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Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes

This booklet will keep you up to speed and allow you to compare the various global REIT regimes

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Introduction

During the past few months Real Estate Investment Trusts (REITs) have come back from the financial crisis showing an impressive upswing. The REIT regimes respond to the ever changing market environment and are continuously evolving.

PwC's Asset Management practice has a global team of real estate tax and legal professionals who have conceived this booklet to keep you up to speed and allow you to compare the various regimes. As you will notice, it is a high level comparison of key attributes of selected REIT regimes. In this year's booklet, we have included Finland as an additional country. We trust that you will find it a useful reference and source of information.

The REIT contacts listed within each country section will be delighted to assist you with any further requests on the local REIT model. Otherwise, please don't hesitate to contact me or your usual PwC contact directly.

Uwe Stoschek
Global Real Estate Tax Leader
PwC (Germany)
+49 30 2636 5286
uwe.stoschek@de.pwc.com

Australia

The Australian REIT market has a history dating back to 1971, when the first REIT was listed on the Australian Stock Exchange (ASX). The Australian REIT market is now very large, well established and sophisticated with approximately 70% of Australian investment grade properties securitised. As of 28 February 2011, there were 57listed REITs on the ASX with a market capitalisation of over AU$80 billion.

Brian Lawrence
PwC (Australia)
+61 2 8266-5221
brian.lawrence@au.pwc.com

Manuel Makas
PwC (Australia)
+61 2 8266-5926
manuel.makas@au.pwc.com

Legal form

There are no specific REIT rules in Australia. Australian REITs are trusts that can be listed or unlisted. Australian REITs can be sector specific (e.g. industrial, office, etc.) or diversified funds. In 1998, the Managed Investment Scheme (MIS) rules were introduced into the Corporations Law. The MIS rules govern investment vehicles in Australia, including REITs. The rules deal with regulatory issues such as licensing and board composition for the manager rather than specific tests that must be satisfied to qualify as a REIT.

Australia is, however, going through a period of tax reform. One of the areas that is being proposed is to introduce a specific tax regime for an MIS. At this stage, it is not known what the outcome of this reform will be.

Capital requirements

There are no capital requirements for a REIT (if listed, however, it must meet ASX requirements). There are, however, capital requirements for the manager.

Listing requirements

There are no listing requirements. A REIT can be listed or unlisted.

Restrictions on investors

There are no investment restrictions on investors.

Asset/income/activity tests

Public unit trusts investing in land must do so for the purpose, or primarily for the purpose, of deriving rental income ("eligible investment business"). Public unit trusts that carry on a trading business such as developing land for sale, will not receive flow through treatment. Eligible investment business includes other passive, investment-type activities such as loans, portfolio share investment, derivatives, etc.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

Undistributed income or gains are taxed at 46.5%. Full distribution of income and gains by REITs generally occurs.

Tax treatment at REIT level

Flow through, provided all unitholders are entitled to the income of the REIT. A REIT is responsible for withholding tax on distributions to non-residents. Some treaties deal specifically with REITs, e.g. US/Australia, Japan/Australia.

Withholding tax on distributions

- Domestic: None
- Foreign: 30% or reduced amount of 7.5% if invest via certain countries
- Treaty access: Yes, depending upon exact treaty wording. Limitations can arise if treaty requires beneficial ownership (due to trust legal form). Note REIT distributions are not dividends and not covered under dividend articles.

Tax treatment at the investor level

Resident investors

Resident unitholders are liable to pay tax on the full amount of their share of the taxable income (including capital gains) of a REIT in the year in which they are presently entitled to the income of the REIT. This applies, irrespective of whether the actual distribution of the income from the REIT is paid in a subsequent year.

Distributions from the REIT retain their character and therefore the tax treatment of the various components may differ. For example a distribution from a REIT may include both foreign sourced income and gains (e.g. from properties located overseas) and Australian sourced income and gains. Distributions from an Australian REIT may also include a tax deferred component, capital gains tax ("CGT") concession component, a capital gain component and a foreign tax credit component.

Tax deferred amounts are generally attributable to returns of capital, building allowances, depreciation allowances and other tax timing differences. It is the practice of the commissioner of taxation to treat tax deferred amounts as not assessable when received, unless and until the total tax deferred amounts received by a unitholder exceed the unitholder's cost base of the REIT units. For CGT purposes, tax deferred amounts received reduce the unitholder's cost base of the REIT units and therefore affect the unitholder's capital gain/loss on disposal of those units.

Where a capital asset that is owned by the Australian REIT for at least 12 months is disposed of, the trust may claim a 50% CGT discount on the capital gain realised upon disposal of that asset. The CGT concession component of a distribution by the REIT will represent the CGT discount claimed by the trust in respect of asset disposals. The CGT concession component is not assessable when received by unitholders (and no CGT cost base adjustment is required).

The capital gain component of a REIT distribution must be included in the unitholder's net capital gain calculation.

Unitholders may be entitled to a foreign tax credit for foreign taxes paid by a REIT. The credit is applied against the Australian tax payable on foreign sourced income.

The disposal of REIT units will have CGT implications.

Non-resident investors

Non-resident unitholders are subject to Australian tax on their share of the REITs taxable income that is attributable to Australian sources. Foreign sourced income can flow through an Australian REIT to a non-resident unitholder, tax-free. Distributions to non-residents of Australian sourced taxable income are subject to withholding tax (refer above).

The disposal of REIT units can have CGT implications for foreign investors owning 10% or more of the REIT units.

Transition to REIT/ Tax privileges

None

Belgium

The Belgian closed ended real estate collective investment company (SICAFI or 'SICAFI or 'Société d'Investissement à Capital Fixe Immobilière') was created by the Law of 4 December 1990. However, it took until the Royal Decree of 10 April 1995 to put in place a regulatory framework whereby a balance was sought between allowing investment flexibility to the SICAFI and providing security to the investor. A new Royal Decree was issued on 7 December 2010, replacing the aforementioned Decree and amending the regulatory framework of public SICAFIs. The most important new change is the introduction of the regulatory framework for institutional SICAFIs allowing a public SICAFI to realise specific projects with third parties, i.e. other institutional or professional investors (including public partners under PPP). The regulatory framework of the institutional SICAFI is aimed at protecting the underlying investors in the public SICAFI.

SICAFIs are subject to the standard corporate income tax rate at 33.99%, be it on a very limited lump-sum basis.

Currently, there are 15 SICAFIs acknowledged by the Banking Commission, with a total market capitalisation of approximately EUR5.4 billion.

Laurens Narraina
PwC (Belgium)
+32 2 710 7431
laurens.narraina@pwc.be

Maarten Tas
PwC (Belgium)
+32 2 710 7402
maarten.tas@pwc.be

Legal form

Only a public limited liability company and a partnership limited by shares governed by Belgian law are eligible for the SICAFI status. Both of these entities are corporate bodies and have a separate legal personality according to Belgian company law.

Capital requirements

In principle, a SICAFI must have a fully paid-up share capital of at least EUR1.2 million. However, to obtain authorisation in practice, the required share capital for a public SICAFI is much higher (e.g. the quotation on the Euronext Stock Exchange requires a market capitalisation of EUR15 million).

Furthermore, the SICAFI must prepare a financial plan for the first three financial years as from registration, containing prospective balance sheets and profit and loss accounts as well as a minimum investment budget to meet the risk diversification criteria within 2 years.

Moreover, a public SICAFI's debts on a statutory and a consolidated level cannot exceed 65% of its assets and the relating financial charge cannot be higher than 80% of total operational and financial income.

Listing requirements

The Royal Decree of 7 December 2010 imposes on the promoters to permanently ensure a free float of at least 30% as from the first year after having obtained the public SICAFI status.

In addition, the regular market rules of Euronext Brussels should be met by a public SICAFI, so that a sufficient number of shares would be available to the public.

Restrictions on investors

For public SICAFIs, there are no restrictions as to the type of investors or their country of residence, or any minimum or maximum shareholder requirements. The institutional SICAFI's investors need to be professional or institutional investors and the institutional SICAFI needs to be exclusively or jointly controlled by a public SICAFI. There are no minimum or maximum shareholder requirements (except for the promoters of the public SICAFI controlling the institutional SICAFI).

Asset/income/activity tests

In principle, the exclusive purpose of a SICAFI is the collective investment in 'real estate'. This is, however, broadly defined and includes among others: real estate as such as well as rights in rem thereon, shares with voting rights issued by affiliated real estate companies, etc. Subsidiaries of a public SICAFI can apply for the SICAFI status, but it is an all or nothing approach: a public SICAFI may not control at the same time an institutional SICAFI and a real estate company that is not subject to the SICAFI regime.

To ensure a relatively safe investment environment, in principle a maximum of 20% of the public SICAFI's consolidated assets can be invested in the same project. As of June 2006, this risk diversification requirement no longer applies to properties subject to long-term commitments of a Member State of the European Economic Area (EEA) or international organisations in which one or more EEA Member States participate.

Investments in moveable property are allowed to a very limited extent (as to the duration and the amount of such investment) and provided that such business is authorised by the articles of association of a SICAFI.

Some activities are, however, not allowed. A SICAFI (as well as real estate companies, if any, controlled by the latter) may not act as a mere property developer, i.e. its activity (excluding occasional transactions) may not

consist in constructing buildings itself or having them constructed in view of selling them prior, after or within a period of 5 years after construction.

