EPRA

European Public Real Estate Association

EPRA GLOBAL REIT SURVEY

A comparison of the major REIT regimes in the world.

REIT SURVEY

September 2004

An EPRA Tax Transparency Committee paper edited by Loyens & Loeff

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We would like to thank Patricia van Zwet for editing the English language of this document.

Preface

This is the updated version of the EPRA REIT Survey 2003 presented at our annual conference in Madrid. The survey broadens its reach, to include Canada and United States in North America, Belgium, France, Italy, The Netherlands in Europe, and Australia, Japan, Hong Kong, Singapore and South Korea in Asia/Pacific.

EPRA strongly supports tax transparent initiatives throughout Europe. In general, evidence shows that tax transparency has stimulated growth and development in available listed markets. Historically, tax transparent structures have provided a number of benefits. The beneficiaries include the governments, the companies, the institutional and private investors, and ultimately the tenants.

EPRA has, and will, support government initiatives wherever necessary in their preparations to introduce these tax transparent structures. The association is focused on the promotion, development and representation of the European listed real estate sector. Further, tax transparent structures deepen liquidity, meeting one of EPRA's long-term goals.

The sector has progressed in the last five years. Management teams are increasingly more professional, the implementation of EPRA Best Practices Standards has laid a common framework for transparency, and adherence to local corporate governance regulations, have combined, evolved into an extremely rewarding asset class for investors.
This report is aimed at building a fundamental knowledge of the available structures for the reader and is an excellent point of reference.

I would like to acknowledge the hard work of the members of the EPRA Tax Transparency Committee and extend my thanks and appreciation to all of the contributing parties, mentioned on the previous page.

Nick van Ommen
Chief Executive Officer EPRA

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Purpose and scope of this survey

Throughout the past decades, a number of countries have created special tax regimes allowing real estate investment companies to benefit from a "flow through" treatment. In this report, this type of tax regime for investment funds is referred to as the "REIT regime", after the US flow through regime which was (one of) the first flow through regimes in the world.

Many analysts[1] consider lack of tax transparency one of the major causes of the discounts at which real estate investment funds trade on the stock exchanges. A "tax transparent" (flow through) REIT regime is believed to have a positive influence on the value and development of real estate investment companies. Last year, the European property sector has seen the introduction of the SIIC in France. France, one of the largest and most important European real estate markets, has set a new example, re-opened discussions and given new impetus to the debate for increasing competition for and efficiency of capital within the sector. Earlier this year the UK government published a consultation paper setting the scene for a discussion with the property industry on the introduction of a UK REIT regime (referred to as a "PIF" in the UK). Also Germany is truely considering the introduction of a REIT-regime, albeit it did not seize the opportunity of the recent overhaul of its investment fund legislation to introduce such regime.

The Asia / Pacific region has witnessed the introduction of new REIT-regimes in Japan, Hong Kong, Singapore and South Korea over the past few years. Australia is the only country in these regions that has operated a REIT-regime for a long time.

The purpose of this report is not to make a macro economic analysis of the value of REIT regimes for the quoted real estate sector. It purports instead to analyse the REIT regimes in various European, Asian/Pacific and North American countries, and to enable a comparison of the characteristics of these regimes. The following countries are included in the survey:

- Europe:
  - Belgium
  - France
  - Italy
  - The Netherlands
- Asia/Pacific:
  - Australia
  - Hong Kong
  - Japan
  - South Korea
  - Singapore
- Northern America:
  - US
  - Canada

The report introduces the REIT regimes in the various countries with a brief description of their history. The conditions for eligibility for the regime are then discussed, followed by a description of the actual tax treatment of the REIT vehicles and their investors.

In clarifying the structures of the various regimes, identifying the various concepts and earmarking the main advantages and disadvantages of these regimes, we hope to be able not only to contribute to a better understanding of the advantages of REIT regimes but also to help find solutions to the major hurdles which confront professionals in the REIT sector. Moreover, a good understanding of the current regimes is a first requirement if we are to achieve harmonization of regimes.

The European part of the survey demonstrates that there are still many obstacles to overcome if a REIT is to invest/operate cross border in Europe. The Tax Transparency Committee of EPRA does not believe that a full harmonization of direct taxation, including the REIT tax regimes, will be achieved in the near future in the European Union. Member States are not willing to surrender their sovereignty in direct tax matters, simply because this directly affects their financial budgets.

However, there is a European institution that is slowly but surely driving Member States to clear away the main obstacles to a free flow of capital / investments in the EU. This force is the European Community Court of Justice in Luxembourg, which is delivering a growing number of decisions in which certain direct taxation measures of Member States are considered an infringement of the EC Treaty freedoms. In most cases, the issues concern tax measures that discriminate between domestic and foreign situations or hinder cross border flow of capital. As a result of the decisions of the EC Court of Justice, Member States are increasingly being obliged to amend their direct tax legislation to make it compatible with EU law. Moreover, the European Commission is stepping up its efforts to press Member States to end discrimination of foreign investors. The European Commission is doing so with the EC Court of Justice case law in its hands. Examples hereof are the official requests sent by the Commission to Germany and Austria asking these countries to put an end to the discrimination of foreign investment funds in their respective tax legislation.

EPRA's TTC sees this clearing of cross border hurdles as a form of gradual harmonisation of the capital markets in Europe. Accordingly, this development is of interest to the European quoted property fund sector. In the final paragraph of the European chapter of this survey, we endeavour to identify the elements of the European REIT regimes which are possibly incompatible with EU law.

[1] See, e.g., Goldman Sachs' equity research paper dated August 12, 2003, "UK Real Estate, taking the treasury angle".

1 - Europe

1.1 General introduction / history

Netherlands	BI	1969
Belgium	SICAFI	1995
France	SIIC	2003
Italy	FII	1994

Below, we briefly describe the origin of the various REIT regimes and the underlying principle behind the introduction of a REIT regime in each country.

Netherlands

The regime for the fiscal investment institution (fiscale beleggingsinstelling: hereafter also referred to as, 'BI') was introduced in the Dutch Corporate Income Tax Act of 1969. Before 1969, Dutch tax law contained a special regime that brought investments in certain portfolio investment companies under the scope of the participation exemption regime[2], provided certain conditions were met. The BI regime replaced this regime.

The underlying principle of the Dutch legislator for introducing the BI or investment institution was to provide for a vehicle through which individual investors could pool their portfolio investments. This vehicle would bring its investors into the same after tax position they would be in if holding the investment directly. As in the US, it was expected that the introduction of such regime would have a favourable influence on the real estate sector.

The BI regime is a pure tax regime. Unlike, for instance, the Belgian regimes, application of the BI regime is not dependent on satisfying certain regulatory requirements (security laws). BIs, which are listed or marketed to the public, fall under the supervision of the Dutch Financial Market Authority, as does any other investment fund. Dutch quoted BIs are amongst the biggest institutional real estate investors in Europe.

Belgium

On December 4, 1990 the Belgian government introduced new types of corporate investment vehicles that were subject to a favourable tax regime. Amongst them was the investment institution with a fixed capital. In 1995, the SICAFI (société d'investissement à capital fixe en immobilière) structure came into existence, an investment institution specific to real estate investments.

The Belgian legislator created a favourable tax regime for the SICAFIs in order to boost the development of Belgian real estate. Collective investment was very popular in Belgium; however, the Belgian legal and regulatory system only provided for limited possibilities to collectively invest in real estate at that time. One reason to introduce the SICAFI was to broaden these possibilities; another was to compete with similar vehicles in Luxembourg and the Netherlands.

The SICAFI is best described as a listed property fund with a fixed amount of corporate share capital whose role is to provide tax neutrality for collecting and distributing the rental income.

SICAFIs are subject to a specific regulatory regime. The rules governing SICAFIs can be found both in the regulatory laws and in the tax laws. SICAFIs are subject to strict supervision by the Belgian Banking and Finance Commission. Part of the tax regime of the SICAFI (e.g. with respect to its tax base) can be found in the abovementioned law of December 4, 1990. Other tax rules regarding the SICAFI can be found in the Belgian tax codes (e.g. income tax code, capital tax code).

[2] Under the participation exemption, dividends derived from and capital gains realized upon alienation of shares in a qualifying subsidiary are exempt from Duth corporation tax in the hands of the shareholder. Generally, the participation exemption applies if a Dutch corporate investor holds shares representing 5% or more of the nominal paid-up share capital of a subsidiary company.

France

The SIIC (société d'investissement immobiliers cotès) tax regime is new and entered into force in tax years closed in 2003.

According to the legislative history, the underlying principle for introducing the SIIC regime was twofold:

- To foster the development of French domestic real estate funds and in particular, to strengthen their position in the competition with Dutch, Belgian and German funds by aligning the French tax regime with the exemption regimes applicable in neighbouring countries;
- To generate non-recurring budget resources to help reduce the French deficit.

Conditions for eligibility for SIIC treatment and the characteristics of the SIIC tax regime are provided in the Finance Law for 2003, recently introduced regulation, and administrative Guidelines (Instruction) issued by the French tax administration on September 25, 2003.
SIIC come under the supervision of the Autorité des Marchés Financiers (AMF).

Italy

A pure REIT regime does not form part of the legal system of Italy. However, according to Italian law, investors may invest trough special funds (fondi di investimento immobiliare hereinafter, 'FII') whose purpose is to invest directly or indirectly in real property.

The FII regime has been introduced by Law on January 25, 1994. The legislation relating to FIIs underwent several changes since that date, both from a tax and non-tax point of view.

The underlying principle for the introduction of this favourable regime was to dispose of the real estate patrimony owned by the Italian Government. For these reasons, at the end of the year 2003, the tax regime of FIIs has been amended in order to make it more advantegeous both for domestic and foreign investors.

An FII is best described as a non-tax-transparent fund investing exclusively or predominantly in immovable assets, rights in rem in immovable assets and shareholdings in real estate companies. The FII is not a legal entity. From a technical standpoint, they are considered as a pool of investment held jointly by the unit holders. The unit-holders of FIIs are taxed only when a profit is distributed or when they dispose of their units.
The favorable regime applies to funds set up in Italy as FIIs and complying with all applicable Italian regulations set forth for FIIs. The FII is tax exempt. It is managed by a managing company (Società di gestione del risparmio hereafter referred to as an 'SGR').

1.2 Requirements

In addition to a distribution obligation, which is common to all the REIT regimes discussed in this report -save the Italian FII- , a variety of conditions are imposed by the various jurisdictions in order to be eligible for the beneficial tax regime. In the paragraph below, we analyze and compare the various types of conditions imposed by each of the countries.

1.2.1 Formalities / procedure

We first examine the formalities and procedures that must be complied with in order to be eligible for the regime.

Belgium

In this respect, the Belgian regime provides for one of the most complex and detailed rules. This is because the Belgian SICAFI is required to have a special regulatory investment fund status. In order to obtain such status, various conditions as laid down in a Royal Decree of April 10, 1995 must be met. The most important of these setting up requirements are the following:

1. The SICAFI must be registered on a list containing all of Belgium's recognized investment institutions. In order to be registered on such list, the SICAFI must file a request with the Belgian Banking and Finance Commission ('BCF') with a view of obtaining a licence. In order to obtain such licence, a SICAFI must demonstrate vis-à-vis the BCF that:
   - it has a qualifying legal form and a minimum share capital (see below);
   - it is incorporated for an unlimited period of time;
   - its directors and the management are reliable and have adequate professional experience;
   - it has an adequate administrative, accounting, financial and technical organisation which helps guarantee an autonomous management;
   - its daily management is under control of minimum 2 individuals who are also part of its board of directors;
   - it has a budget covering the first 2 years following its registration. This budget plan must allow the SICAFI to make its investments as planned;
   - it has a financial plan for the first 3 years following its registration on the abovementioned list of recognized Belgian investment institutions;
   - it calls upon one or more qualifying real estate specialists for the appraisal of its investments.
2. The articles of association of the SICAFI must contain a number of specific provisions (e.g. no possibility to derogate from the right of equal treatment in case of a cash contribution, provisions regarding the procedure for a contribution in kind, criteria regarding the diversification of the investments made by the SICAFI) and must be accepted by the Belgian Banking and Finance Commission.
3. The SICAFI must appoint a trustee who is accepted by the Belgian Banking and Finance Commission.

Netherlands

Formalities in the Netherlands are not complicated. A company can simply elect to apply the BI regime (provided the legal provisions are complied with) in its corporate income tax return, which is filed after the end of the year for which the BI regime is to apply.

France

In France, an eligible real estate investment company listed on a French stock exchange may elect for SIIC within 4 months from the beginning of the financial year in which the SIIC regime will apply for the first time. An election may also be made by any subsidiary directly or indirectly held at 95% at least by the SIIC parent and having a qualifying activity. Such qualifying corporate subsidiaries may decide not to elect immediately but rather, in a future year.

The company must send an election letter to the French tax administration before the end of the fourth month of the tax year for which the SIIC regime will first apply (for tax years closed in 2003, the election could be filed until September 30). Prior administrative approval is not required.

Italy

Since the Italian FIIs are special kinds of investment funds their setting up has to comply with a number of detailed regulatory provisions. Many of the regulatory provisions must be included in the by-laws of the fund. For instance, they must provide the modalities applicable to the profit distribution and the types of financial instrument in which the fund may invest.
Furthermore, the by-laws of FIIs must be scrutinized and approved by the Bank of Italy. If the Bank does not explicitly deny the approval within a four-month period after the by-laws have been filed, the approval is deemed granted.

Under certain circumstances, the filing of a prospectus might be needed. In particular, the prospectus must be filed if the units of the fund are offered to the public (the definition of "public offering" is laid down in the Italian regulatory provisions. For instance, the prospectus is not needed when the face-value of the units exceeds EUR 250,000, when the potential investors are more than 200, etc.).

1.2.2 Legal form / share capital [3]

Each regime has specific conditions as to the permitted legal forms that can be used for a REIT and/or the structure of its share capital.

[3] The conditions regarding the quality of its shareholders are discussed below under paragraph 1.2.3

Netherlands BI	Public limited (liability) company (NV), private company with limited liability (BV) or a unit trust (UK)/mutual funds (US) (fonds voor gemene rekening). Entity must be resident in the Netherlands. Minimum share capital for a B.V. is EUR 18,000 and for an N.V. is EUR 45,000.
Belgium SICAFI	Limited liability company or a limited partnership with shares under Belgian law. Company must be a resident of Belgium. Minimum share capital is EUR 1.25 mio.
France SIIC	Any entity that can be listed on a French stock exchange (domestic entities that can be listed consist of Sociétés Anonymes (SA - corporation) and Sociétés en Commandite par Actions (SCA - limited partnership by shares)). Minimum share capital is EUR 15 mio. No condition for the direct and indirect 95% corporate subsidiaries of a listed parent.
Italy FII	Closed-end or semi-closed-end funds.

Belgium

Belgian law prescribes that the SICAFI should have one of the above-mentioned legal forms under Belgian domestic corporate law and the company must be a Belgian resident.

France

French SIIC law does not contain a specific condition that the corporation must be incorporated under French law and/or that the company must be a French resident.

Companies electing for the SIIC regime as 95% subsidiaries of a listed SIIC parent only need to be subject to French corporate income tax. Any form of company which is subject to corporate income tax, either due to its legal form or under a tax election, may therefore elect, provided that it meets the activity test and is directly or indirectly held at 95% at least by a listed SIIC parent company.

This raises the question of whether companies incorporated under foreign law and/or resident outside France are potentially eligible for the SIIC regime. According to our information, the French tax administration has already agreed (formally in specific cases) to the fact that foreign companies listed on the Paris stock exchange and complying with the other SIIC conditions (although compliance with the distribution obligation would be harder to control) may elect for SIIC tax regime with respect to their French direct or indirect qualifying operations. The eligibility for SIIC tax regime is subject to the foreign company falling within the territorial scope of the French corporate income tax either (i) because it directly holds French real property, the income from which is taxable in France pursuant to an applicable double tax treaty, or (ii) because it has a permanent establishment in France to which shares in the relevant real estate French subsidiaries are allocated for tax purposes (the shares of subsidiaries must be recorded as assets of the branch for French tax purposes).

Netherlands

Dutch tax laws prescribe that a Dutch BI must be incorporated in the form of one of the above-mentioned entities under Dutch law and be a Dutch resident. The BI regime is also open to mutual funds (fonds voor gemene rekening), which do not have legal personality. Under certain circumstances, these mutual funds are subject to Dutch corporate income tax (called "open" funds). An "open" Dutch mutual fund may elect for the BI regime.

