' and having an aggregate fair market value of not less than CAN$500 – Generally, MFTs cannot be established or maintained primarily for the benefit of non-residents of Canada	Required to avoid redemption right of unit holders

Unit holder requirements
The Canadian rules applicable to MFTs require that there be at least 150 unit holders each of whom holds not less than one 'block of units' which have a fair market value of not less than CAN$500. The number of units required in a block will depend on its fair market value (e.g. 100 units, if the fair market value of one unit is less than CAN$25). There are rules which deem a 'group' of persons holding units to be one person for purposes of determining whether there are 150 unit holders. In addition, a class of units of the trust must be qualified for distribution to the public, and there must be a lawful distribution in a province to the public of units of the trust in accordance with a prospectus or similar document. These requirements will normally be met by MFTs by filing a prospectus and making a distribution to the public of units in accordance therewith.

Listing requirements
Units must be listed on a designated stock exchange in Canada to avoid the requirement that the units be redeemable at the demand of the holder.

In general, to qualify as a 'unit trust' (where the units are not redeemable on demand by the holder), the following requirements in respect of property ownership and income must be satisfied:

- At least 80% of its property consisted of any combination of shares,
  a. any property that, under the terms or conditions of which or under an agreement, is convertible into, is exchangeable for or confers a right to acquire, shares,
  b. cash,
  c. bonds, debentures, mortgages, hypothecary claims, notes and other similar obligations,
  d. marketable securities,
  e. real property situated in Canada and interests in real property situated in Canada (which would include leasehold interests),
  f. rights to and interests in any rental or royalty computed by reference to the amount or value of production from a natural accumulation of petroleum or natural gas in Canada, from an oil or gas well in Canada or from a mineral resource in Canada, and
- not less than 95% of its income was derived from, or from the disposition of, investments described in (a) through (g) above; and

- not more than 10% of its property consisted of bonds, securities or shares in the capital stock of any one corporation or debtor other than Her Majesty in right of Canada or a province or a Canadian municipality.

2.4 Asset level / activity test

Restrictions on activities / investments	
	– The investing in property (other than real property or an interest in real property) is allowed – The acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the trust is allowed – Any combination of the foregoing activities

To qualify as an MFT, the only undertaking of a trust must be:
- the investing of its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable);
- the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) or of any immovable (or real right in immovables) that is capital property of the trust; or
- any combination of the foregoing activities.

An MFT generally may not carry on a business. Consequently, an MFT may not engage in trading in real estate and may not directly operate hotels or nursing homes, which are considered businesses. In the case of hotel and nursing home MFTs, the MFT normally owns the real property and establishes one or more subsidiaries which carry on the particular business. The MFT may finance the subsidiary with debt to purchase the business, and normally leases the real estate to the subsidiary to enable it to operate the business. The subsidiary normally has minimal income tax liabilities as a result of deductions of rent and interest payable to the MFT.

2.5 Leverage

	Leverage
	N/A

The ITA does not impose limits on leverage of an MFT. It is common for there to be limitations as a matter of investment policy set out in the declaration of trust establishing the MFT, and disclosed in the prospectus.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	All income of the MFT for a taxation year is paid or payable to unit holders in the year so that MFT does not incur tax	All capital gains are paid out and retain their character as such in the hands of unit holders, provided a designation is made by the MFT	All income must be paid or payable in the taxation year of the MFT but does not have to be paid out until later

Operative income
An MFT is not required by the ITA to pay out all of its income and capital gains. However, this is the invariable practice, as a trust may deduct in computing its income for a taxation year all income paid or payable to unit holders in such year. An amount will be ‘payable’ to a unit holder in a taxation year if the unit holder was entitled in the year to enforce payment. The declaration of trust establishing an MFT normally includes provisions ensuring that the income is ‘payable’ so the MFT may deduct amounts of income it has not actually paid out by the end of its taxation year.

Capital gains
See above.

2.7 Sanctions

	Penalties / loss of status rules
	Loss of MFT status

If a REIT loses its MFT status, there will be several negative consequences:
a. The REIT will be subject to a special 36% tax on its 'designated income', which includes income from real property in Canada and gains from dispositions of real property in Canada and any other 'taxable Canadian property';
b. Units of the REIT will become 'taxable Canadian property', with the result that non-residents would generally be taxable in Canada on any gain from disposition of such units, and such dispositions by non-residents would become subject to reporting and withholding requirements;
c. Units of the REIT will generally cease to be qualified investments for certain deferred income plans, such as 'registered retirement savings plans'; and
d. Transfers of REIT units may give rise to land transfer taxes if the REIT owns real property in certain provinces such as Ontario.

For these reasons, it is considered critical for a REIT to maintain its MFT status. There are special rules that may deem a REIT to retain its MFT status for the balance of the year where such status is lost midway through the year.s

3 Tax treatment at level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	An MFT is entitled to deduct in a year all income determined for purposes of the ITA paid or payable to unit holders in the year so it may reduce its net income to nil	Capital gains follow the same system for income, except only 50% of a capital gain (a 'taxable capital gain') is included in income and 50% of a capital loss can be applied to offset taxable capital gains	Credit or refund of foreign withholding tax possible

Current Income
An MFT is not exempt from income tax under the ITA. Rather, an MFT computes its income in the same manner as any other resident of Canada, and is entitled to deduct in computing its income for a taxation year all income paid or payable to a unit holder in such taxation year. Consequently, distributions by a MTF are effected on a pre-tax basis. An MFT cannot flow through any losses to unit holders. The tax treatment of distributions to unit holders of an MFT will generally depend on their characterisation for purposes of the ITA and the residency of the unit holder. As a result of the 2004 federal budget, there were changes to the withholding tax rules that specifically impact REITs, as discussed below. As noted above, the SIFT Rules may apply an entity level tax on certain REITs that do not qualify for the REIT Exception beginning in 2011.

Capital gains
Capital gains follow the same system for income, except only 50% of a capital gain (a 'taxable capital gain') is included in income and 50% of a capital loss can be applied to offset taxable capital gains.

Withholding tax
If a REIT invests outside Canada, it may be subject to foreign income and withholding taxes. Provided the REIT makes the appropriate designation, investors in the REIT can generally claim a foreign tax credit for the foreign taxes when the related foreign source income is distributed by the REIT. Alternatively, the REIT may deduct such foreign taxes in computing its own income in some circumstances.

Other taxes
As legal entities that are organised as trusts, REITs are generally not subject to provincial capital taxes.

REITs are subject to provincial land transfer taxes in respect of acquisitions of real property.

Accounting Rules
Canadian entities currently report under Canadian GAAP represented by standards issued by the Accounting Standards Board of Canada (AcSB) and by its interpretations body, the Emerging Issues Committee. The full set of standards is compiled in a comprehensive handbook known as *the Canadian Institute of Chartered Accountants (CICA) Handbook*.

Effective January 01, 2011, all publicly-accountable entities, as defined by the AcSB, will be required to report financial statements in accordance with IFRS, as issued by the IASB. Certain entities that meet specific requirements of the Canadian securities regulators may adopt IFRS early, commencing January 01, 2009. Therefore, at minimum, all publicly traded REITs in Canada, will be reporting under IFRS for annual periods commencing on or after January 01, 2011.

The AcSB is currently reviewing its strategy for private entities in Canada. At the current time, the AcSB is proposing a unique set of Canadian accounting standards for private entities that will be based on the existing *CICA Handbook*, and also aligned with the conceptual framework of IFRS.

3.2 Transition regulations

	Conversion into REIT status
	N/A

Where a trust owning property commences to qualify as an MFT, there is no deemed or actual disposition of property and therefore no tax payable under the ITA. There are not any rules permitting a tax-deferred transfer of property to a MFT except if there is a qualifying transfer of property to the MFT by another MFT or by a 'mutual fund corporation', and other conditions are satisfied. These latter provisions, in effect, provide for a tax-free merger of MFTs.

Some REITs have established Canadian subsidiaries (or indirectly held partnerships) so that transfers thereto can qualify for a tax deferral. The vendor cannot receive non-share (or partnership interest) consideration (e.g. cash, debt) which exceeds its tax cost; otherwise, recapture and gain will be triggered. The shares or partnership interests acquired by the vendor are typically exchangeable for units of the MFT. The exercise of such exchange would generally be a taxable event.

3.3 Registration duties

	Registration duties
	Real estate transfer tax

Some provinces impose a transfer tax on the acquisition of real estate payable by the purchaser. For instance, the rate in Ontario is generally 1.5% of the value of the consideration.

4 Tax treatment at the unit holder level

4.1 Domestic unit holder

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

Corporate unit holder/individual unit holder
Income (including the taxable portion of capital gains and dividends) paid or payable by an MFT to unit holders will be included in the income of unit holders resident in Canada (whether individuals

or corporations), and will be subject to the normal rules of taxation. The rates of taxation will depend on whether the unit holder is an individual or a corporation and the province of residency. For example, in Ontario, the generally prevailing combined federal-provincial income tax rate for 2008 is approximately 33.5% for corporations and 46% for individuals.

If a REIT earns taxable dividends from Canadian corporations, provided the REIT makes the appropriate designation, those amounts will retain their character as such when distributed. Unit holders that are corporations will generally be entitled to a full dividends received deduction. Unit holders that are individuals will generally be entitled to preferential tax treatment by claiming a dividend tax credit.

If a REIT realises capital gains, provided the REIT makes the appropriate designation, those amounts will retain their character as such when distributed. One-half of capital gains are included in income as ‘taxable capital gains’.

Distributions by an MFT in excess of income may arise because of non-cash deductions such as capital cost allowance. These distributions provide a form of tax deferral because they reduce the tax cost of the units without immediate taxation unless the tax cost becomes negative.

As noted above, capital gains, dividends and foreign source income will retain their character in the hands of unit holders if appropriate designations are filed. Otherwise, the ‘source’ of income is treated as income from a trust.

On disposition of a unit of a MFT, the unit holder will realise a capital gain (or a capital loss) to the extent the proceeds of disposition exceed (or are exceeded by) the aggregate of the tax cost of a unit and any disposition costs.

Withholding tax
There is no withholding on distributions made to residents of Canada.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– To the extent the distribution is made out of the REIT’s income, the withholding tax is imposed at a statutory rate of 25% – Tax exemption for capital gains	– To the extent the distribution is made out of the REIT’s income, the withholding tax is imposed at a statutory rate of 25% – Tax exemption for capital gains	Tax treaty relief available

Corporate unit holder/individual unit holder

Distributions
A foreign unit holder (whether a corporation or an individual) will generally be subject to withholding tax on distributions from a REIT.

To the extent the distribution is made out of the REIT’s income, the withholding tax is imposed at a statutory rate of 25%. However, under many treaties, the rate is reduced to 15%.

To the extent the distribution exceeds the REIT’s income, the ITA provides for a 15% tax if the REIT is a ‘Canadian property mutual fund investment’ – which essentially means that more than 50% of the value of the REIT’s units is attributable to Canadian real property or resource property.

All MFTs, including REITs, are required to keep track of their net capital gains from disposals of ‘taxable Canadian property’ in a ‘TCP gains distributions account’. For example, if the REIT realises a gain on disposal of a real property investment, the full amount of that capital gain will be added to the TCP gains distribution account (despite the fact that only one-half of the capital gain is included in taxable income of the REIT). When the REIT makes a distribution to a foreign investor, the distribution is treated as coming out of the balance, if any, in the TCP gains distribution account, and any portion of the distribution that would otherwise have escaped Canadian withholding tax is subject to a 15% withholding tax.

Capital gains
Foreign unit holders (whether corporations or individuals) will generally not be subject to Canadian tax on gains from disposals of REIT units provided an ownership test is met. In particular, the unit holder must not own 25% or more of the REIT's outstanding units at any time during the 60 months preceding the disposal.

5 Tax treatment of foreign REITs and their domestic unit holders

	Foreign REIT	Corporate unit holder	Individual unit holder
	Taxed on Rental income and Gains	Fully taxable	Fully taxable

Foreign REIT
A foreign REIT generally will be subject to the normal Canadian tax rules applicable to other foreign investors in Canada, including the following:
- rental income earned by a foreign REIT from Canadian real estate will generally be subject to a 25% withholding tax, levied on gross rentals;
- gains realised from a disposal of Canadian real estate by a foreign REIT will be subject to Canadian tax.

In many cases, foreign REITs acquire Canadian properties through special purpose corporations, unlimited liability companies or trusts. Through the use of leverage, both internal and external, it is normally possible to reduce or, in some cases, eliminate Canadian tax on rental income. Canada's tax treaties generally permit Canada to tax capital gains realised by foreign investors, including REITs, from disposals of real property in Canada or shares of Canadian companies whose value is derived principally from real property in Canada, although certain treaties provide an exemption in the case where the real property is used in a business of the company.

Corporate unit holder
A corporate unit holder of a foreign REIT will generally be required to include in income any distributions received, whether or not those distributions were sourced from income generated in Canada.

Individual unit holder
An individual unit holder of a foreign REIT will generally be required to include in income any distributions received, whether or not those distributions were sourced from income generated in Canada.

Chile (FII)

View of Santiago, Chile.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
FII	1989 and modified in 2001	– Law No. 18,815 on Investment Funds – Decree No. 864	Fund type	

A REIT-like regime called Fondos de Inversion Inmobiliario (Real Estate Investment Fund, or FII) exists under Chilean law, according to which the FII is not subject to corporate level taxes. FII investors are subject to tax on the dividends received from the FII and are subject to general rules with respect to the gains/loss derived from the transfer of their quotas.

FIIs are specifically regulated by Law No. 18,815 on Investment Funds published in the *Official Gazette* on July 29, 1989 as amended and by administrative regulations contained in Decree No. 864 published on February 23, 1990. This law and its regulations deal in general with investment funds, and specifically with real estate investment funds as a consequence of establishing that investment funds are allowed to invest in real estate assets.

2 Requirements

2.1 Formalities / procedure

	Key requirements
	– Approval of the fund by the Chilean Securities Commission – Management by a Chilean corporation

The Chilean Securities Commission (Superintendencia de Valores y Seguros, or SVS) must approve the internal rules of public investment funds, the agreements between the fund and its investors and their amendments.

Funds must be managed by an entity that has to be organised as a Chilean corporation in Chile (sociedad anónima). The fund manager is subject to the regulation of the SVS, and their existence must also be authorised by the SVS. Its business activity is limited exclusively to the administration of investment funds and is required to have a minimum paid-in share capital in cash of 10,000 UF (US$350,000 approximately).

Private funds may be organised without the approval of the SVS, and may be managed by a regulated or unregulated corporation.

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	Unincorporated entities	No initial requirement After one year, UF 10,000

Legal form
Funds may only be organised as unincorporated entities (i.e. do not have the status of a separate legal entity) which are formed by the contributions made by individual and corporate investors.

Minimum initial capital
There is no minimum initial capital required, although the law requires that after a year from the commencement of the fund's operations its total equity must be at least an amount expressed in units of an indicator indexed for inflation called Unidad de Fomento or UF. This minimum total equity amount is UF 10,000, which is equivalent to approximately US$ 350,000.

If this obligation is not met, the SVS has to be notified by the managing corporation and the fund has 180 days (renewable for another 180 days) to reach the minimum equity requirement. If the situation has not been amended, the fund must be liquidated.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	– Private FIIs: less than 50 members – Listed FIIs: at least 50 members or one institutional investor	No

Unit holder requirements
The existence of private investment funds is allowed, but they cannot have 50 or more members. If a private fund reaches 50 or more members, it will be treated as a listed fund and subject to the same rules and requirements.

The requirement for other funds is that after six months from the creation of the fund, it must permanently have at least 50 members unless an institutional investor is member of the fund. In the latter case, just a single institutional investor is required.

The managing entity, persons or entities related to it and employees of the managing entity, may not own individually or considered together more than 40% of the units of the funds that it manages. Any excess would not have any voting rights in the fund's unit holders meetings. They would be required to dispose of their units in excess, within the term set by the Chilean SEC and may be subject to administrative penalties imposed by the Chilean SEC. These restrictions do not apply to private FIIs.

FIIs, whether public or private, cannot conduct operations between themselves unless managed by unrelated entities.