Furthermore, a SICAFI may not grant loans to or provide guarantees to companies other than its subsidiaries (third-party companies).

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

The SICAFI is obliged to distribute at least 80% of its corrected net result as defined in the Royal Decree, reduced by the amounts corresponding to the net decrease of their debts during the financial year.

Tax treatment at REIT level

Both public and institutional SICAFIs are Belgian tax resident companies and are subject to the standard corporate income tax at a rate of 33.99%. The taxable basis however is limited to non-deductible expenses (other than reductions in the value of shares and capital losses realised on shares), abnormal or gratuitous benefits received and so-called secret commissions. The capital gains and the recurring income from the property are hence tax-exempt.

SICAFIs are subject to an annual tax on their net asset value. The tax rate is 0.08% for public SICAFIs and 0.01% for institutional SICAFIs.

Withholding tax on distributions

In principle, dividends distributed by public SICAFIs are subject to 15% withholding tax. However, provided that at least 60% of the public SICAFI's assets are invested in Belgian immoveable property allocated to residential use, a withholding tax exemption is available. The dividends distributed by an institutional SICAFI are subject to a 25%/15% withholding tax. The public SICAFI receiving such dividends may however apply for a withholding tax exemption based on the parent subsidiary directive as implemented into Belgian law.

Tax treatment at the investor level

Resident investors

Private individuals and legal entities

In principle, the Belgian withholding tax, if any, on the dividends received by private individuals or by legal entities is the final tax so that no dividend income should be declared.

Capital gains realised by Belgian resident individuals on shares that are not held for business purposes are in principle tax-exempt, unless the transfer of the shares cannot be regarded as falling within the scope of the normal management of one's private estate. If the transfer of the shares cannot be regarded as falling within the scope of the normal management of one's private estate, any capital gain will be taxable at 33% (to be increased by municipal taxes).

Also, the capital gain realised upon the transfer of shares will be taxable at 16.5% (+ municipal taxes) if the following cumulative conditions are met: (i) the transferor owned, at any time during the five years preceding the transfer, alone or with close family members, more than 25% of the shares of the Belgian company of which the shares are sold; (ii) the transfer is for a consideration; and (iii) the transfer is made to a company or an association that does not have its registered seat or principal place of business in a country located within the European Economic Area (EEA).

Capital gains realised by individuals on the sale of shares held for business purposes are normally taxed at the general progressive income tax rate. However, in specific cases, a separate tax rate of 16.5% (to be increased by municipal taxes) can be applied.

Corporate investors

Since a SICAFI is an investment company which, although subject to corporate income tax, benefits from a regime that deviates from the common rules, the dividend distributed by a SICAFI cannot benefit from the participation exemption and will in principle be taxable at 33.99%. However, provided the bylaws of the SICAFI state that annually at least 90% of the net revenue will be distributed to the shareholders, the participation exemption can be applied to the extent that said revenue stems from dividends meeting the subject-to-tax condition or from capital gains on shares. For a SICAFI, the latter exception is less relevant as the majority of the income would consist of real estate income.

Any withholding tax levied on the dividend payments can be credited (and is refundable), provided that the dividend is included in the taxable basis of the beneficiary company and to the extent that the dividend distribution does not cause a reduction in value or a capital loss on the shares.

As a SICAFI does not meet the so-called subject-to-tax condition, the capital gains realised on the disposal of the shares would in principle be fully taxable.

Non-resident investors

Based on article 4 of the OECD Model Tax Treaty, a SICAFI should be eligible for treaty protection as it can be considered to be a resident for tax treaty purposes. After all, a SICAFI is subject to corporate income tax in Belgium, albeit the taxable basis is significantly reduced (notional tax basis). Note however that treaty access should be determined on a case-by-case basis.

Private individuals and legal entities

As mentioned above, dividends distributed by SICAFIs are in principle subject to 15% withholding tax (0% in case of a residential SICAFI). However, Belgian tax law also provides for an exemption from withholding tax on dividends paid to non-Belgian residents who do not run any business or are not involved in profit making transactions or who are exempt from income tax in their country of residence.

Corporate investors

As the SICAFI is subject to Belgian corporate income tax – albeit on a limited basis – it can be defended that corporate investors owning a minimum participation (10%) during an uninterrupted period of one year, can benefit from a 0% dividend withholding tax under the Parent-Subsidiary directive.

Transition to REIT/Tax privileges

In case of transformation into a SICAFI or a merger, split or partial split involving a SICAFI, the unrealised capital gains and the hidden reserves are not taxed at the standard corporate income tax rate of 33.99%, but at 16.995% (half the normal rate). There is, however, no such reduced rate for capital gains realised upon contribution into, or sale to, a SICAFI. The contributions in cash or in kind (e.g. real estate) made to a SICAFI benefit from an exemption from proportional registration duties. Only the fixed duty of EUR25 will be due.

Bulgaria

The Real Estate Investment Companies in Bulgaria ("BG-REITs") are regulated by the Special Purpose Investment Companies Act (the "Act"). The Act was published on 20 May 2003 and has been amended several times since.

Orlin Hadjiiski
PwC (Bulgaria)
+359 2 9355 100
orlin.hadjiiski@bg.pwc.com

Blagomir Minov
PwC (Bulgaria)
+359 2 9355 100
blagomir.minov@tbp.bg

BG-REITs are public joint-stock companies which, in compliance with the Act, invest in real estates and raise funds by issuing securities. BG-REITs can carry out their activities lawfully only if licensed by the Bulgarian Financial Supervision Commission ("FSC"). BG-REITs established under the Act are exempt from corporate income taxation.

The adoption of the Act in 2003 was aimed at stimulating the real estate and investment markets. By April 2011 there were 67 active REITS licensed by the FSC. The great majority of them were incorporated in 2005 and 2006 and some established in 2007 and 2008. The crisis put a hold on the development of Bulgarian REITS and none of them were registered in 2009 or 2010. For the first half of 2010 (latest data available), the total asset value of the BG-REITs was about BGN1 450 thousand.[1]

The majority of the BG-REITs are diversified, i.e. they are designed for investment in a broad variety of real estate. There are also specialised funds, e.g. eight BG-REITs specialise in agricultural land investments. Some of the BG-REITs are established for an indefinite period of time and some are term funds.

Legal form

A BG-REIT can be established only as a public joint-stock company. A BG-REIT can neither reorganise itself into another type of company nor change its scope of business.

Capital requirements

The registered capital of a BG-REIT must amount to at least BGN500,000. It must be paid in full before the BG-REIT is registered and no contributions in kind are permitted.

Upon the incorporation of a BG-REIT, the constituent meeting is obliged to pass a resolution for an initial capital increase up to at least 30% of the initial share capital. This first capital increase can be performed only on the basis of a prospectus authorised by the FSC. The increase is to be effected through the issuance of rights entitling the holders to take part in the subscription of the increase. The founding shareholders do not have pre-emption rights in the initial capital increase.

In order to operate legitimately, REITs should receive a licence from the FSC. If a REIT does not commence operations within 12 months of issuing the licence, its licence would be revoked.

Listing requirements

BG-REITs are required to obtain a listing on a regulated market at the time of the obligatory share capital increase (refer to the previous section). It is the rights related to the capital increase that must be listed first.

Restrictions on investors

There are no restrictions on investors.

Asset/income/activity tests

BG-REITs are entitled to invest in real estate and limited property rights in real estate, construction works and improvements, mortgage-backed bonds (up to 10% of their own funds), and service companies for their own needs (up to 10% of their own funds). BG-REITs may not acquire real estate that is subject to a legal dispute and may not guarantee obligations of other persons or provide loans.

Moreover, a BG-REIT may not perform directly the activities relating to the management and maintenance of acquired real estates, performance of constructions and improvements thereon, or, respectively, the collection of amounts resulting from acquired receivables. These have to be outsourced to one or more companies ("service companies"). BG-REITs may themselves invest in service companies under certain restrictions and within certain limitations.

1 This is calculated as the asset value of non-REIT Special Purpose Investment Companies and is deducted from the total asset value of all Special Purpose Investment Companies reported on the website of the FSC – http://www.fsc.bg.No statistical information on the market capitalisation of the licensed companies is disclosed.

Restrictions on foreign assets

The real estate acquired must be located in the territory of Bulgaria.

Distribution requirements

BG-REITs must distribute at least 90% of their adjusted accounting profits for the respective financial year as dividends, which are payable within 12 months as from the end of the financial year.

Tax treatment at REIT level

The profits of the BG-REITs are not subject to corporate taxation. However, BG-REITs are legally obliged to distribute at least 90% of their profits (so called distribution profits) as dividends. The income from dividends distributed by the BG-REIT is subject to taxation at the level of the shareholder. There is no flow through treatment of the income of the BG-REIT for Bulgarian tax purposes.

Local taxes and fees apply for BG-REITs. The transfer of real estate is subject to transfer tax of 0.1%–3% on the higher of the purchase price or the tax value (statutory determined value) of the real estate. The tax is paid by the buyer unless agreed otherwise. Further, there is a 0.01%–0.45% annual real estate tax levied on the higher between the gross book value and the tax value of the real estate (except agricultural land and forests) held by the BG-REIT. The tax value is determined by the municipal authority where the real estate is situated. Garbage collection fee is also collected. The exact rates of these local taxes and fees are determined by the municipality in which the property is situated.