The question arises whether the requirements in Belgium and the Netherlands that the companies be incorporated under domestic law and resident in that country, is compatible with EU law. See section 1.5.2 for an analysis of this subject.

Italy

FIIs are formed through contribution or through subscription. Their legal form can be twofold:

- Closed ended FIIs. In case of a closed ended investment fund in its purest form, the entire amount of the capital is determined at the time of its being set up and cannot be subsequently modified. Furthermore, the units of the fund can only be reimbursed on dates determined in the by-laws (or at the end of the fund), although the SGR may - if the by-laws of the fund so provide - decide to reimburse the unit(s) sooner. Moreover, the unit-holders are not allowed to sell their participations to third parties. The duration of FIIs can vary between 10 and 30 years.

- Semi-closed ended funds. Very recently the Italian legislator introduced the possibility for closed ended FIIs to increase the value of its initial capital by issuing new units on the condition such an issue is provided for in the by-laws. These funds are referred to as semi-closed ended funds. On September 9, 2003 the Bank of Italy issued a Communication containing a statement indicating that if further units are issued, they must nonetheless be subscribed within the time limit of 18 months after publication of the prospectus.

FIIs have no share capital. However: (i) the by-laws of each FII must indicate the initial amount of capital that each unit holder must invest; (ii) in the near future, the Bank of Italy might issue regulations setting a minimum number of unit holders and a minimum value of each unit of the FII.

1.2.3 Listing requirements / shareholders' requirements

	Treatment of domestic shareholders (max/min of shareholders)	Mandatory listing on stock exchange
Netherlands BI	- Max. 45% of the share capital may be held directly or indirectly by a single entity – not being a listed BI - that is subject to tax. - Max. 25% may be held directly by a single non-resident shareholder and max. 25% indirectly by resident share-holders through non-resident entities	None
Belgium SICAFI	No restrictions	Mandatory listing. IPO must include a 30% public offering
France SIIC	No restrictions	The parent company must be listed on a French stock exchange.
Italy FII	No restrictions	None

Listing is a mandatory requirement to obtain REIT status under the Belgian[4] and French regimes. Under the Dutch and Italian regimes a REIT can either be listed or not listed. In Italy, various conditions are imposed regarding the quality and/or composition of the shareholders.

The background for the listing requirement (France and Belgium) and the shareholders' conditions (the Netherlands) is that the REIT vehicle should give small investors the possibility to pool their investments. In principle, measures should be taken to prevent REITs from being owned by a very small group of (corporate) investors. Hence, almost all countries impose restrictions to the effect that the REIT regime is only available in the event of a real estate investment fund with a variety of investors. In the Netherlands, this goal is achieved by imposing detailed shareholders' conditions. In France and Belgium, the mandatory listing is considered to achieve this objective. The question arises whether the SIIC condition of compulsory listing in France, as opposed to listing on any other EU stock exchange, is compatible with EU laws (see section 1.5.2).

The Dutch regime imposes the most complex shareholders' conditions. It is the only regime that imposes conditions on foreign shareholders which are more burdensome than those imposed on domestic shareholders. Vehicles listed on the Official Segment of the stock market of Euronext Amsterdam, have to fulfil the following requirements to be eligible for the BI regime:

- A single entity (including affiliated entities) that is subject to tax on income, or the profits of which are subject to tax on income at the level of its shareholders or participants, cannot own 45% or more of the shares in a BI[5]. This 45% test is not applicable to a shareholder that itself is a BI listed on the Amsterdam stock exchange (an Amsterdam listed BI can hold 100% of the share capital in another BI).
- None of the individual shareholders may have an interest equal to or in excess of 25%.
- The interest in the vehicle may not, through the interposition of a mutual fund or corporate entity that is not resident in the Netherlands, be ultimately held for 25% or more by entities resident in the Netherlands.
- The interest in the vehicle may not be held for 25% or more by a mutual funds or corporate entity resident outside the Netherlands.

[4] In order to qualify as a SICAFI the persons controlling the SICAFI must tell at least 30% of the voting shares to the public within one year after the registration on the list of recognized belgian investment institutions.
[5] Agreements regarding exercise of voting power are included in the 45% test.

Please note that different shareholders' tests apply to BIs that are not listed on the Amsterdam stock exchange. These fall outside the scope of this report.

The question arises of whether all the shareholders' conditions imposed on a Dutch BI are compatible with EU law (see section 1.5.2 below).

An Italian FII can either be listed or not listed. Hence, it is possible to set up an FII with only a few participants. Nevertheless, if the value of the units is low, Italian law requires the filing of a listing request. If the value of the units is below 25,000, such listing request is mandatory.

1.2.4 Asset level / Activity test

	Restrictions on activities / investments
Netherlands BI	The exclusive activity of the BI must be portfolio investment activities (passive investments in real estate).
Belgium SICAFI	The main activity of the SICAFI must be (passive) investment in real estate. Not more than 20% of assets can be invested in one real estate project. Developments are allowed, but cannot be sold within five years of completion. The bylaws may provide that the SICAFI can temporarily and additionally invest in securities and hold cash under certain circumstances.
France SIIC	The main activity of the SIIC must be (passive) investment in real estate. The SIIC may also engage into other activities, provided that they remain ancillary to the main qualifying activity: financial leasing is allowed but may not exceed 50% of the company's gross assets; other ancillary activities (real property development, brokerage, etc.) are also allowed but may not exceed 20% of the company's gross assets. The tax privileges do not apply to these other activities.
Italy FII	FIIs must invest mainly in real estate and real estate companies. Some activities, such as the lending of money and the investment in financial instruments issued by the SGR, are prohibited.

Netherlands

The company qualifying for the BI regime is required to be exclusively involved in portfolio investment activities (passive investments). This means that a minimum of activities that could be qualified as businesslike would already mean that the BI is conducting activities that fall outside the scope of the regime.

Portfolio investment activities include the regular investment activities, including investments in shares, bonds, other securities, and real estate properties. With respect to the latter investment objective, the company must restrict its activities to ´passive´ renting out of and investment in the properties. Also the shares in subsidiaries should qualify as passive investments, meaning that the subsidiaries' activities must also be restricted to passive investments.

A BI is entitled to self-manage its real estate portfolio. In other words, a BI can perform the commercial and technical management of its own properties and also conduct the management of its own portfolio of assets. However, there is no scope whatsoever for a BI to conduct, directly or indirectly, business like activities, or services/activities that are ancillary to the operating of the real estate as such. It is also not permitted to conduct property or asset management activities for third parties. The range of related activities described above, for example, that a US REIT can perform also for third parties via a taxable subsidiary, are non-qualifying activities for a BI.

The Dutch tax authorities do not consider participating in real property development activities, even if such activities are aimed at developing properties for the own portfolio of assets, a portfolio investment activity. They hold the view that such activities would jeopardize the BI status. Debate is ongoing between the Dutch BI community and the Dutch tax authorities as to whether a BI can conduct, within certain limits and subject to certain conditions, development activities for its own portfolio, provided the developed properties are to be held for the long term.

Belgium

The SICAFI must invest in immovable property. The term immovable property includes:

- real estate in its literal sense
- option rights on real estate
- shares in affiliated companies investing in real estate
- real estate certificates

However, to a limited extent the SICAFI is allowed to invest in movable property, provided that the articles of association authorize such investment.

The investments must be differentiated in order to ensure spreading of the (investment) risks. Therefore, a SICAFI cannot invest more than 20% of its total assets in immovable property (project) that qualifies as one single risk for the SICAFI. A SICAFI may also develop real estate, however in that case, the SICAFI is obliged to hold the completed developments for at least five years.

A SICAFI itself is entitled to conduct the management of its properties/portfolio.

A SICAFI may invest in immovable properties through subsidiaries. A SICAFI may also invest in foreign countries, either directly in foreign properties or via domestic or foreign subsidiaries.

France

The main activity and object of a French SIIC must be the acquisition and/or erection of buildings for leasing purposes and/or the direct or indirect ownership in partnerships and corporate subsidiaries having a similar purpose. The income of qualifying partnerships is taxable at the level of the members and therefore exempt if such members are themselves exempt under the SIIC regime. Qualifying corporate subsidiaries may elect for SIIC exemption if they are held at least for 95% by a qualifying listed SIIC. An SIIC may also engage in other activities - the income from which will be fully taxable - provided that they remain ancillary to the main qualifying activity. Qualifying ancillary activities may comprise notably:

- financial leasing of real property (crédit-bail immobilier), provided that the net book value of the out standing portfolio of buildings subject to financial leases does not exceed 50% of the total gross asset value of the company;
- 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 purposes of this 20% test, the value of buildings subject to financial leases is disregarded). Where these non-qualifying ancillary activities are performed through subsidiaries, only the book values of the participation in and current-account receivables on such subsidiaries must be considered for the purposes of the 20% test.

The qualifying activity may be carried out outside of France, either directly or through subsidiaries. In (exceptional) cases where income and gains from the ownership of real property located abroad would not be exclusively taxable in the foreign jurisdiction where the property is located, the SIIC corporate income tax exemption applies with respect to such income and gains.[6]

Italy

These matters are regulated by the Bank of Italy. In particular, the Bank of Italy provides that FIIs may not:

- Lend money in forms other than forward transactions on financial instruments. It is expressly stipulated that Funds investing in immovable property may lease the assets to third parties and a purchase option may be granted to the lessee;
- Sell short term financial instruments or other assets;
- Invest in financial instruments issued by the SGR;
- Invest in non-negotiated financial instruments issued by companies of the group of the SGR.

Even if normally closed-end funds are not allowed to conduct activities of building construction, according to a recent Regulation issued by the Bank of Italy, FIIs can deal with this kind of activity, directly or through controlled companies, provided these activities do not exceed 10% of the overall activity.

Nevertheless the literal translation of the regulatory provisions seems to allow FIIs to carry out such activity indirectly without limitations, for instance, by letting it out on contract to a construction company. Moreover, the text only refers to construction activities, whereas terms referring to similar activities other than construction (e.g., the change of the commercial destination and parcelling of real estate) are used elsewhere in the legislation governing FIIs.

[6] The SIIC may however irrevocably elect to exclude such foreign property from the scope of the exemption from French corporate income tax.

This could give rise to the conclusion that the prohibition does not cover activities that have not been mentioned. It is advised, however, to check upon future interpretation of this provision.
Besides the above-mentioned investment prohibitions, The Regulations of the Bank of Italy set out the following limitations on the activities of FIIs in order to guarantee an appropriate level of risk diversification. Please note that these limits apply in general to investment funds of whatever nature, it is fair to conclude that they apply also to FIIs:

- Immovable Property. The fund may not invest, directly or through controlled companies, more than one third (1/3) of its assets in one single asset having unitary, urban and functional characteristics;
- Financial Instruments. The fund may not invest in non-negotiated financial instruments of one single issuer for a value exceeding 20% of its assets. This limit is higher under particular circumstances. Moreover, if the financial instruments are issued by companies of the same group the limit is raised to 30%;
- Bank deposits. The fund may not invest more than 20% of its assets in bank deposits with one single bank (30% with banks of the same group).

1.2.5 Leverage

Netherlands BI	Limited to 60% of fiscal book value of real property and 20% of fiscal book value of all other
Belgium SICAFI	Limited to 50% of the SICAFI's assets at the time when the loan agreement is concluded.
France SIIC	Unlimited
Italy FII	Limited to 60% of the value of the real property and 20% of the value of other assets

The gearing limits set out by the various regimes differ. The French SIIC regime is characterized by having no gearing limits at all that are prescribed by law. The compulsory distribution may however affect the leverage capacity as, in practice, it may deprive the SIIC from the cash necessary to repay the debt to the principal. Furthermore, concerning the French SIIC regime, the leverage and financial expenses must be allocated between the tax-exempt and the taxable sectors to determine the taxable and tax exempt profits and gains. A net financial profit is always allocated to the taxable sector. Complicated rules laid down by the French tax administration govern the allocation of net financial expenses, to determine the taxable/exempt income as well as the amount of the distribution obligation.

The Dutch, Italian and Belgian regimes lay down specific restrictions on the leveraging of a REIT. The underlying principle of prohibiting high gearing is that a highly geared real estate portfolio is considered a speculative activity and, therefore, can no longer be considered a passive investment activity.

Under Dutch tax law, loan capital is defined as total debt borrowed (calculated on an ongoing and non-consolidated basis). The total loan capital must not exceed 60% of the fiscal book value of the real property[7] and 20% of the fiscal book value of all other investments. These gearing limits are tested under Dutch tax law on a non-consolidated basis. In practice, Dutch BIs often apply debt financing at various levels, meaning that the consolidated level of debt is in excess of the formal gearing limits.

The Belgian legislator aimed to protect the SICAFI from an excessive loan capital and prescribed that no more than 50% of the assets can be financed by means of loan capital[8]. This means that the total short-term and long-term debt of the SICAFI (as shown in its balance sheet) may not be higher than 50% of its assets at the time the loan is concluded. Furthermore, the annual interest costs of the company may not exceed 80% of the total sales, services and financial income earned.

Under Italian law loan capital may not exceed the following limits:

- General limit: The total amount of debt of the FIIs may not be higher than 60% of its immovable assets, rights in immovable property and shareholdings in real estate companies and than 20% of its other assets. It is explicitly stipulated that FIIs can apply loan capital - within the indicated limits - to 'carry out operational activities' of the assets in which the capital of the fund is invested. Operational activities include changing the commercial designation of the real estate as well as its parcelling.

[7] Whereby shares in subsidiary companies which predominantly hold real property. Such shares can therefore be leveraged with a maximum of 20 percent (in contrast to directly held real property, which can be leveraged up to 60 percent).
[8] Until january 2002, this limit was set at 33 percent. However in order to maintain a competitive international tax status, the Belgian legislator raised the limit to 50 percent.

- Advance reimbursement of units limit: Loan capital for advance reimbursement of units - within the limit indicated above - may not exceed 10% of the value of the fund.

1.2.6 Profit distribution obligations

	Distribution on operative income	Distribution on capital gain on disposed investments	Timing
Netherlands BI	100% of taxable profit	Capital gains / losses are allocated to a tax free reserve and do not form part of the taxable profit / distribution obligation)	The BI is obliged to distribute these profits within 8 months after the close of the financial year
Belgium SICAFI	80% of net-profit (in form of dividends)	Capital gains remain tax-free and are not included in the distribution obligation, provided the capital gains are reinvested within four years.	The distribution has to take place annually
France SIIC	85% of the profit resulting from leasing of real estate 100% of dividends received from a subsidiary having elected for the SIIC regime.	50% of capital gains from the disposal of either real estate or shares in real estate partnerships or shares in a subsidiary company that has elected for SIIC status	Operating income before the end of the tax year following the year in which it was realized and capital gains before the end of the second tax year following the year in which they were realized.
Italy FII	No obligation	No obligation	N/A

Belgium

In Belgium, the distribution obligation is equal to 80% of the annual earnings, which must be distributed in the form of dividends on an annual basis. The distribution obligation is reduced by the net instalments made on the loan capital. Excluded from the distributable earnings are the write-offs of participations as well as capital gains on the disposition of assets. However in the latter case, the capital gain must be reinvested in qualifying assets within four years. If the reinvestment is not made within this four-year period, the remaining capital gain will be treated as net profit and therefore, will become part of SICAFIs distribution obligation for that year.

France

The French regime has a profit distribution requirement, which also includes part of the capital gains realized at disposal of real properties (under the Dutch and Belgian regimes, capital gains can be fully reserved on a tax neutral basis).

The parent company and any corporate subsidiary which has elected for the SIIC regime must comply with the following mandatory distribution requirements:

- At least 85% of the tax exempt profits from the qualifying leasing activity (including profits realized by a directly owned partnership or pass-through entity) must be distributed before the end of the tax year following the year in which they are generated.
- At least 50% of capital gains from the sale of (i) real property (including sale of real property through a directly held partnership or pass-through entity), (ii) from the sale of participation in qualifying partnerships, and (iii) from the sale of participation in subsidiaries that have elected for the regime (including sale of such participation through a directly held partnership or pass-through entity) must be distributed before the end of the second tax year following the year in which they have been realized.
- Once received by the parent company or by a qualifying subsidiary that has elected for the SIIC regime, 100% of the compulsory distributions of exempt income and gains must be redistributed in the tax year following the year in which they are received.