Listing requirements
In case of listed funds, the investment or participation quotas must be publicly traded securities registered with the SVS and in at least one local or foreign Securities Exchange Market. Quotas are not redeemable, except in case of liquidation of the fund.

2.4 Asset level / activity test

	Restrictions on activities / investments
	Real estate (till 2012) Subsidiaries allowed Quotas or rights in real estate cooperatives Development allowed

There are no specified limits concerning the amount of the real estate assets of the REIT.

As mentioned, the law authorising the existence of the FII was introduced in 1989. However, initially they were only authorised to invest in urban real estate located in Chile, marketable mortgage notes, and real estate corporations which are a specially regulated type of corporation. In 1994, an amendment authorised investments in other types of corporations whose sole business purpose is to participate in the real estate business and in real estate located outside of Chile. Another amendment in 2000 added the possibility of investing in quotas or rights in real estate cooperatives.

Recently Congress has passed a new amendment to Law 18,815 which eliminates certain categories of assets from the list of assets in which FIIs are allowed to invest. This amendment would eliminate the possibility to directly invest in real estate, located in Chile or abroad, and to invest in cooperative quotas or rights. Once the final procedures for the amendment to become law are completed, this change would become effective from January 01, 2012 for listed funds. In case of private funds, the amendment will become effective from January 01, 2012 for those funds existing as of November 27, 2006, and will become effective as soon as the amendment is published as Law for newer funds.

The law enumerates the specific assets in which the FII may invest, but does not impose any restrictions on the permitted activities of the FII. In fact, due to the perception that certain abuses of the system existed, specifically that real estate developers were using real estate investment funds to channel their construction and sale activities, an amendment to the Investment Fund Law has been recently approved. Once in effect, this amendment would eliminate the possibility of directly investing in real estate, located in Chile or abroad, or investing in coop quotas or rights. An FII cannot hold shares in another FII if both are managed by the same managing entity. No specific consequence has been contemplated for this.

FIIs are allowed to hold shares and interest in subsidiaries or partnerships, as long as the subsidiary's financial statements are externally audited.

2.5 Leverage

	Leverage
	Liabilities may not exceed 50% of the fund's equity

Liabilities may not exceed 50% of the fund's equity. This limitaton can be increased to 100% of the fund's equity if provided in the internal rules of the fund.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	At least 30% of the fund's annual profits	At least 30% of the fund's annual profits	Annually

Operative income
At least 30% of the FII's annual profits must be distributed each year. Distributions must be paid within 30 days following the members' annual meeting that approves the FII's financial statements. Provisional distributions in advance of final distributions are allowed.

Capital gains
No distinction is made between capital gains and operative income when calculating the fund's annual profits, at least 30% of which must be distributed each year.

2.7 Sanctions

	Penalties / loss of status rules
	Loss of FII status and liquidation possible

If the FII invests in non-authorised assets, it will lose its status and must be dissolved and liquidated. Gains derived from the redemption in case of a liquidation of the fund are exempt from corporate taxes in case of cash-basis investors, although may be subject to personal income taxes or dividend withholding taxes. In case of accrual-method investors, the redemption is subject to tax under general rules.

The Law does not provide for any specific consequence if the profit distribution obligation is not complied with. The fund may lose its status, become subject to corporate tax on its accrued income, or even be dissolved and liquidated. In case membership falls below the 50 member requirement, the fund has six months to remedy this circumstance. If the minimum membership is not met, the fund would be dissolved and liquidated.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

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

Current Income
Real estate investment funds are not subject to income tax on their income. For purposes of distribution of its profits, these are defined as the net received benefits which comprise the sum of profits, interest, dividends and capital gains effectively received during the calendar year (cash basis) less the losses and expenses accrued during the same calendar year.

The special treatment is applicable only to corporate income taxes otherwise applicable on the investment income obtained by the fund. Special treatment could also be available with respect to capital gains tax on the sale of the quotas in the fund, or their redemption upon liquidation of the fund.

Local tax authorities have ruled that because of its unincorporated status, investment funds are not regarded as taxpayers. Accordingly, the tax authorities could consider that they are not a resident person for treaty purposes, except in cases where the treaty specifically provides otherwise. See treaties with Croatia, Poland, South Korea and UK.

Capital gains
See current income.

Withholding tax
FII receipts are not subject to withholding taxes in Chile.

Other taxes
No other income taxes would be applicable on the fund. However, under an amendment to Law No. 18,815 that is pending its final approval and that will become effective once published in the Official Gazette, a 35% tax would apply on the following disbursements or operations made by a fund:
- those not required for the development of the fund's activities and investments authorised by the law;
- loans made by the fund to their individual and non-resident investors;
- providing to its investors the use of one or more of the assets that compose the fund; and
- guaranteeing obligations of the Fund's individual and non-resident investors with assets belonging to the fund.

Accounting Rules
Local GAAP would have to be followed.

3.2 Transition regulations

	Conversion into REIT status
	No regulations

No pre-REIT structure is contemplated by Chilean law.

Chilean law does not contemplate the possibility of convertion into a REIT or vice versa.

However, under general rules, the gain derived from the sale of real estate held by individuals or non-residents is exempt if held for at least one year and if the seller is not considered as regularly engaged in selling real estate.

If the seller is an entity subject to corporate tax, any gain is treated as ordinary income.

3.3 Registration duties

	Registration duties
	Notary fee and register fees

Transfers of real estate located in Chile must be formalised in a public deed signed before a public notary and registered with the land register. Notary fees and land register fees would apply. In addition, in order to authorise the public deed, evidence must be provided to the notary that there are no unpaid real estate taxes.

No real estate transfer tax applies in Chile.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	Distribution received tax-exempt Capital gains on disposal of units taxation subject to circumstances	Personal income taxes Capital gains taxation subject to circumstances	N/A

Corporate unit holder
Generally Chilean entities that invest in a fund are exempted from corporate tax on the dividend income they receive from the fund. No distinction exists between a current income dividend and a capital gains dividend.

Ultimate distributions to individual or non-resident shareholders of the domestic corporate unit holder will be subject to personal income taxation or dividend withholding tax, respectively.

A return of capital would be tax-free to the extent of basis recovery. Any excess would be treated as dividend income and subject to the treatment discussed above.

Capital gains realised on the sale of units held in a fund are treated in the same way as gains derived from the sale of publicly traded shares of Chilean corporations. The treatment would depend on the facts and circumstances surrounding the sale. If certain conditions are met, including that the unit is acquired and disposed in an authorised stock exchange, the gain may be exempt from income taxes.

If the exemption is not applicable, the gain could be subject to a capital gains tax of 17% provided that the shares have been held for at least one year, the seller and buyer are unrelated and the seller is not considered as habitually engaged in the sale of units. If any of these conditions are not met, the gain would be subject to tax as ordinary income.

Individual unit holder
Dividends are subject to personal income taxes. In case of a fund investing in corporate entities, a credit for corporate taxes paid on the underlying investments may be available. No difference exists between a current income dividend and a capital gains dividend.

A return of capital distribution is treated the same as for corporate domestic unit holder.

Capital gains realised on the sale of the REIT shares are treated the same as for corporate domestic unit holder.

Withholding tax
Dividends paid to Chilean resident individuals or entities organised in Chile are not subject to withholding tax. They would be liable to self-assess and file the corresponding personal or corporate taxes that apply.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	– Dividends subject to a 35% Withholding tax – Taxation of capital gains depend on circumstances	– Dividends subject to a 35% Withholding tax – Taxation of capital gains depend on circumstances	In principle, no tax treaty relief available

Corporate unit holder
Dividends are subject to a 35% withholding tax. In the case of a fund investing in corporate entities, a credit for corporate taxes paid on the underlying investments may be available. No difference exists between a current income dividend and a capital gains dividend.

Taxation of a return of capital distribution and capital gains realised on the sale of the REIT units is the same as for corporate domestic unit holders.

Individual unit holder
Dividends are subject to a 35% withholding tax. No difference exists between a current income dividend and a capital gains dividend.

Taxation of a return of capital distribution and capital gains realised on the sale of the REIT units is the same as for domestic shareholders.

Withholding tax
In case of non-resident shareholders, the manager of the fund is required to withhold and file the required tax returns. The withholding tax would be applied at a 35% on the dividend amount. A credit against this withholding tax may be available for the corporate tax paid on the underlying investment, in case the fund has investments in Chilean companies subject to corporate tax.

The dividend withholding tax must be filed and paid within the first 12 days of the month immediately following the month in which the dividend was paid.

No major differences would exist in a case where the investor is resident in a tax treaty country because in virtually all Chilean tax treaties have a provision that Chilean dividend withholding tax is considered as a tax applicable on the Chilean company, and thus not subject to the limitation of the dividends article of the treaties.

5 Tax treatment of foreign REITs and their domestic unit holders

	Foreign REIT	Corporate unit holder	Individual unit holder
	– General rules for local rental income applies – 10% income tax if special rules followed	Likely to be treated as a normal dividend from a non-resident company	Likely to be treated as a normal dividend from a non-resident company

Foreign REIT

A foreign REIT would be taxable under general rules for local rental income. However, if the foreign REIT organises itself in Chile under the rules contained in Law No. 18.657, the profits it obtains in Chile would only be subject to a 10% income tax on their operating income and capital gains derived from investments in assets located in Chile.

Corporate unit holder

A distribution of its income by a foreign REIT to a Chilean corporate unit holder is likely to be treated as a normal dividend from a non-resident company. The income would be includable upon receipt, and a foreign tax credit may be available for withholding taxes imposed on the distribution and for foreign income taxes paid on the underlying income.

Capital gains from the sale of the units in the foreign REIT would be subject to tax in Chile as ordinary income. A foreign tax credit for taxes imposed on the capital gain may only be available if the REIT is treated as a resident in a country that has a tax treaty with Chile.

Individual unit holder

A distribution of its income by a foreign REIT to a Chilean individual unit holder is likely to be treated as a normal dividend from a non-resident company. The income would be includable upon receipt, and a foreign tax credit may be available for withholding taxes imposed on the distribution and for foreign income taxes paid on the underlying income.

Capital gains from the sale of the units in the foreign REIT would be subject to tax in Chile as ordinary income. A foreign tax credit for taxes imposed on the capital gain may only be available if the REIT is treated as a resident in a country that has a tax treaty with Chile.

Costa Rica (REIF)

Volcanic Landscape in Costa Rica.

1 General introduction

	Enacted year	Citation	REIT type
REIF	1997 and 2006, respectively	Securities Market Regulation Act (No. 7732) and the General Regulations of Fund Management Companies and Investment Funds	Fund type (Shows some characteristics of a REIT)

REIFs are composed of two entities: one holds the real estate and the other is the fund manager. In general, investment funds are treated as independent estates owned by a plurality of investors. Only authorised investment fund management companies (IFMC) can manage an investment fund. The participation units of the investors are represented by participation certificates (participations), issued with the same characteristics and under the same conditions for each investor. Only investment funds authorised by the National Securities Commission (Superintendencia General de Valores (SUGEVAL)) may conduct a public offering of its participation units, or be quoted on a local securities exchange. These funds may only invest in: other securities listed and publicly traded in Costa Rica (CR), in certain qualified foreign securities, and in other non-financial assets such as real estate property or real estate developments.

In the case of REIFs, these funds are solely intended to own real estate commercial property, meaning income derived from real estate assets. The regulations also allow REIFs to invest a specific percentage of its equity in other financial investments such as publicly traded securities.

The regime is governed by Securities Market Regulation Act (No. 7732) and the General Regulations of Fund Management Companies and Investment Funds.

2 Requirements

2.1 Formalities / procedure

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

The investment fund management company (IFMC) must obtain permission to operate from the National Securities Commission (SUGEVAL). The request must be filed by the person who will act as legal representative of the company, and a draft of the incorporation deed must be attached to the request, along with the partners' resume and a sworn statement indicating that none of the partners or legal representatives have been convicted of a crime during the previous ten years. Also the capital stock must be paid and subscribed.

After the licence to operate has been granted by SUGEVAL to the IFMC, the company has a six-month period to file the original documents of incorporation before the Mercantile Section of the Public Registry, and the sworn statements. This does not refer to the registration in the REIF list, since the fund has not been created yet. The aforementioned procedure is for the IFMC, which operates as a corporation. To apply for the authorisation from SUGEVAL, the person that would act as legal representative of the company must attach to the petition a draft of the incorporation deed. After the authorisation is granted, the legal representative of the corporation must file the original incorporation documents that where filed before the Mercantile Section of the Public Registry to incorporate the IFMC. The requirements to file for the fund's authorisation are listed below.

If the IFMC fails to begin operation during the year following the licence being granted, it will be cancelled.

As per the investment funds, a requirement for authorisation along with a statement of investment policy, must be filed at SUGEVAL.This statement must include the following information:

- the fund's duration;
- the fund's objective;
- terms of investment policy;
- issuance and redemption of the fund's participation units;
- general guidelines for management of the fund;
- mechanisms for estimating returns and distributions to investors;
- commissions payable to the IFMC;
- name and address of the fund and the IFMC;
- general requirements to modify the agreement and the regulations on management and substitution of the IFMC;
- characteristics of the participation units and of the issuance and reimbursement procedures, among others.
- contracts between different parties;
- draft of the public offering notice.

Additionally, the fund must file a copy of a prospectus, which must contain the same information as the statement of investment policy and be approved by SUGEVAL.

Investment funds must start operations during the following nine months as of the notification from SUGEVAL in which they comply with all requirements. If they do not start operations in the aforementioned term, SUGEVAL will request to the IFMC to deregister the fund.

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	– The IFMC must be a corporation or a branch of a foreign fund manager – The investment fund will operate as a close fund	– The investment fund must count with US$ 5,000,000 on net assets – Minimum of approx US$ 168,000 for the IMFC

Legal form
The fund manager must be a Costa Rican corporation or a branch of foreign fund manager, incorporated before the Mercantile Section of the Public Registry as established by the Commerce Code.

If a foreign company wants to operate a REIF, a branch must be registered before the Mercantile Section of the Public Registry, and file for a corporate identification number.

REIFs operate as closed-end funds whose patrimony is fixed, and the participation units are not redeemed directly by the fund, except for some circumstances and procedures established by law.

Minimum initial capital
REIF: The investment fund must count on US$ 5,000,000 in net assets.

The participations' value of REIFs that only invest in assets located in Costa Rica must amount to a minimum of US$ 1,000, and if the REIF invests in assets located outside of Costa Rica, the minimum amount of the participation must be US$ 5,000.

IFMC: The minimum share capital for the IFMC is of CRC88,000,000, approx US$ 168,000 (Exchange rate CRC522.94 per US$ 1). However, this amount is updated every year by a resolution from SUGEVAL.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	Minimum 50 participants	Yes

Unit holder requirements
The minimum number of participants in a CR REIF is 50.

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

If the investor decides to sell his/her participation, the value will be determined both by the valuation of the assets and by its fair market value according to the stock exchange. Also, the unit holder can demand the fair payment of his/her units under certain circumstances, for example when the investors execute their appraisal right, which can be executed when they do not agree with the amendments made to the fund's investment policies.

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

2.4 Asset level / activity test

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

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

REIFs have three years to fulfill with the aforementioned percentages.

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

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

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

2.5 Leverage

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

Loans for IFMC are limited to 20% of their assets. Loans for financial funds are limited to 10% of their assets. In exceptional cases, SUGEVAL may authorise a 30% limit on loans for financial funds, however, the investors' assembly must agree on this.

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

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	No requirement	No requirement	No requirement

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

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

2.7 Sanctions

	Penalties / loss of status rules
	Determined by SUGEVAL

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

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

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

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

Revenues derived by the investment funds are divided into three groups, each one with a different tax treatment:

- Income derived from the acquisition of securities that are already subject to the definitive tax on interests as referred to in Section 23 c) of the CR Income Tax Law (e.g. time deposits in dollars issued by state-owned banks, or even offshore investments) are not taxable;
- Income derived from securities or other types of acquired assets not subject to withholding taxes (e.g. lease income derived by REIFs) is subject to a 5% tax rate on the gross amount;
- Capital gains are taxable at a 5% definitive tax with no deductions allowed. The taxable base for the computation of the capital gains tax is the difference between the sale price less the net carrying value of the asset as of the date of the transaction (the assets' net carrying value recorded in the accounting that should be used as the basis for tax purposes to compute the taxable base for an eventual capital gain should not include any revaluation included on top of the acquisition cost).