Withholding tax on distributions

Dividends distributed by a BG-REIT to individuals are subject to a 5% withholding tax.

The 5% withholding tax applies to dividends distributed to non-resident corporate entities, unless these entities are residents of EU/EEA.

No withholding tax is levied if the dividends are distributed to a corporate shareholder in Bulgaria or an EU/EEA country.

Non-resident individuals and corporate entities could lower or eliminate the withholding tax on dividends under the provisions of an applicable DTT.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends derived from BG-REIT shares are subject to a final withholding tax of 5%.

Capital gains from the sale of the shares in the BG-REIT are exempt from tax if the sale was made on a regulated market of securities in the EU/EEA. If the sale was made off a regulated market in the EU/EEA, the capital gains are subject to 10% tax. The gain is determined as the difference between the acquisition price and the sales price of the shares.

Corporate investors

Dividends distributed by the BG-REIT would be included in the taxable result of the corporate shareholder subject to corporate income tax at a rate of 10%.

Capital gains from the disposal of shares in the BG-REIT (i.e. the difference between the acquisition price and the sales price of the shares) would be exempt from taxation if the disposal of the shares was done on a regulated market in the EU/EEA. If the sale was made off a regulated market in the EU/EEA, the capital gains would be included in the taxable result of the company and would be subject to 10% corporate income tax.

Non-resident investors

Individual investors

A withholding tax of 5% is levied on the gross amount of dividends distributed by the BG-REIT to a foreign individual.

Capital gains from the sale of the shares in the BG-REIT by foreign individuals are exempt from tax if the sale was made on a regulated market of securities in the EU/EEA. If the sale was made off a regulated market in the EU/EEA the capital gains are subject to 10% tax. The gain is determined as the difference between the acquisition price and the sales price of the shares.

Corporate investors

Under Bulgarian tax legislation, there is a 5% withholding tax on dividends distributed by the BG-REIT to a non-resident corporate entity. No withholding tax applies for EU/EEA shareholders.

Capital gains from the disposal of shares in the BG-REIT by a foreign corporate entity would be exempt from taxation if the disposal of the shares was done on a regulated market in the EU/EEA. If the sale was made off a regulated market in the EU/EEA the capital gains would be subject to 10% withholding tax on the difference between the acquisition price and the sales price of the shares.

Transition to REIT/ Tax privileges

There are no specific exit tax regulations in respect of REITs.

Canada

Since 2007, Canada's income tax legislation has contained a specific set of rules that apply to listed REITs (the "REIT Rules"). The REIT Rules were introduced as an exception to new provisions dealing with specified investment flow-through entities (i.e. certain publicly traded trusts and partnerships) (the "SIFT Rules"). Entities subject to the SIFT Rules are subject to tax ("SIFT tax") in a manner similar to that of public corporations and are not entitled to the flow through tax treatment that is generally available to trusts and partnerships. In their legal form, REITs are mutual fund trusts ("MFTs").

Chris Potter
PwC (Canada)
+1 416 218-1468
chris.j.potter@ca.pwc.com

Chris Vangou
PwC (Canada)
+1 416 228-1087
chris.vangou@ca.pwc.com

David Glicksman
PwC (Canada)
+1 416 947-8988
david.glicksman@ca.pwc.com

Those that qualify as REITs under the REIT Rules are subject to the flow through tax regime applicable to MFTs, provided they meet certain requirements. Most importantly, the REIT must distribute all of its income annually and the activities of the REIT must be passive in nature. The majority of REITs are sector specific (e.g. residential, office, retail, etc.). Others are involved in more than one sector. There are also unlisted or private REITs that are not subject to the REIT Rules and that can be involved in a broader range of activities through controlled partnerships and corporations. Private REITs, which usually have at least 150 investors, are generally not subject to tax so long as they distribute 100% of their taxable income annually. This chapter only considers REITs that are subject to the REIT Rules – i.e. listed REITs.

The first modern Canadian public REIT was formed in 1993 with the REIT market reaching a reasonable size in the late 1990s. Prior to that time, there had been a few publicly traded REITs, but the vast majority of listed real estate enterprises were structured as taxable corporations. As discussed in more detail below, the REIT Rules that became law in 2007 severely restrict the nature of activities that a qualifying REIT may carry on either directly or indirectly. As of 1 January, 2011, the SIFT Rules apply to all listed MFTs. The initial application of the SIFT Rules was deferred, in general, until 2011 for listed MFTs that were in existence on 31 October 2006, the day that the intention to introduce the SIFT Rules was announced by the Federal Government. A number of the listed MFTs that prior to 2011, referred to themselves as REITs will not qualify for exemption from SIFT tax under the REIT Rules, due to the nature of the activities that they carry on.

However, some non-qualifying REITs restructured before 2011 to bring themselves onside the REIT Rules. The listed REIT market in Canada is small when compared to the total market capitalisation of the TSX, Canada's principal stock exchange. On 12 April 2011, there were 29 listed MFTs that referred to themselves as REITs with a market capitalisation of approximately CA$35 billion. Listed real estate corporations had a market capitalisation of approximately CA$16 billion at the same date.[1] Similar to listed REITs in other countries, Canada's REITs generally provide predictable cash distributions and opportunities for capital appreciation.

Legal form

As noted above, REITs are formed as MFTs). MFTs may be closed-end or open-end funds.

Capital requirements

In order to list on the TSX, a REIT must have at least CA$1 million free trading public shares, CA$4 million held by public shareholders and 300 public shareholders, each holding a board lot. If the operations of the REIT have a track record, the minimum NTA requirement is CA$2 million. If the REIT is merely forecasting profitability, it will require a minimum NTA of CA$7.5 million.

Listing requirements

Closed-end funds must be listed on a designated stock exchange. Open-end funds are generally listed but there is no requirement to do so.

1 Source of date at 12 April 2011 is derived from the 13 April 2011 version of the Daily Market Indicator, produced by RBC Capital Markets.

Restrictions on investors

Minimum number of investors
There must be at least 150 unitholders in order to qualify as an MFT. However, see listing requirements above.

Restrictions on non-resident investors
A REIT cannot be established or maintained primarily for the benefit of non-residents (ownership must be less than 50%).

Asset/income/activity tests
a) If an open-end or closed-end REIT:

- Cannot hold non-portfolio property (e.g. equity and debt of certain Canadian resident corporations, trusts or partnerships, and property used in carrying on a business), other than qualified REIT property. However, subsidiary entities can be used, provided certain tests are satisfied.
- The fair market value of real properties, cash, bankers' acceptances, debt or other Canadian government obligations must be at least 75% of the REITs equity value.
- At least 75% of revenues must be attributable to rents from, mortgages on, or capital gains from the disposition of, real properties.
- At least 95% of revenues must be from any combination of rent from real properties, capital gains from dispositions of real properties, interest, dividends and royalties.
- Real property excludes depreciable property, other than buildings and ancillary property, and leasehold interests in such property.
- Must acquire, hold, maintain, improve, lease or manage real property (or interests therein) that is capital property, or invest its funds in other property. Other activities can be carried on through subsidiary entities, subject to asset and income tests.

Proposed amendments to the REIT Rules were announced on 16 December 2010, which would have the effect of making it easier to comply with some of the requirements to qualify as a REIT. These changes are generally proposed to apply, beginning in January 2011. At a high level, the proposed amendments:

- permit a REIT to hold non-portfolio property that is not qualified REIT property up to an amount equal to 10% of the total fair market value of all of the REITs non-portfolio property;
- reduce the 95% revenue test discussed above to 90%;
- provide rules that specifically deal with certain types of properties held for resale; and
- clarify that, for the purposes of the revenue tests, amounts paid by subsidiary entities that are trusts, including distributions of capital gains, retain the character that the underlying revenue had when those trusts earned or received it.

In addition, the proposed amendments introduce a definition of 'gross REIT revenue', which will apply for the purposes of both the 90% and 75% revenue tests. Gross REIT revenue will mean the total of (i) all amounts that are received or receivable in a taxation year by the entity other than amounts that are, or are on account of, capital, and (ii) capital gains of the entity for the year. Accordingly, any proceeds of disposition, such as recaptured depreciation, which are not included in capital gains, will be excluded from this definition.

While these proposed amendments provide some welcome changes to the REIT Rules, they are subject to further public consultation and, at the time of printing, it is not certain when they may be enacted.

b) In addition, if a closed-end REIT, among other things:

- At least 80% of its properties must consist of real properties situated in Canada, cash, shares, marketable securities, bonds, debentures and certain other assets
- At least 95% of its income must be derived from, or from the disposition of, real properties situated in Canada, cash, shares, marketable securities, bonds, debentures and certain other assets.

Restrictions on foreign assets
Closed-end REITs are subject to the restrictions described above. There are no restrictions for open-ended REITs.

Distribution requirements
There is no minimum distribution requirement. However, in order to avoid tax liability at the REIT level, all of its taxable income, including taxable capital gains, must be paid or become payable to its unitholders each year.

Tax treatment at REIT level
REITs must be resident in Canada.