The fully taxable profits and gains from the non-qualifying ancillary activities are not subject to any mandatory distribution. The distribution obligation in all events, is limited to the amount that can be distributed from a corporate law viewpoint. The excess, if any, is carried forward and must be distributed as soon as possible in subsequent years.
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 a distribution shortfall appears. In case of reassessment of the exempt profits or gains by the tax administration in the course of a tax audit, such reassessment is fully taxable unless covered by excess distributions already made in excess of the 85% and 50% requirement, as the case may be, based on the initially reported profits and gains.

According to our information, the French tax administration has agreed (informally) to the fact that the compulsory redistribution applies only to dividends distributed by a qualifying corporate subsidiary paid out of exempt income and gain in application of the SIIC regime.

Italy

Unless the by-laws of the FII prescribe a distribution obligation, FIIs have no obligation to distribute their profits during their lifetime. However, FIIs are obliged to distribute all the proceeds deriving from their activities at the end of their duration.

1.3 Tax treatment at REIT level

1.3.1 Corporate income tax / withholding tax

In this paragraph, a description will be given of the tax treatment of profits of a qualifying REIT and the withholding tax regime applicable to distributions to its shareholders.

	Income	Capital gain	Withholding tax
Netherlands BI	Real property income forms part of the taxable profit and is taxed at a 0%-rate (a de facto full exemption)	Capital gains / losses are allocated to a tax-free reserve and are, therefore, exempt from tax.	25%, which may be reduced pursuant to a double taxation treaty. The amount of the tax-free capital gain reserve is considered “capital” for withholding tax purposes, which is in principle, not subject to withholding tax.
Belgium SICAFI	In principle subject to the standard corporation tax rate (33.99%), but the qualifying real property income is excluded from the taxable basis.	Capital gains are not included in the taxable profit provided they are at arm’s length.	15% dividend withholding tax, which may be reduced pursuant to the application of tax treaties.
France SIIC	Exemption from CIT for eligible activities. Non-eligible activities are taxed at the rate of 33.33% increased to 35.43% by surcharges.	Capital gains resulting from disposal of assets or participations belonging to the eligible activities and duly distributed are exempt from CIT.	25% dividend withholding tax which may be reduced pursuant to tax treaties to 15%, 5% or 0% (substantial participation held by a corporation)
Italy FII	Tax exempt	Tax exempt	12.5%, which may be reduced to 0% in case of distribution to qualified resident or non-resident unit holders.

Netherlands

The Dutch BI system is the only system which does not benefit from a tax exemption. Technically, the taxable profit of a BI is subject to a rate of corporate income tax of zero percent. A zero percent tax rate is, of course, a de facto exemption from tax. A BI is subject to the same formal requirements in terms of filing tax returns, et cetera, as companies subject to the regular corporate income tax regime. In the view of the Dutch tax authorities, a BI can refer to the bilateral Conventions for the prevention of double taxation in cross-border situations as technically speaking, it is a "corporate income tax payer".

All income or losses from the investments of a BI (real estate assets or shares) and all capital gains or losses from the disposal of its investments (real estate assets or shares) constitute taxable income of the BI. Capital gains and losses can be eliminated from the taxable income and allocated to the tax free reinvestment reserve. The taxable income, after allocation of capital gains/losses to the tax free reinvestment reserve, constitutes the annual distribution obligation (see above).

Under Netherlands tax law and tax treaties, foreign withholding tax may, in general, be set off against corporate income tax payable by a resident company, or income tax payable by resident individuals. As a BI is subject to a zero percent corporate income tax rate, it cannot benefit from this tax credit. However, the income received by a BI will become taxable in the hands of its shareholders due to the distribution obligation. In view of this "flow through" nature of a BI, it is entitled by law to obtain payment of a "tax credit" for foreign withholding taxes levied on its foreign source income. This "tax credit" is given in the form of a direct payment made by the tax authorities to the BI. The maximum amount of the tax credit payment is the amount of foreign taxes withheld (which can be allocated pro rata to the Dutch resident shareholders of the BI). The reason for this beneficial treatment is that individuals investing directly in shares or debt claims can, by virtue of tax treaties or unilateral relief, credit foreign withholding taxes against their income tax due.

According to Dutch tax law, this credit payment is only available to the extent that the BI is held by Dutch resident shareholders. In a recent lower court decision, it was ruled that this limitation constituted a violation of the freedom of capital under the EC-Treaty, and should not apply to EU resident shareholders.

Distributions of dividends by a Dutch BI are subject to withholding tax at a rate of 25% (to be reduced under the prevailing tax treaties concluded by the Netherlands). A distribution of the reinvestment reserve is in principle not subject to withholding tax, as the reinvestment reserve (balance of capital gains/losses) is considered "capital" for withholding tax purposes.

N.B. On January 1, 2001 the 'Surtax' regulations entered into force. The main objective of the Dutch legislator for introducing this Surtax was to prevent Dutch companies from postponing dividend distributions until the introduction of the new Dutch Income Tax Act on January 1, 2001. The Surtax regulations are transitional and will be repealed from Dutch tax law on December 31, 2005.

As of that date portfolio dividends will no longer be taxable in the hands of individual shareholders. Since January 1, 2001 income tax has been levied on a 'deemed income basis'. (For further information concerning the tax treatment of the individual shareholders see part 1.4.1.) Postponing the dividend distribution until the entry into force of the new legislation could be profitable. The Dutch legislator has aimed to prohibit such tax planning, and the Surtax can be considered a penalty for postponing the dividend distribution.

If entities subject to corporate income tax, including BIs, make a dividend distribution in the period January 1, 2001 through December 31, 2005 Surtax will only be levied on the part of the dividend distribution that qualifies as excessive. A dividend distribution is considered as excessive if it exceeds certain limits set out in the Dutch Corporate Income tax Act.

The Surtax due will be proportionally reduced to the extent that the entity proves that the participation in the entity has been held for an uninterrupted period of at least three years by participants (other than REITS) that hold at least 5% of the par value of the paid up share capital.

Belgium

The SICAFI is subject to the standard corporate income tax rate (33.99%). However, the taxable basis does not include real estate income qualifying under the SICAFI regime. Such income is fully exempt from corporate income tax. The qualifying SICAFI income does not include disallowed expenses and 'abnormal benefits' in connection with the real estate income. Disallowed expenses are, for instance, restaurant expenses or income taxes. Abnormal benefits are, for instance, extremely high rents (i.e. rents that are higher than an at arm's length would be).

Due to the fact that the SICAFIs enjoy their own favourable tax regime by means of a very low tax base, they are not entitled to (other) reduced tax rates nor to (other) tax facilities of the Belgian tax regime. Because of the reduced tax base (e.g. rents received and realized capital gains are not considered to form part of the taxable base) a SICAFI may, in practice, not pay any corporate income tax at all.

However because the SICAFI is subject to Belgian corporate income tax, it is subject to the same formal requirements in terms of filing tax returns etcetera as are companies to the regular corporate income tax regime.
This submission to corporate income tax can be an advantage in the case of cross border taxation. Due to the fact that the SICAFI is subject to corporate income tax, the Belgian authorities take the view that a SICAFI will qualify as a Belgian resident for international double taxation treaties and will, therefore, have access to such treaties and take advantage of the concessions they contain.

In principle, dividends and interest distributed to a SICAFI by a Belgian entity (or a non-Belgian entity residing in Belgium) are exempt from Belgian withholding tax. The abovementioned described tax regime applies to profits earned as well as capital gains realized by the SICAFI. As said before, the SICAFI must distribute 80% of the net profits (e.g. minus cost) to its shareholders by means of dividend. However one important exception applies to this distribution obligation. Capital gains realized by the selling of assets do not have to be distributed, provided that they are reinvested within four years. If no reinvestment is made within this period, the remaining sum of the capital gain is treated as net income and is subject to the distribution rules.

Dividends distributed by the SICAFI to its shareholders are subject to withholding tax at a rate of 15%, to be reduced under the tax treaties concluded by Belgium. A specific unilateral exemption from withholding tax applies if the SICAFI invests more than 60% of its assets in real estate located in Belgium which is used for private accommodation. The SICAFI is subject to Belgian real estate withholding tax on the Belgian real estate that it owns, possesses, holds in long lease, holds building rights thereon or enjoys the usufruct thereof. The SICAFI is subject to an annual tax of 0.06% on its inventory value at the end of the financial year.

Belgian law explicitly prohibits the credit of foreign withholding tax by the SICAFI.

France

A SIIC and its qualifying corporate subsidiaries that have elected for the SIIC regime are, in principle, subject to French corporate income tax, but the following items of income are fully exempt from tax:

- income from their qualifying leasing activity, realized directly or through qualifying partnerships;
- capital gains from the sale or other disposal of real property used for purposes of the qualifying leasing activity, as well as gains from the disposal of participation in qualifying partnerships or other pass-through entities and from participation in qualifying corporate subsidiaries that have elected for the SIIC regime provided that in each of these cases, the acquirer is unrelated to the seller. For purposes of that rule, two entities are considered to be related to each other if (i) one of the two directly or indirectly holds the majority of the share capital of the other or has de facto control over the other, or (ii) the two entities are directly or indirectly under the control of the same person;
- dividends received from qualifying subsidiaries that have elected for the SIIC regime and paid out of the tax exempt income of such subsidiary.

Other items of income and gains are subject to French corporate income tax pursuant to standard rules.

A French SIIC receiving foreign source income actually subject to French corporate income tax would be entitled to credit foreign withholding tax if a tax treaty so provides. No actual payment in cash for foreign withholding taxes is possible.

Italy

Italian FIIs are fully tax exempt . Any withholding tax applied to income paid to an FII, such as withholding tax suffered on foreign source income, is a final withholding tax. There is no mechanism to allow the FII to offset such tax withheld at source.

Dividends distributed by FIIs are subject to a 12.5% withholding tax withheld by the SGR. For the purpose of application of the 12.5% withholding tax the term dividend includes (i) distribution executed by the fund, (ii) the difference between the official value of the unit upon redemption and the official value upon acquisition or subscription, and (iii) the difference between the official value of the unit upon sale and the official value upon acquisition or subscription.

Whereas the withholding tax represents an advance withholding tax if the unit holder is an Italian resident enterprise, corporate entity or an Italian permanent establishment of a foreign entity, it represents a final withholding tax in all other circumstances.

The withholding tax, however, does not apply if the beneficial owners of the proceeds are:
(i) Italian pension funds;
(ii) Italian investment funds;
(iii) foreign persons that are resident in countries which allow an adequate exchange of information with the Italian tax authorities (provided that certain formalities are satisfied).

1.3.2 Transition regulations

	Conversion into REIT status
Netherlands BI	At the end of the year prior to the year the entity is converted to a BI, step-up of all assets/liabilities to market value. The "built-in" capital gain is subject to CIT at normal rate. Also tax-free reserves should be added to the taxable income.
Belgium SICAFI	Upon conversion into a SICAFI all unrealized capital gains of normal real estate will be taxed at a reduced corporate tax rate (20.085%).
France SIIC	To obtain the SIIC status, an exit tax amounting to 16.5% of the unrealized capital gains on the assets in the eligible portfolios is due (paid in four instalments over four years). Tax losses carried forward are deductible from the exit tax basis.
Italy FII	It is not possible to convert companies in FIIs or viceversa

The exit tax is levied at the ordinary corporate income tax rates in the Netherlands. In Belgium[9] and France, a special reduced rate of "exit tax" applies.

France

As a result of the election, the SIIC and its electing corporate subsidiaries experience a change of tax regime which, under ordinary tax rules, would trigger the immediate taxation of deferred profits and latent capital gains. The statute and administrative comments, however, provide for a number of favourable rules.

Available losses carried forward may be imputed against the profits and gains recognized upon the election for SIIC regime; excess losses lapse and can no longer be carried forward.

Electing for an SIIC regime does not trigger any taxation at shareholder's level, either pursuant to a constructive distribution rule or on the latent capital gains on shares of the SIIC.

If the conditions for SIIC treatment are no longer complied with by the SIIC parent company (for instance, in the case of de-listing or if the non-qualifying ancillary activities exceed the applicable threshold), rental income and gains become fully taxable from the beginning of the financial year in which the triggering event takes place. In addition, if such event takes place within 10 years from the initial election for SIIC regime, the latent gains recognized upon such election are retroactively subject to corporate income tax at the then standard rate (currently 33.33% increased to 35.43% by surcharges) with a deduction for the 16.5% exit tax already paid on such latent gains.

Should a qualifying 95% corporate subsidiary that has elected for the SIIC regime no longer fulfil the conditions (such as in the case of sale of more than 5% of its share capital to an unrelated person or in case of excessive ancillary activities), it loses the benefit of the exemption of the leasing profits and gains from the beginning of the financial year in which the triggering event takes place. There is no recapture however of the latent gains recognized upon the initial election and which benefited from the exit tax at 16.5%.

Belgium

If the BCF comes to the conclusion that the SICAFI does not observe the law or its bylaws, this does not necessary lead to a loss of SICAFI status. Instead, the BCF can e.g. make the necessary recommendations to the SICAFI with a view to regularizing the situation or impose temporary or suspending sanctions (e.g. the BCF may ask the market authorities to suspend the listing of the shares of such a SICAFI). The farthest reaching sanction is to strike the SICAFI off the list of Belgium's recognised investment institutions. The SICAFI would then loose its status and become a normal real estate company. In the case of such a loss of status during a taxable period, the taxable basis of the SICAFI for that the period will be determined in accordance with the ordinary Belgian corporate income tax rules.

[9] Companies applying for approved SICAFI status, or which merge with a SICAFI, are subject to an exit tax, which is treated in the same way as a liquidation tax, on net unrealized gains and on tax-exempt reserves, at a rate of 19.5 percent (increased by a supplementary crisis tax uplift of 3 percent, giving a total of 20.085 percent. In case of conversion into SIIC status, a 16.5 percent tax on latent capital gains on the real property portfolio (payable over four years) is applied. Should the conditions for the SIIC regime no longer be met less than 10 years from the election (e.g. in case of delisting), the 16.5 percent tax rate is retroactively increased to the then standard corporate income tax rate.

Italy

Under Italian law it is not possible to transform an FII into another entity or vice versa. The only possibility is to merge two or more FIIs. Such transaction is tax neutral.

1.3.3 Registration duties

Registration duties payable by a REIT in the four jurisdictions on i) capital contributions and ii) acquisition or disposal of real property, can be summarized as follows:

	Registration duties
Netherlands BI	- 0.55% capital duty on capital contributions in cash or kind to a BI. The taxable basis is the higher of (i) the fair market value of the contribution received; and (ii) the nominal value of shares issued in exchange for the contribution. - 6% real property transfer tax if the BI itself acquires or disposes of real property and/or shares in real property companies.
Belgium SICAFI	- 0% capital duty concerning contributions in cash or kind to a SICAFI (exemption). - 10% or 12.5% (5% subject to certain conditions) real property transfer tax if the SICAFI itself buys real estate. A rate of 10% or 12.5% applies for the buyer if the SICAFI sells real estate.
France SIIC	- No proportional capital duty on capital contributions. - Transfer tax at around 4.80% on acquisition of real estate or acquisition of share in an unlisted real estate oriented company.
Italy FII	- Application of either VAT (20%) or registration tax (7% or lower) upon contribution/purchase of real property. Other indirect taxes may apply

1.4 Tax treatment at shareholders' level

1.4.1 Domestic shareholders

The Netherlands

Corporate shareholder:

According to Dutch tax law, a Dutch corporate investor in a BI cannot claim the participation exemption to its investment in the BI. This implies that the return on the investment in the BI recognized pursuant to Dutch tax accounting principles constitutes a taxable item for corporate income tax purposes in the hands of the investor subject to the prevailing tax rates[10].

Furthermore, dividends distributed by the BI are subject to 25% Dutch dividend withholding tax. Dutch corporate investors can credit this withholding tax against their Dutch corporate income tax liability, any excess being refundable.

Capital gains realized by a corporate shareholder on the disposal of shares in a BI, are included in the taxable profit and, therefore, are subject to tax.

Individual shareholder:

The income tax treatment for a Dutch individual shareholder of his investment in a BI depends on the qualification of this investment for the investor. However, in most cases the investment qualifies as an ordinary portfolio investment in which case, generally, 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 a deemed income, resulting in an effective income tax burden of 1.2% of the average value of the investment during the calendar year. Also capital gains upon disposal of BI shares are deemed to be covered by this forfeited income tax (provided the capital gains are not considered "income from work").