Withholding tax
REIFs do not usually invest in local companies, however in case they do, according to Section 100 of the Securities Market Regulation Act, in our opinion the dividend distributions should not be subject to the applicable 15% withholding tax rate on dividends (or 5% withholding rate in the case of dividends paid by listed companies). Consequently, the dividend income received by the REIF should be taxed at the 5% definite tax rate. However, please note there is no current case law in this regard; therefore a REIF will generally file a request for a private letter ruling to the Tax Administration to determine the actual treatment of the dividends received by the REIF.

Other taxes
No other taxes apply.

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

3.2 Transition regulations

	Conversion into REIT status
	N/A

Does not apply under CR legislation.

3.3 Registration duties

	Registration duties
	Transfer tax exemption

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

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

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

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

4.2 Foreign unit holder

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

As previously mentioned, Section 100 of the Securities Market Regulation Act establishes that profits, dividends and capital gains generated by participations of investment funds will be exempt from any tax.

5 Tax treatment of foreign REITs and their domestic unit older

	Foreign REIT	Corporate unit holder	Individual unit holder
	Taxed under normal CR tax rules	Dividends taxable at rate of 15%	Dividends taxable at rate of 15%

Foreign REIT
According to Section 2 of the CR Income Tax Law, a "permanent establishment" is defined as: any office, plant, building or other real property asset; plantation, mining, timber and agricultural venture or of any other type; warehouse or any other permanent business premises - including the temporary use of storage facilities - as well as those places used for the sale and purchase of goods and products within the country, and any other ventures of non-resident persons carrying out for-profit activities in Costa Rica.

According to the aforementioned definition, a foreign REIT that hold assets in CR and that is not registered by SUGEVAL may be considered by the Tax Authorities to have a permanent establishment in CR, and will be taxed under normal CR tax rules. Any income generated from the assets located in CR will be taxed at a 30% corporate income tax rate.

However, if a foreign REIF wants to be registered before SUGEVAL, it must comply with certain requirements established by SUGEVAL, such as being authorised by a regulatory entity that is member of IOSCO; the fund should at least have one year of operation behind it; it must have an equity of at least US$ 20,000,000; the fund manager should have a minimum of three years experience, and should have an independent custodian entity, among others. However, only the commercialisation of real estate investment funds duly authorised in the United States, Spain, Mexico, Colombia, Chile, Canada, Brazil and England, is permitted.

Domestic Corporate unit holder
As previously mentioned, a foreign REIT with assets in Costa Rica will be deemed to have a permanent establishment in Costa Rica, and therefore it will be subject to the 30% corporate income tax. Once the REIT transfer its profits out of Costa Rica, such distribution will be subject to a 15% withholding tax. Furthermore, the distribution of dividends from the foreign REIT to its corporate unit holders in Costa Rica should not be subject to taxation according to the territoriality principle.

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

Domestic Individual unit holder

As previously mentioned, a foreign REIT with assets in Costa Rica will be deemed to have a permanent establishment in Costa Rica, and therefore it will be subject to the 30% corporate income tax. Once the REIT transfers its profits out of Costa Rica, such distribution will be subject to a 15% withholding tax. Furthermore, the distribution of dividends from the foreign REIT to its individual unit holders in Costa Rica should not be subject to taxation according to the territoriality principle.

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

Mexico (Mexican Trust)

Paseo de la Reforma in Mexico City.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
Mexican Trust	- 2004 - Amended in 2007	Mexican Income Tax Law	Trust or corporate type	Currently, there is no Mexican Trust listed

In order to improve real estate investments, the Mexican government established several provisions in the Mexican Income Tax Law (MITL) which grant attractive tax benefits for foreign investors that wish to invest or rent real property through a Mexican Trust. This regime was introduced to the MITL in 2004. New rules are in force since January 01, 2007.

The Mexican Trust is regulated in the MITL, articles 223, 224 and 224-A.

The Mexican Trust regime has not been an entirely successful program. There are private Mexican Trusts, but no listed Mexican Trust.

2 Requirements

2.1 Formalities / procedure

	Key requirements
	- Incorporation under Mexican Laws - Certificates - Mexican trustee

The Mexican Trust must be incorporated under the Mexican Laws and must also issue participant certificates.

The trustee must be a credit institution residing in Mexico and duly authorised to act as such in Mexico.

2.2 Legal form / minimum initial capital

	Legal form	Minimum initial capital
	– Trust – Companies related to real estate	No

Legal form
The legal forms for REIT incorporation are a trust and companies related to real estate ('Sociedades Inmobiliarias').

Companies must meet the following requisites:

a. That the primary purpose of the Company be acquisition or construction of properties intended for lease or for acquisition of the right to obtain revenues proceeding from lease of such assets, and also for the grant of financing for said purpose with the assets so leased serving as guarantee;
b. That at least 70% of the fund be invested in real properties, or in the rights or credits referred to in a) above, and the remainder be invested in Federal Government securities registered in the National Securities Registry or in shares of debt-instrument investment corporations;
c. That the real property so built or acquired be intended for lease and not be alienated prior to the lapse of at least four years from the end of construction or the date of acquisition, respectively. Real properties alienated prior to the lapse of said term shall not warrant the preferential tax treatment.

The certificates of participation grant voting rights to the unit or shareholders.

Minimum initial capital
Mexican legal and tax provisions do not establish any limits relating to the initial capital of the Trust.

The alienation of the private trust certificates is deemed as the alienation of the real property, but the alienation of the listed trust certificates, or the alienation of the shares issued by the company, is not deemed as the alienation of the real property.

2.3 Unit holder requirements / listing requirements

	Unit holder requirements	Listing mandatory
	– Only for non-publicly traded Trusts: – At least ten shareholders that are not related parties – Each shareholder may not hold more than 20% of the certificates	No

Unit holder requirements
The Trust must issue certificates to the participants, regardless of whether the certificates can be publicity traded or not.

If the certificates are not allowed to be publicly traded, it is required that there are at least 10 unit holders who do not classify as related parties. Furthermore, each unit holder may not hold more than 20% of the certificates.

Mexican Laws do not establish any other requirements related to the unitholding percentage, status, etc.

Listing requirements
It is not a requirement that the participant certificates must be listed on a stock exchange. In Mexico, the special tax regime for real state investment is only for Trusts or Companies related to real estate. Both could be listed or not. In order to obtain the special tax regime, trust must be incorporated under Mexican law. The MITL does provide tax incentives if participant certificates are listed on the stock exchange.

2.4 Asset levels / activity test

	Restrictions on activities / investments
	– At least 70% of the business activities must be related to real estate investments – 30% or less of the business activities may be invested in Mexican Government debt securities or in shares of mutual funds investing in debt instruments

The primary purpose of the Trust must be acquisition or construction of properties intended for lease or for acquisition of the right to obtain revenues proceeding from lease of such assets, and also for the grant of financing for said purpose with the assets so leased serving as guarantee.

The Trust may invest in domestic or foreign real estate. Real estate must be held at least for a four-year holding period.

There are no restrictions regarding real estate developments.

At least 70% of the business activities must be related to real estate investments (acquisition of real estate, leasing of real estate and financing the acquisition of real estate). The remaining percentage (30% or less) may be invested in Mexican Government debt securities or in shares of mutual funds investing in debt instruments.

A Mexican Trust or Company related to real estate is not allowed to own subsidiaries.

2.5 Leverage

	Leverage
	Thin capitalisation rules

Several changes have been passed to the thin capitalisation provisions that were established in 2005. These changes, in force as of January 01, 2007, attempt to narrow the application of related party debt involving non-residents, but broaden the type of debt that is covered by the rules. The thin capitalisation provisions only apply to related party debt received from non-residents. Before January 01, 2007 thin capitalisation restrictions also applied to related party loans received from resident companies. Currently, thin capitalisation rules apply to any interest bearing debt, including promissory notes. In order to determine the amount of debt that exceeds the applicable 3 to 1 ratio, all interest bearing debt has to be taken into consideration.

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	95% of profits	95% of profits	Annually

Operative income
The Trust should distribute at least 95% of its profits no later than March 15 of every year. In this respect, the Trust's profit must be attributable to each beneficiary or shareholder. Such profit is to be deemed as taxable income. The Trust is not entitled to carry out advance profit distributions.

Capital gains
See above. Capital gains cannot be allocated in a reserve. In the case that the Trust decides not to distribute its profits, it is a mandatory to pay the corresponding tax (28%). Said tax will be applied as a credit by holders of Trust certificates when they receive their profits and no tax shall be withheld on the profit so distributed. In other words, it is not an obligation to distribute the profits every year, but it is an obligation to pay the tax of the mentioned profits, even if no profits are distributed.

2.7 Sanctions

	Penalties / loss of status rules
	– Tax incentives do not apply – May lose status as real estate investment trust

Upon non-compliance with organisational and asset rules, the trust may lose its status as a real estate investment trust. The sale of real estate before the four-year holding period does not constitute 'non-compliance'. In this case, the tax benefit is lost only for the real state sold.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Corporate income tax of 28% withheld by trustee	Corporate income tax of 28% withheld by trustee	N/A

Current Income
Real estate trusts are fiscally transparent entities that should calculate and pay annual income tax with respect to the real estate activities carried out. Mexican beneficiaries or trustees should include in their annual tax return the net income of the trust based on their participation. The holders of Trust certificates who reside in Mexico, or reside abroad but have a permanent establishment in Mexico, shall accrue as taxable the results so distributed to them by the trustee and shall also accrue as taxable the profit from alienation of such certificates (unless such holders are exempt from payment of Income Tax thereon) and may apply as credit the tax withheld from said result and said profit, to the Income Tax due by them in the fiscal year of distribution or alienation. Amounts withheld from holders of Trust certificates who are foreign residents shall be deemed as a final tax payment.

The Trust's net profit is subject to a 28% corporate income tax rate (tax withheld by the trustee). In this case, the Trust must recognise the income when such is collected. The holders of the Trust certificates can apply as credit the tax withheld from the trustee.

The Trust should not file and pay estimated income tax payments. This is due to the fact that the Trust needs to allocate cash to project financing instead of paying estimated income taxes. However, the trust has the liability to file and pay income taxes on an annual basis.

The Mexican tax provisions establish that the net operating losses ('NOLs') may be carried forward ten years. Furthermore, the Trust will be able to decrease its losses sustained in preceding taxable years against the tax profit of the year.

Capital gains
Upon alienation of an entrusted there is a withholding tax at a rate of 28% levied.

Withholding tax
A Mexican Trust or Companies related to real estate are not allowed to invest in subsidiaries. For that reason they can not receive distributions.

Other taxes
There is no asset tax derived from real estate owned by the Trust.

The sale of participant certificates in a private trust is subject to the value added tax and local taxes. If it is a listed Trust the tax is only levied in some States of Mexico.

Accounting Rules
In Mexico, the Federal Fiscal Code (FFC) lists the requirements that the books and records must comply with. The books and records must comply with the following rules:

The accounting systems and records must comply with the requirements listed in the Regulations of the Federal Fiscal Code (RFFC) (i.e. conducting financial statements, linking the financial statements with accounts, identification of the transactions, and transaction vouchers as transaction evidence); The accounting records should be analytical and must be registered within two months following the date that the respective transactions were performed; The accounting books should be kept in the tax domicile. A request can be submitted to the Mexican tax authorities to authorise the taxpayer of maintaining the accounting books in domicile other than his tax domicile. The accounting books should be kept in the tax domicile, but the tax payer could request to Mexican Tax Authorities an authorisation to keep them in other domicile which has to be located in the same State where the tax domicile is located.

Furthermore, the books and records must follow the Mexican GAAP and be calculated in Pesos.

3.2 Transition regulations

	Conversion into REIT status
	Deferred taxation of contributions in the trust status

The contribution of real estate is deemed a taxable transaction. The taxpayer of the tax derived from the contribution is not the Trust, but the person who contributed the real estate properties to the Trust in the status of trustor. The income tax derived from the contribution is deferred up to the moment of the sale of the Trust certificate (the amount of the tax has to be updated for the period from the month of contribution of the real estate properties to that of alienation of said Trust certificates or the properties). Also, if the Trust certificates are not sold, the deferment of tax payment referred shall terminate on alienation of the properties by the trustee, and the tax shall be paid in the term of 15 days next following such alienation thereof, by the trustor having contributed such properties.

3.3 Registration duties

	Registration duties
	Local transfer tax

In Mexico, transfer tax derived from the alienation of real properties is a Local Tax. In Mexico City, transfer tax is triggered when the trustor receives the Trust certificates, but if it is a Listed Trust the transfer tax is deferred up to the moment the Trust certificate is sold or when the property is sold by the Trust. The transfer tax rate is between 3.16% and 4.56%, depending on the value of the property.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	Corporate tax of 28% on distributions and capital gains from the sale of the certificates	– Income tax of 28% on distributions and capital gains from the sale of the certificates – Income from the sale of Trust certificates through Stock Exchange is tax-exempt	– Withholding tax of 10%, only for individuals in the case of sale of Trust certificate – Withholding tax of 28% (corporate and individual) in the case of Trust's distributions

Corporate unit holder
The distributions paid by the Trust to Mexican companies is considered taxable income and is subject to the Mexican corporate tax at a rate of 28%.

The income that derives from the sale of Trust certificates is considered taxable income for income tax purposes. The sale of Trust certificates is taxed at a rate of 28% of the net profit.

Individual unit holder
The distributions paid by the Trust to Mexican individuals is considered taxable income and is subject to the Mexican corporate tax at a rate of 28%. Mexican individual should recognise this income as leasing income for income tax purposes.

The income that derives from the sale of Trust certificates is considered taxable income for income tax purposes. The sale of Trust certificates is taxed at a rate of 28% of the net profit. The income from the sale of participant certificates through the Stock Exchange, received by Mexican individuals is deemed exempt for income tax purposes.

Withholding tax
The distributions paid by the Trust to Mexican companies or individuals is subject to withholding tax at a rate of 28% and it is a tax creditable by the Mexican companies or individuals.

The sale of Trust certificates owned by Mexican individuals is subject to withholding tax at a rate of 10% of the gross revenues, with no deduction, and it is a tax creditable by the Mexican individuals.

4.2 Foreign unit holder

	Corporate unit holder	Individual unit holder	Withholding tax
	Final withholding tax	Final withholding tax	– 10% withholding tax rate on Mexican real estate income received by foreign investors in the case of the alienation of the Trust Certificates – 28% withholding tax of (corporate and individual) in the case of Trust's distributions

Corporate unit holder
Amounts withheld from corporate unit holders of Trust certificates who are foreign residents shall be deemed in Mexico as a final tax payment.

Only if the owner of the Trust certificate is a 'pension and retirement fund' registered with the Mexican tax autorithies, Trust's distributions and the alineation of Trust ceritificates are exempt for income tax purposes. Some requirement should be met in order to be a 'pension and retirement fund' registered for Mexican tax purposes.

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

Withholding tax
The distributions paid by the Trust to foreign companies or individuals is subject to withholding tax at a rate of 28% and it is a final tax payment.

The sale of Trust certificates owned by foreign companies or indviduals is subject to withholding tax at a rate of 10% of the gross revenues, with no deduction. When is a listed Trust certificate, Income Tax shall not be due on the profit obtained from such alienation by foreign residents with no permanent establishment in Mexico.

5 Tax treatment of foreign REITs and their domestic unit holders

	Foreign REIT	Corporate unit holder	Individual unit holder
	28% corporate income tax if resident. Otherwise taxation depends on tax treaty	Like corporate holder of a Mexican REIT	28% withholding tax

Foreign REIT

In the case of a foreign Trust acting in Mexico as a REIT, the benefit of the special tax regime will not be applicable to the foreign Trust because in order to get the special tax regime, the Trust must be incorporated under Mexican Laws. In this case (a foreign Trust acting in Mexico as a REIT), the activities of the foreign trust in Mexico will determine its tax regime. It is possible that the foreign trust would be treated in Mexico as a permanent establishment (in this case, it would be taxed at a rate of 28%), or it is possible it would be treated as a foreign resident with revenues from a source of wealth located in Mexico (therefore, the tax treatment will depend upon the type of Mexican source income obtained by the resident abroad, and whether the non-resident resides or not in a country with which Mexico has a tax treaty).