Taxable income of a REIT that is not paid or payable to unitholders is subject to tax at a combined federal and provincial rate ranging from approximately 42% to 50%. If asset/income tests set out above in paragraph (a) under asset/income/activity tests are not satisfied, certain types of income addressed by the SIFT Rules (see Background) will be subject to tax at combined federal and provincial general corporate rates ranging from approximately 26.5% to 32.5% in 2011.

Withholding tax on Distributions
There is no withholding tax on REIT distributions to Canadian residents. Non- resident unitholders are subject to a 25% withholding tax (may be reduced to 15% by treaty) on distributions of income and capital gains, and a 15% withholding tax on distributions in excess of income and capital gains.

Tax treatment at the investor level

Resident investors
Unitholders are subject to tax on income and taxable capital gains paid or payable to them by the REIT. Returns of capital are not taxable but reduce the tax cost of the units.

Non-resident investors
Non-resident unitholders are subject to withholding tax as described above. Capital gains realised on a disposition of REIT units are generally not subject to tax in Canada unless such units are characterised as "taxable Canadian property".

Finland

Finnish legislation provided a framework for collective investments in real property ("REFs") as early as 1997 (Act on Real Estate Funds ("REF Act")). However, no funds were set up under the REF Act, mostly due to unattractive taxation: no tax exemptions were available for the REFs, which consequently were subject to regular corporate income tax on all income.

However, after a lengthy lobbying effort by the industry, a tax exemption for such real estate fund, governed by the said REF Act, was introduced with effect from 1 January 2009 by the Finnish Act on Tax Incentives for certain Limited Companies Carrying on Residential Renting Activities (24.4.2009/299, "FIN-REIT Act"). Despite the objections from the market participants, the tax exemption was only extended to real estate funds investing in residential property.

The introduction of the FIN-REIT Act was however subject to a state aid notification to the European Commission. On 12 May 2010, the Commission announced that the said tax exemption is not regarded as illegal state aid (subject to a minor adjustment in the legislation). Due to the notification procedure and the consequent amendments made to the FIN-REIT Act as a result, the FIN-REIT Act entered into force on 17 November 2010 with retroactive effect from 1 January 2010.

Under the new REIT regime, qualifying REFs engaged in owning and renting of residential real property may make an application to be treated as REITs. A REIT is a tax-exempt entity in Finland. The REIT must, in order to claim the tax-exempt status, comply with requirements set out both in the REF Act and the FIN-REIT Act.

Samuli Makkonen
PwC (Finland)
+358 9 22801752
samuli.makkonen@fi.pwc.com

Legal form

The REIT must be incorporated as a Finnish public limited company.

Capital requirements

The minimum capital requirement for a REIT is EUR5 million.

Listing requirements

The shares of a REIT must be admitted to trading in a regulated stock exchange or in a multilateral trading facility within the European Economic Area. However, a REIT may be excused from this requirement for the first two years.

Restrictions on investors

Any one shareholder's shareholding in a REIT must be less than 10% of the REITs share capital (however, a 30% threshold is applied until the end of 2013).

Asset/income/activity tests

As mentioned above, only companies qualifying as REFs under the REF Act may apply to become REITs in accordance with the FIN-REIT Act. Therefore, a REIT must comply with both Acts.

Activities

- A REIT is only allowed to carry on activities relating to owning and renting of residential real property and certain ancillary activities, such as property management and maintenance. Property development on own account is also permissible. The REIT is allowed to manage cash needed to carry on permissible activities.

Assets

- A minimum of 80% of the REITs assets must consist of residential real property, as defined in the FIN-REIT Act, or of shares in mutual residential real estate companies ("MRECs"), i.e. companies, shares of which render the shareholder a right to possess and lease out certain defined premises owned by the MREC, and the right to rental income on a lease of the said premises) or comparable entities. In addition to these assets, the REIT is allowed to own certain other liquid assets as defined in the FIN-REIT Act and the REF Act. However, a REIT is not allowed to hold shares in subsidiary companies other than MRECs and comparable entities.

- Furthermore, there are notable restrictions on asset disposals (see below in "penalties").

Other requirements

- The total debt of a REIT must not exceed 80% of the value of the REITs assets (as presented in the financial statements).
- The REIT must derive at least 80% of its net profits (excluding capital gains) from its rental activities. In case the REIT fails to satisfy this rule, a penalty charge may become payable (see below).
- After achieving the REIT status, the company must also:
  - have its shares traded in a regulated market (see above); and
  - distribute as dividends at least 90% of its net profits (see below). Distributions in other form than dividends are not permitted.
- Furthermore, any subsidiaries of the REIT must not become involved in business rearrangements deemed to have a tax avoidance purpose or other transactions of similar nature.

Restrictions on foreign assets

Any MRECs or comparable entities the REIT holds shares in must be resident in the European Economic Area.

Distribution requirements

The REIT must distribute at least 90% of its net profits, excluding unrealised gains, subject to restrictions set out in the Finnish Companies Act.

Tax treatment at REIT level

As mentioned above, a Finnish REIT is a tax-exempt entity. Subsidiaries of a REIT do not benefit from the REIT status and are hence subject to general taxation. However, the REIT is only allowed to hold shares in residential MRECs and comparable entities. Such entities are typically not in a tax paying position.

In respect to foreign income, a REIT is not (as a tax-exempt entity) able to receive credit in Finland from any withholding taxes paid at source.

The tax exemption of a REIT does not cover taxes other than corporate income tax. Therefore, for example, transfer taxes and real property taxes (where REIT holds real property directly) would be payable. Transfer tax is a percentage of the transaction price of equities and real property (1.6% regarding equities and 4% regarding real property).

Tax treatment at the investor level

Resident investors

Individual investors

Dividends are fully taxable capital income at a rate of 28%. Capital gains from disposals of REIT shares are similarly fully taxable capital income (at a rate of 28%).

Corporate investors

Dividends are fully taxable income at the general corporate income tax rate (currently 26%). Also capital gains from disposal of REIT shares are fully taxable income.

Non-resident investors

Individual investors

Dividends from a REIT are subject to a withholding tax at the domestic rate of 28% or at a lower treaty rate, if applicable.

Capital gains from disposals of REIT shares could be subject to Finnish tax in case more than 50% of the REITs assets would directly consist of Finnish real property. However, in practice it is more likely that the REIT would own the real property via MRECs, in which case disposals of REIT shares should be exempt from Finnish tax.

Corporate investors

Dividends from a REIT would be subject to a withholding tax at the domestic rate of 28% or at a lower treaty rate, if applicable.

Capital gains from disposals of REIT shares could be subject to withholding tax in case more than 50% of the REITs assets would directly consist of Finnish real property. However, in practice it is more likely that the REIT would own the real property via MRECs, in which case disposals of REIT shares should be, as a starting point, exempt from Finnish withholding tax.

Transition to REIT/ tax privileges

Conversion tax

Where an existing company carrying on residential activities converts into a REIT, its assets are valued to their fair market value and any unrealised gains will be subject to tax at general corporate tax rate (currently 26%). Upon REITs application, the charge may be spread to be paid over a period of three years.

Penalty charges and cancellation of REIT status

In case the REIT fails to satisfy certain criteria mentioned above, tax authorities may impose penalty charges or cancel the REIT status.

- As mentioned above, a REIT must derive at least 80% of its income from its rental activities. If a REIT fails on this, a penalty charge of 20% will be levied on the shortfall.
- In certain cases, capital gains (calculated separately for tax purposes) upon disposals of real property assets will be subject to tax at the general corporate income tax rate, currently 26%. Capital gains are taxable if:
  - the real property assets are held for less than 5 years, or,
  - less than 5 years have elapsed from completion of a "comprehensive renovation" of premises, where the cost of the renovation exceed 30% of the premises' acquisition cost for tax purposes, or,
  - the company disposes of more than 10% of its real property assets.
- If a REIT fails to satisfy the conditions for the applicability of the FIN-REIT Act discussed above, its tax-exempt status may be cancelled. The tax authorities must give the company a reasonable opportunity to correct the failings, unless it is obvious that the conditions for the applicability of the FIN-REIT Act will not be fulfilled. However, if a REIT has acted intentionally or with the intent for significant gain, its REIT status will be cancelled in all cases.

France

France was one of the first (in 2003) European countries to introduce a REIT regime, which is known by its French acronym "SIIC" for "Sociétés d'Investissements Immobiliers Cotées". The so-called SIIC regime is an optional (i.e. an election is required by the company to benefit from that regime) tax regime.

Since its introduction in 2003, the SIIC regime has been modified several times. Some of these changes aimed to close certain existing loopholes and some others to broaden the scope of this regime. The SIIC regime has now reached stability and maturity.

Thanks to the SIIC regime and also to the provisions of Article 210 E of the French tax code (allowing SIICs to purchase real estate assets from sellers, which will benefit from a reduced taxation rate on their capital gains), listed SIICs have become key players on the French real estate market.

Bruno Lunghi
PwC (France)
+33 1 56 57 82 79
bruno.lunghi
@fr.landwellglobal.com

Philippe Emiel
PwC (France)
+33 1 56 57 41 66
philippe.emiel
@fr.landwellglobal.com

Legal form

The company must be incorporated under the legal form of a joint stock company.

Capital requirements

The share capital of a listed SIIC must amount to at least EUR15 million.

Listing requirements

The shares of a SIIC must be listed on a French regulated stock market or on a foreign stock market that respects the provisions of Directive 2004/39/CE, dated 21 April 2004.