[10] 29% for the first EUR 22,689 of taxable profits and 34.5% on the excess.

Distributions by a Dutch BI give rise to 25% Dutch dividend withholding tax. The individual investor can credit this withholding tax against any personal income tax liability, any excess being refundable.

A capital gain realized by an individual Dutch resident on the sale of BI shares is not subject to any special tax.

An individual Dutch taxpayer having a "substantial interest" in a (quoted) BI is taxed on the basis of the "substantial interest tax regime", which is outside the scope of this report.

Belgium

Corporate shareholder:

A Belgian corporate shareholder is subject to corporate income tax on the income it derives from its shares. Dividends received from a Belgian real estate company not being a SICAFI, qualify for the Belgian dividend participation exemption provided essentially that the shareholder (i) holds a participation of more than 10% or with an acquisition value of more than EUR 1,200,000 for an uninterrupted period of 1 year or more, and (ii) this participation qualifies as a fixed financial asset. If conditions are complied with, 95% of the dividend received will, in principle, be tax deductible, the remaining 5% is subject to corporate income tax (rate: 33.99%).

In principle, the Belgian participation exemption regime does not apply to dividends received from a SICAFI. Consequently, these dividends are fully taxable (rate: 33.99%) in the hands of the Belgian corporate shareholder. Nevertheless, the Belgian dividend participation exemption regime does apply if and to the extent that the by-laws provide that the SICAFI distributes a minimum of 90% of its income and the income originates from dividends or capital gains on shares that qualify for the Belgian participation exemption regime.

Capital gains realized on SICAFI shares are, in principle, excluded from the Belgian participation exemption regime for capital gains realized on shares and are fully taxable as ordinary profit (rate: 33.99%).

Under certain conditions the withholding tax on the dividends received is creditable against the Belgian corporate income tax, and can even be reimbursed.

Individual shareholder:

The withholding tax (15%) is the final levy if the recipient is a Belgian resident individual. Capital gains realized on SICAFI shares are not taxable for Belgian resident individuals unless the Tax Authorities are able to prove that the capital gain was not realized within the limits of normal management of (private) assets.

France

Corporate shareholder:

The tax treatment of French corporate shareholders receiving dividends from an SIIC (parent company or qualifying subsidiary having elected for SIIC treatment) differs dependent on whether such dividend is paid out of the taxable or the tax exempt income and gains.

Dividends paid out of the tax exempt income and gains are fully subject to French corporate income tax at standard rate. They do not carry any 'avoir fiscal' tax credit. They are not eligible for exemption pursuant to the parent-subsidiary regime.

Dividends paid out of the taxable sector are also subject to corporate income tax at the standard rate, however, dividends received by companies until December 31, 2003 carry a tax credit (the avoir fiscal) generally equal to 10% of the dividend received in cash, which is creditable against the corporate income tax liability (but not refundable). In addition, qualifying parent companies holding at least 5% of the share capital of the SIIC are eligible for the parent-subsidiary 95% exemption with respect to such dividends.
Pursuant to recent changes in the French domestic mechanism to alleviate economic double taxation on dividend distributions introduced by the French Finance Bill for 2004, no avoir fiscal tax credit will be available for corporate shareholders with respect to dividends distributed from 2004 onwards.

A return of capital distribution is normally tax free. However, any reduction of share capital or distribution of share premium will be treated as a tax free return of capital only to the extent that all reserves or E&P have been already distributed (this last rule does not apply in the case of share redemption).

Capital gains realised on the sale of the SIIC shares are subject to corporate income tax at standard rate (a 33 1/3% increased to 35.43% by surcharges). A reduced tax rate (19% increased to 20.2%) is eligible for gains on disposition of a qualifying participation held for at least 2 years provided that the net gain is posted to a non-distributable reserve account (any distribution of the amounts shown in that reserve would trigger retroactively the increase of tax rate from the reduced long-term rate to the standard rate).

Individual shareholder:

As is the case for corporate shareholders, dividends received by French resident individuals from an SIIC, or a qualifying subsidiary having elected for the SIIC regime, are subject to different tax treatment depending on whether they are paid out of exempt or taxable profits and gains.

Dividends paid out of exempt income and gains are subject to French income tax with application of the progressive rate schedule and to additional social insurance contributions. They do not carry any avoir fiscal tax credit. Shares of an SIIC may however be held within the frame of a tax favoured stock investment scheme (plan d'epargne en actions: 'PEA'), in which case, they are exempt from income tax provided that all income and gains from disposal of shares held in the PEA are reinvested in the PEA for a minimum of 5 years.

Dividends paid out of the taxable income and gains are also subject to French income tax with application of the progressive tax rate schedule and to additional social contributions. However, dividends received until December 31, 2004 carry a tax credit (the avoir fiscal) equal to 50% of the dividend received in cash, which is creditable against the income tax liability and refundable if in excess of such liability. This credit mechanism, which aims at alleviating the economic double taxation, was repealed in the French Finance Bill for 2004 and replaced by a 50% "abatement" from the taxable amount of dividends received by French resident individual shareholders. The replacing mechanism to avoid economic double taxation is applicable to dividends received from an SIIC.

Accordingly, dividends (either paid out of taxable income and gains or paid out of exempt income and gains) received from an SIIC as from January 1, 2005 will be subject to income tax for 50% only of their amount. Such dividends will also benefit from a yearly allowance of EUR 1,220 (for single taxpayers and taxpayers subject to separate taxation) or of EUR 2,440 (for couples subject to joint taxation) and give rise to a tax credit corresponding to 50% of the distributed dividends within the limit of EUR 115 (for single taxpayers or taxpayers subject to separate taxation) or of EUR 230 (for couples subject to joint taxation). The 11% social surcharges will apply to the full amount received (i.e. before the 50% deduction).

A return of capital distribution is normally tax free. However, any reduction of share capital or distribution of share premium will be treated as a tax free return of capital only to the extent that all reserves or E&P have been already distributed (this rule does not apply in the case of share redemption).

Italy

Corporate shareholder:

Dividends received from the FII as well as capital gains realized on the sale of the units, are included in the corporate income tax base of corporate unit-holders and taxed at the ordinary rate(s). The 12.5% withholding tax can be credited against the final tax liability.

The return of capital does not amount to a taxable event.

Individual shareholder:

For individual resident shareholders the 12.5% withholding tax applied by the SGR on the dividend distributions executed by the FII, constitutes a final levy. Capital gains are taxed with a capital gain tax ('CGT') at a 12.5% rate. CGT. CGT is levied by applying one of the following three methods:

1. the 'tax return regime'. The application of this regime implies that the income is declared by the investor in the annual income tax return and the 12.5% substitute tax is paid by the investor according to the terms established for the settlement of personal income tax, to be determined on the basis of the income tax return;
2. the 'administered saving regime'. This regime applies provided the following conditions are complied with: (a) the units are deposited with an Intermediary (or permanent establishment in Italy of a foreign intermediary); and (b) an express election is made by the relevant holder of the Units. Under such regime, the Italian depositary bank of the securities applies the 12.5% substitute tax on the income, when it is realized by the investor;

3. the 'portfolio management regime'. The Portfolio Management Regime can be elected if the unit holder grants the management of the units to a qualifying financial intermediary (the "managing intermediary"). In such case, CGT is (a) levied at a flat rate of 12.5% on the appreciation of the investment portfolio even if not realized, as accrued at year-end, and (b) applied on behalf of the unit holder by the managing intermediary.

The return of capital does not constitute a taxable event.

1.4.2 Foreign shareholders

The Netherlands

Generally speaking, foreign investors are not liable for Dutch income or corporate income tax with respect to an investment in a BI, except for Dutch dividend withholding tax withheld on (deemed) dividend distributions by the BI. If the foreign investor is eligible for the benefits of a tax treaty with the Netherlands, the Dutch domestic withholding tax rate of 25% is generally reduced to 15% through a relief at source or refund mechanism. Dutch revenue upholds the view that due to the special tax treatment of a BI, a foreign corporate EU investor in a BI is not eligible for the benefits pursuant to the EU Parent Subsidiary Directive laid down in Dutch tax law. Due to the shareholders' restrictions described above, a foreign corporate shareholder may not own 25% or more of a BI. Hence, in principle, it is not possible to benefit from the reduction to 5% / 0% of the withholding tax, which is provided for under certain tax treaties, provided the recipient is a corporate shareholder owning at least 25% of the share capital of the paying company.

Belgium

The 15% withholding tax constitutes the final Belgian levy if the recipient is a non-Belgian individual or corporate shareholder subject to Belgian non-resident income tax. This rate can be lowered in the case of a tax treaty.
Capital gains realized on the SICAFI shares are in this case not taxable in Belgium.

France

Subject to applicable tax treaties, dividends distributed by a French SIIC or a qualifying subsidiary having elected for the SIIC regime are subject to dividend withholding tax at the rate of 25% when paid to non-resident shareholders. When residents of a treaty country, non-resident shareholders benefit from 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 25% of the capital of an SIIC are not eligible for the withholding tax exemption pursuant to the EU Parent-Subsidiary Directive with respect to dividends distributed by an SIIC out of its tax-exempt income and gains.

A return of capital distribution is normally tax free. However, any reduction of share capital or distribution of share premium will be treated as a tax free return of capital only to the extent that all reserves or E&P have been already distributed (this rule does not apply in the case of share redemption).

Capital gains realised on the sale of the SIIC shares are taxable in France (at a flat rate of 16%) only in the case of substantial participation (more than 25% of the profits rights at any time in the 5-year period preceding the sale) and subject to the application of tax treaties.

Italy

Dividends distributed to foreign unit-holders (both individual or corporate) are subject to a 12.5% withholding tax. However foreign unit-holders residing in countries that provide for an adequate exchange of information with the Italian tax authorities are exempt from such withholding tax. A list of States providing an adequate exchange of information, is laid down in a Ministerial Decree. In very general terms, these are the States who have concluded a tax treaty with Italy, laying down a fully-fledged exchange of information clause.

Capital gains realized by a non resident unit-holder are subject to a 12.5% substitute tax, unless: (i) the units are traded on a Regulated market, or (ii) the unit-holders reside in countries that allow an adequate exchange of information with the Italian tax authorities.
A return does not amount to a taxable event.

1.5 Impact of EU law on REIT Regimes

1.5.1 Introduction

The above comparison of the European REIT regimes illustrates that harmonisation of the tax treatment of REITs and their shareholders in the various EU Member States is a long way off. To date, the EC Treaty does not provide for a direct transfer of legislative powers in the field of direct taxation. Basically, legislative harmonisation and integration of direct taxation in the EU today are only possible by means of EC Directives, which subsequently must be incorporated into domestic law. Not only does the issue of a direct tax EC Directive require the unanimous consent of all EU Member States, it also requires incorporation into local law which gives rise to deficiencies of various natures.

Despite the lack of direct harmonisation through EC legislative efforts, a clear harmonising influence can be discerned, as exercised by the decisions (case law) rendered by the EC Court of Justice. The EC Treaty provides for a number of direct binding treaty freedoms. These freedoms should secure the creation of a common market within the EU and thus require the abolition between EU Member States of obstacles and distortions which could hinder this common market. These freedoms are directly binding on the EU Member States, and EU Member States are obliged to exercise their own taxation powers, including direct taxation, in conformity with these freedoms. Thus indirectly, through the treaty freedoms – and in particular the freedom of establishment and capital – the EU Member States are more or less restricted as to how they exercise their taxation powers. This is further demonstrated by the fact that EU nationals (individuals as well as companies) have discovered the opportunities offered by the EC Treaty to defy the national direct tax measures. This has led to an ever-expanding flow of judgments by the EC Court of Justice on the interaction between national direct tax measures and the EC Treaty freedoms, whereby in the majority of cases, the claims of the taxpayer are awarded.

In conclusion, it is interesting to see that EU law often restricts the application of national tax measures. The developments described above are also of great interest in the field of the taxation of European (property) investment funds and their shareholders. In this chapter, we focus particularly on a preliminary inventory of the features of the Belgian, French and Dutch REIT regimes which may well not be compatible with the EC Treaty Freedoms. This is of particular interest to EPRA members given that in the future, these tax features might be lifted and/or amended. This could create new opportunities for, among others, listed REITs and their shareholders. A similar inventory could be made for European investment funds that are not REITs, although such falls outside the scope of this survey.

1.5.2 Overview of elements which seem incompatible with EU law

What the three REIT regimes more or less have in common is that they provide for conditions concerning:

- the legal form or residency of the entity claiming the REIT regime; and
- the nature and/or residency of the investors investing in the REIT and or the listing of the REIT on a particular stock exchange.

In particular, these key conditions of the REIT regimes are likely to be in conflict with EU law.

1.5.3 Conditions on legal form and residency

Legal form

Both the Belgian and the Dutch regimes require the use of a stock company incorporated under the domestic laws of each of these two jurisdictions (in the Netherlands the "NV" or "BV" and in Belgium the "NV" or the “CVA”). Only the French regime seems to be open to all types of stock companies, provided that the legal form is eligible for a listing on the French stock exchange which is a prerequisite for the French regime (see also 3.2.2. below).

The Dutch and Belgian limitation on the application of the REIT regimes to companies incorporated under domestic law is highly likely to be incompatible with EU law, because this seriously infringes the freedom of establishment within the EU. One key feature of a common market is that companies incorporated under the laws of an EU Member State should, in principle, be able to freely change their residency to another EU Member State. If a company has made use of this principal right of establishment and therefore, resides in a Member State (‘host state’) other than its State of origin, its treatment by this host state must be equal to that of companies incorporated under the law of the host state. At this stage, and in apparent conflict with EU law, companies residing in the Netherlands or Belgium which are incorporated in another EU Member State will, in principle, not be eligible for the local REIT regimes. In other words, a German AG or French SA, both of which have legal forms comparable to a Dutch and Belgium NV, are not eligible for the Dutch or Belgian regimes, irrespective of whether the AG or SA is resident in Belgium or the Netherlands.

The French regime does not seem to be in conflict with EU law because its key condition is that the company electing the REIT regime should be eligible for local listing. As long as the French listing requirements do not hinder the freedom of establishment, for instance, through an overtly or covertly denial of listing to companies with a non-French origin, this regime is less likely to infringe the EC Treaty freedoms.

Residency

Based on case law, EU law treats a local branch of a foreign company and a local company alike[11]. Setting up a branch by a foreign company is one way of making use of the EC Treaty freedom of establishment. This freedom would be hindered if the host country of the branch treated it differently to local companies.

The Dutch and Belgian regimes impose the condition that the company applying for REIT treatment is a tax resident company. In other words, a foreign resident company is by definition not eligible to the REIT regime in connection with its property investments in the Netherlands or Belgium. This can form a serious impediment for cross-border investment in the Netherlands and Belgium and thus, could be an infringement of EC Treaty freedoms. For instance, a French SIIC making a property investment in the Netherlands or Belgium will face local corporate income tax on its property profits and gains at standard corporate income tax rates, whereas a Dutch BI or Belgian SICAFI holding local property is eligible for the more beneficial tax treatment provided by the local REIT regimes.

Therefore, generally speaking, it seems likely that the Dutch and Belgian REIT regimes should also be available to local branches of other EU companies not residing in the Netherlands or Belgium. In that case, however, it is likely that the Netherlands and Belgium might then impose additional conditions in order to safeguard a proper application of the BI/SICAFI regimes by the non-resident entity.

With respect to the French regime, the law does not exactly clarify whether the SIIC regime is available to non-resident entities. However, according to our information, the French tax administration has already agreed (formally in specific cases) to the fact that the SIIC regime is indeed potentially available to non-resident entities listed on the French stock exchange (see below) complying with the other SIIC conditions (including the compulsory distribution) and falling within the territorial scope of French corporate income tax (see 2.2.2)

1.5.4 Conditions on shareholders / listing requirements

General

As discussed in this survey, the background of listing requirements is to ensure that the REIT vehicles are used for the pooling of investments by larger groups of (small) investors and are not used in wholly owned, or small corporate investor schemes. The Netherlands achieves this goal by imposing very detailed shareholders conditions and by providing more lenient conditions if the REIT (or its ultimate shareholder) is listed on the Amsterdam stock exchange. It is believed that the Belgian and French regimes have achieved this goal simply by a compulsory listing, albeit that the French SIIC regime requires local listing.