Corporate unit holder

A corporate unit holder of a foreign REIT will be taxed on Mexican source income like a corporate unit holder of a Mexican REIT.

Individual unit holder

An individual unit holder will be subject to the withholding tax of 28% for the profit generated by the trust situated in Mexico.

Puerto Rico (REIT)

The San Juan Convention Center, in Puerto Rico.

1 General introduction

	Enacted year	Citation	REIT type	REIT market
REIT	- Enacted in 1972 - Amended in 2000 and 2006	Puerto Rico Internal Revenue Code of 1994, as amended (PRIRC)	In principle, corporate type (election for tax status)	Significant improvements expected from the 2006 changes in the PR IRC

The Real Estate Investment Trust was enacted in 1972 and amended in 2000 and 2006. The REIT is legally dealt with the Puerto Rico Internal Revenue Code of 1994, as amended (PR IRC), Section 1500 to 1502, and Section 1101(18).

REIT legislation prior to the 2006 amendments was very restrictive and did not result in the expected investment and development that was contemplated when enacted. Puerto Rican local media on the other hand quoted recently in connection with the approval of the 2006 amendments, on an economic report that the REIT investments from 2007-2012 is expected to exceed US$ 6 billion, with over US$ 3 billion during the first year, mostly from conversions.

The REIT regime is principally a tax regime, i.e. several types of entities can elect for the REIT status. In the following we refer to the corporate REIT type.

2 Requirements

2.1 Formalities / procedure

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

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

The Commissioner of Financial Institutions will oversee the operations of the REIT as regulator.

- Pursuant to the Puerto Rico Uniform Securities Act, all stocks or shares in a REIT will be considered 'Securities'.
- In order to comply with federal laws:
  1. Investor must register issuance of securities as part of the "full and fair disclosure" policy stated by the Securities Act of 1933;
  2. Sales could be regulated by the Securities Exchange Act of 1934.

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

As a practical manner, the REIT might need to issue audited financial statements for purposes of financing, or other regulatory and business requirements, even though not required for the Puerto Rico income tax return.

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

2.2 Legal form / minimum share capital

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

Legal form
REITs may be organised as corporations, partnerships, trusts or domestic or foreign associations engaged in trade or business in Puerto Rico and subject to Puerto Rican income taxes.

The REIT cannot be a financial institution or a life insurance company subject to taxation under Subchapter G of the PR IRC.

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

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

2.3 Shareholders requirements / listing requirements

	Shareholder requirements	Listing mandatory
	At least 50 shareholders or partners	No

Shareholder requirements
A REIT has to be composed of at least 50 shareholders or partners.

At no time during the last half of its taxable year may more than 50% of total value of outstanding shares be owned by more than five individuals, based on the attribution rules of section 1024 of the PR IRC.

Listing requirements
Listing of a REIT is not mandatory.

2.4 Asset level / activity test

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

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

75% or more of gross income must be derived from rents derived from real property located in Puerto Rico, interest on obligations secured by mortgage on real property or rights to real property located in Puerto Rico, gain from the sale or other disposition of real property that is not of the type of property that qualifies as inventory, dividends or other distributions derived from, and gains derived from, the sale or other disposition of shares of transferable stock, certificates, or participation in another REIT, amounts received or accrued as consideration for entering into agreements to make loans secured by mortgages on real property and/or rights to real property located in Puerto Rico, and/or to buy or lease real property and/or rights to real property located in Puerto Rico.

At the end of each quarter of each taxable year, at least 75% of the value of total assets must be represented by real estate assets, cash or equivalents, and securities and obligations of Puerto Rico and not more than 25% of the value of total assets must be represented by securities other than those mentioned above. For the purpose of these sections, real property means land located in Puerto Rico or improvements thereon (including but not limited to buildings or other structures of permanent nature including the structural components of such buildings or structures constructed after June 30, 1999, or that have been substantially renewed, if constructed after that date) used as: hospitals, schools, universities, public or private housing, transportation facilities and/or public or private roads, office building, governmental facilities, facilities of manufacture industry, recreational centres, parking facilities, residential properties, shopping centres, buildings or structures acquired from the government of Puerto Rico, its agencies, instrumentalities, and hotels.

Subsidiaries of a REIT will not be treated as a separate entity, and all its assets, liabilities, income items, deductions and credits will be considered as belonging to the REIT. Subsidiary means a corporation, company, or partnership totally directly or indirectly owned by a REIT. Thus, the income from subsidiaries will be considered eligible income and tax-exempt at the level of the REIT

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

2.5 Leverage

	Leverage
	No restrictions

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

2.6 Profit distribution obligations

	Operative income	Capital gains	Timing
	90% of net income must be distributed as taxable dividend	Included in net income	Annually

Operative income
At least 90% of the net income of a REIT must be distributed annually as taxable dividends. If the REIT does not distribute such net income, it will be taxable as a regular corporation, partnership or trust (at a maximum tax rate of 39%).

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

2.7 Sanctions

	Penalties / loss of status rules
	– Loss of REIT tax exemption – Loss of REIT status

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

If a REIT fails to comply with certain of the requirements to operate as such during the taxable year but its election is not deemed terminated, the imposition of taxes will be applicable. There are special rules to determine the amount of the tax liability.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

	Current Income	Capital gains	Withholding tax
	Eligible income is tax-exempt	Eligible capital gains are tax-exempt	Eligible income received by the REIT is not subject to withholding tax

Current Income
The eligible income is not taxed at the level of the REIT.

Non-eligible income such as income from prohibited transaction (sales or other dispositions) of stock in trade or other property of a kind that would properly be included in inventory, and property held primarily for sale to customers in the ordinary course of a trade or business is subject to regular corporate income taxation at a maximum rate of 39%.

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

Capital gains
Gains from prohibited transactions are taxed at regular corporate tax rate. Otherwise capital gains are not taxed at the level of the REIT.

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

Other taxes
The REIT is subject to other taxes like municipal license taxes (similar to a gross receipt tax) and real and personal property taxes. For property taxes under general applicable rules a tax exemption might be available depending on the type of activity or industry in which the property is used.

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

3.2 Transition regulations

	Conversion into REIT status
	No regulations

3.3 Registration duties

	Registration duties
	Stamp duties and register fees

The acquisition of real estate by the REIT will be subject to various kinds of stamp duties and of register and notary fees.

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– Final withholding tax on dividends – Capital gains are taxable	– Final withholding tax on dividends – Capital gains are taxable	– Withholding tax of 10% on dividends

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

If the shareholder is a resident entity, gain from the sale of the shares in a REIT would be taxable at special rates if considered long-term capital gains.

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

Residents of Puerto Rico would be subject to taxation on capital gains from the sale of the shares in a REIT. Special rate is available if the gain is considered long-term capital gain.

Withholding tax
Taxable dividends are subject to withholding tax at the rate of 10%, as defined in Section 1501 of PR IRC. The trustees or directors to whom the management of the REIT has been delegated are responsible for deducting and withholding the required tax rate on the distributed taxable dividends.

4.2 Foreign shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	– Final withholding tax on dividends – Generally, final withholding tax on capital gains	– Final withholding tax on dividends – Generally, final withholding tax on capital gains	– Withholding tax of 10% on dividends – Puerto Rico has not entered into any Tax Treaties

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

Taxation of capital gain income in the case of a foreign shareholder will depend on the source of the gain and the residency status of the shareholder. If the shareholder is a non-resident entity, income tax withholding at source would be applicable only if the gain is considered from sources within Puerto Rico. Generally, the rule to determine the source of the gain in the case of personal property (shares) is the place where the title passes.

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

Taxation of capital gain income in the case of a foreign shareholder will depend on the source of the gain and the residency status of the shareholder. A non-resident individual shareholder would be subject to withholding tax on the sale of the shares in a Puerto Rican REIT if the gain is considered to be from sources within PR. The rules to determine the source are the same that we indicated above under corporate shareholder.

Withholding tax
Taxable dividends are subject to withholding tax at the rate of 10%, as defined in section 1501 of PR IRC, and as required by Section 1147 and 1150 of the PR IRC related to income tax withholding at source on payments to non-resident persons. Treaty relief is not available.

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	Foreign REIT can qualify for REIT status	No specific tax privilege.	No specific tax privilege.

Foreign REIT
Foreign REIT will not be taxed if it qualifies for REIT status under the provisions of the PR IRC according to Section 1101(18).

Please refer to discussion above related to requirement imposed by the 2006 amendments which entails a taxable acquisition for transactions occurring after the effective date of the approval of the amendments, January 01, 2007.

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

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

USA (US-REIT)

A view of the financial district of New York City from the East river.

1 General introduction

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

The US Congress created the Real Estate Investment Trust (US-REIT) in 1960 in order to make large-scale, income-producing real estate investments accessible to smaller investors. Congress reasoned that the average investor should be able to invest in large-scale commercial properties just as if it were any other kind of investment. That is, through the purchase of equity. Similar to shareholders benefiting from the ownership of stocks in other corporations, the stockholders of an REIT also receive economic benefits from the production of income through commercial real estate ownership. REITs offer distinct advantages for investors. Firstly, greater diversification is achieved by investing in a portfolio of properties rather than just in a single property. Also, the managerial activities are performed by experienced real estate professionals.

Sector summary (end of June 2008)

	Number of companies	Market cap (€bn)	% of global REIT market
US-REIT	172	180.1	48.0

Top five REITs

	Market cap (€m)	Sector type
Simon Property Group Inc	12,861	Retail
Public Storage	8,816	Industrial
Vornado Realty Trust	8,577	Hotel, Office, Residential, Retail
Boston Properties Inc	6,853	Hotel, Office, Retail
Equity Residential	6,569	Land, Leisure, Residential

The US REIT regime, which is governed by tax laws, has been modified on several occasions since its inception. The essential rules for the US REIT can be found in section 856 and 857 of the Internal Revenue Code.

The passage of a major housing bill in July 2008 had significant implications for US REITs. The new legislation contained a number of REIT-specific provisions that had garnered strong industry support. The bill's changes to US REIT laws included:

- Reducing the holding period under the 'dealer' sales safe harbor test from four years to two;

- Changing the measurement of the 10% of sales permitted under the safe harbor test from current tax basis to either tax basis or fair market value (at the REIT's annual option);
- Increasing the size ceiling for taxable REIT subsidiaries from 20% to 25% of assets;
- Permitting healthcare REITs to use taxable subsidiaries in the same manner as hotel REITs;
- Excluding most real estate-related foreign currency gains from the computation of the REIT income tests; and,
- Providing the US Treasury Department with clear authority to rule on whether a variety of items are 'good' REIT income.
- The US REIT industry also benefited from terrorism insurance legislation signed into law by President George W Bush in late-December 2007. The bill included a seven-year extension of the federal government's terrorism risk insurance backstop, and expanded the scope of the law to include both foreign and domestic acts of terrorism. The new insurance rules help encourage investment in development projects, stimulating economic growth.

The past year also saw the continued growth of publicly traded real estate securities and risk management products in the US, as the Commodity Futures Trading Commission approved trading of Euronext Paris real estate futures contracts. The contracts are tied to the FTSE EPRA/NAREIT Global Real Estate Index Series and provide investors with effective, transparent tools for managing risk related to European real estate investment.

2 Requirements

2.1 Formalities / procedure

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

To elect REIT status in the US, a company must file a special tax return (Form 1120-REIT) for the year in which the company wishes to become an REIT. There is no requirement to request prior approval or to submit prior notification of regime election. Furthermore, the REIT must annually send letters of record to its shareholders requesting the details of the beneficial share ownership. Modest monetary penalties may be imposed on an REIT that fails to send these letters.

2.2 Legal form / minimum share capital

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

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

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

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

Minimum share capital
There is no minimum share capital requirement for a REIT.

2.3 Shareholder requirements / listing requirements

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

Shareholder requirements
Firstly, REIT shares must be transferable. The REIT is required to have a minimum of 100 shareholders. Also, no more than 50% of its shares may be held by five or fewer individuals or private foundations during the last half of the taxable year

A number of 'look through' rules can determine whether the latter criterion is met. These rules only apply after the REIT's first taxable year and thereafter during the second half of the REIT's taxable year.

Various stock classifications (i.e. different classes of shares such as common stock and preferred stock) are allowed. However, all shareholders within the same class of stock must be treated equally. Otherwise, dividends from such classes of stock would no longer be considered eligible for the dividends paid deduction.

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

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

2.4 Asset level / activity test

	Restrictions on activities / investments
	– At least 75% of its assets must be real estate, government securities or cash – 75% asset test and 75% and 95% income tests – Cannot own more than 10% of another corporation's stock, other than in another REIT or a taxable REIT subsidiary (ownership of a 100% owned 'qualified REIT' subsidiary is ignored) – No more than 5% of the value of its assets can be represented by securities of any one issuer, other than another REIT or a taxable subsidiary (ownership of a 100% owned 'qualified REIT' subsidiary is ignored) – Cannot own more than 20% (2009: 25%) of is assets in securities of one or more taxable REIT subsidiaries

75% of an REIT's assets must be comprised of real estate (including mortgages), government securities or cash items. At least 75% of the gross income must be derived from real estate property rental or from interest on mortgages on real estate property. Furthermore, at least 95% of the gross income must come from a combination of real estate related sources and passive sources, such as dividends and interest. No more than 5% of an REIT's income may come from non-qualifying sources.

At the end of each quarter, the REIT may not have securities of taxable REIT subsidiaries that represent more than 20% of the REIT's total asset value. Effective for taxable years starting in 2009, the 20% taxable REIT subsidiary limit will be increased to 25%. Further restrictions apply. As part of renting real estate, a REIT is allowed to provide all kinds of tenant services expected in the real estate rental business. Services are broad and extensive, e.g. providing utilities (sub metering), security services, cleaning services, internet and cable TV, etc.

A US REIT is allowed to own, operate, manage and develop real estate for its own portfolio. If it develops real estate for third parties, the resulting income is disqualified and must fit under the 5% "bad income" allowance. US REITs may develop real estate for third parties or trade real estate through their taxable REIT subsidiaries (TRS).

A REIT is allowed to invest in foreign assets.

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

2.5 Leverage

	Leverage
	No

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

2.6 Profit distribution obligations

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

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

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

2.7 Sanctions

	Penalties / loss of status rules
	– Various penalties – Possible loss of REIT status

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

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

A US US$50,000 penalty is imposed if the REIT shareholder limitations are disregarded. Unless excused by reasonable cause, the loss of REIT status would ensue.

3 Tax treatment at level of the REIT

3.1 Corporate tax / withholding tax

	Current income	Capital gains	Withholding tax
	Tax-exempt if distributed	Tax-exempt if distributed	– No refund of foreign Withholding tax – It can use a foreign tax as deduction

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

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

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

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

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

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

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

3.2 Transition regulations

	Conversion into REIT status
	– 'Built-in gains' are taxable – Exemption is possible if assets held for 10 years

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

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

3.3 Registration duties

	Registration duties
	Transfer tax

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

4 Tax treatment at the shareholder's level

4.1 Domestic shareholder

	Corporate shareholder	Individual shareholder	Withholding tax
	Income, capital gains, and return of capital distributions are taxed at a rate of 35%	– Capital gain dividends are taxed at the maximum 15% rate – Return of capital is tax-deferred	N/A

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

Individual shareholder
An individual US shareholder is subject to an income tax of approximately 35% on ordinary dividends distributed by a qualifying REIT.

Ordinary dividends qualify for the 15% rate only if they are paid out of income that has already been subject to corporate taxes, e.g. dividends attributable to distributions from a taxable REIT subsidiary.

Shareholders are taxed on capital gain distributions from assets the REIT held for at least one year at a 15% rate. However, if the gain is attributable to the recapture of depreciation, the tax burden is 25%.

Return of capital distributions reduce the shareholder's tax basis and are therefore tax-deferred. To the extent a return of capital distribution exceeds tax basis, it is treated as sale of the stock and the gain is taxable at the 15% maximum rate. (The return of capital rules for a REIT are the same as for non-REIT corporations).

Withholding tax
No withholding tax is levied on distributions to US shareholders.