Restrictions on investors

Minimum number of investors

The financial and voting rights of a company at the time of its entry into the SIIC regime must be held by at least 15% of shareholders, each of which holds, directly

or indirectly, less than 2% of the financial and voting rights of the company.

The financial and voting rights of a listed SIIC must not be held, directly or indirectly, and at any moment during the application of the SIIC regime, at 60% or more by one shareholder or by several shareholders acting in "concert".

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

The SIIC regime is available to companies (subject to corporate income tax) whose main activity is to acquire or to build, directly or indirectly (i.e. through intermediary companies) real estate properties for the purposes of renting them. The SIIC regime is also available (upon election) to French subsidiaries (carrying out an above-mentioned eligible activity), subject to corporate income tax, which are 95% or more held by one or several listed SIICs or jointly by several SPPICAV or jointly by one SPPICAV and one SIIC.

Companies benefiting from the SIIC regime can carry out other activities provided they remain ancillary. The income deriving from these activities remains subject to corporate income tax at the standard rate of 34.43%.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

A SIIC is obliged to distribute at least 85% of its rental income, 50% of the capital gains realised and 100% of the dividends it received from its 95%-or-more-held French subsidiaries, which elected for the

SIIC regime or from another listed SIIC or from SPPICAV (provided certain conditions are met). The above distribution requirements apply only with respect to the income and the capital gains deriving from the tax-exempt sector.

Tax treatment at REIT level

A company that benefits from the SIIC regime is exempt from corporate income tax on the following items:

- Income deriving from the rental of real estate properties;
- Income deriving from the sub-rental of real estate properties, which are financed through a real estate financial lease agreement concluded or acquired as from 1 January 2005;
- Capital gains realised on the disposal of real estate assets;
- Capital gains realised on the disposal of rights in real estate financial lease agreements concluded or acquired as from 1 January 2005;
- Capital gains on the disposal of shares in pass-through entities carrying out an activity similar to a listed SIIC;
- Capital gains on the disposal of shares in 95%-or-more-held French subsidiaries, which elected for the SIIC regime;
- Dividends received by a listed SIIC from its 95%-or-more-held French subsidiaries, which elected for the SIIC regime; and
- Dividends received by a listed SIIC from another listed SIIC or from SPPICAV (provided certain conditions are met).

All the other income and capital gains realised belong to the taxable sector and are subject to corporate income tax at the standard rate of 34.43%. These other income and capital gains are not subject to any dividend distribution requirements.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends from listed SIICs received by individual shareholders are either subject, on 60% of their amount, to personal income tax at progressive rates or, upon option from the taxpayer, to a 19% flat rate (plus 12.3% of social contributions).

Capital gains realised on the disposal of shares in a listed SIIC are subject to a flat rate of 19% (plus 12.3% of social contributions), whatever the global value of securities sold.

Corporate investors

Dividends from listed SIICs deriving from the tax-exempt sector received by corporate shareholders are subject to corporate income tax at the standard rate of 34.43%. On the other hand, dividends from listed SIICs deriving from the taxable sector benefit from the domestic parent-subsidiary regime if certain conditions are met (5% shareholding requirement).

Capital gains realised on the disposal of shares in a listed SIIC are subject to corporate income tax either at the standard rate of 34.43% or at the reduced rate of 19.6%, if certain conditions are met (5% shareholding requirement for at least two years).

Non-resident investors

Individual investors

Dividends from listed SIICs received by an individual shareholder are subject to French withholding tax either at the rate of 19% if s/he is a tax resident from an EU country, from Iceland and from Norway, or at the rate of 25% (subject to a reduction under an applicable tax treaty) in all the other cases.

Dividends received by a tax resident located in a Non-Cooperative State or Territory ("NCST") is subject to French withholding tax at the rate of 50%.

Capital gains realised on the disposal of shares in a listed SIIC are tax-exempt if the individual shareholder holds, directly or indirectly, less than 10% in the listed SIIC.

If the individual shareholder holds, directly or indirectly, 10% or more of the listed SIIC, the capital gains realised are then subject to French withholding tax, either at the rate of 19% (if the individual is a tax resident from an EU country, from Iceland and from Norway) or at the rate of 33.33% (in all other cases).

Corporate investors

Dividends from listed SIICs are subject to French withholding tax at the rate of 25% (subject to reduction under applicable tax treaty) or 50% if the shareholder is located in an NCST.

A 20% special levy is payable when a listed SIIC pays a dividend out of its tax-exempt sector to a foreign corporate shareholder when the two following conditions are met: (a) the foreign corporate shareholder holds, directly or indirectly, 10% or more of the financial rights in the listed SIIC; and (b) the foreign corporate shareholder is either exempt from corporate income tax on the dividend received or is subject to corporate income tax at a rate lower than 2/3 of standard CIT rate (i.e. circa 11%).

Capital gains realised on the disposal of shares in a listed SIIC are tax-exempt if the corporate shareholder holds, directly or indirectly, less than 10% of the listed SIIC.

If the corporate shareholder holds, directly or indirectly, 10% or more in the listed SIIC, the capital gains are then subject to French withholding tax either at the rate of 19% (if the corporate shareholder is established in an EU country, in Iceland and in Norway) or at the rate of 33.33% in all the other cases.

Transition to REIT/ Tax privileges

Existing listed real estate companies, which elect for the SIIC regime, must pay an exit tax at the rate of 19.6%. This tax is assessed on the amount of the latent capital gains existing on the eligible SIIC assets at the time of entry into the SIIC regime. This provision is also applicable when a 95%-or-more-held French subsidiary (subject to corporate income tax) of a listed SIIC elects for the SIIC regime.

According to Article 210 E of the French tax code, capital gains realised by sellers (subject to French corporate income tax) on the disposal (or on the contribution in exchange for shares) of real estate properties or on shares in real estate companies are taxed at the reduced rate of 19.6% (and not at the standard rate of 34.43%) if the purchasing (or the beneficiary) entity is a listed SIIC (or one of its 95%-or-more-held French subsidiaries, which elected for the SIIC regime), provided that the listed SIIC (or its 95%-or-more-held French subsidiary) takes the commitment to keep the asset purchased (or received) for at least five years. This favourable tax provision applies for the time being until the end of 2011. The Rectificative Finance Bill for 2010 extends this favorable tax regime to the sale of real estate properties/rights to real estate leasing companies (under certain conditions).

Suspension and exit from the SIIC regime

The SIIC regime is suspended when the 60% above-mentioned threshold is exceeded at any moment during a financial year and that the situation is not regularised at the end of that financial year.

In that case, the SIIC regime is suspended with respect to that financial year. Specific tax provisions apply when the SIIC regime is suspended.

There are various situations under which a listed SIIC exits from the SIIC regime. Adverse tax consequences apply in that case.

Germany

The German REIT Act ("REITA") was introduced in 2007. The introduction followed intensive lobbying by the German real estate industry, which felt that Germany needed to keep up with developments in other European Union (EU) countries.

German REITs ("G-REITs") are income tax-exempt stock corporations that must be listed on an organised stock market.

Uwe Stoschek
PwC (Germany)
+49 30 2636 5286
euwe.stoschek@de.pwc.com

Helge Dammann
PwC (Germany)
+49 30 2636 5222
helge.dammann@de.pwc.com

The initial phase of the newly introduced investment vehicle has been difficult due to the weak market environment. So far, three real estate companies have opted for the G-REIT status. The companies' market capitalisation amounts to EUR957 million at a net asset value of EUR1,087 million as of 31 December 2010.

About a dozen real estate companies have declared plans to become G-REITs, which would significantly increase the G-REIT market.

Legal form

The only legal form that is permissible for a G-REIT is a joint stock corporation (AG - Aktiengesellschaft).

Capital requirements

The nominal capital of a G-REIT must amount to at least EUR15 million.

The G-REITs equity must not fall below 45% of the immovable property value as shown in the consolidated or the individual financial statements under IFRS (leverage provision).

Listing requirements

G-REITs must be listed on an organised stock market in Germany, the E U or the European Economic Area.

Restrictions on investors

Minimum number of investors

At least 15% of the shares must be freely available to the public (free float), with the further provision that the holders of these shares each hold less than 3%.

In regard to the remaining 85% of the shares, a single shareholder is not allowed to hold 10% or more in the G-REIT, directly. The shareholding requirement does not apply to indirect shareholdings.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

At least 75% of the assets and earnings (held/derived by the G-REIT and its subsidiaries) must relate to real estate assets.

Side-line occupations (such as facility management) rendered to third parties may only be performed through wholly owned service corporations. Their assets and earnings must not exceed 20% of the G-REITs total assets/earnings.

The G-REIT may not trade in real estate, i.e. the G-REITs and its subsidiaries' proceeds from the disposal of immovable property in the last five fiscal years must not exceed half of the value of immovable property held on average during that period.

The aforementioned tests are carried out, based on the consolidated or the individual financial statements under IFRS.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

The G-REIT is obliged to distribute at least 90% of its profits (determined under German Commercial Code).

Tax treatment at REIT level

The G-REIT must be a German tax resident. G-REITs are income and trade tax-exempt (irrespective of whether the income is derived from real estate or non-real estate assets). The tax exemption applies retroactively from the start of the financial year in which the G-REIT is registered in the commercial register.