Compulsory Stock Exchange listing

Recent developments show that listing requirements, particularly when concerning a condition requiring an exclusive local listing, are likely to infringe of the EC Treaty Freedom of Capital[12]. It is, therefore, not unlikely that at least the French and Dutch regimes are incompatible with EU law because they provide for local listing requirements. This would imply that, under conditions, also companies listed in another EU Member State should be eligible for the BI and SIIC regimes, provided they meet the local requirements. With respect to the BI regime, this would also render improved investment opportunities for non-Dutch listed investors in Dutch BIs.

Additional shareholder conditions imposed by the Dutch BI regime

The Dutch regime provides for additional shareholders' requirements, which effectively secure that:

- Dutch investors do not interpose non-Dutch entities between their investment in a BI; and
- The Dutch BI regime is not used by foreign corporate groups in their cross-border tax planning.

[11] EC Court of Justice C-270/83 (Avoir Fiscal) and C-307/97 (Compagnie de Saint-Gobain).
[12] Reference is made to the Financial Services Action Plan initiated by the European Commission, COM (1999) 232, 11.05.1999. See also for instance Commission vs Spain, C-219/03.

Although the underlying principle behind these provisions can be appreciated, the effect thereof is likely to be considered a distortion of the Common Market from an EU tax viewpoint. EU law imposes the condition that any distortion of an EC Treaty Freedom[13] must be appropriate and applied as restrictively as possible[14]. If the disputed measure is driven by the motivation to curb tax evasion or avoidance, it is generally not acceptable that, for example, a beneficial tax treatment is denied on the basis of a general tax avoidance/evasion presumption, laid down in law. The alleged abusive use of such beneficial tax treatment must be judged on a case-by-case basis and the taxpayer must be offered the possibility to present counter evidence demonstrating the business motives[15]. It is therefore not unlikely that the above conditions of the BI regime cannot be upheld in their current form under EU law. Less restrictive solutions are conceivable which would make the BI regime more accessible to non-Dutch (EU) investors, or at least should the BI regime provide the possibility to the taxpayer to prove that it is not used in tax driven structures.

1.6 Germany

There is currently no investment concept in Germany that could truly be described as a REIT. While the highly successful German open-ended funds are often referred to as the German REITs they lack many of its key features, i.e. listing, legal personality.

In 2003, Germany saw a far-reaching renovation of its investment laws. The scope of permitted investments for real estate funds was once again broadened and the concept of tax transparency was generally extended to all investment structures with a risk diversified portfolio. Thus, foreign funds can benefit from a tax transparent treatment under German law as can open-ended funds or German investment stock corporations (Investmentaktiengesellschaft).

Investment stock corporations were introduced in 1998 as a corporate investment vehicle, but the acquisition of real estate was not allowed. The recent reform of the investment law left this restriction unchanged. In the process of legislation, however, it was discussed whether a true REIT should be introduced in Germany. The legislator explicitly left the REIT aside when reforming the investment law but stated that it would further investigate the necessity and possibilities for a REIT to be introduced.

Leading German banks and other institutions such as the Federal Ministry of Finance and the Federal Bank brought to life an initiative for the promotion of Germany as a financial centre (Initiative Finanzstandort Deutschland) that among other concepts promotes the introduction of a German REIT. Their idea is to introduce a REIT not as a competing but as a complementary asset class to the open-ended funds. Consequently, the REIT should not be subject to far reaching regulatory restrictions while similar to concepts of other jurisdictions it was suggested to provide the REIT with a tax system that grants the REIT a tax exemption and shifts taxation to investors.

The government recognizes the trend towards REIT in various jurisdictions. It is hoped that the government will present a REIT concept or even draft legislation before the end of this year.

[14] Not being a direct or indirect discriminating measure on the basis of nationality.
[15] It should be noted that distortions may be accepted under EU law if the so-called “rule of reason” test is met.
[16] EC Court of Justice C-28/95, Leur-Bloem.

2 – Asia/Pacific

2.1 General introduction / history

Australia	(Public) Unit Trust Equity law Public Trading Trust Regime	1985
Hong Kong	REIT	2003
Japan	REIT	2000
South Korea	REIT, CR-REIT RETF	2001 2004
Singapore	SREIT	2002

Australia

The establishment of fixed trusts has a long history in Australia. Fixed trusts are the preferred vehicle for holding investments in real estate. They are typically set up as a listed (public) or unlisted 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, making an investment via a fixed trust correspond to a direct interest in the real estate.

The key requirements for an Australian REIT to obtain tax transparency are that it distributes all its income at least annually and, if it is publicly held, it must carry on only passive rental producing activities. There are few regulatory restrictions, although compliance with investor protection type regulations apply to any publicly offered REITs. Many Australian REITs now hold real estate located outside Australia, including in the US, UK, New Zealand and Singapore.

The Australian REIT market is sophisticated and large and the REITs are major holders of Australian investment property. The listed REIT sector is a significant segment of the Australian share market offering significant choice of variety of REITs, such as retail, commercial, industrial, etc. Recently, many stapled stocks have been established - in which a REIT unit is 'stapled' to a share in an active property company (such as a developer, construction company, etc) allowing investors to retain the look through status for the passive property investments of the REIT while also obtaining an investment in a more growth oriented property company. The two separate securities of a stapled stock are always traded together. The world's largest owner/operator of retail shopping centres is an Australian listed stapled stock.

The Government is currently undertaking a review of the tax treatment of non resident unit holders investing in Australian resident trusts as part of their Review of International Tax Arrangements to increase the attractiveness of inbound investments through Australian managed funds and trusts.

The term property trust used further with respect to Australia refers to a public unit trust (e.g. listed or at least 50 investors) unless otherwise specified.

Hong Kong

The Securities and Future Commission ('SFC') in Hong Kong introduced the new Code on REIT (the 'Code') in July 2003, marking the introduction of this new form of collective investment scheme in Hong Kong.

In brief, a REIT that is authorised by the SFC for sale in Hong Kong must be a unit trust domiciled in Hong Kong. It is a mandatory requirement for the REIT to be listed on the Stock Exchange in Hong Kong ('HKSE'). It should have a transparent investment policy and it can only invest in real estate in Hong Kong for long-term investment purposes.

The REIT may issue new units in accordance with the requirements set out in the Code. However, it is not allowed to redeem the units from time to time. Unit holders may divest their units by selling them on the HKSE.

As REIT has only been recently introduced in Hong Kong, certain aspects of the Code on REITs are still subject to further refinement, for example, the possible relaxation of the geographical location of the properties. The first REIT is expected to be listed in Hong Kong by the end of 2004.

Japan

The JREIT has its origins in the collapse of Japan's "bubble" economy in the 1990s.

As a means to increase liquidity, a series of reforms were passed to protect investors and to permit the securitisation of real estate assets including, in April 1995 the Real Estate Syndication Law, and in September 1998 the Law on the Securitisation of Specified Assets by a Special Purpose Company.

In November 2000, the Investment Trust and Investment Corporation Law was reported and the Japanese Real Estate Investment Trust ("JREIT") was introduced. The JREIT was modelled on US REIT law to enable small investors to participate in the real estate market. Like the US REIT, distributions paid to investors were deductible by the REIT itself, provided that certain conditions were met, thereby providing an efficient investment scheme.

The first JREITs were sponsored by two of the largest real estate corporations in Japan and were listed on the Tokyo Stock Exchange in September 2001. The JREIT market has continued to grow and there are now 12 listed JREITs with a market value at the time of this writing of approximately JPY 1.2 trillion (about US $11 billion).

In addition, the JREIT market has expanded into warehouse and residential properties and foreign sponsored JREITs are also expected to be listed soon. Although the JREIT market is still small, the injection of funds into the market by the JREITs is widely believed to be changing the market and it is expected that the JREIT influence will continue to grow.

South Korea

In the wake of the economic crisis, the Real Estate Company Act was enacted in 2001 to lay the groundwork for Real Estate Investment Trusts in South Korea. RECA governs both (General) REITs and CR-REITs (Corporate Restructuring REITS), the two REIT regimes in South Korea. Since March 2004, no General REITs have been in operation and only a handful of CR-REITs have been set up. This is due to the regulatory hurdles involving the establishment and operation of CR-REITs and General REITs, in particular.

REITs (General REITs and CR-REITs collectively) are subject to specific regulatory regimes and the rules governing REITs can be found both in the regulatory and tax laws.

In 2004 the Korean government introduced a new structure for indirect real estate investment, the Real Estate Trust Fund ("RETF"). RETFs have many advantages over both General REITs and CR-REITS, (i.e., lower initial investment amounts, ability to leverage investment, less regulatory red-tape to create, possibility of perpetual existence). It is anticipated that REITs and RETFs will coexist for the sort term but that RETFs will be a much more popular form of real estate investment. There are currently two close-ended RETFs listed on the Korea Stock Exchange.

Singapore

In May 1999, the Monetary Authority of Singapore ("MAS") issued a set of regulatory guidelines for property funds. These guidelines give guidance to fund managers on the operation of such funds offered for sale to retail investors in Singapore. The stated objective of introducing property funds is to widen the range of financial products available to investors, consistent with the efforts to make Singapore a world class financial centre.

These Property Funds Guidelines do not deal at all with the taxation of property funds. The MAS issued a separate statement that property funds will be taxed according to the same general tax principles as ordinary companies or trusts. In other words, no special tax treatment will be granted to property funds.

The Property Funds Guidelines are now incorporated under the Code of Collective Investment Schemes issued by the MAS pursuant to the Securities and Futures Act. Nonetheless, this Code and the guidelines are non-statutory in that failure to comply with the Code and the guidelines will not invoke criminal proceedings.

The first Singapore REIT ('SREIT') to be listed on the Singapore Exchange was launched in July 2002. One of the key hurdles crossed to get this SREIT listed was the negotiation of a set of private tax rulings, within the existing tax framework, to govern taxation of the SREIT. This set of tax rulings (the 'Tax Ruling') was similarly adopted by the second listed SREIT.

The Tax Ruling was negotiated within the existing tax framework for trusts. Because of this, the SREITs listed to date have been structured in the form of a trust vehicle.

2.2 Requirements

2.2.1 Formalities / procedure

Australia

In Australia, no special legal or regulatory requirements need to be satisfied in order to establish a property trust. Property trusts may be subject to regulatory requirements such as the Managed Investment Scheme rules. However, these requirements have no impact on the tax treatment of the trust as a 'flow through' entity.

Hong Kong

A Hong Kong REIT is subject to a high standard of corporate governance rules. In brief, the Code requires all connected party transactions (unless below a prescribed threshold) to be subject to voting by unit holders, with those holding a material interest in the transactions to abstain from voting. Advice from an independent expert is also required and public announcements have to be made. For the purposes of the Code, a connected party transaction is any transaction between the REIT scheme and any of the connected persons (such as the management company, the property valuer, the trustee, a significant holder of 10% or more of the outstanding units of the REIT scheme, etc) as defined in the Code or any transaction between two or more REIT schemes which are managed by the same management company.

The Code also requires that the management company and the trustee must be independent of each other and should not have common directors and neither is a subsidiary of the other.

A Hong Kong REIT is required to be listed on the HKSE. Before requesting a listing, a REIT has first to seek authorisation from the SFC. According to the Code, a REIT seeking authorisation from the SFC is required to have the following characteristics:

- dedicated investments in real estate that generates recurrent rental income;
- active trading of real estate is restricted;
- the greater proportion of income is derived from rentals of real estate;
- a significant portion of income is distributed to investors in the form of regular dividend;
- a maximum borrowing limit is defined; and
- connected party transactions are subject to investors' approval.

Once authorisation is obtained, the HKSE will ensure that the REIT complies with the procedural aspect of the listing process.

Funds seeking authorisation as REITs will need to comply with all the relevant provisions of the Code.

Japan

JREITs are highly regulated and take approximately one year to establish. The first step is to establish an asset management company and acquire a "Building Lots and Building Transactions Agent License" and "Discretionary Transaction Agent License" from the National Land and Transportation Ministry ('NLTM'). Once these licenses have been obtained, the asset management company may apply for approval as an "Asset Management Company" from the Financial Services Agency. Once approval is granted, the Asset Management Company may establish the JREIT.

During this preliminary stage, properties are assembled using interim vehicles in order to transfer to the JREIT when appropriate.

South Korea

(1) General REIT
In Korea, a General REIT can only be established as a stock company and must obtain approval from the Ministry of Construction and Transportation.

30% or more of the total shares offered must be subject to public subscription. Contributions in kind are not permissible in the formation of General REIT.

(2) CR-REIT
CR-REITs are paper companies and have finite lives. Contributions in kind are allowable up to 30% of the share capital of the company.

(3) RETF
RETFs are trusts that can only be established by an asset management company. A bank will usually serve as the trustee with the investors holding beneficiary certificates issues by the RETF.

Singapore

Currently, the Tax Ruling is issued only to SREITs listed on the Singapore Exchange. To be listed, the SREITs have to comply with the Property Funds Guidelines and the applicable requirements set out in the Singapore Exchange Listing Manual.

The Property Funds Guidelines lay down the qualifying criteria for managers of property funds, prescribe permissible investments and borrowing limits, stipulate diversification and valuation requirements, and set the disclosure and redemption requirements. In addition, SREITs have also undertaken to be structured to meet certain key features in order to obtain the Tax Ruling.

There is no prescribed application form for the Tax Ruling. The submission to the IRAS for the Tax Ruling generally has to outline the key features of the SREIT, such as investment focus and distribution policy, and the measures that the trustee and the manager will undertake to implement, such as to minimize administrative burden and tax revenue leakage to the IRAS arising from the IRAS' agreement to grant tax transparency to the trust.

2.2.2 Legal form / share capital

Australia	Resident/non-resident (public) unit trust. No minimum capital requirements exist.
Hong Kong	Unit Trust domiciled in Hong Kong, no minimum capital requirements
Japan	Trust or Corporation, minimum capital required for corporate type is JPY 100 million
South Korea	For REIT's a stock company, minimum share capital of KRW 50 billion For RETF's a trust with no minimum investment requirement
Singapore	Trust or corporation

Australia

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 carries on trading activities.

Hong Kong

A Hong Kong REIT authorised by SFC must be a unit trust domiciled in Hong Kong. The REIT is allowed to hold real estate through special purpose vehicles ("SPVs") only if:

- the SPVs are 100% beneficially owned by the REIT;
- the SPVs are incorporated in jurisdictions which have established laws and corporate governance standards commensurate with those observed by companies incorporated in Hong Kong.

The REIT is allowed to hold up to two layers of SPVs. The top-layer SPV shall be formed solely for the purposes of holding 100% interest in one or more SPVs in the second layer, whereas the second-layer SPVs are established for the sole purposes of directly holding the real estate and / or arranging financing for the REIT scheme.

The REIT is required to appoint an external management company which is acceptable to the SFC. The SFC requires that the management company must be licensed under the Securities and Futures Ordinance in Hong Kong. The management company is allowed to delegate the property management functions of running the REIT's properties to an outside company or employ suitably experienced personnel.

As the REIT is a trust, it is required to appoint an independent trustee who will provide an additional layer of oversight of the operations of the REIT and protect the rights and interests of the unit holders. The Code requires that the management company and the trustee must be independent of each other, should not have common directors, and that neither is a subsidiary of the other.

Japan

Under the Investments Trusts and Investment Corporations Law, a JREIT can either be "trust type" or a 'corporate type'.

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 first publicly listed JREITs were all corporate type despite the trust type JREIT having certain tax advantages. Although the trust law has since been amended to unravel some of the administrative requirements that led the first JREITs to be corporate type, business practice has been to continue using corporate type as it is the accepted form in the market.

The minimum investment capital for corporate type investment corporations is JPY 100 million.

South Korea

General REITs and CR-REITs are stock companies with a minimum capital requirement of KRW 50 billion.

Singapore

Under the existing legal framework, a property fund can either be structured as a company or a trust. However, as mentioned above, given that tax transparency can only be applied to a trust, the existing SREITs are structured as unit trusts.

2.2.3 Listing Requirements / shareholders requirements

	Treatment of domestic shareholders (max./min. of shareholders)	Mandatory listing on stock exchange
Australia	No restrictions	none
Hong Kong	No restrictions	yes
Japan	At least 1,000 shareholders before listing	no
South Korea	No restrictions	General REIT: yes CR-REIT: none RETF: close-ended public funds are required to be listed; open-ended funds have no listing requirements
Singapore	At least 500 shareholders	yes

Australia

Listing is not mandatory in Australia to obtain 'low through' status. However, large property trusts are typically listed in Australia for commercial purposes. Broadly, in order to be able to be listed on the Australian stock exchange, the trust must have at least 500 unit holders each holding a parcel of units with a value of at least $2,000.