4.2 Foreign shareholders

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

Corporate shareholders
Final withholding tax.

Individual shareholders
Final withholding tax.

Withholding tax
A withholding tax of 30% is levied on income dividends. This rate may be reduced by a double tax treaty. The US usually imposes a 15% tax on dividends paid by countries with which the US has a valid double tax treaty. The amount of the repayment of capital which is not subject to a withholding tax is taxed at a

rate of 10%. The rate returns to 30% in most treaties for foreign shareholders who own more than 10% of a REIT. Pension funds and certain governmental entities might benefit from a tax exemption.

Capital gain dividends attributable to the sale of US real property are subject to the Foreign Investment in Real Property Taxes Act (FIRPTA). According to FIRPTA, foreign shareholders are treated as if they were US taxpayers. Unless the shareholder owns 5% or less of a listed REIT, the capital gain dividends are subject to a 35% (plus branch profit tax) withholding tax. If the shareholder does own 5% of the REIT shares or less, then the treatment of capital gain dividends is similar to the treatment of ordinary dividends.

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

5 Tax treatment of foreign REITs and their domestic shareholders

	Foreign REIT	Corporate shareholder	Individual shareholder
	Generally 30% withholding tax	– Dividend distributions are taxed at a rate of 35% – Return of capital is tax deferred	– Dividends are generally taxed at the 15% rate if foreign REIT is not a 'PFIC' – Return of capital is tax-deferred

Foreign REIT

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

Corporate shareholder

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

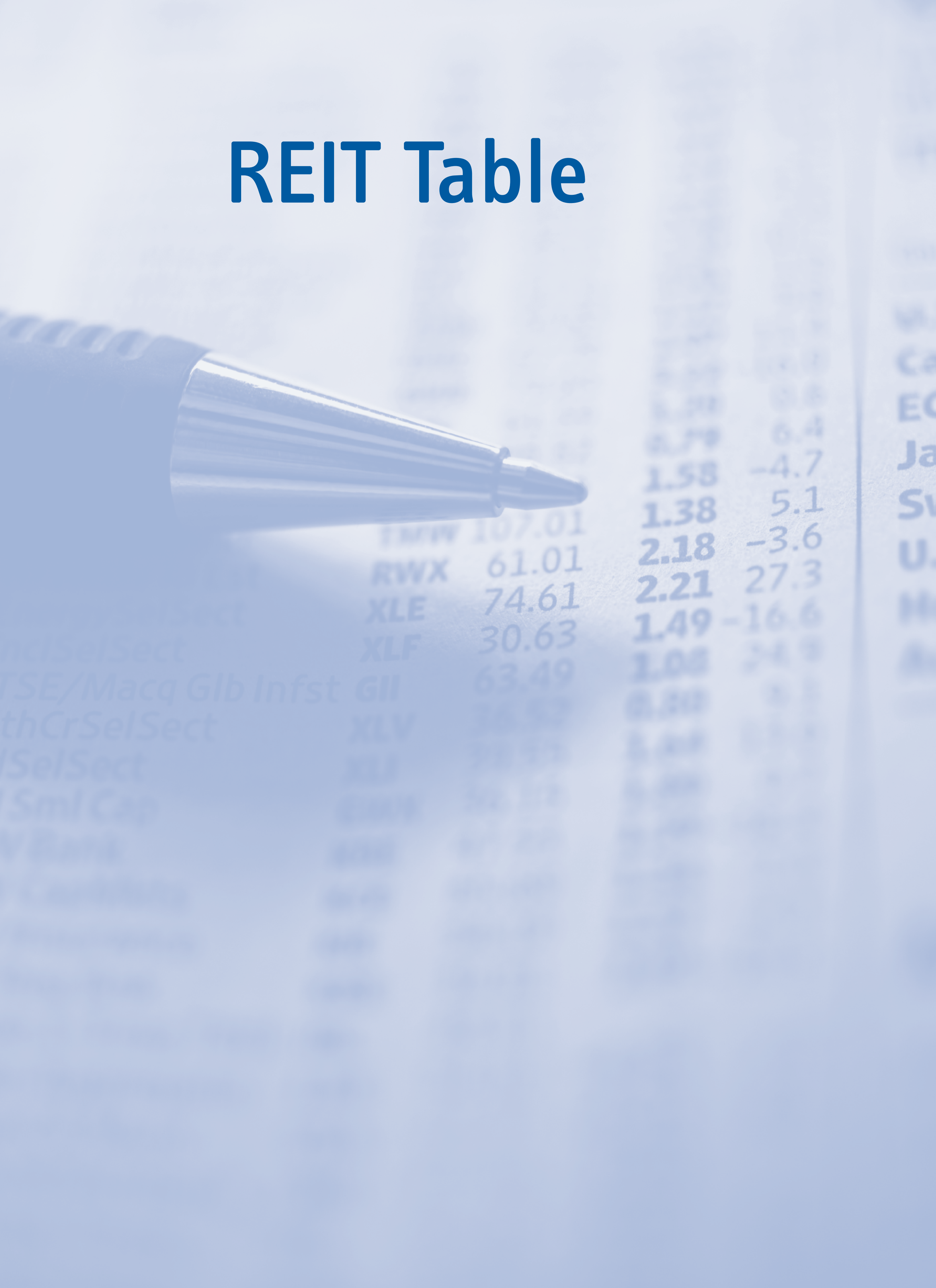
Finally, if the foreign REIT is considered a 'passive foreign investment company' (PFIC), which may be the case if the rental income of the foreign REIT is not attributable to the activities of its own employees, a US shareholder either is subject to tax and substantial interest charges upon receipt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

Individual shareholder

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

If the foreign REIT is considered a PFIC, which may be the case if the rental income of the foreign REIT is not attributable to the activities of its own employees, an individual US shareholder either is subject to tax at rates of up to 35% and substantial interest charges upon receipt of a distribution from the PFIC (or disposition of the PFIC stock), or may elect instead to be taxed on the PFIC investment on a current basis using an earnings flow-through approach or a mark-to-market approach. ■

REIT Table



	1. General			2. Requirements 2.1	2.2		2.3	
Country	**Enacted Year**	**Citation**	**REIT type**	**Key requirements**	**Legal form**	**Minimum share/ initial capital**	**Shareholder requirements**	**Listing mandatory**
Australia (LPT)	1985	- Public) Unit Trust and Equity law - 'Trust Income', Division 6, ITAA 1936 - 1936 'Public Trading Trusts' Regime, Division 6C, ITAA 1936	Trust type	No special legal or regulatory requirements	Unit trust	No	No requirement	No
Belgium (SICAFI)	1995	- Royal Decree of April 10, 1995 - Law of July 20, 2004 - Other tax laws	Corporate type	- Licence from the Belgian Banking, Finance and Insurance Commission - SICAFI Registration List	- Belgian public limited liability company - Belgian limited partnership with shares	EUR 1.25 million	No requirement	Yes
Brazil (FII)	1993	Federal Law 8.668/93 and subsequently issued regulations by CVM 205/94 and 206/94 and CVM 389/03 and 418/05	Fund type	- Must be approved by the Securities and Exchange Commission - Managed by a financial institution - All units' subscription must be assured by the CVM	Fund	No	Construction companies may not hold more than 25%	No
Bulgaria (SPIC)	2004	Special Purpose Investment Companies Act (SPICA)	Corporate type	- Licence from the Financial Supervision Commission - If listed, further Bulgarian Stock Exchange authorisation - Depository bank mandatory	Joint stock company	BGN 500,000 (EUR 255,646)	- 30% or more should be owned by an institutional investor - No more than 50 founders	Yes
Canada (MFT)	1994	Income Tax Act	Trust type	Election in tax return	Unit trust	No	- Minimum of 150 unit holders each of whom holds not less than one "block of units" and having an aggregate fair market value of not less than CAN$ 550) - Generally, MFTs cannot be established or maintained primarily for the benefit of non-residents of Canada	Required to avoid redemption right of unit holders
Chile (FII)	1989 and modified in 2001	- Law No. 18,815 on Investment Funds - Decree No. 864	Fund type	- Approval of the fund by the Chilean Securities Commission - Management by a Chilean corporation	Unincorporated entities	- No initial requirement - After 1 year, UF 10,000	- Private FIIs: less than 50 members - Listed FIIs: at least 50 members or 1 institutional investor	No
Costa Rica (REIF)	1997 and 2006, respectively	Securities Market Regulation Act (No. 7732) and the General Regulations of Fund Management Companies and Investment Funds	Fund type (Shows some characteristics of a REIT)	- Licence from the National Securities Commission (SUGEVAL) for the investment fund management company (IFMC) - Registration on the REIF list - Fund must be authorized by SUGEVAL - Approved prospectus by SUGEVAL	- The IFMC must be a corporation or a branch of a foreign fund manager - The investment fund will operate as a close fund	- The investment fund must count with USD 5,000,000 on net assets - Minimum of approx USD 168,000 for the IMFC	Minimum 50 participants	Yes
Dubai (REIT)	2006	The Investment Trust Law No. 5	Trust type	Detailed information not yet available	Public Property Fund	No	Detailed information not yet available	Yes

2.4	2.5	2.6 Distribution rules			2.7
Restrictions on activities / investments	**Leverage**	**Operative income**	**Capital gains**	**Timing**	**Sanctions**
- Public unit trusts investing in land, must do so for the purpose, or primarily for the purpose, of deriving rent (eligible investment business) - Public unit trusts that carry on a trading business, i.e. a business that does not wholly consist of eligible investment business, are not accorded 'flow through' treatment - May invest in a single property	Unlimited, subject to general thin capitalisation rules	Typical distribution of 100% of trust's income	Typical distribution of 100% of capital gains realised on disposal of property, including interests held in other sub-trusts or other entities	Annually	N/A
- The principal activity must be passive investments in real estate - A maximum of 20% of the total assets can be invested in one real estate project - Developments are allowed, but cannot be sold within five years of completion - The SICAFI is allowed to hold shares in subsidiaries investing in real estate - As an exception, the SICAFI is allowed to invest in transferable securities.	- Loans limited to 65% of the total assets - Interest expenses limited to 80% of the total income	80% of net profit	Not included in the distribution obligation, if reinvested within a four-year time period	Annually	Various penalties (not necessarily resulting in the loss of SICAFI status)
- 75% of equity must be invested in real estate - Other investments only in financial fixed income funds or fixed income securities - The FII may not manage or receive dividends from the business within its real estate investments	N/A	Minimum of the 95% of the profit (cash basis)	Minimum of the 95% of the profit (cash basis)	Every 6 month	Loss of tax exemption
- No more than 10% of the SPICs assets can be invested in mortgage bonds - Real estate investments must be located in Bulgaria	Short term loan cannot exceed 20% of income generating asset	90% of the net income of the year	Included in net income	Distribution until the end of the following business year required	Monetary penalties and a possible loss of SPIC status
- The investing in property (other than real property or an interest in real property) is allowed - The acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the trust is allowed - Any combination of the foregoing activities	N/A	All income of the MFT for a taxation year is paid or payable to unit holders in the year so that MFT does not incur tax	All capital gains are paid out, and retain their character as such, in the hands of unit holders provided a designation is made by the MFT	All income must be paid or payable in the taxation year of the MFT, but does not have to be paid out until later	Loss of MFT status
- Real estate (till 2012) - Subsidiaries allowed - Quotas or rights in real estate cooperatives - Development allowed	Liabilities may not exceed 50% of the fund's equity	At least 30% of the fund's annual profits	At least 30% of the fund's annual profits	Annually	Loss of FII status and liquidation possible
- The main activity must be the acquisition and/or leasing of real estate - 80% of property in real estate assets - The remaining percentage could be invested in other financial investments such as publicly traded securities. - No more than 25% of the REIF's income can derive from one individual or corporation that belongs to the same economic unit - There are some limitations regarding the sale of the REIF's asset	- Loans for IFMC are limited to a 20% of their assets - Loans for funds are limited to 60% of their real estate property and 10% of any other securities owned by the fund (this 10% cap is the same that applies to financial funds)	No requirement	No requirement	No requirement	Determined by SUGEVAL
- REIT is primarily aimed at investments in income generating real property - Property under development must not exceed 30% of the net assets value - REIT must derive income from two tenants or lessees - REIT can only invest up to 40% of ist total assets in assets other than real property or property related assets - REIT should receive the total income generated by the SPV (Special Purpose Vehicle) if it holds a real property via an SPV - REIT should own and control a minimum of 50% if entered into a joint property ownership arrangement - REIT's property ownership is restricted to the designated areas, which are available only to non-nationals - REIT's ownership of property outside Dubai and other GCC countries is bound by the same ownership restrictions mentioned above	Limited to 70% of the total net asset value	80% of annual net income	At discretion of the overseeing body	Annually	Detailed information not yet available

	1. General			2. Requirements				
				2.1	2.2		2.3	
Country	Enacted Year	Citation	REIT type	Key requirements	Legal form	Minimum share/ initial capital	Shareholder requirements	Listing mandatory
France (SIIC)	2003	- Article 11 of the Finance Act for 2003 - Administrative Guidelines from the French Tax Office	Corporate type, pure tax regime	- The election letter must be filed with the competent tax office for the parent company with a list of the subsidiaries which also elect - Subsidiaries list must be updated once a year	- Joint stock company - Partnership limited by shares	EUR 15 million	- Investors cannot hold more than 60% of share capital and voting rights - At the time of election, 15% of the share capital and voting rights must be held by investors, who individually own less than 2%	Yes
Germany (G-REIT)	2007	Law on German real estate joint stock companies with publicly quoted shares (Real Estate Investment Trust law – REIT law)	Corporate type	G-REIT: Registration with the Commercial Register Pre-REIT: Registration with the Federal Central Tax Office	Joint stock company	EUR 15 million	- 15% of the shares must be widely held (25% at the time of IPO) - A shareholder is not allowed to own directly 10% or more of the shares or the voting rights of the company	Yes
Greece (REIC)	1999	L.2778/1999 (REIT Law)	Corporate type (Shows some characteristics of a REIT)	- Prior operating licence issued by the Hellenic Capital Market Commission required - Functions are supervised and regulated accordingly	Joint stock company	EUR 29 million	Acquisition of shares by founders, shareholders, board members, CEOs and their relatives is not allowed	Yes
Hong Kong (HK-REIT)	2003	Code of Real Estate Investment Trusts	Trust type	- To be authorized by the Securities and Futures Commission (SFC) of Hong Kong - Appointment of a trustee - Appointment of a management company	Unit trust	No	No requirements	Yes
India	Draft for public comment stage	Draft for Public Comments SEBI (REIT) Regulations	Trust type	- Net worth of INR 50 million - 50% of the trustees independant - Real Estate Investment Management Company required - Official appraisal required	Trust	INR 50 million	No foreign participation	Yes
Israel (REIF)	2006	Sections 64A2–64A11 of the Israeli Tax Ordinance	Corporate type	- Special purpose company required - Controlled and managed from Israel	Public company traded in the Tel Aviv Stock Exchange (TASE)	No	At least 50% of the company's means of control should be held by more than 5 shareholders	Yes
Italy (SIIQ)	2007	Italian Real Estate Investing Corporations with listed Shares (SIIQ)	Corporate type	- The election E24 form must be filed before the end of the fiscal year preceding the one in which it is intended to take effect. - The opinion must be jointly exercised by all the companies that elected the SIIQ fiscal unit regime.	Joint stock company	EUR 40 million	- At least 35% of the shares must be "widely held" - A single shareholder is not allowed to own more than 51% of the voting rights	Yes
Japan (JREIT)	2000	Investment Trust law	Trust or corporate type (in practice corporate type)	- Building Lots and Building Transactions Agent Licence - Discretionary Transaction Agent Licence - Registration of the Asset management company with Financial Services Agency - Registration of the JREIT with the Financial Services Agency	Corporation (in practice)	JPY 100 million	- No requirements under the Investment Trust Law (ITL) - Special shareholder conditions in order to deduct dividend distribution under the tax law	No