The G-REITs subsidiaries do not benefit from the tax exemption. They are subject to the general taxation rules.

Withholding tax on distributions

Dividend distributions by the G-REIT are subject to a 26.4% withholding tax (including solidarity surcharge).

If the G-REIT shares are held by resident individual shareholders, the withholding tax is final.

Resident corporate shareholders may credit withholding taxes or claim it back.

In case of non-resident shareholders, most German double tax treaties provide for a reduced withholding tax rate of 15%. The REIT Act stipulates that foreign corporate shareholders may not exercise their rights to a further reduction under a double tax treaty if the restrictive treaty requires a shareholding of 10% or more. Therefore, the international affiliation privilege, which grants further reduction to foreign corporate shareholders is regularly not applicable. Moreover, the EU Parent Subsidiary Directive does not apply, due to the G-REITs tax exemption.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends derived from G-REIT shares held as private assets are subject to a final withholding tax of 26.4%.

In regard to capital gains derived from the disposal of G-REIT shares held as private assets, the following applies:

- if the shareholder did not hold 1% or more of the shares at any time during a five-year period prior to the disposal and the shares were acquired before 1 January 2009, capital gains are only taxable (at the personal income tax rate of up to 47.5% including solidarity surcharge) if the shares are disposed of within one year after acquisition;
- if the shareholder did not hold 1% or more of the shares at any time during a five-year period prior to the disposal and the shares were acquired after 1 January 2009, capital gains are subject to a final tax of 26.4% (irrespective of the holding period);
- if the shareholder held 1% or more of the shares at any time during a five-year period prior to the disposal, capital gains from shares are fully subject to personal income tax, irrespective of whether the shares were acquired before or after 1 January 2009.

Dividends and capital gains derived by resident shareholders from shares held as a business asset are fully subject to personal income tax.

Corporate investors

Dividends and capital gains derived from the disposal of G-REIT shares are fully subject to corporate income tax at a rate of 15.8% (including solidarity surcharge).

Tax relief in order to avoid double taxation

REITs are obliged to distribute 90% of their profits. Dividends distributed may stem from non-taxed German properties held by the G-REIT itself, or from taxed income from foreign properties, or taxable subsidiaries.

In order to avoid double taxation, dividend distributions of a G-REIT are entitled to the same tax privileges that apply to ordinary dividends, to the extent that the REIT distributions stem from pre-taxed income (by definition of the REIT Act, income that has been taxed with German corporate income tax or a comparable foreign tax).

As a result, pre-taxed dividends will be 95% tax-exempt if received by a corporate taxpayer and 40% exempt in the hands of private individuals holding the REIT share as a business asset. In regard to individual shareholders holding the REIT shares as private assets, dividends are subject to the final withholding tax of only 26.4%. Therefore, a further relief does not apply.

Non-resident investors

Individual investors

Dividends are subject to German withholding tax.

Capital gains from the disposal of G-REIT shares are only subject to personal income tax (on the total German source income) if the shareholder has held at least 1% of the shares in the G-REIT at any time within a five-year period preceding the disposal. Most German double tax treaties, however, usually provide for a tax exemption of capital gains in Germany.

Corporate investors

The same applies as for non-resident individual investors. If a taxable disposal is at hand (see above), corporate income tax at 15.8% (including solidarity surcharge) applies.

Greece

Greek REITs are special purpose entities whose main activity is investment in real estate assets prescribed by the Greek REIT law.

The Greek REIT law was introduced in December 1999 by L.2778/1999. However, as the initial version of the law proved to be ill-adapted to the needs of the market, and as a result no REITs were established, the Greek REIT law was amended a few years after.

Subsequent amendments of the law are expected to encourage the establishment of many more such structures.

Vassilis Vizas
PwC (Greece)
+30 210 6874019
Vassilios.vizas@gr.pwc.com

Legal form

The Greek REIT law provides for two types of REITs:

- Those having a corporate legal form (Real Estate Investment Companies or REICs). The REIC is a special type of societe anonyme company, which has the exclusive purpose of engaging in the management of an asset portfolio composed of real estate (mainly), securities and cash. REICs must obtain a listing on a recognised stock exchange.
- Those having a legal form similar to a unit trust (Real Estate Mutual Funds or REMFs). The REMF is actually a pool of assets composed of real estate and liquid financial instruments. REMFs are jointly owned by a number of investors and managed by a management company, which must have the form of a societe anonyme and is also a special purpose company. REMFs are not listed vehicles.

Capital requirements

For the establishment of a REIC, the company must hold a share capital of at least EUR29.35 million, fully payable upon incorporation.

The share capital of a REMF management company must be at least EUR2.93 million, fully payable upon incorporation. Its share capital, divided into registered shares, should be at least 51% owned by one or more financial institutions and/or insurance companies and/or companies offering investment services with a minimum share capital of at least EUR2.93 million.

Listing requirements

For REICs, a listing must be sought within one year from formation on a recognised stock exchange, provided that by the time of the listing at least 50% of the share capital of the company will be invested in real estate property.

The costs with respect to the initial listing of shares, assuming this is performed on the Athens Stock Exchange, will depend on the value of shares, multiplied by a rate ranging between 0.02% and 0.08%.

Restrictions on investors

There are no restrictions on the identity of investors in a REIT. However, there are significant restrictions on the investments that the REIT itself may carry out.

Asset/income/activity tests

The available funds of a REIC or a REMF must be invested in only:

- Real estate property located in Greece or another European Economic Area (EEA) Member State. In the case of a REIC, this percentage must exceed 80% of the REIC's funds. The concept of real estate property includes subsidiaries that are at least 90% owned, provided that such subsidiaries are engaged exclusively in real estate activities and invest in real estate property in which a REMF or REIC may also invest directly.
- Real estate property is defined as property that may be used for commercial and generally business purposes: the definition seems to exclude residential projects and ownership of bare land.
- Money market instruments. Especially for REMF, this investment should not exceed 10% of the minimum share capital of the management company.
- Investments in real estate property in non-EEA Member States may not exceed 10% of total real estate investments.

A REIC can also invest in other moveable assets that serve the company's operational needs, provided that such assets, together with the value of any real estate property acquired for the same purpose, do not exceed 10% of the total property value.

Furthermore, the law provides for a number of restrictions on the nature of assets in which a REIT may invest, such as:

- Each individual property in which funds are invested may not exceed 25% of the total investment value.
- Property under development is allowed only to the extent that it is expected to be completed within a reasonable amount of time and that the budgeted remaining costs do not exceed 25% of the value of the property, which will be evaluated once works are completed.
- The REIT may not invest more than 25% of its net equity in properties acquired under financial leasing contracts, provided that each contract individually does not exceed 10% of the net equity as well. Furthermore, no more than 10% of the total investments in real estate property may consist of properties for which the REIT does not hold full ownership.
- Properties acquired may not be sold in less than 12 months from the acquisition date.
- It should be noted that both the acquisition or disposal of real estate property must be preceded by a valuation thereof by a certified evaluator, and the price paid may not deviate (upwards for acquisition or downwards for disposal) more than 5% from their value, as determined by the certified evaluator.
- Finally, there are several restrictions and rules as to the investment in other financial assets.

Restrictions on foreign assets

No specific restrictions, provided that the above asset tests are met.

Distribution requirements

The REIC company is obliged to distribute on an annual basis at least 35% of its annual net profits. Exceptionally, and if so provided in the Articles of Association, the dividend distribution may be waived following a resolution of the General Assembly for the purposes of either:

- forming a special reserve from profits other than gains, or
- converting profits into share capital and issuing free shares to shareholders.

Furthermore, the General Assembly may decide on creating reserves from capital gains for the purposes of offsetting losses incurred from the sale of securities with values lower than the acquisition cost. However, capital gains may not be booked in such a reserve if the reserve has already exceeded 300% of the total value of investments in securities of the REIC.

The net profits of the REMF are distributed following the procedure as specified in the regulation of the REMF.

Tax treatment at REIT level

REITs are exempt from any income tax. Therefore, the tax accounting rules are not that relevant.

However, REITs are subject to a tax imposed on their average net asset value. The tax rate is 10% of the respective intervention interest rate as determined by the European Central Bank, increased by 1 percentage point.

The tax is payable by the REIC, within the first 15 days of the month following the end of the respective semester.

Withholding tax on distributions

No withholding tax is levied on dividends distributed by REICs.

Tax treatment at the investor level

Private Investors

Taxation of current income (all income derived from REIT in holding phase)

Dividends distributed by REITs are tax-free in the hands of private investors.

However, if the owner is a Greek company, further distribution of the relevant dividend income by such company mayresult in taxation imposed at the CIT rate (20%). Moreover, a WHT shall be imposed at the rate of 25% (21% for distributions within 2011) on dividends distributed (unless the provisions of a more favourable DTT or the EU Parent – Subsidiary Directive apply), by such (normally taxable) company. Taxation of capital gains (from disposal of REIT shares)

Individuals: Capital gains from the disposal of REIC shares, before listing are exempt from taxation. Once listed, the disposal of REIC listed shares are exempt from taxation if the shares have been initially acquired until 31 December 2011 and fully taxable if the shares have been acquired as of 1 January 2012 onwards. Redemption of REMF units is exempt from taxation for individuals.