There are no requirements in respect of the make up of the investor profile.

Hong Kong

Listing of a Hong Kong REIT is a mandatory requirement. While the REIT may issue new units in accordance with the requirements set out in the Code, it is not allowed to redeem the units from time to time. Unit holders may divest their units by selling them on the HKSE.

There is no restriction on the units to be issued or number of unit holders. However, in order to protect the interest of the existing unit holders, unless the Code otherwise permits, all issues of units by the REIT must be offered to the existing holders pro rata to their existing holdings and, only to the extent that the units offered are not taken up by such holders may they be allotted or issued to other persons or other than pro rata to their existing holdings.

The Code contains rules governing the transactions between connected persons, which include the management company, the property valuer, the trustee and a significant holder. A holder is a significant holder if it holds 10% or more of the outstanding units of the REIT.

Japan

The Tokyo Stock Exchange listing requirements for JREITs include the following:

- At least 75% of the JREITs assets must be invested in real estate.
- At least 50% of the JREITs total assets must be invested in, or expected to be invested in, income generating assets. Non-real-estate assets must be limited to cash and cash equivalents.
- Total assets must exceed JPY 5 billion.
- The number of investors must exceed 1,000 prior to listing.

South Korea

In Korea, there are no requirements concerning the minimum/ maximum number of shareholders. However, in the case of General REIT, a single shareholder and its related party cannot own more than 10% of the total number of shares issued.

RETFs may be privately held or offered to the public. A close-ended publicly placed RETF is required to be listed on the Korea Stock Exchange or the KOSDAQ. There is no listing requirement for an open-ended RETF. There is no minimum number of beneficiary certificate holders.

Singapore

One of the current requirements for tax transparency is that the SREIT must be listed on the Singapore Exchange. For purposes of applying for a listing, an SREIT, if it is denominated in Singapore Dollars, must have a minimum asset size of at least S$20 million and at least 25% of its units is held by at least 500 public shareholders.

2.2.4 Asset level / Activity test

	Restrictions on activities / investments
Australia	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.
Hong Kong	Investment in Hong Kong real estate only. The real estate must generally be income-generating. The REIT is required hold each property (or the property holding SPVs) for a period of at least two years.
Japan	Investments only in "Qualified Assets", including negotiable securities, real estate, monetary debts, trust beneficiary rights, interest in silent partnerships (tokumei kumiai)
South Korea	General REIT: at least 90% of assets must be invested in real estate, real estate associated securities, and cash 70% of the total assets must comprise of real estate. REITs are limited to 10% of the voting securities of a corporation. CR-REIT: At least 70% of the CR-REIT's asset must comprise purchased/acquired real estate.
Singapore	At least 70% of the funds deposited property should be invested in real estate and real estate related assets

Australia

There are no restrictions on the type of activities that can be undertaken by a property trust, unless the trust qualifies as a public trading trust.

Unit trusts, other to 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.

There is some uncertainty as to the extent to which a public unit trust can engage in non-eligible activities. Provided the public unit trust carries on primarily, i.e. predominantly, eligible investment business activities and non-eligible activities are incidental and relatively insignificant, the public unit trust will retain the 'flow through' treatment. On that basis, the development of property for the purpose of holding it to derive rental income rather than for the purpose of selling it at a profit should qualify as an eligible investment business.

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.

Hong Kong

A Hong Kong REIT may only invest in real estate in Hong Kong. Real estate or property refers to land or buildings, whether the interest is freehold or leasehold and includes car parks and assets incidental to the ownership of real estate (e.g. fittings, fixtures, etc). The SFC has accepted that hotel, recreation parks and serviced apartments should be included as permissible investments. The real estate must generally be income-generating. The REIT may acquire uncompleted units in a building which is unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment, but the aggregate contract value of such real estate may not exceed 10% of the total net asset value of the REIT scheme at the time of acquisition.

The REIT is prohibited from investing in vacant land or engaging or participating in property development activities. For this purpose, property development activities do not include refurbishment, retrofitting and renovations.

The REIT may hold the legal and beneficial titles of the real estate either as joint tenants or tenant-in-common with one or more third parties provided that the REIT scheme holds majority interest and control and the REIT scheme has freedom to dispose of its interest (subject to complying with the applicable requirements of the Code).

The REIT must hold each property (or the property holding SPVs) for a period of at least two years.

Japan

JREITs are required to invest primarily in "Qualified Assets", including:

(1) negotiable securities;
(2) real estate;
(3) leasehold rights in real estate;
(4) surface rights;
(5) monetary debts;
(6) promissory notes;
(7) trust beneficiary rights (money, negotiable securities, monetary debt, real estate, leasehold rights and surface rights for land;
(8) interest in tokumei kumiai, and;
(9) trust beneficiary rights of monies in which the object is management of the investment in the tokumei kumiai interest primarily consisting of the trust property etc.

As a general rule, JREITs may not conduct operations other than the management of Qualified Assets. If the company bylaws permit, however, the following operations may be conducted:

- Transactions involving qualified assets that do not involve "the investment corporation itself developing the site or building buildings."
- In the case of non-qualified assets, "acquisition, assignment or other transactions" are possible, however, the practical work itself must be entrusted to an outside party.

JREITs are allowed to invest in an SPV, but cannot own 50% or more of the SPV's shares. If the SPV is a tokutei mokuteki kaisha ('TMK'), however, the JREIT may own 100% of the TMK shares provided certain conditions are met.
There are no limitations on JREITs investing in foreign assets.

South Korea

In general, there are no explicit restrictions applicable to General REITs, CR-REITs or RETFs against ownership of (1) assets located in a foreign jurisdiction, or (2) shares in a company that owns real estate property. However, the government agencies that oversee the approval of General REIT and CR-REIT are unlikely to approve the ownership of either foreign assets or shares in a company owning the target real estate property by General REIT or CR REIT. There are no provisions prohibiting a RETF from investing in foreign assets; however, the RETF is a new structure and it is unclear how the provisions will be enforced. RETFs may invest in a variety of assets including but not limited to: real estate; real estate company shares; overt-the-counter derivatives; other beneficiary certificates; and real estate development company shares. The shares of a company owning the target real estate.

(1) General REIT
At the end of each quarter, at least 90% of the General REIT's asset must comprise real estate, real estate associated securities, and cash. However, 70% of the total assets must comprise of real estate.

Further, General REITs cannot own more than 10% of the voting securities of a corporation.

(2) CR-REIT
At least 70% of the CR-REIT's asset must comprise purchased/acquired real estate.

(3) RETF
RETFs are not required to invest a certain percentage of their assets in real estate.

Singapore

The Property Funds Guidelines prescribe the permissible investments that a property fund may invest in and impose restrictions and requirements on its investments and activities.

A property fund may invest in:
- real estate, whether in or outside Singapore;
- real estate related assets, such as debt securities and listed shares of property corporations, mortgage backed securities and other property funds;
- debt securities and listed shares of non-property corporations;
- government securities and securities issued by a supra-national agency or a Singapore statutory board; and
- cash and cash equivalent items.

Although a property fund is allowed to invest in overseas real estate, the Tax Ruling issued by the IRAS is currently premised on investment wholly in Singapore real estate. This Tax Ruling will have to be negotiated to cover investment in overseas real estate should any SREIT decide to expand overseas.

At least 70% of the property fund's deposited property should be invested in real estate and real estate-related assets. At least 35% of the property fund's deposited property should be invested in real estate. There are also restrictions in terms of the amount that can be invested in certain permissible investments to ensure that there is diversification of investments.

A property fund should not engage or participate in property development activities whether on its own, in a joint venture, or by investing in unlisted property development companies. It is also not allowed to invest in vacant land and mortgages.

2.2.5 Leverage

Australia	unlimited, subject to general principles (e.g. thin capitalisation rules)
Hong Kong	aggregate borrowings shall not at any time exceed 35% of the total gross asset value
Japan	no limitation
South Korea	Reits: None. (permissible only for short-term operating capital) RETF's: Allowed up to 200% of the net assets of the RETF
Singapore	Total borrowings should not exceed 35% of deposited property

Australia

Australian tax law contains no specific gearing limits for unit trusts. The thin capitalisation rules may apply to effectively impose a gearing limit where the property trust is controlled by non-resident unit holders.

A tax deduction should be available for interest expense incurred in connection with loans used to acquire the income yielding property.

Hong Kong

A REIT may borrow, either directly or through its SPVs, for financing investment or operating purposes but the aggregate borrowings may not at any time exceed 35% of the total gross asset value of the REIT scheme. The REIT scheme may pledge its assets to secure such borrowings.

Japan

There is no limitation in the Investment Trusts and Investment Corporations Law concerning borrowings.
In order to meet tax requirements, the lender must be a Qualified Institutional Investor.

There is no requirement on distribution out of capital gains realised from the sale of investments.

South Korea

In general, REITs cannot borrow funds, except for short-term borrowings used to manage cash flow issues.

RETFs may incur debt up to 200% of their net assets.

Singapore

The Property Funds Guidelines stipulate that the total borrowings of a property fund should not exceed 35% of the fund's deposited property. However, this gearing limitation does not apply if all the borrowings by the property fund are made via borrowings which are rated at least A by Fitch Inc., Moody's or Standard and Poor's or the credit rating of the property fund itself is at least A by any of these three rating agencies.

2.2.6 Profit distribution obligations

	Distribution on operative income	Distribution on capital gain on disposed investments	Timing
Australia	Distribution of 100% of trust's income.	Distribution of 100% of capital gains realised on disposal of property, including interests held in other subtrusts or other entities. 50% capital gains tax (CGT) discount may be available.	Beneficiaries must be presently entitled to the trust income at year end; i.e. distribution must occur annually.
Hong Kong	90% of its audited annual net income after tax	90% of its audited annual net income after tax (the trustee has the discretion to determine if any of the amount of the gain on disposal of real estate may form part of the net income)	Annual distributions
Japan	More than 90% of distributable income	More than 90% of distributable income	Business year
South Korea	90% of distributable income No requirement for CR-REIT RETF's must distribute their profits	90% of distributable income No requirement for CR-REIT by cash or by issuing new beneficiary certificates	Fiscal year
Singapore	90% of taxable income	no requirement	Semi-annually (in practice)

Australia

In order to ensure that the trustee is not subject to tax on the trust's net income at 48.5%, the unit holders must be presently entitled to all of the trust's income at year end, including capital gains. Property trusts typically distribute their trust income (including tax deferred amounts) on at least an annual basis, and listed trusts distribute generally on a quarterly basis.

Hong Kong

The REIT must distribute to unit holders as dividends each year at least 90% of its audited annual net income after tax. Where the scheme holds real estate via SPVs, each SPV must distribute to the REIT all of its income as permitted by the laws and regulations of the relevant jurisdiction.

As regards the revaluation surplus credited to income, or gains on disposal of real estate, the trustee must determine whether any of these amounts are to form part of the net income for distribution to the unit holders.

Failure to meet the profit distribution obligations would breach the provisions of the Code. The Code is non-statutory. Accordingly, such breach would not by itself render any person liable to any legal or other proceedings, but in any proceedings under the Securities and Futures Ordinance before any court, the Code is admissible as evidence, and if any provisions set out in the Code appears to the court to be relevant to any questions arising in the proceedings, it will be taken into account in determining the matter. The breach may also cause the SFC to consider whether such failure adversely reflects on the person's fitness and propriety and the suitability of the REIT to remain authorised.

Japan

The JREIT is taxable in the same manner as other Japanese corporations. If certain requirements are met, however, the JREITs dividends are deductible. With regard to profit distributions, the Special Taxation Measures Law requires that the JREIT distribute more than 90% of distributable income to investors each business year.

South Korea

(1) General REIT
General REITs are required by law to distribute to the shareholders at least 90% of their distributable income, in the form of shareholders' dividends, in order to maintain their General REITs status.

(2) CR-REIT
There are no requirements for CR-REITs in terms of profit distribution obligation. However, CR-REITs will generally distribute 90% or more of their distributable income to take advantage of certain tax benefits.

(3) RETF
RETFs are required to distribute their profits by cash distributions or by issuing new beneficiary certificates.

Singapore

Under the Tax Ruling, an SREIT is required to distribute at least 90% of its taxable income, in the form of distributions to unit holders. Although not a requirement, the listed SREITs currently make two distributions annually out of their taxable income calculated on a semi-annual basis.

2.3 Tax treatment at level of REIT

2.3.1 Corporate income tax tax / withholding tax

	Income	Capital gain	Withholding tax
Australia	Not taxable in the hands of the trustee provided the unitholders are presently entitled to the trust's income. Certain types of income may be subject to tax in the hands of the trustee where the income is attributable to non-resident unitholders and is Australian sourced.	Tax treatment of capital gains similar to that of ordinary income. 50% CGT discount may be available.	Dividend and interest paid to non-resident unitholders is subject to withholding tax in accordance with domestic rules/treaty rules, as dividends or interest.
Hong Kong	REIT is ordinarily subject to property tax for property held directly, dividend income from SPVs is tax exempt from profits tax	No capital gain tax	None
Japan	JREIT is subject to tax but distributions are deductible.	Tax treatment similar to current income.	Withholding income tax rate for public JREITs is 7%, local tax rate: 3%, for details see sect. 2.4.
Korea General REIT	Property income forms part of the taxable profit and is taxed at 16.5% on income up to KRW 100 million and 29.7% on income above KRW 100 million. (NOTE1: This rate will be lowered to 14.3% or 27.5% from 2005)	Capital gains form part of the taxable profit and is taxed at 16.5% or 29.7% (this rate will change from 2005 – See NOTE1)	16.5% to Korean individual shareholders. Dividends to offshore shareholders may be reduced pursuant to the application of tax treaties
Korea CR-REIT	Property income forms part of the taxable profit but a full exemption is applicable if 100% of taxable income is distributed as dividends	Capital gains form part of the taxable profit but a full exemption is applicable if 100% of taxable income is distributed as dividends	16.5% to Korean individual shareholders. Dividends to offshore shareholders may be reduced pursuant to the application of tax treaties
Singapore	Not taxable at trustee level to the extent of taxable income distributed	No capital gains tax	70% on distributions to non qualifying unit holders, e.g. non-resident corporate unit holders

Australia

Provided the unit holders are presently entitled to the trust income, including capital gains, at year end, the trustee is not liable to tax on the trust's net income.

Income derived by the property trust will retain its character in the hands of the unit holders.

In respect of non-resident beneficiaries, the trustee will be subject to tax on Australian sourced income, other than income which is subject to withholding tax (e.g. interest/dividend WHT as WHT is a final tax). The unit holder is entitled to a tax credit for tax paid by the trustee. The Government is currently reviewing the tax treatment of Australian sourced capital gains distributed to foreign unit holders.

The taxation of distributions in excess of the trust's net taxable income (e.g. an amount representing plant and equipment depreciation) may be deferred until such time as the units are disposed of, or are subject to capital gains tax.
Tax losses are quarantined in the trust and cannot be distributed to unit holders. They can be carried forward for offset against future income subject to satisfying the trust loss recoupment tests (these provisions do not apply to capital losses) the most

important of which is a greater than 50% continuity of ownership.

Hong Kong

If the REIT holds the real estate directly, it will be subject to Hong Kong property tax. Property tax is chargeable on the net assessable value of the land and / or buildings situated in Hong Kong. The net assessable value is calculated based on the rental income less the statutory deductions. The statutory deductions are:

- rates where these are paid by the owners;
- irrecoverable rents which are proved to be bad; and
- 20% of the rental income after deducting the items in (a) and (b) above.

Actual expenses incurred by the REIT are disregarded under the property tax regime.

If the REIT holds the real estate indirectly via the SPVs, any dividends received by the REIT from the SPVs will be exempt from Hong Kong profits tax. The SPVs will be chargeable to Hong Kong profits tax in respect of the rental income derived. In arriving at its assessable profits, the SPVs are generally allowed to deduct the actual expenses incurred provided that the deduction rules under the profits tax regime are satisfied.

Japan

In general, Japanese corporations are subject to corporate income taxes as follows:

- Corporate income tax: 30.0%
- Inhabitants tax: 6.21%
- Enterprise tax: 10.08%
- Total of statutory rates: 46.29%

Enterprise tax is deductible from taxable income in the year paid; thus, assuming that the deduction can be fully used, the effective tax rate is approximately 42%.