2.4	2.5	2.6 Distribution rules			2.7
Restrictions on activities / investments	Leverage	Operative income	Capital gains	Timing	Sanctions
- Principal activity restricted to rent out the property - No required asset level - Real estate development may not exceed 20% of the gross book value	Thin-capitalisation rules	85% of tax-exempt profits	50% of capital gains	Annually	- Profit and gain exemption is denied for the financial year in which the distribution shortfall appears - Latent gains could be retroactively subject to a corporate income tax rate of 34.43% (including the 16.5% exit tax deduction)
- 75% immovable property requirement - 75% immovable property income requirement	The equity must equal at least 45% of the total asset value of immovable property (valuated at IAS 40)	90% of net income of the year	Deferral of 50% of the capital gains from real estate assets allowed	Distribution is required until the end of the following business year	- Several penalties - Loss of REIT status
- At least 80% of the total assets must be real estate - Investment in marketable securities should not exceed 10% of total assets - Greek REICs may invest in at least 90% of the shares of Societes Anonymes (A.E.) having as special purpose the real estate investments - Real estate assets serving its operational needs are limited to 10% of these assets plus real estate assets - May invest abroad. Investments in non EU-members states my not exceed 10% of total real estate investments may invest abroad - May invest in a single property	- Must not exceed 50% of the REICs assets - Must not exceed 25% of total real estate investments - Specific 10% of total net equity rule for the purchase of real estate	35% of its annual net profits	No obligation	Annually	- Violations may trigger the imposition of penalties - No loss of REIT status
- Must invest in real estate - Must hold the real estate for at least two years - Must not invest in vacant land or engage in property development activities - Must not acquire any asset that involves the assumption of any unlimited liability - May invest in foreign assets	Limitation to 45% of gross asset value	- 90% of annual net income after taxes	Specified in the trust deed	Annually	- De-listing - Loss of authorization
- Only allowed to invest in real estate - Prohibited to invest in vacant land or engage in property development - No more than 15% exposure in a single real estate	20% of total gross assets	90%	90%	Annual	
- 95% or more of the value of the REIF's assets must consist of income-yielding real estate and liquid assets (cash, deposit etc.) - 75% or more of the value of the REIF's assets must consist of income-yielding real estate - The value of the income-yielding real estate exceeds 200 million NIS (approximately $50 million) - 75% of the value of the income-yielding real estate must be located in Israel	Debit is limited to 60% of the income-yielding real estate's value	90% of its profits plus amount of depreciation	100% of its capital gain from disposal of real estate	- Distribution of the operating income must take place no later than April 30th of the following year - Distribution of the capital gain must take place in a period of 12 months from the sales date of the real estate	Loss of tax privilege
- 80% real estate asset requirement - 80% real estate income requirement	No specific restrictions	85% derived from real estate rental or leasing	Capital gains distribution requirements not yet implemented	Annually	Termination of tax benefits
- Merely an asset holding vehicle - Investment primarily in "Qualified Assets"	May only receive loans from qualified institutional investors	Greater than 90% of net income	Same as ordinary income	For the fiscal year	- Regulatory action - Cannot deduct dividend distribution

	1. General			2. Requirements 2.1	2.2		2.3	
Country	Enacted Year	Citation	REIT type	Key requirements	Legal form	Minimum share/ initial capital	Shareholder requirements	Listing mandatory
Lithuania (IC)	2008	Law on Collective Investment Undertakings	Corporate type	- Special collective investment undertaking status required - Licence from Lithuanian Securities Commission	Joint stock company or investment fund managed by a management company	150,000 LTL (approx. 43,500 EUR) 431,600 LTL (125,000 EUR) for the management company	No requirements	No
Luxembourg	2007	Law relating to specialised investment funds	- Contractual type - Corporate type	- Authorisation and ongoing supervision by the Luxembourg supervisory authority - Requirement for a depositary	- Contractual form (FCP) - Corporate form (SICAV, SICAF)	- EUR 1,250,000 - EUR 1,250,000	Well-informed investors (SIF's only)	No
Malaysia (Unit trust)	The Securities Commission had issued Guidelines on "Property Trust Funds" in 2002, which were superceded by the issuance of REIT Guidelines in January 2005. Further updates were issued by way of Guidance Notes issued in 2005, 2006 and 2007.	- Capital Markets and Services Act, 2007 ("CMSA") - Securities Commission (SC) Guidelines on REIT of 2005 - Malaysia Income Tax Act, 1967 ("MITA") - SC Guidelines for Islamic REITs of 2005	Trust type	- Registered trust - Trustees must be approved by the SC - Management company - Real estate held by the trust must be managed by a qualified property manager - Appoint a Shariah committee or a Shariah advisor (Islamic REIT)	Unit trust	RM 100 million	No requirements	No
Mexico (Mexican Trust)	- 2004 - Amended in 2007	Mexican Income Tax Law	Trust or corporate type	- Incorporation under Mexican Laws - Certificates - Mexican trustee	- Unit trust - Companies related to real estate	No	Only for non publicly traded Trusts: - At least 10 shareholders that are not related parties - Each shareholder may not hold more than 20% of the certificates	No
Netherlands (FBI)	1969	FBI (Art. 28 CITA)	In principle corporate type (pure tax regime)	Election in the tax return	- Dutch public company (BV) - Limited liability company (NV) - Open ended investment fund (FGR) - Comparable foreign legal entity	- BV: EUR 18,000 - NV: EUR 45,000 - FGR: None	If listed or licenced: - Taxable corporate entities may hold up to 45% of the shares - Individuals may hold up to 25% If not listed or licenced: - Individuals / non taxable corporate entities / listed FBIs must hold at least 75% of the shares - Single individuals may hold up to 5%	No
New Zealand (PIE)	1960 2007	- The Trustee Act 1956 - Unit Trusts Act 1960 - Income Tax Act 2007 (from the 2008-09 income year)	- Trust type - Corporate type (Shows some characteristics of a REIT)	- Registration of the trust with the Registrar of Companies - Issue of a registered prospectus	- Unit trust - Portfolio Investment Entity (PIEs)	No	- No restrictions for unit trusts or companies which are not PIEs - Restrictions apply to the number and type of investor/unit holder in a PIE	No
Pakistan (REIT)	January 31, 2008	Pakistan Companies Ordinance, 1984	Trust type	- Licence application to the Security & Exchange Commission of Pakistan - Appointment of a trustee & property valuer in accordance with the Regulations	- Management company: Public Limited Company	Rs. 50 million as prescribed by the SECP at the time of applying for licence. The paid up capital shall be further increase to at least Rs. 500 million within 30 working days of the registration of the REIT scheme.	None	Yes

2.4	2.5	2.6 Distribution rules			2.7
Restrictions on activities / investments	**Leverage**	**Operative income**	**Capital gains**	**Timing**	**Sanctions**
- No more than 20% of its net assets in securities of other companies; - No more than 30% of its net assets in a separate real estate asset or real estate company; - No more than 20% of its net assets in real estate under development; - No more than 40% of its net assets in a single real estate property and any assets required for its maintenance; - No more than 30% of its net assets in securities issued by single real estate company including liabilities arising from the transactions with real estate company involving derivatives; - No more that 30% of its net assets in the securities in the single real estate company and in the assets that such real estate company has invested in. - May invest in real estate abroad - Further restrictions apply	Limited to 75% of the net assets	No requirement	No requirement	No requirement	- No tax penalties - Administrative penalties - Revoking of the licence
Principle of risk-spreading	No quantitative restrictions	No obligation	No obligation	N/A	- Withdrawal from the official list - Dissolution and liquidation - Criminal penalties
- Different thresholds apply for unlisted and listed REITs and the Malaysian Islamic REIT - Additional restrictions for Islamic REITs	Borrowing may not exceed 35% of the net asset value	90% of total income	N/A	Annually	Various sanctions possible. Revocation of approval possible
- At least 70% of the business activities must be related to real estate investments - 30% or less of the business activities may be invested in Mexican Government debt securities or in shares of mutual funds investing in debt instruments	Thin capitalisation rules	95% of profits	95% of profits	Annually	- Tax incentives do not apply - May lose status as real estate investment trust
- FBIs are restricted to passive investment activities - Allowed to invest abroad	- 60% of fiscal book value of real property and - 20% of fiscal book value of all other investments	100% of taxable profit	Capital gains / losses can be allocated to a tax-free reserve	Within 8 month after the end of its fiscal year	Loss of REIT status
- No limitations if not PIE's - Diverse thresholds for PIE's	No specific restriction	No requirement, but taxation of not allocated income	No requirement	Annually	Loss of PIE status and loss of PIE tax treatment
- Investment shall only be made in real estate - Restriction on transferring ownership of controlling shares, merger and take-over - Restriction on obtaining management of another REIT scheme - Investment in vacant land for development purposes is allowed - Restriction on investing in unlisted securities & commodities	Not yet prescribed by the SECP	90% of the annual income	90% of the annual income	Annually	- Cancellation or suspension of REIT scheme - Remove trustee in the circumstances as stipulated in the Regulation - Remove valuer in the circumstances as stipulated in the Regulation - Impose fine

	1. General			2. Requirements 2.1	2.2		2.3	
Country	**Enacted Year**	**Citation**	**REIT type**	**Key requirements**	**Legal form**	**Minimum share/ initial capital**	**Shareholder requirements**	**Listing mandatory**
Philippines (REIC)	Pending in Cogress	Will be passed as a statute (Republic Art)	Corporate type	Registration with the Securities and Exchange Commission (SEC)	Joint stock corporation	PHP 100 Million (approx. TEUR 210)	- At least 1000 shareholders with at least 100 shares (must sum up to 30% of the outstanding capital stock)	Yes
Puerto Rico (REIT)	- Enacted in 1972 - Amended in 2000 and 2006	Puerto Rico Internal Revenue Code of 1994, as amended (PRIRC)	In principle, corporate type (election for tax status)	- Election with the tax return - REITs are regulated by the Puerto Rico Commissioner of Financial Institutions - Managed by one or more trustees or directors	Corporation, partnership, unit trust or association	No minimun capital	At least 50 shareholders or partners	No
Singapore (SREIT)	1999	- Securities and Futures Act - Code on Collective Investment Schemes - Property Funds Guidelines	Trust type or corporate type (in practice trust type)	- Formal advance ruling and/or tax exemption application has to be submitted - Listing for tax exemption	Company or unit trust	S$ 20 million	At least 25% of the REIT's capital has to be held by at least 500 public unit holders for listing	In principle not, but required for the various tax concessions
South Africa (PUT)	No specific year	Part V of the Collective Investment Schemes Control Act No 45 of 2002 Companies Act No 61 of 1973	Trust type (Shows some characteristics of a REIT) Company	- Managed by a management company incorporated or registered in terms of the Companies Act - A collective investment scheme is required to have an association licence - Compliance with the JSE Limited regulatory requirements for securities exchange listing - Registered in terms of and comliance with the Companies Act	PUT Usually unit trust PLS Company	No No	PUT No requirements PLS No requirements	Yes No
South Korea (REIC)	2001	Real Estate Investment Company Act	Corporate type	Approval from the Ministry of Land, Transport and Maritime Affairs	- Joint stock company (General REIT, REIC) - CR-REIT: Special purpose company	KRW 10 billion	A shareholder may not own more than 30% of the shares	Yes
Spain (RECII)	1984 / 2003	Law 46/1984 of Dec. 26	Corporate and trust (Shows some characteristics of a REIT)	- National Stock Exchange Commission (CNMV) authorization - Administrative Registry	- Fund - Corporation	EUR 9 million	100 shareholders/investors minimum	No
Taiwan (REIT)	2003	Real Estate Securitization Act	Trust type	Trustee shall submit certain documents to the competent authority (the Ministry of Finance) for approval or effective registration	Public company	Depending on the scope of business engaged by the trustee (ranging from NT$ 300 million to NT$ 2 billion)	- Certificates shall be held by at least 50 persons for at least 335 days during a fiscal - Any five certificate holders shall not own more than ½ of the total value of the certificates issued	No
Thailand (PFPO)	1992	Securities and Exchange Act B.E. 2535	Fund type	- PFPO can only be established and managed by an Asset Management Company (AMC) through a Public Offering - AMC must be licenced by the Thailand Ministry of Finance	Closed-ended fund	Baht 500 million	- At least 250 unit holders are required for an IPO - At least 10 unit holders are required after SET listing - No more than 33.33% of unit holders can be related persons	Yes

2.4	2.5	2.6 Distribution rules			2.7
Restrictions on activities / investments	Leverage	Operative income	Capital gains	Timing	Sanctions
- At least 75% income producing real property in the Philippines required. - Must not undertake property development. - May hold real estate through unlisted SPV.	Shall not exceed 35% of deposited property.	90% of ist distributable income	Capital gains from the sale of stock of domestic corporations are not included in distributable income since they have already been subjected to final tax. Other types of capital gains are included in distributable income if they have been realised and have not been reinvested by the REIC within one year from the date of sale.	Annually	- Revocation of tax incentives - Liability for surcharges and penalties under the Tax Code
- At least 95% or more of gross income must be qualifying income - At least 75% or more of gross income must be qualifying domestic income - At least 75% of the value of total assets must be represented by real estate assets, cash or equivalents, and securities and obligations of Puerto Rico - Not more than 25% of the value of total assets must be represented by securities other than those mentioned above	No restrictions	90% of net income must be distributed as taxable dividend	Included in net income	Annually	- Loss of REIT tax exemption - Loss of REIT status
- At least 75% of the REIT's deposited property should be invested in income producing real estate - No property development activities unless the REIT intends to hold the developed property upon completion - May invest in foreign assets - Should not derive more than 10% of its revenue from sources other than rental and other specified sources	Aggregate leverage should not exceed 35% of REIT's deposited property (this leverage limit may be increased to a maximum of 60%)	90% of eligible income	Not required	- Annually or - Semi-annually or - Quarterly	De-listing of REIT and withdrawal of tax exemption
- PUTs may invest in shares of property companies and in immovable property and other property as determined by the registrar - May invest in foreign assets - PLS No restrictions other than those imposed in terms of the memorandum and articles of association	- PUT Debt financing is limited to 30% of the value of the underlying assets - PLS Debt financing is limited by the memorandum an darticles of association, and the Companies Act	PUT No requirement PLS No requirement	PUT Capital gains must be reinvested PLS No requirement	N/A N/A	PUT and PLS - Non compliance with the Collective Investment Schemes Act - Non compliance with the JSE requirements - Non compliance with the Companies Act
- 70% must be invested in real estate - 80% must be invested in real estate, real estate related securities and cash - Can invest in real estate development within 30% of its assets if listed - Cannot acquire more then 10% of voting shares in other companies	Maximum Debt: Equity ratio of 2:1	90% or more of distributable income	Included in operative income	Depends on Articles of Association	- Imprisonment penalty - Fine not exceeding KRW 50 million - Revoke the establishment of REIT
- 50% of assets must consist of residential real estate and/or residence for students or the elderly - Minimum of three-year investment period - 35% of value of total assets may be invested in a single real estate asset - Development for rental purposes allowed - 15% threshold for investments in real estate subsidiaries - 10% (REIFs) and 20% (REICs) of total assets may be invested in listed companies	Third-party financing limited to 50% of the RECIIs assets	No requirement	No requirement	No requirement	- Loss of tax benefits - Loss of RECII status
Investment in real estate, related rights of real estate, securities of real estate, as well as other investment objects approved by the competent authority.	The competent authority may prescribe an upper limit of the ratio regarding the money borrowed by the Trustee	Pursuant to the REIT contract	Pursuant to the REIT contract	Within six months after the closing of the fiscal year	Transfer REIT to other trustee
- 75% of the net asset value invested in property - Property must be at least 80% complete - Property must be located in Thailand - The PFPO cannot purchase real property in dispute - Property insurance required - AMC must conduct feasibility studies before investment decisions are made - AMC must appoint a property appraiser, property prices are based on appraisals - Property re-evaluation every two years	Borrowing is prohibited	90% of net profit	90% of net profit	Within 90 days of the end of each accounting period	N/A