If the owner is a Greek company, the profit from disposal of a REIC is subject to CIT as part of its annual taxable profits. An exemption may apply under certain conditions only for shares initially acquired prior to 1 January 2012.If the listed shares have been acquired prior to 1 January 2012 there is a chance that the income will be further exempt if booked in a special tax-free reserve and not distributed to its shareholders. Furthermore, the redemption gains from a REMF unit is exempt only until such company distributes such gain to its own shareholders, in which case it is taxed at the CIT rate (20%) Moreover, a WHT shall be imposed at the rate of 25% (21% for distributions within 2011) on dividends distributed (unless the provisions of a more favorable DTT or the EU Parent – Subsidiary Directive apply).

Institutional Investors

Taxation of current income (all income derived from REIT in holding phase)
There are no special tax rules for the taxation of institutional investors on income from a REIT. Therefore, the provisions mentioned above in the private investors section equally applies in this respect, unless institutional investors enjoy a differentiated tax treatment themselves, depending on their legal form and residence.

Taxation of capital gains (from disposal of REIT shares)
There are no special tax rules for the taxation of institutional investors on income from a REIT. Therefore, the provisions mentioned above in the private investors section equally applies in this respect, unless institutional investors enjoy a differentiated tax treatment themselves, depending on their legal form and residence.

Transition to REIT/ Tax privileges

No special rules apply in this respect.

Hong Kong

In Hong Kong, REITs generally refer to real estate investment trusts authorised by the Securities and Futures Commission (SFC) under the Code on Real Estate Investment Trust (the "Code"), which was published in August 2003.

There are currently eight REITs with a total market capitalisation of approximately US$16.74 billion in May 2011. These REITs invested in different types of real estate, including office buildings, shopping malls, and hotels. Six of these REITs hold real estate exclusively in Hong Kong, while the other two hold real estate exclusively in Mainland China. The first RMB-denominated REIT, with major assets in Mainland China, was listed in Hong Kong in April 2011.

KK So
PwC (Hong Kong)
+852 2289 3789
kk.so@hk.pwc.com

Legal form

An SFC-authorised REIT is required to be structured in the form of a trust.

The REIT may hold real estate, directly or indirectly, through special purpose vehicles that are legally and beneficially owned by the REIT.

Capital requirements

There are no specific requirements as to the minimum capital, market capitalisation, etc.

Listing requirements

The REIT has to be listed on the Stock Exchange of Hong Kong Limited (SEHK) within a period acceptable to the SFC. The REITs in Hong Kong are subject to the listing rules of SEHK.

Restrictions on investors

The Code does not impose any specific restrictions that apply to the investors in a REIT. Both Hong Kong and overseas investors may invest in a REIT.

There are no requirements on the minimum number of investors under the Code. Moreover, there are no restrictions on foreign investors.

Asset/income/activity tests

The REIT should only invest in real estate. The real estate may be located in Hong Kong or overseas. At least 90% of the assets must be income generating properties. Where the REIT invests in hotels, recreation parks or serviced apartments, the Code requires that such investments be held by special purpose vehicles.

The REIT is prohibited from investing in vacant land or engaging in or participating in property development activities (refurbishment, retrofitting and renovations excepted).

The REIT should hold its interest in each property for a period of at least two years, unless consent for an earlier disposal is obtained from the investors by way of a special resolution at a general meeting.

If the REIT indicates a particular type of real estate in its name, the REIT should invest at least 70% of its non-cash assets in such type of real estate.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

The REIT is obligated to distribute to unit holders as dividends each year an amount not less than 90% of its audited annual net income after tax.

Tax treatment at REIT level

An authorised REIT is exempt from Hong Kong profits tax under the Inland Revenue Ordinance of Hong Kong. However, where the REIT holds real estate in Hong Kong directly and derives rental income from that, such rental income will be subject to Hong Kong property tax.

Where the REIT holds real estate in Hong Kong indirectly via special purpose vehicles, such special purpose vehicles will be subject to profits tax at 16.5% (i.e. the tax rate for the year of assessment 2011/12) in respect of the profits derived from the real estate. Such special purpose vehicles would generally be exempt from property tax.

Income derived from real estate situated outside Hong Kong and capital gains are generally exempt from property tax and profits tax.

Dividends paid by a special purpose vehicle to another special purpose vehicle are generally exempt from profits tax.

Stamp duty

Hong Kong stamp duty is charged on transfers of real estate in Hong Kong. The maximum rate of 4.25% applies where the transfer consideration or value of real estate exceeds HK$21,739,120. Where shares in a Hong Kong company are transferred, Hong Kong stamp duty at the rate of 0.2% applies to the higher of the transfer consideration or the value of the shares.

Hong Kong stamp duty also applies to a lease of real estate in Hong Kong, generally at a rate of 0.25% to 1% of the average yearly rent, depending on the term of the lease.

The Financial Secretary in Hong Kong announced on 19 November 2010 that he had proposed to introduce Special Stamp Duty ("SSD") on disposal of residential properties. Any residential property acquired on or after 20 November 2010 and resold within 24 months will be subject to the proposed SSD at a rate up to 15%. The implementation of the new measures is subject to the enactment of the proposed legislative amendments.

Withholding tax on distributions

There is no withholding tax on interest, dividends or distributions from a REIT in Hong Kong.

Tax treatment at the investor level

Taxation of current income

Distributions received from a REIT are not subject to any Hong Kong tax.

Taxation of capital gains

Profits tax

Gains on disposal of units in a REIT are exempt from Hong Kong profits tax if such gains are capital gains. An investor carrying on a trade or business in Hong Kong consisting of acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from disposal of the units in Hong Kong.

Stamp duty

Hong Kong stamp duty is chargeable in respect of the transfer of the REIT units at 0.2% of the transfer consideration (payable by the transferor and transferee at 0.1% each). In addition, a fixed duty of HK$5 is currently payable on any instrument of transfer of units.

Transition to REIT/ Tax privileges

There are no specific tax privileges and concessions during exit. However, there is a territorial concept of taxation and no capital gains tax generally. In addition, certain transactions undertaken by genuine foreign funds are exempt from Hong Kong tax.

Italy

Following the positive experience of other countries, Italy has introduced a real estate investment vehicle similar to the better known REITs in force in other countries: the SIIQ, "Società di Investimento Immobiliare Quotata" (i.e. "Listed Real Estate Investment Company").

The SIIQ is a listed stock corporation, which has real estate rental activity as its main business and as a result benefits from income tax exemption with regard to this activity (directly or indirectly performed) and to investments in other SIIQs (and in SIINQs).

The SIIQ regime was introduced by the 2007 Budget Law, with effect from the first tax period starting after 30 June 2007, and certain implementation rules were issued only at the end of 2007. But, as of today, the SIIQ market in Italy is still at a very early stage.

Fabrizio Acerbis
PwC (Italy)
+39 2 91605.001
fabrizio.acerbis@it.pwc.com

Daniele Di Michele
PwC (Italy)
+39 2 91605.002
daniele.di.michele@it.pwc.com

Legal form

The SIIQ is a stock corporation (i.e. a company limited by shares), resident in Italy for tax purposes, mainly carrying on real estate rental activity and fulfilling certain requirements.

Rather than a new type of entity, the SIIQ is a special civil and tax law regime, which applies upon an irrevocable option (to be exercised before the beginning of the first tax period under the SIIQ status).

The SIIQ regime has been afterwards extended to Italian permanent establishments (PE) of companies resident in the countries of the European Union or the European Economic Area included in the white-list (i.e. non-tax-haven countries with information exchange procedures with Italy), if the PE's main business consists of real estate rental activity.

Capital requirements

The capital requirement to obtain the SIIQ status varies according to the listing market. The minimum market capitalisation for listing on specific segments of the Italian market is equal to EUR40 million.

Listing requirements

The SIIQ must be listed on an organised stock market in the European Union or in the European Economic Area.

The special regime may be extended to unlisted stock companies (SIINQ), provided that they are tax resident in Italy, mainly carry on real estate rental activity, are owned at least 95% by SIIQs (in terms of voting rights and profit participation) and opt for the national tax consolidation regime with the controlling SIIQ.

SIIQs (and SIINQs) are required to apply IAS/IFRS.

Restrictions on investors

Minimum number of investors

The following shareholding requirements in the SIIQ must be met:

- No shareholder shall hold, directly or indirectly, more than 51% of the voting rights in the general meeting and no shareholder shall participate in more than 51% in the profits;
- At least 35% of the SIIQ shares have to be owned by shareholders, each one not holding, directly or indirectly, more than 2% of the voting rights in the general meeting and not more than 2% of participation in the profits (free float).

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

The SIIQ's prevalent activity should be real estate rental, which occurs if both the following tests are met:

(i) Asset Test: at least 80% of the assets are real estate properties and rights referred to the exempt business (i.e. the real estate rental business) or shareholdings in other SIIQs or SIINQs booked as fixed assets;

(ii) Profit Test: at least 80% of the SIIQ's annual proceeds are derived from the aforementioned properties (dividends received from other SIIQs or SIINQs paid out from their profits from the exempt business are taken into account).

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

SIIQs are required to annually distribute at least 85% of the net profit available for distribution derived from the exempt business (since capital gains are included in the taxable business, even if derived from assets belonging to the exempt business, the minimum annual distribution requirement should not refer to capital gains).