A JREIT is taxable in the same manner as other corporations except that, if certain conditions are met, the dividends are deductible. As a result, the effective rate for a JREIT may be almost zero. The following requirements must be met for the dividends to be deductible:

- The JREIT is registered under Article 187 of the Investment Corporation Law
- One of the following must be satisfied:
  - The shares (or trust units) at the time of establishment were publicly traded and the total issue value is JPY 100 million or more; or
  - The shares (or trust units) at the end of the JREIT fiscal year are held by either 50 or more persons or solely by qualified institutional investors
- The shares (or trust units) are offered mainly in Japan
- The business year does not exceed one year
- The JREIT acts in compliance with the Investment Corporation Law
- The Investment Corporation has engaged a custodian to own the JREITs assets
- The management of the assets is entrusted to an investment trust management company
- The investment corporation shall not be classified as a family corporation at the fiscal year end
- More than 90% of the JREITs distributable income (defined below) is distributed to investors as a dividend
- The JREIT does not own or control 50% or more of another corporation
- The JREIT borrows only from qualified institutions
- Other requirements as may be added by regulation.

The term “distributable income”, in general, is defined as the ordinary income for the given business year plus capital gains from the sale of a property.

If the JREIT has more cash than distributable income, for example, as a result of depreciation, such cash may be distributed to the shareholders as a return of capital (a listed JREIT may distribute up to 60% of the depreciation amount in this way). If, however, a portion of this return of capital is from retained earnings, it may be treated as a deemed dividend and is subject to tax in a manner similar to the distribution of profit.

Withholding tax on distributions paid by the JREIT is discussed in section 2.4 below.

South Korea

(1) General REIT
The treatment of capital gains and passive/ ordinary income are the same under Korean tax laws: a tax rate of 16.5%, including surtax, is applicable to a tax base of up to KRW 100 million and 29.7% above the 100 million threshold. (Tax rates to change in 2005 to 14.3% or 27.5% respectively).

(2) CR-REIT
Like General REITs, CR-REITs are subject to the same tax treatment as a normal Korean company. However, all taxes at the CR-REIT level can be avoided through the dividend declared deduction. If a CR-REIT declares a dividend of 90% or more of its distributable income, it can claim a deduction for the full amount of the declared dividend.

(3) RETF
RETFs are not taxable entities under the Korean Corporate Income Tax Act. Therefore, there is no entity level income taxation.

Singapore

Under the current Singapore income tax law, the trustee is liable to income tax on the taxable income of a trust. The trust income that is taxable in the hands of the beneficiary is the amount of taxable income of the trust that corresponds to his beneficial entitlement. A corresponding amount of tax paid by the trustee on the taxable income of the trust is generally imputed as a tax credit to the beneficiary of the trust. This tax credit may be used by the beneficiary for offset against the income tax liability of his overall income subject to Singapore income tax.

This legislated tax treatment is modified by the Tax Ruling issued by the Inland Revenue Authority of Singapore ("IRAS") to the listed SREITs. Under the Tax Ruling, subject to meeting the terms and conditions specified therein, the trustee is not taxed on the taxable income of the trust (commonly referred to as "tax transparency"). Instead, unit holders are taxed on the distributions they received from the trust at their own applicable income tax rates. The trustee is however required to deduct income tax at the applicable corporate income tax rate from distributions made to certain unit holders.

Corporate income tax / Withholding tax

Subject to meeting the terms and conditions of the Tax Ruling, the trustee of an SREIT is not taxed on the taxable income of the SREIT to the extent of the amount of taxable income distributed. Instead, the trustee and the manager deduct income tax at the applicable corporate income tax rate from distributions made to unit holders. However, to the extent that the unit holder is an individual or a qualifying unit holder, the distributions will be made without tax deduction. A qualifying unit holder includes a company incorporated and tax resident in Singapore and generally excludes non-resident investors.

The amount of taxable income, if any, not distributed is assessed to tax in the hands of the trustee.

Distributions to unit holders are based on the taxable income of the trust determined by the manager of the trust. This is likely to differ from the amount finally agreed with the IRAS. Accordingly, a rollover adjustment mechanism has to be agreed with the IRAS, as part of the Tax Ruling, to deal with over and under distributions.

Singapore does not impose tax on capital gains. Any gain derived from the disposal of the SREITs real estate will not be liable to Singapore income tax unless the gain is considered income derived from a trade or business in property trading. If the gain is considered as trading gain, it will be assessed to tax in the hands of the trustee.

As the investment policy of a REIT is typically long-term investment in real estate which is income producing and not property trading, it is quite likely that gains derived from the disposal of its real estate will be treated as capital gains. Nonetheless, this is dependent on the actual facts and circumstances of each case.

2.3.2 Transition regulations

	Conversion into REIT status
Australia	N/A
Hong Kong	There is no specific transition regulation in Hong Kong governing the transformation of a corporation to a REIT.
Japan	There are no special transition regulations. Thus, if there is any appreciation in the assets prior to the transfer to the JREIT, such gains are taxable.
South Korea	Confirmation with relevant authorities necessary. No specific requirements provided under law.
Singapore	There are currently no special tax rules for the transition of property from a normally taxable entity to an SREIT. The transferor is subject to normal tax treatment on gains realised from the transfer, i.e. they are taxed as ordinary income if determined to be trading gains and not taxed if they are capital gains.

2.3.3 Registration duties

	Registration duties
Australia	No duty on capital contributions. Stamp duty of up to 6.75% of the higher of market value or consideration paid on the transfer of property or transfer of units in unlisted property trusts. Listed trusts – no duty on transfers of units.
Hong Kong	The transfer of real estate into a REIT will be subject to Hong Kong stamp duty at a maximum rate of 3.75% for purchase consideration exceeding HK$6,720,000. If the REIT acquires the shares in an SPV holding the real estate, the transfer of the shares, if they are regarded as Hong Kong stock, will be subject to stamp duty at the rate of 0.2% on the transfer consideration.
Japan	Registration tax of JPY15, 000 is imposed on the increase of capital in JREIT, regardless of the amount of capital increase. Acquisition tax, registration tax, and various surtaxes are levied (with reduced rates for JREITs).
South Korea	Acquisition tax at a rate of 2.2% on the acquisition price of real estate, Registration tax at a rate of 3.6% on the acquisition price of real estate, including the agricultural and education surtaxes. For real estate acquired in a metropolitan area, these taxes are tripled. CR-REITs and RETFs receive a 50% reduction in these rates and are exempt from the tripling for real estate acquired in a metropolitan area.
Singapore	There is no capital duty on capital contributions into an SREIT. However, an SREIT has to pay stamp duty at approximately 3% of the consideration for acquisition of real estate.

2.4 Tax treatment at shareholders' level

2.4.1 Domestic Shareholders

Australia

Corporate unit holder:

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

A return of capital, including a tax deferred amount, is only taxable to the extent that it exceeds the cost base of the unit holder's investment.

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

Individual unit holder:

An individual unit holder is subject to tax at the prevailing tax rate of up to 48.5% on its share of the trust's net income. However, to the extent that the trust's net income is made up of capital gains, the unit holder may be entitled to a 50% CGT discount.

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.

Hong Kong

The unit holders are not subject to Hong Kong tax in respect of the dividends received from the REIT. The Hong Kong tax position will be the same for both Hong Kong and overseas investors. However, the overseas investors may be subject to tax in their home countries in respect of the dividends received from the Hong Kong REIT.

Japan

A. Individuals

dividends: From January 1, 2004 to March 31, 2008, dividends from a public JREIT are subject to withholding income tax of 7% and local tax of 3%. This withholding tax is a final tax, though the taxpayer can, if it elects, file a tax return to report the income and pay tax on such income on a net basis. (Dividends credit is not applicable to dividends from JREITs, unlike dividends received from ordinary Japanese stocks).

capital gains: From January 1, 2003 to December 31, 2007, capital gains from the sale of investment units are subject to income tax of 7% and local tax of 3%. This tax is paid by filing a tax return (although in some cases, if the shares are held through a securities company, the appropriate amount of tax is paid by way of withholding at source).

B. Corporations

dividends: For corporate investors, dividends from a public JREIT are subject to 7% withholding tax. Dividend income is aggregated with other income and subject to tax at standard corporate rates. Unlike dividends from other Japanese companies, the dividends from a JREIT do not qualify for the dividend received exclusion.

capital gains: Capital gains are subject to tax at the standard rate. There is no withholding.

C. Pension funds

Qualified pension funds are not subject to withholding tax or corporate income tax on dividends or capital gains from a JREIT.

South Korea

Corporate shareholder:

Ordinary dividends and capital gains dividends paid by a REIT to a domestic corporate shareholder are subject to corporate income tax and resident surtax of 16.5% for taxable income up to KRW 100 million and 29.7% above the KRW 100 million threshold. Corporate shareholders qualify for the deduction on dividends received (Tax rates to change in 2005 to 14.3% or 27.5% respectively).

Taxable distributions from an RETF are characterized as a dividend for tax purposes if less than 50% of the RETF's assets are debt securities. These dividends in the hands of a corporate shareholder will be subject to the same tax treatment as distributions from a REIT, except that the dividend received deduction cannot be claimed.

Individual shareholder:

An individual shareholder is exempt from tax on capital gains and subject to 16.5% tax rate if the aggregate interest and dividend income is below KRW 40 million in the calendar year. However, if the aggregate interest and dividend income exceeds KRW 40 million, he or she is subject to the ordinary individual income tax rates.

Taxable distributions from an RETF are characterized as a dividend for tax purposes if less than 50% of the RETF's assets are debt securities. These dividends in the hands of a corporate shareholder will be subject to the same tax treatment as distributions from a REIT.

Singapore

Income distributions:

Corporate Unit holders:
Corporate unit holders are taxed on income distributions at 20%, the prevailing corporate income tax rate. The taxable amount is the gross amount of the taxable distribution less deductible expenses, if any.

Individual Unit holders:

Distributions from REITs that are authorised under Section 286 of the Securities and Futures Act (excluding distributions out of franked dividends) derived on or after January 1, 2004 by individuals are exempt from tax. This tax exemption does not apply to distributions received by individuals that are considered as gains or profits from any trade, business or profession, or are derived from units held through a partnership in Singapore.

Gains on disposal of units

Singapore does not impose tax on capital gains. Accordingly, gains on disposal of units that are capital in nature will not be subject to tax. However, such gains may be considered income in nature and subject to income tax if they arise from or are otherwise connected with activities of a trade or business carried on in Singapore.

2.4.2 Foreign shareholders

Australia

Non-resident unit holders are subject to Australian tax (corporate income tax rate of currently 30%; individuals - on a progressive scale starting at 29%), on their share of the trust's net income that is attributable to sources within Australia).

To the extent that the income has been subject to Australian withholding tax (e.g. interest, dividend and the typical treaty withholding rates are 10% for interest and zero or 15% for dividends) no further tax is levied.

Non-resident individual unit holders may be eligible to claim the 50% CGT discount in respect of capital gains distributed by the trust. These taxing rules are currently under review as part of the Governments' general review of international taxation arrangements.

Capital gains realised on the disposal of units in an Australian resident property trust are subject to capital gains tax if the unit holder held at least 10% of the units in the trust. Non-resident individual unit holders may qualify for the 50% CGT discount concession.

Hong Kong

The unit holders are not subject to Hong Kong tax in respect of the dividends received from the REIT. The Hong Kong tax position will be the same for both Hong Kong and overseas investors. However, the overseas investors may be subject to tax in their home countries in respect of the dividends received from the Hong Kong REIT.

Japan

Dividends from a public JREIT paid to foreign shareholders are subject to 7% withholding tax, regardless of whether the shareholder is a corporation or an individual. This rate may be reduced by treaty.

Capital gains are not subject to tax provided that the shareholder (i) does not sell 5% or more of the shares in the JREIT in a single tax year; and (ii) does not own, and has not owned during the year of sale or the prior two years, 25% or more of the shares in the JREIT.

South Korea

Subject to reduction based on applicable tax treaties, the Korean domestic withholding tax rate for dividends distributed by a REIT or an RETF to a foreign shareholder is 27.5%.

Singapore

Distributions from SREIT to foreign unit holders, other than foreign individual, are subject to withholding tax at 20%. This withholding tax is not a final tax.

3 - US & Canada

3.1 General introduction / history

USA	REIT	1960
Canada	MFT	1994

Below, we briefly describe the origin of the US and Canadian REIT regimes and the underlying principle behind the introduction of a REIT regime in both countries.

US

The US Congress created Real Estate Investment Trusts (REIT) in 1960 to make investments in large-scale, income-producing real estate accessible to smaller investors. Congress decided that the way for average investors to invest in large-scale commercial properties was the same as they invested in other industries, through purchasing equity. The way shareholders benefit by owning stocks of other corporations, the stockholders of a REIT earn in the same way a pro rata share of the economic benefits that are derived from the production of income through commercial real estate ownership. REITs offer distinct advantages for investors: greater diversification through investing in a portfolio of properties rather than in a single building and management by experienced real estate professionals.

The US REIT regime, which is governed by tax laws and by regulatory laws, has been modified on several occasions since its inception.

US REITs must comply with a number of requirements related to their operations and distributions, and must meet detailed information reporting requirements. The most fundamental of these requirements are as follows:

(1) US REITs must pay at least 90% of their taxable income to shareholders;
(2) most of a US REIT's assets must be real estate related (including investments in mortgage loans);
(3) US REITs must derive most of their income from real estate held for the long term; and
(4) US REITs must be widely held.

In exchange for satisfying these requirements, REITs benefit from a dividends paid deduction so that most, if not all, of a REIT's income is taxed only at the shareholder level. On the other hand, REITs are limited in the earnings they may retain to meet their business needs. As a result, much of the capital for growth and property maintenance and betterment must come from new money raised in the investment marketplace from investors who have confidence in the REIT's future prospects and business plan, from recycling proceeds from like kind exchanges under section 1031 of the Internal Revenue Code of 1986, or by attracting capital through joint ventures. Although U.S. law requires REITs to distribute at least 90% of their taxable income, taxable income is calculated after deducting depreciation and certain other non-cash expenses. Because depreciation is a non-cash expense, the distribution of the minimum requirement of 90% of taxable income allows REITs to retain additional capital, if deemed necessary and appropriate by REIT management.

Canada

The Canadian Income Tax Act (the 'ITA') does not contain a distinct tax regime for REITs, nor is the term used in the ITA, in contrast to the US Internal Revenue Code. 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. A MFT must qualify as a "unit trust" under the ITA. A unit trust is an inter vivos trust (being a trust other than a testamentary trust) in which the interests of each beneficiary is described by units and either (i) 95% of the units are redeemable at the demand of the holder (an "open-end trust") or (ii) the trust complies with numerous conditions regarding its investments and income (a "closed-end trust"), as noted below.
Prior to 1994, REITs could qualify as MFTs but were generally an unattractive investment vehicle. This is because prior to 1994, a REIT could only qualify as a unit trust if it was an open-end trust. The redemption requirement was an impediment to the development of Canadian REITs because of the lack of immediate liquidity to fund redemptions. This ultimately led to a liquidity crisis for certain REITs when there was a run on redemptions. Fortunately, the provisions relating to a closed-end trust were 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 permitted the proliferation of REITs of which there are approximately 23. 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.

3.2 Requirements

3.2.1 Formalities / procedure

US

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 a REIT. There is no requirement for requesting prior approval or submitting prior notification to elect for the regime. Furthermore, the REIT must send letters to its shareholders of record requesting details of beneficial ownership of shares annually. Substantial monetary penalties are imposed on a REIT that fails to timely send these letters.

Canada

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 an MFT from the beginning of its first taxation year.

3.2.2 Legal form / share capital

	Treatment of domestic shareholders (max. / min. of shareholders)	Mandatory listing on stock exchange
USA REIT	Min. 100 shareholders; Have no more than 50% of its shares held by five or fewer individuals during the last half of the taxable year	None
Canada MFT	As for any MFT, there is a requirement of a minimum of 150 unitholders each of whom holds not less than one "block of units" (which number depends on the fair market value of the units) and having an aggregate fair market value of not less than $500) generally, MFTs cannot be established or maintained primarily for the benefit of non-residents of Canada	Units must be listed on a prescribed stock exchange to avoid having the units redeemable at the demand of the holder

Each regime has specific conditions as to the permitted legal forms that can be used for a REIT and/or the structure of its share capital.