	1. General			2. Requirements 2.1	2.2		2.3	
Country	Enacted Year	Citation	REIT type	Key requirements	Legal form	Minimum share/ initial capital	Shareholder requirements	Listing mandatory
Turkey (REIT)	1995	- Capital Markets Law - Communiqué on Principles Regarding Real Estate Investment Companies, Serial VI No. 11	Corporate type National Stock Exchange Commission	- Regulated and closely monitored by the Capital Markets Board (CMB) - Statues must be in accordance with the law and the procedures of the Communiqué - Founders must have no records of legal prosecution due to bankruptcy or other offences - The statutory auditors of the company must be Turkish citizens	Joint stock company	TRY 8.4 million	Only for company founders	Yes
UK (UK-REIT)	2007	Finance Act of 2006 and subsequently issued regulations	Corporate entity	- Election must be filed prior to conversion - Certain conditions for REIT status	Listed closed-ended company	GBP 50,000 (if listed in UK)	- Not “close company” - A single corporate shareholder may not own more than 10% of the shares/ voting rights - No restriction on foreign shareholder	Yes
USA (US-REIT)	1960	Internal Revenue Code	Corporate type	Entities must file Form 1120-REIT with the Internal Revenue Service	Any legal US entity taxable as a domestic corporation	No	At least 100 shareholders - five or fewer individuals or foundations may not hold more than 50% of the shares - No restriction on foreign shareholders	No

2.4 Restrictions on activities / investments	2.5 Leverage	2.6 Distribution rules: Operative income	Capital gains	Timing	2.7 Sanctions
- Only transactions permitted by the Communiqué are allowed - Must primarily deal with portfolio management - 75% of the assets must consist of assets mentioned in their titles and/or articles of association - Cannot be involved in the construction of real estate - Cannot commercially operate any hotel, hospital, shopping center, etc. - Cannot provide services by its personal to individuals or institutions	Short-term credits limited to three times the net asset value	- Minimum 20% as first dividend ratio - Articles of association indicate the dividend ratio	Will be regarded within the distributable profit	Annually	- Modification of the articles of association to exclude real estate investment trust operations - Possible company liquidation
- More than 75% of the net income profit must be derived from the property rental business - More than 75% of the assets must be used in the property rental business - Must hold at least three separate assets - No one asset may exceed 40% of the total assets - May invest ouside the UK	Interest cover test	90% of tax-exempt profits	Not included in the distribution obligation	Within 12 months	Tax charges not necessarily resulting in the loss of the REIT status
- At least 75% of its assets must be real estate, government securities or cash - 75% asset test and 75% and 95% income tests - Can not own more than 10% of another corporation's stock other than in another REIT or a taxable REIT subsidiary (ownership of a 100% owned qualified REIT subsidiary is ignored) - No more than 5% of the value of its assets can be represented by securities of any one issuer other than another REIT or a taxable subsidiary (ownership of a 100% owned qualified REIT subsidiary is ignored) - Can not own more than 20% (2009: 25%) of its assets in securities of one or more taxable REIT subsidiaries	No	At least 90% of its taxable ordinary income	Not required to distribute	Annually	- Various penalties - Possible loss of REIT Status

	3. Tax treatment at the level of REIT					4. Tax treatment at the shareholder's/unit holder's level	
	3.1 Corporate tax			3.2	3.3	4.1 Domestic shareholder / unit holder	
Country	Current income	Capital gains	Witholding tax	Conversion into REIT status	Registration duties	Corporate	Individual
Australia (LPT)	Not taxable in the hands of the trustee provided the unit holders are presently entitled to the trust's trust income	- Tax treatment of capital gains similar to that of ordinary income - 50% CGT discount may be available	N/A	N/A	- No duty on capital contributions - Stamp duty of up to 6.75% on the transfer of property or transfer of units in unlisted property trust. - No duty on transfers of units of listed trusts	- 30% tax on share of the trust's worldwide taxible income, including capital gains - Capital gains on disposal of units taxed at 30%	- Tax at rates of up to 46.5% on share of the trust's worldwide taxable income - 50% CGT discount may be available on capital gains distributed and on disposal of units
Belgium (SICAFI)	The eligible rental income is excluded from the taxable basis	Tax-exempt	N/A	- Real estate assets are to be assessed at market value - 16.995% tax on capital gains	- No capital duty - Real property transfer tax of 10% or 12,5% (may be reduced to 5% if the SICAFI buys real estate and 10% or 12.5% if the SICAFI sells real estate)	Dividends and capital gains are fully taxable, but if dividend participation regime applies, dividends are 95% tax free and capital gains are fully tax-exempt	- Withholding tax on dividends is final levy - In principle, capital gains are tax-exempt
Brazil (FII)	- Revenue from real estate activities are tax-exempt - Revenue from other investments are subject to withholding income tax	Revenue from real estate activities are tax-exempt	Revenue from real estate activities are exempt	N/A	N/A	- Final withholding tax of 15% to 22.5% over units' revenue - Final withholding income tax of 20% over capital gains	- Final withholding tax of 20% over units' revenue and capital gains - Income may be exempt from witholding tax if special conditions are met
Bulgaria (SPIC)	Tax-exempt	Tax-exempt	N/A	N/A	- Transfer tax of 2 - 4% - Land Registrar Entrance Fee of 0.1%	Distributions and capital gains are tax-exempt	- 5% withholding tax on distributions is the final levy - Capital gains are tax-exempt
Canada (MFT)	An MFT is entitled to deduct in a year all income determined for purposes of the ITA paid or payable to unit holders in the year so it may reduce its net income to nil	Capital gains follow the same system for income except only 50% of a capital gain (a "taxable capital gain") is included in income and 50% of a capital loss can be applied to offset taxable capital gains	Credit or refund of foreign withholding tax possible.	N/A	Real estate transfer tax	Taxable	Taxable
Chile (FII)	Tax-exempt	Tax-exempt	N/A	No regulations	Notary fee and register fees	- Distribution received tax-exempt - Capital gains on disposal of units taxation subject to circumstances	- Personal income taxes - Capital gains taxation subject to circumstances
Costa Rica (REIF)	5% on gross income	5% on net amount	N/A	N/A	Transfer tax exemption	Tax-exempt	Tax-exempt
Dubai (REIT)	N/A	N/A	N/A	N/A	- Transfer fee of 1.5% – 7% - Land registration fees	N/A	N/A
France (SIIC)	Eligible income tax-exempt	Eligible capital gains tax-exempt	- In principle domestic sourced income not subject to witholding tax - The taxes withheld on foreign sourced income could be credited if a double tax treaty allows	- Exit tax payment - Tax losses carried forward are deductible from exit tax basis - Remaining losses are cancelled	- Notary and land registration fees - VAT and/or registration duties	- Dividends and capital gains are taxed at a standard rate of 34.43% - Return of capital is normally tax-free	- Capital gains and 60% of the value of the dividends are subject to French income tax - The return of capital is normally tax-free
Germany (G-REIT)	All income is tax-exempt	Capital gains are tax-exempt	Reduced withholding tax on distributions to the G-REIT	- 50% tax exemption on disposal of eligible assets to the G-REIT or pre-REIT - 50% tax exemption on conversion into a G-REIT for eligible assets	Real estate transfer tax	Fully taxable	- In general final withholding tax of 25% plus a 5.5% solidary surcharge on the withholding tax, totalling 26.375%

	4.2 Foreign shareholder / unit holder			5. Tax treatment of foreign REIT		
Withholding tax	**Corporate**	**Individual**	**Withholding tax**	**Foreign REIT**	**Corporate**	**Individual**
- There is no final withholding tax imposed - Trustee may pay tax on behalf of beneficiary in certain circumstances - Withholding at 46.5% is required where an Australian tax file or business number is not quoted	- Non-resident unit holders are subject to Australian tax at corporate tax rate of currently 30%, on their share of the trust's taxable income that is attributable to sources within Australia - Capital gains on non real property are tax-exempt	- Non-resident individual unit holders are subject to Australian tax on a progressive scale starting at 29%, on their share of the trust's taxable income that is attributable to sources within Australia - Non-resident unitholders in a "managed investment trust" are subject to a flat non-final Australian tax at 30% - Capital gains on non real property are tax-exempt and taxable capital gains may be eligible for a 50% discount	Dividend and interest paid to non-resident unit holders is subject to a final withholding tax in accordance with domestic rules/ treaty rules, on dividends or interest	Similar to Australian Trust however with modifications	Like corporate unit holder of Australian trust	Like individual unit holder of Australian trust
- 15% final withholding tax - Special rules for SICAFI investing in Belgian real estate for private accommodation - Participation privilege for domestic corporate shareholders	- 15% withholding tax - At certain conditions 0% witholding tax - Capital gains tax-exempt	- 15% withholding tax - At certain conditions 0% witholding tax - Capital gains tax-exempt	- Tax treaty relief available - Parent-Subsidiary Directive applicable	No specific tax privilege	No specific tax privilege	No specific tax privilege
Unit holders may credit witholding tax paid by the FII on revenues other than from real estate activities. Credit not possible if Laws 11.033/04 and 11.196/05 applicable	- Withholding tax of 15% over the units' revenue - Withholding tax of 15% over the capital gains	Equal to the corporate unit holder	Tax treaty relief available	Taxed with 15% withholding tax on income and capital gains	Information not available	Information not available
To credit witholding tax is not possible	- Dividends are subject to a 5% withholding tax - Possibility of dividend tax reduction - Capital gains tax-exempt	- Dividends subject to a 5% withholding tax - Possibility of dividend tax reduction - Capital gains are tax-exempt	- Treaty relief might apply - Parent Subsidiary Directive not applicable	Local rental income is subject to a withholding tax of 10%	No tax privileges	No tax privileges
N/A	- To the extent the distribution is made out of the REIT's income, the withholding tax is imposed at a statutory rate of 25% - Tax exemption for capital gains	- To the extent the distribution is made out of the REIT's income, the withholding tax is imposed at a statutory rate of 25% - Tax exemption for capital gains	Tax treaty relief available	Taxed on Rental income and gains	Fully taxable	Fully taxable
N/A	- Dividends subject to a 35% withholding tax - Taxation of capital gains depend on circumstances	- Dividends subject to a 35% withholding tax - Taxation of capital gains depend on circumstances	In principle no tax treaty relief available	- General rules for local rental income applies - 10% income tax if special rules followed	Likely to be treated as a normal dividend from a non-resident company	Likely to be treated as a normal dividend from a non-resident company
N/A	Tax-exempt	Tax-exempt	N/A	Taxed under normal CR tax rules	Dividends taxable at rate of 15%	Dividends taxable at rate of 15%
N/A	Detailed information not yet available	N/A	N/A	Detailed information not yet available	Detailed information not yet available	Detailed information not yet available
N/A	- Final withholding tax for dividends - 15% in the case of substantial participation	- Final withholding tax for dividends - 15% in the case of substantial participation	- Generally 25% withholding tax (or a reduced treaty tax rate) - EU Parent-Subsidiary Directive not applicable	Election for SIIC regime possible	Same treatment as domestic shareholders of SIIC	Same treatment as domestic shareholders of SIIC
- Final withholding tax for privately held shares - Otherwise creditable/ refundable withholding tax	- Final withholding tax for dividends - Generally, tax exemption for capital gains	- Final withholding tax for dividends - Generally, tax exemption for capital gains	25% plus a 5.5% solidarity surcharge, resulting in a rate of 26.375% (or a reduced treaty tax rate or a reduced withholding tax rate for foreign corporate shareholders) - EU-Parent-Subsidiary Directive not applicable	Fully taxable	Like dividends from G-REIT if foreign REIT is a qualifying REIT	Like dividends from G-REIT if foreign REIT is a qualifying REIT

	3. Tax treatment at the level of REIT 3.1 Corporate tax			3.2	3.3	4. Tax treatment at the shareholder's/unit holder's level 4.1 Domestic shareholder / unit holder	
Country	**Current income**	**Capital gains**	**Withholding tax**	**Conversion into REIT status**	**Registration duties**	**Corporate**	**Individual**
Greece (REIC)	Assets and funds taxes at 10% of European Central Bank (ECB) interest rates plus 1%	- Tax-exempt	N/A	Tax benefits upon absorption of real estate companies.	Exemption from any Greek tax and stamp duties	Tax-exempt	Tax-exempt
Hong Kong (HK-REIT)	- 16.5% at SPV level - Dividends from SPV tax-exempt - Foreign sourced income tax-exempt	N/A	N/A	N/A	Stamp duties	Tax-exempt	Tax-exempt
India	No information available	No information available	No information available	N/A	Stamp duty between 5% to 15%	- No information available	- No information available
Israel (REIF)	- No taxation of distributed eligible income - Undistributed prohibited income subject to 60% tax rate. In case of distribution 70% tax rate	Distributed capital gains tax-exempt	- Deduction only if levied on taxable income - No domestic withholding tax	N/A	Reduced real estate "purchase tax"	- Corporate tax is 27% in 2008 - Capital gains tax is 25%	- Individual tax rate is 47% in 2008 - Capital gains tax is 20%
Italy (SIIQ)	Eligible income is tax-exempt	Ordinary corporate taxation	N/A	- 20% substitute tax on real property contributed to SIIQ - 20% substitute tax on conversion "entry tax"	- Industrial buildings: subject to a 20% VAT and to 8.5% transfer taxes - Residential buildings: subject to 8.5% transfer taxes with some exceptions - Registration duties can be avoided	Fully taxable	- Generally withholding tax is the final levied for SIIQ exempted income - Dividends paid-out of the non-exempted income will be subject to ordinary dividend taxation rules - Possible taxation of capital gains
Japan (JREIT)	- Corporate tax of 42% - Dividends are deductible from taxable income	Follows the same system as ordinary income	- Japanese withholding tax can be credited (refundable) - Foreign income taxes including withholding tax can be credited against Japanese withholding tax imposed on distributions to the shareholders	N/A	- Real property acquisition tax (favourable rate can be applied) - Registration tax (favourable rate can be applied) - Consumption tax	Standard corporate tax rate	- In practice, final withholding tax of 10% for individual shareholders
Lithuania (IC)	- Investment income (e.g.rental income, capital gains upon disposal of property and shares) is tax-exempt - Dividend income or any other income from distributed profits and other business income subject to 15% profit tax. - Participation exemption might apply	Tax-exempt	In principle creditable	N/A	- Land registration fee and real estate registration fee apply - Notary fees are 0.45% of the value of property capped at approx. 5,800 EUR	- In principle final withholding tax of 15% - Participation exemption might apply - Generally, capital gains are subject to 15% income tax	- Final Withholding tax of 15% - Generally, capital gains are subject to 15% income tax
Luxembourg	Tax-exempt	Tax-exempt	Tax-exempt (exept Savings Directive)	- Capital duty (EUR 1,250) - Taxation of underlying assets or properties	Luxembourg real estate transfer tax (Max. 10%)	- Corporate income tax (max. 22%) combined with municipal tax (max. combined rate of 29.63%) - Net worth tax (0.5%)	Income tax (max. 38%)
Malaysia (Unit trust)	Tax-exempt if 90% of total income is distributed	Tax-exempt	- Creditable for taxable income - Not refundable for non-taxable income	N/A	Stamp duty exemption	- 26% income tax on distributions (reduced to 25% in the tax year 2009 and onwards) - No capital gains tax	- 15% witholding tax final levy for distributions on income not taxed at level of REIT - Tax rates of 0-28% on gross income from distributions of income taxed at level of REIT. Such income carry a tax credit - No capital gains tax
Mexico (Mexican Trust)	Corporate income tax of 28% withheld by trustee	Corporate income tax of 28% withheld by trustee	N/A	Deferred taxation of contributions in the trust status	Local transfer tax	Corporate tax of 28% on distributions and capital gains from the sale of the certificates	- Income tax of 28% on distributions and capital gains from the sale of the certificates - Income from the sale of Trust certificates through Stock Exchange is tax-exempt