US

Any entity taxable as a domestic corporation under U.S. federal income tax law can elect to be treated as a U.S. REIT. In addition, shares of a U.S. REIT must be transferable and the entity must be managed by one or more trustees or directors. Two thirds of listed U.S. REITs are organized as corporations under state law, while the remainder are business trusts.

Canada

In Canada, the MFT developed to become the most popular publicly traded investment vehicle for Canadian real estate investment. While other tax efficient vehicles have been considered, the MFT provides the best tax treatment. Unit holders of MFTs (including REITs), however, have not been granted statutory limited liability except for recent enacted legislation in Alberta which applies in certain cases. While the risk of liability for unit holders in respect of claims against the REIT is generally considered remote, it has been an impediment to investment by certain pensions. There is proposed legislation in Ontario, yet to be enacted, which would provide limited liability to unit holders of an MFT.

3.2.3 Listing requirements / shareholders requirements

US

The US regime requires the REIT to have a minimum of 100 shareholders, but have no more than 50% of its shares held by five or fewer individuals during the last half of the taxable year. A number of "look through" rules apply to see whether the latter criterion is met.

Canada

The Canadian rules applicable to an MFT 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 $500. The number of units required in a block depends on its fair market value (e.g. 100 units, if the fair market value of one unit is less than $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 prospectus or similar document in respect of a class of units of the trust was filed with a public authority in Canada in accordance with applicable law, 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 are normally met by MFTs by filing a prospectus and making a distribution to the public of units in accordance therewith.

3.2.4 Asset level / Activity test

	Restrictions on activities / investments
US REIT	- At least 75% of total assets in real estate assets, cash and government securities. At least 75% of gross income from rents from real estate property or from interest on mortgages on real estate property; - At least 95% of gross income from the above sources plus certain passive sources such as non-mortgage interest and dividends; - No more than 20% of its assets consist of taxable REIT subsidiaries, which cannot operate or manage accommodation or healthcare facilities. - A REIT can develop properties for its own portfolio.
Canada MFT	To qualify as an MFT, the trust's only undertaking must be - the investing of its funds in property (other than real property or an interest in real property), - the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) that is capital property of the trust, or - any combination of the foregoing activities There are requirements in respect of the ownership of property it may own and its sources of income discussed below.

All regimes impose restrictions on the permitted activities of a REIT vehicle. The basic underlying principle is that a REIT is a company (or trust) that primarily invests in real estate assets. There is a growing tendency towards a more active investment approach whereby REITs are in fact starting activities of an entrepreneurial nature. The US system seems the most liberal in this respect, as is explained below.

US

REITs can own, operate, manage and develop real estate for its own account. The REIT must satisfy two annual income tests and a number of quarterly asset tests that are designed to ensure that the majority of the REIT's income and assets are derived from real estate sources.

Annually, at least 75% of the REIT's gross income must derive from real estate-related income such as rents from real property and interest on obligations secured by mortgages on real property (as well as income from cash and government bonds). Furthermore, 95% of the REIT's gross income must come from the above-mentioned sources, but can also include other passive forms of income such as dividends and interest from non-real estate sources (e.g., bank deposits). Consequently, no more than 5% of a REIT's income may derive from non-qualifying sources, such as service fees or a non-real estate business.

Quarterly, at least 75% of a REIT's assets must comprise real estate assets such as real property or loans secured by real property. Although a REIT can own up to 100% of a TRS, a REIT cannot own, directly or indirectly, more than 10% of the voting securities of, or 10% of the value of the securities of any corporation other than another REIT (with the exception notably of certain taxable subsidiaries; see below). Nor can a REIT own stock in a corporation (other than a REIT with the exception notably of certain taxable subsidiaries) the value of whose stock comprises more than 5% of a REIT's assets.
The REIT Modernization Act (RMA), which took effect on January 1, 2001, opened for REITs the possibility to create taxable subsidiaries (a "Taxable REIT Subsidiary") that can provide a broader range of services to tenants for which a REIT would otherwise need to employ an independent party. Examples include caretaker services (dry cleaning, booking reservations, etc.) at an office building or a range of services (e.g. pet care) at an apartment complex. Taxable REIT subsidiaries are also used for real estate development activities for third parties (also referred to as "dealer property activities". These activities comprise, e.g., of converting apartments into condominiums) or merchant banking (e.g. buying the real estate of a bankrupt retailer and selling it to others at a profit). However, these real estate development and trading activities (not related to the own investment portfolio) are subject to regular corporate income tax. The value of a REIT's interest in Taxable REIT Subsidiaries, in the aggregate, may not exceed 20% of the REIT's assets (at fair market value).

In 1974, the IRS clarified that real estate located outside the United States qualifies as a good real estate asset for the REIT tests. In the past decade, US REITs have increasingly invested around the world, but they must take care when meeting certain technical obstacles such as managing foreign currency gains and repatriation.

Canada

To qualify as an MFT at any time, the only undertaking of a trust at that time must be

- the investing of its funds in property (other than real property or an interest in real property),
- the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) 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 so it can operate the business. The subsidiary normally has minimal income tax liabilities as a result of deductions of rent and interest payable to the MFT.

In general, to qualify as a "unit trust" (where the units are not redeemable on demand by the holder), the trust must be resident in Canada and only have the undertaking described above troughout the relevant periods, and the following requirements in respect of property ownership and income must be satisfied troughout the relevant periods:

- At least 80% of its property consisted of any combination of
  - shares,
  - any property that, under the terms or conditions of which or under an agreement, is convertible into shares, exchangeable for shares or confers a right to acquire shares,
  - cash,
  - bonds, debentures, mortgages, mortgage claims, notes and other similar obligations,
  - marketable securities,
  - real property situated in Canada and interests in real property situated in Canada (which would include leasehold interests), and
  - 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,
- Not less than 95% of its income was derived from, or from the disposition of, investments described 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.

3.2.5 Leverage

US

The US REIT regime is characterized by having no gearing limits at all that are prescribed by law.

Canada

The ITA does not impose limits on leverage of a 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.

3.2.6 Profit distribution obligations

	Distribution on operative income	Distribution on capital gain on disposed investments	Timing
US REIT	At least 90% of taxable income (in form of dividends)	No required distribution in order to maintain status, but to the extent tha capital gains are not distributed corporate income tax is due.	The distribution has to take place annually.
Canada MFT	All income of the MFT for a taxation year is paid or payable to unit holder in distributions 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 are generally quarterly	All income must be paid or payable in the taxation year of the MFT but does not have to be paid out until later.

US

The US REITS are required by law to distribute each year to their shareholders at least 90% of their taxable income, in the form of shareholders' dividends in order to maintain the REIT status. The US REIT is not required to annually distribute capital gains to maintain REIT status. The rules regarding the annual distributions are complex and detailed. Under certain circumstances, not further explained in this survey, an excise tax may become due if a REIT is not distributing all of its income/capital gains.

Canada

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 it was paid or the unit holder was entitled in the year to enforce payment. The declaration of trust establishing an MFT normally has 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.

3.3 Tax treatment at level of REIT

3.3.1 Corporate income tax / withholding tax

In this paragraph, a description is given of the tax treatment of profits of a qualifying REIT and the withholding tax regime applicable to distributions to its shareholders.

	Income	Capital gain	Withholding tax
US REIT	Dividend distributions for tax purposes are allocated to ordinary income, capital gains and return of capital, each of which may be taxed at a different rate. Dividends are deductible from taxable income. A REIT pays corporate income tax to the extent it retains income.	Capital gains follow the same system asordinary income: to the extent the capital gains are distributed to the REIT's shareholders in the form of dividends, these may be deducted from taxable income.	No withholding to US shareholders. 30% rate applied to ordinary dividends to non-US shareholders unless a lower treaty rate applies (usual case). 35% withholding rate on REIT capital gain distributions to non-US shareholders.
Canada MFT	An MFT, like any trust resident in Canada, is taxed as individual on its worldwide income from all sources including capital and gains computed under the ITA. It is entitled to deduct whenin computing its income for a taxation year all income determined for puposes of the ITA was paid or payable to unit holders in the year thereby reducing its net income to zero.	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.	There is no withholding on distributions made to residents of Canada. There is a 25% withholding tax on income paid to a unit holder that is non-resident of Canada subject to reduction under a tax treaty. Prior to the proposal 2004 federal budget (discussed below), distributions in excess of income and distributions of capital gains from the disposition of "taxable Canadian property" did not attract withholding tax.

US

For REITs, dividend distributions for tax purposes are labelled ordinary income, capital gains or return of capital, each of which may be taxed at a different rate. Dividends are deductible from income. For example, if a REIT distributes 90% and retains 10%, it is taxed on the retained 10% at the normal corporate income tax level. These rules also apply to capital gains income. As mentioned above, a REIT may have certain taxable subsidiaries providing services related to the real estate investments. The profits of such subsidiaries are normally subject to corporate income tax.

With respect to withholding taxes, the US system draws a clear distinction between domestic (US) and foreign shareholders. Only in connection with dividend distributions to foreign shareholders is withholding tax applied. The "ordinary income" dividends (dividends sourced out of ordinary income) are subject to withholding tax at a 30% rate. Such rate can be reduced pursuant to tax treaties concluded by the US with the countries of residence of the recipient of the dividend. The "capital gains" dividends are subject to 35% withholding tax. This withholding tax cannot be reduced under the prevailing tax treaties.

Canada

An MFT is not exempt from income tax under the ITA. Rather, an MFT computes its income in the same manner as any other individual resident in 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 MFT 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 depends on their characterization for purposes of the ITA and the residency of the unit holder. There are proposed changes to the withholding tax rules as a result of the 2004 federal budget discussed below.

3.3.2 Transition regulations

	Conversion into REIT status
US REIT	Any property owned by a non-REIT corporation that elects REIT status is subject to corporate income tax on the "built-in gain," i.e., the excess of the assets' fair market value over their tax basis. However, this tax is deferred if a company so elects and is eliminated if the REIT holds the property for at least ten years. In addition, all of a corporation's accumulated earnings and profits generated before it becomes a REIT must be distributed to the shareholders no later than the end of the REIT's first taxable year.
Canada MFT	Where a trust owning property commences to qualify as an MFT, there is no deemed or actual gain and therefore no tax payable under the ITA. The ITA generally does not accommodate tax-deferred transfers of property to MFTs 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. Some REITs have established Canadian subsidiaries (or indirectly held partnerships) so that transfers thereto can qualify for tax deferral.

US

In the US, an exit tax is levied upon the transition from a normally taxed entity to a tax exempt REIT on the unrealised capital gains on the properties. In the US, it is possible to defer or even eliminate such "exit tax".

Canada

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 no rules permitting a tax-deferred transfer of property to an 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.

3.3.3 Registration duties

Registration duties payable by a REIT on (i) capital contributions and (ii) acquisition or disposal of real property, can be summarised as follows:

	Registration duties
US REIT	Most states apply transfer taxes on acquisitions of real estate.
Canada MFT	Some provinces impose a transfer tax on the acquisition of real estate payable by the purchaser. For instance, the rate in Ontario is 1.5% of the value of the consideration.

3.4 Tax treatment at the shareholder level

3.4.1 Domestic Shareholders

US

A US individual shareholder is subject to income tax at prevailing income tax rate of approximately 35% (federal rate) on ordinary dividends distributed by a qualifying REIT. Ordinary US REIT dividends qualify for the 15% rate only to the extent that: (1) they represent distributions for a taxable corporation such as a taxable REIT subsidiary; or (2) they represent earnings that have been previously subject to tax at corporate level, for example, if the REIT distributed less than 100% of its taxable income. In 2003, about one third of US listed REITs' distributions qualified for the 15% rate under the above two categories, plus capital gains distributions and return of capital distributions.
Capital gains distributions are taxed as capital gains to the individual shareholders They are taxed at a 15% rate unless the gain is attributable to the recapture of depreciation deductions, in which case the rate is 25%.

A return of capital distribution is only taxable to the extent it exceeds the taxpayers' basis in the REIT shares. The investor's cost basis in the stock is reduced by the amount of the return of capital distribution. When shares are sold, the excess of the net sales price over the reduced tax basis is treated as a capital gain for tax purposes. As long as the appropriate capital gains rate is less than the investor's marginal ordinary income tax rate, a high return of capital distribution may be especially attractive to investors in higher tax brackets.

Canada

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 and 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. Otherwise, there is generally no distinction between individuals and corporations except for taxable dividends that retain their character in the hands of the unit holder. Distributions by the 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". Capital gains and dividends will retain their character in the hands of unit holders if elections are filed. Otherwise, the source" of income is treated as income from a trust.

Upon disposal of a unit of a MFT, the unit holder will realize 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. The combined federal/provincial tax rates vary depending on whether the unit holder is an individual or a corporation (and the type for tax purposes) and the applicable province. The highest marginal tax rate applicable to individual range from 39% to approximately 48% depending on the province. The tax rates applicable to a Canadian-controlled private corporation in respect of investment income vary from approximately 47.5% to approximately 52.5%, depending on the province. A portion of this tax is refundable when taxable dividends are paid.

3.4.2 Foreign shareholders

US

Foreign shareholders are subject to US withholding tax, whereby the rates vary depending on the source of the dividend:

- dividends out of ordinary income are subject to 30% withholding tax;
- "capital gains dividends" are subject to 35% withholding tax;
- return of capital distributions are subject to 10% withholding tax (foreign controlled REITs only).

The withholding tax on ordinary income dividends can be reduced pursuant to the tax treaties concluded by the US. The withholding tax on capital gains distributions cannot be reduced pursuant to tax treaties.

A sale of the shares in a publicly traded REIT by non-US persons is not subject to any withholding or US tax on sales as long as the investor owns 5% or less of the REIT.

Canada

A non-resident of Canada will not generally be taxable under the ITA from a sale of a unit of an MFT. A non-resident will be taxable on the gain if at any time during the 60-month period prior to the sale, it and/or related persons owned 25% or more of the units of any class or series.

The current system treats distributions by an MFT in excess of the trust's income for purposes of the ITA as tax deferred returns of capital. Investors, including non-residents, are therefore not subject to current tax on such distributions. Such distributions reduce the tax cost of the units, thereby increasing the capital gain ultimately realized on disposal of the investment (however, in the case of a non-resident, no tax would typically be payable on disposal.

Under the current system, capital gains realized by an MFT can be distributed to non-residents of Canada with no Canadian tax being levied on the MFT or the non-resident. Even gains from the disposal of "taxable Canadian property" ("TCP") effectively escape Canadian taxation when distributed to non-residents. TCP is defined broadly to include both "core" types of Canadian property, such as Canadian real property and resource property, as well as other types of "non-core" property such as unlisted shares of Canadian companies and certain partnership interests.

In the federal budget tabled March 23, 2004, the Department of Finance proposed changes that will affect the tax treatment of distributions by an MFT to non-residents of Canada. The first change is specific to REITs, the second applies to all MFTs.

The first proposed rule will apply after 2004 to an MFT where the units are listed and its value is attributable primarily to real property in Canada. A new 15% tax will be imposed on the gross amount of all otherwise tax free distributions (other than the non-taxable half of capital gains) from MFTs in excess of the MFTs income for purposes of the ITA. The proposed rule effectively taxes distributions that represent a return of an investor's capital, and therefore differs fundamentally from an income or profits tax. It will be interesting to see whether other countries will grant a foreign tax credit for this tax. The MFT must withhold and remit the tax out of the relevant distribution. The tax is intended to be a "final" tax—in the normal course the non-resident of Canada need not file a tax return.

If the non-resident unit holder realizes a loss on disposal of the unit, this loss is treated as a "TCP holding loss" to the extent of distributions previously received on the unit that were subject to the new tax. The 15% tax applies to the total distributions received in a particular year (to the extent such distributions would otherwise not be taxable) less TCP holding losses for the year. Unused TCP holding losses can be carried forward indefinitely and carried back up for three years. In order to claim such a carry forward or carry back, however, the non-resident investor must file a Canadian tax return.

The second proposed rule will be relevant if an MFT sells real property or shares of a Canadian subsidiary. Effective on the budget date, every MFT must track its net gains from all dispositions of TCP in a new "TCP gains distributions account". Capital gains distributions paid by an MFT out of the TCP gains distributions account to non-residents are deemed to be distributions of trust income, and are subject to a withholding tax of 25% (subject to reduction under a treaty).

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