	4.2 Foreign shareholder / unit holder			5. Tax treatment of foreign REIT		
Withholding tax	**Corporate**	**Individual**	**Withholding tax**	**Foreign REIT**	**Corporate**	**Individual**
N/A	Tax-exempt	Tax-exempt	N/A	No specific tax privilege	No specific tax privilege for foreign corporate REIT type	No specific tax privilege for foreign corporate REIT type
N/A	Tax-exempt	Tax-exempt	N/A	Local tax rules apply	No taxation	No taxation
- No information available	- No information available	- No information available	- No information available	N/A	N/A	N/A
In principle, no final withholding tax	- Witholding tax subject to tax rates applicable for Israeli companies - “Prohibited income” which is not distributed subject to 60% tax	- Witholding tax subject to tax rates applicable for Israeli individual - “Prohibited income” which is not distributed subject to 60% tax	- Final withholding tax - Treaty relief available to distributions of prohibited income in later years	Taxed under normal Israeli tax rules	- Taxed at corporate tax rate of 27% in 2008 if REIT is a “flow through entity” - Dividend is subject to 25% tax, if the REIT is not a “flew throught entity”	- Taxed at 47% in 2008 if REIT is a “flow through entity” - Dividend income will be subject to 20/25% tax if the REIT is not a “flew throught entity”
- 20% withholding tax of the distribution of exempted SIIQ income - Corporate and business shareholders can credit the withheld taxes	Withholding tax is the final levy	Withholding tax is the final levy	- Treaty relief benefits not yet verified - Applicability of Parent Subsidiary Directive not yet verified	It follows the ordinary source taxation rule at rate of 27.5%	1.375% final taxation	12.5% final tax or 60% of exemption depending on the number of the shares held
- In principle, withholding tax of 7% for corporate shareholders - In principle, withholding tax of 10% for individual shareholders - Shareholders can credit the withholding tax levied, if withholding tax is not final	Withholding tax is final levy	Withholding tax is final levy	- In principle 7% withholding tax for corporate and individual shareholders - May benefit from tax treaties	No favourable treatment	No favourable treatment	No favourable treatment
Creditable	- Final withholding tax of 15% on dividends (may be reduced to 0%) - Capital gains are tax-exempt	- Final withholding tax of 15% on dividends - Capital gains are tax-exempt	- Local participation privilege available - Treaty benefits available - Parent-Subsidiary-Directive applicable	Rental income shall be subject to 10% withholding tax	- Dividends are subject to 15% profit tax (may be reduced to 0%) - Generally, capital gains are subject to 15% profit tax	- Residents income tax of 15% on dividends - Generally, capital gains are subject to 15% income tax
N/A	No taxation	No taxation	N/A	Net worth tax	Fully taxed	Fully taxed
No withholding tax levied on distributions to corporate unit holder. 15% withholding tax on resident individual investors	- 26% for 2008 (reduced to 25% in the tax year 2009 and onwards) - 20% for institutional investors	15% for individuals	No specific relief available	Taxation subject to Double Tax Treaty	Tax-exempt	Tax-exempt
- Withholding tax of 10%, only for individuals in the case of sale of Trust certificate - Withholding tax of 28% (corporate and individual) in the case of Trust’s distributions	Final withholding tax	Final withholding tax	- 10% withholding tax rate on Mexican real estate income received by foreign investors in the case of the alienation of the Trust Certificates - 28% withholding tax of (corporate and individual) in the case of Trust’s distributions	28% corporate income tax if resident. Otherwise taxation depends on tax treaty	Like coporate unit holder of a Mexican REIT	28% withholding tax

	3. Tax treatment at the level of REIT 3.1 Corporate tax			3.2	3.3	4. Tax treatment at the shareholder's/unit holder's level 4.1 Domestic shareholder / unit holder	
Country	**Current income**	**Capital gains**	**Withholding tax**	**Conversion into REIT status**	**Registration duties**	**Corporate**	**Individual**
Netherlands (FBI)	Real property income forms part of the taxable profit and is taxed at a 0%-rate (full exemption)	Capital gains/losses can be allocated to a tax-free reserve and are thus exempt from tax	Taxes withheld are refunded	- All assets/ liabilities are assessed at market value - Tax-free reserves should also be added to the taxable income - The "built-in"-capital gain is subject to CIT at a normal rate	- No capital duties - A real property transfer tax rate of 6% is applied if the FBI acquires or disposes real property or shares from/to real estate companies	Dividends and capital gains are taxable	Taxpayer is taxed on the basis of a deemed income
New Zealand (PIE)	Subject to standard corporate tax rate (30%)	Gains may be taxable depending on circumstances	Generally subject to resident withholding tax of 33%, reduced by the amount of imputation (franking) credits attached	Deemed disposal and re-acquisition of certain Australasian share investments at market value immediately before PIE election is effective	None	- Distributions of companies and unit trusts taxed at normal income tax rate - Distribution of a PIE: allocated PIE income taxed at normal income tax rate, with no tax on distributions from unlisted PIEs. Distributed from listed company or unit trust PIEs may be taxable dividends to the extent imputation or foreign dividend payment credits are attached	- Distributions of companies and unit trusts taxed at normal income tax rate - Distribution of a PIE: allocated PIE income taxed at 19.5% or 30% final levy with no tax on distributions unless NZ resident individual or trustee taxpayers elect to treat as taxable
Pakistan (REIT)	Tax-exempt, if 90% of net income distributed	Capital gains on immovable property are tax-exempt	- Tax exempt for received dividend, profit on debt (interest) or commission - Other withholding tax due can be avoided by exemption certificate	N/A	Stamp duty	- 5% (10%) witholding tax final levy - Capital gains tax-exempt	- 10% withholding tax final levy - Capital gains tax-exempt
Philippines (REIC)	Only non-distributed current income subject to taxation	Transfer of shares of stock of a domestic corporation subject to special rates of capital gains tax. Other types of capital gains are included in gross income.	Foreign withholding tax deductible or creditable Local withholding tax creditable	"Conversion" may be through a transfer of existing REIC-eligible assets to a REIC	Registration fees, VAT, DST, local withholding tax, and local transfer taxes	Distributions tax-exempt	- Final 10% withholding tax on dividends received.
Puerto Rico (REIT)	Eligible income is tax-exempt	Eligible capital gains are tax-exempt	Eligible income received by the REIT is not subject to withholding tax	No regulations	Stamp duties and register fees	- Final withholding tax on dividends - Capital gains are taxable	- Final withholding tax on dividends - Capital gains are taxable
Singapore (SREIT)	Eligible rental income tax-exempt	No tax imposed on capital gains	No foreign withholding tax refunds in case of tax-exempted income	N/A	- Stamp duties from 0.2-3%, remission under certain requirements - Goods and Service Tax may be applicable - No capital duty	- 18% corporate tax - Distribution out of capital gains generally not taxable - Capital gains are generally tax-exempt (exception for example trading assets)	- Current income distributions in principle tax-exempt - Distribution out of capital gains generally not taxable - Capital gains are generally tax-exempt (exception for example trading assets)
South Africa (PUT)	PUT - Distributed income tax-exempt - Non-distributed income is subject to a tax rate of 40% PLS - Corporate tax rate of 28%	PUT - Distributed income tax-exempt - Non-distributed capital gains are taxed with an effective tax rate of 20% PLS - Capital gains are taxed at an effective tax rate of 14%	PUT Foreign withholding tax depending on tax treaty creditable PLS Foreign withholding tax depending on tax treaty creditable	N/A	No specific rules	PUT - Distributed interest and rental income taxed as if income was directly received - Taxation of capital gains on disposal (if not dealer) 50% of the gain is included in taxable income (resulting in an effective rate of max. 14%). PLS - Interest income received taxed at corporate rate of 28%. - Dividend income exempt if unit holder is not a collective investment scheme - Taxation of capital gains on disposal (if not dealer) 50% of the gain is included in taxable income (resulting in an effective rate of max. 14%).	PUT - Distributed interest and rental income taxed as if income was directly received - Taxation of capital gains on disposal (if not dealer) 25% of the gain is included in taxable income (resulting in an effective rate of 7%). PLS - Interest income received taxed as individual tax rate - Dividend income exempt - Taxation of capital gains on disposal (if not dealer) 25% of the gain is included in taxable income (resulting in an effective rate of 7%).

	4.2 Foreign shareholder / unit holder			5. Tax treatment of foreign REIT			
	Withholding tax	Corporate	Individual	Withholding tax	Foreign REIT	Corporate	Individual
	- In principle withholding tax of 15% - Creditable	Only 15% withholding tax is levied	The 15% withholding tax is levied	- Tax treaty relief might apply - Parent Subsidiary Directive not applicable	A foreign REIT is tax-exempt	No specific tax privileges	No specific tax privileges
	- Up to 33% on distributions, reduced by imputation credits attached	30% tax rate	30% tax rate	- In principle 30% withholding tax, reduced to 15% to the extent imputation (franking) or similar credits are attached - Tax treaty relief available	- 30% Corporate tax - Treaty relief might apply	May be taxable under "CFC" or "FIF" regime	May be taxable under "CFC" or "FIF" regime
	No credit possible	- 10% withholding tax final levy - Capital gains tax-exempt	- 10% withholding tax final levy - Capital gains tax-exempt	No tax treaty relief available	35% tax on Pakistan source income	10% tax on dividend received	10% tax on dividend received
	- Final withholding tax for individual shareholders	10%	10%	Tax treaty relief available	Subject to taxation, unless there are applicable preferential rates or exemptions under tax treaties	Subject to taxation	Subject to taxation
	Withholding tax of 10% on dividends	- Final withholding tax on dividends - Generally, final withholding tax on capital gains	- Final withholding tax on dividends - Generally, final withholding tax on capital gains	- Withholding tax of 10% on dividends - Puerto Rico has not entered into any Tax Treaties	Foreign REIT can qualify for REIT status	No specific tax privilege	No specific tax privilege
	Generally no	Final withholding tax on current income distribution - Withholding tax is not applicable on distribution of tax-exempt income (e.g. foreign dividends) - Distribution out of capital gains generally not taxable	Distribution and capital gains in principle, exempted from tax	- 10% until 17 February 2010 on distributions to non individuals - No treaty relief available	Taxed under normal Singapore tax rules	Tax-exempt	Tax-exempt
	N/A	- Interest distribution tax-exempt - Rental income fully taxable - Capital gains taxed like domestic unit holder - Dividend income exempt if unit holder is not a collective investment scheme	- Interest distribution tax-exempt - Rental income fully taxable - Capital gains taxed like domestic unit holder	Tax treaty relief available	Same tax treatment as PUT and PLS company	Same tax treatment as income from PUT and PLS company	Same tax treatment as income from PUT and PLS company

	3. Tax treatment at the level of REIT					4. Tax treatment at the shareholder's/unit holder's level	
	3.1 Corporate tax			3.2	3.3	4.1 Domestic shareholder / unit holder	
Country	Current income	Capital gains	Withholding tax	Conversion into REIT status	Registration duties	Corporate	Individual
South Korea (REIC)	Income technically tax-exempt, if 90% distribution requirement met	Income technically tax-exempt, if 90% distribution requirement met, but in certain cases 33% capital gains surtax	- No withholding tax levied on domestic distribution - Entitled to claim a foreign tax credit with a certain ceiling of tax credit	N/A	- Acquisition tax - Registration tax	- Subject to corporate income tax and resident sure tax - No difference between current income dividend and capital gains dividend - Capital gains on disposal subject to ordinary income tax rate	- Withholding tax of 15.4% final levy if interest and dividend income does not exceed KRW 40 million - Capital gains tax-exempt if certain thresholds are met
Spain (RECII)	1% income tax rate	1% income tax rate	General withholding tax rules	N/A	95% exemption on Transfer Tax and Stamp Duty	Dividends and capital gains taxed at general rate	- Dividends and capital gains are taxed at the same 18% rate - Capital gains personal income tax applies. Exemption possible if reinvested in RECII
Taiwan (REIT)	Tax-exempt	Tax-exempt	Refundable	N/A	- There are registration fees for the formality of the Trustee - There are no tax/ fee/ duty imposed on the issuance of the beneficial securities	Current: - Withholding tax final levy on distributions Future: - the distribution may be consolidated into gross corporate income if the draft is approved by the Legislative Yuan Capital gains corporate tax-exempt, but subject to alternative minimum tax	- Withholding tax final levy on distributions - Capital gains tax-exempt
Thailand (PFPO)	Not subject to income tax, but a 12.5% Land and Building tax on rental income of immovable properties levied	Tax-exempt	N/A	No direct conversion to property fund status is allowed	Reduced transfer tax of 0.01%	- Generally distributions 50% (unlisted company) or 100% (listed company) tax exempt - 30% income tax on capital gains	- Income tax of 5-37% - If unit holder allows the fund to deduct 10% witholding tax, this withholding tax final levy - Capital gains tax-exempt
Turkey (REIT)	Tax-exempt	Tax-exempt	Credit/refund may be possible	In principle, no tax privilege	- Title deed fee of 3% - Stamp tax exemption - Transfer may be subject to VAT	Dividends and capital gains from share disposal subject to standard corporate income tax rate (20%)	- 50% of dividend subject to individual income tax (15% to 35%) - Capital gains in principle tax exempt
UK (UK-REIT)	- Rental income from tax-exempt property - Non tax exempt business is taxable in ordinary manner (30%)	Eligible property is tax-exempt	- In principle no witholding tax levied on domestic distributions (only on tax-exempt profit distributions) - If foreign income is taxable credit of foreign witholding tax possible	Conversion charge of 2% of the gross market value of property rental business assets	Stamp Duty Land Tax of between 1% and 4%	- Distributions of tax-exempt profits (PIDs) are treated as rental profits taxable at 20% - In most cases distributions of taxed income at level of REIT will be tax-exempt - Capital gains on disposal of REIT shares are taxable under normal capital gains rules	- 20% tax on PIDs (collected by way of the withholding tax) - Higher rate tax payers pay additional 20% through his tax return - Capital gains on disposal of REIT shares taxable in ordinary manner
USA (US-REIT)	Tax-exempt, if distributed	Tax-exempt, if distributed	- No refund of foreign withholding tax - It can credit a foreign tax as deduction	- "Built in gains" are taxable - Exemption is possible if assets held for 10 years	Transfer tax	Income, capital gains, and return of capital distributions are taxed at a rate of 35%	- Capital gain dividends are taxed at the maximum 15% rate - Return of capital is tax-deferred

	4.2 Foreign shareholder / unit holder			5. Tax treatment of foreign REIT		
Withholding tax	**Corporate**	**Individual**	**Withholding tax**	**Foreign REIT**	**Corporate**	**Individual**
- No withholding tax for domestic corporation - Final withholding tax of 15.4% for Korean individual residents on distributions	- Withholding tax of 27,5% - Can be reduced according to a tax treaty	- Withholding tax of 27,5% - Can be reduced according to a tax treaty	Tax treaty relief available	Tax privileged with its Korean rental income	No specific tax privilege	No specific tax privilege
Generally creditable	Dividends and capital gains are subject to the same 18% withholding tax rate	Same as corporate foreign shareholders	- Tax treaty relief might apply - Parent-Subsidiary Directive might apply	Case by case basis	Subject to taxation in Spain. Specific analysis of foreign REIT is required	Subject to taxation in Spain. Specific analysis of foreign REIT is required
Current: - Final withholding tax of 6% Future: - WHT rate of 10% may apply if the draft is approved by the Legislative Yuan	Final withholding tax of 6%	Final withholding tax of 6%	No tax treaty relief available	Investment income subject to withholding tax Capital gains are tax free	Corporate income tax	Need further clarification
- 10% or 0% withholding tax on distributions to an individual unit holder - No withholding tax levied on distributions to a corporate unit holder	N/A	N/A	N/A	Same as other foreign companies	- N/A	- N/A
General view: N/A	0% withholding tax	0% withholding tax	0% withholding tax	No tax privilege	No tax privilege	No tax privilege
Withholding tax is deducted at 20% on PIDs to individual shareholders. REIT shares held via a “tax wrapper” such as an ISA can be paid gross.	- 20% final withholding tax for PIDs - Disposal of shares in a UK REIT are outside the scope of UK capital gains tax	- 20% final withholding tax for PIDs - Disposal of shares in a UK REIT are outside the scope of UK capital gains tax	- Tax treaty relief available if claimed following receipt. Will be treated as a dvidend distribution under most treaties - Parent-Subsidiary Directive not applicable	Taxed under normal UK tax rules	30% tax on foreign income	20% or 40% tax on foreign income
N/A	- 30% on income dividends - 35% on capital gain dividends - 10% on return of capital	- 30% on income dividends - 35% on capital gain dividends - 10% on return of capital	Tax treaty relief available	Generally 30% withholding tax	- Dividend distributions are taxed at a rate of 35% - Return of capital is tax deferred	- Dividends are generally taxed at the 15% rate if foreign REIT is not a “PFIC” - Return of capital is tax-deferred

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