If the net profit available for distribution is lower than the accounting net profit from the exempt business, up to the amount of

this difference, the subsequent years' accounting net profit from the taxable businesses is deemed to be earned from the exempt business, thus subject to the 85% minimum distribution obligation.

Tax treatment at REIT level

For Italian stock corporations that opt for the SIIQ status, any income associated with rental business activity is exempt from corporate income tax (IRES) and from regional tax (IRAP).

Income from the other activities is subject to ordinary taxation.

For permanent establishments (PEs) of foreign companies that elect for the SIIQ regime, the annual income derived from the rental activity is subject to a 20% substitute tax (this tax replaces the withholding tax to be levied on SIIQ's dividend distributions).

Withholding tax on distributions

Dividends distributed by the SIIQ (or SIINQ) out of profit derived from the exempt business are subject to withholding tax (WHT) at source at a rate of 20% (the net profit related to particular residential building lease contracts may benefit from a reduced WHT tax rate of 15%).

The WHT is applied as advance payment in the case of resident individual entrepreneurs and resident entities subject to the business income tax rules, including limited liability companies and Italian PEs of foreign entities.

In other circumstances, such as the case of non-resident shareholders, the WHT is applied as a definitive payment.

The WHT is not applied for distributions to: other SIIQs, Italian pension funds, Italian undertakings for collective investments, and private wealth management subject to substitute tax regime.

In addition, WHT does not apply to profit repatriations executed by PEs of foreign companies that opted for the SIIQ regime (because already subject to substitute tax at PE level).

Dividends distributed out of profit from the taxable businesses are subject to the ordinary rules.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends distributed out of profit derived from the exempt business are subject to a 20% definite WHT (potentially reduced to 15% under certain circumstances). No further income taxation applies at the level of the individual shareholders.

Capital gains are subject to tax at 12.5%, provided the interest does not exceed 2% of the voting rights or 5% of the SIIQ's capital – tested on a 12-month basis (i.e. "non-qualified" shareholding). Otherwise, capital gains are subject to individual income tax with progressive rates, up to 43% (participation exemption does not apply).

Dividends out of the exempt profit collected by resident individual shareholders acting in their business capacity are fully included in the business income (dividend exemption does not apply) and subject to individual income tax with progressive rates, up to 43%.

The 20% (or 15%) WHT applied at source is credited against the income tax due.

Capital gains should also be fully included in the business income (participation exemption does not apply) and taxed accordingly.

Corporate investors

Dividends out of the exempt profit collected by resident companies and Italian PEs of foreign entities are fully subject to IRES, at 27.5% (dividend exemption does not apply). The 20% (or 15%) WHT applied at source is credited against IRES due. In certain circumstances, IRAP is also due, with a rate ranging from 3.9% to about 4.9%.

Capital gains are fully subject to IRES (participation exemption does not apply). In certain circumstances, IRAP is also due, with a rate ranging from 3.9% to about 4.9%.

Non-resident investors

Individual investors

Dividends out of the exempt profit are taxed in Italy by way of the mentioned 20% (or 15%) definite WHT. DTTs should apply.

Capital gains on "non-qualified" shareholdings into: (a) SIIQs (listed companies) are not taxable in Italy for the lack of the territoriality requirement; (b) SIINQs (non-listed companies) are subject to a 12.5% taxation, which may be reduced to nil for residents in the white-listed countries or most Treaty countries. Otherwise, capital gains are taxed according to the individual income tax rates of up to 43% (participation exemption does not apply), unless DTTs provide for lower taxation.

Corporate investors

Dividends out of the exempt profit paid to non-residents (without PE in Italy) are subject to Italian definite WHT of 20% (or 15%). The WHT rate should be reduced under the applicable DTTs. The benefits of the EU Parent-Subsidiary Directive are not available.

Capital gains on "non-qualified" shareholdings into: (a) SIIQs (listed companies) are not taxable in Italy for the lack of the territoriality requirement; (b) SIINQs (non-listed companies) are subject to a 12.5% taxation, which may be reduced to nil for residents in the white-listed countries or most Treaty countries. Otherwise, capital gains are subject to IRES, at 27.5% (participation exemption does not apply), unless DTTs provide for lower taxation.

Transition to REIT/ Tax privileges

Election for SIIQ status implies the step-up at fair market value of the real estate properties and rights held and relating to the real estate rental business. Any net built-in gain, in lieu of the ordinary taxation, may be taxed with a 20% substitute tax, potentially payable over a five-year period (with interest). This favourable tax treatment applies only if the SIIQ retains the assets for at least three years.

This favourable 20% substitute taxation is also provided, in lieu of the ordinary taxation, for capital gains realised upon contribution of real estate properties and rights to SIIQs (and to SIINQs), to the extent that these assets will be held for at least three years. The substitute tax is payable over five years (with interest).

Contributions to SIIQs (and to SIINQs) of pluralities of real estate properties, rented for their majority, should not be subject to other material tax costs other than the above-mentioned taxation in the hands of the contributing entity (i.e. no proportional VAT and transfer taxes).

For other contributions and sales of real estate properties to SIIQs (and to SIINQs), several reductions are provided for indirect tax purposes.

Japan

Japanese REITs (J-REIT) are formed under the Law Concerning Investment Trusts and Investment Corporations (ITL) with a view to managing investments in specified assets, including real estate. Except as may be necessary for context, the term J-REIT means a J-REIT that is listed on the Japanese stock exchange.

Raymond Kahn
PwC (Japan)
+81 3 5251 2909
raymond.a.kahn@jp.pwc.com

Hiroshi Takagi
PwC (Japan)
+81 3 5251 2788
hiroshi.takagi@jp.pwc.com

Legal form

Under the ITL, there are two different types of investment vehicles: investment trusts and investment corporations. To date, all listed J-REITs have been formed as investment corporations.

Capital requirements

Under the ITL, the minimum share capital of a J-REIT is JPY100 million.

Listing requirements

J-REITs are not required to be listed on a stock exchange, but most J-REITs are listed in Japan. J-REITs that are listed on the Tokyo Stock Exchange are subject to Tokyo Stock Exchange Listing Standards (the "TSE Rules").

Restrictions on investors

Minimum number of investors

The TSE Rules require that the number of units held by the lead investor at listing is expected to be 75% or less of the total and that there are expected to be at least 1,000 investors other than the lead investor.

Restrictions on non-resident investors

Under the Special Taxation Measure Law (STML), an offer of an investment in the units of the J-REIT has to be made mainly in the domestic market (the "Domestic Offering Test").

Asset/income/activity tests

Under the TSE Rules, the following listing screening standards are required to be met in relation to the J-REITs assets:

- The ratio of real estate, etc. in the fund's managed assets is expected to be 70% or more;
- The ratio of real estate, etc., real estate-related assets and liquid assets summed together is expected to be 95% or more of the total assets under management;
- Net assets are expected to be at least JPY1 billion;
- Total assets are expected to be at least JPY5 billion; and
- Net asset per unit is expected to be at least JPY50,000.

In addition, under the STML the activities of a J-REIT are subject to the following restrictions (the "Activity Test").

- The J-REIT does not engage in any business other than asset management, has not opened any place of business other than its head office and has not hired any employees;
- The J-REIT has outsourced the asset management function to an asset management corporation; and
- The J-REIT has outsourced custody of the assets to a custodian.

Restrictions on foreign assets

The restrictions on investment in foreign assets by J-REITs were lifted on 12 May 2008. However, in practice, foreign assets have not yet been acquired.

Distribution requirements

Under the STML, a J-REIT must pay out dividends in excess of 90% of its distributable profits to qualify for dividend payment deduction (the "90% Distribution Test"). On the other hand, the TSE Rules require that the J-REITs maintain net assets of at least JPY1 billion.

Tax treatment at REIT level

Under the STML, dividends paid by a J-REIT to its investors will be deductible for corporate tax purposes, provided it satisfies certain requirements. Set out below is a summary of certain requirements deserving special attention.

Requirements relating to the J-REIT:

- One of the following requirements is met:
  - A public offering of JPY100 million or more was made at the time of establishment; or
  - The units of the J-REIT are held by 50 or more investors at the end of each fiscal period, or 100% of the units of the J-REIT are held by institutional investors as defined in the STML; and
- The Domestic Offering Test is met.

Requirements relating to the year of taxation:

- The Activity Test is met;
- The J-REIT is not treated as a family corporation at the end of the fiscal year (A family corporation is defined as a corporation in which a single individual or corporate unitholder (including its related parties) holds 50% or more of the units of the J-REIT);
- The 90% Distribution Test is met;
- The J-REIT does not hold 50% or more of the equity of another corporation; and
- The J-REIT has not obtained loans from parties other than institutional investors as defined in the STML.

Withholding tax on distributions

Dividend distributions paid by a J-REIT to Japanese individual investors and non-Japanese individual investors with a permanent establishment (PE) in Japan ("Individual Investors") whose ownership are less than 5% ("Minor Individual Investors") are currently subject to 10% withholding tax (including local portion of 3%). For Individual Investors whose ownership is 5% or more ("Major Individual Investors"), the above withholding tax rate would be 20%. Such 10% or 20% withholding tax on dividend distribution is creditable in full from income tax due upon the filing of such dividend income.

Dividend distributions paid by a J-REIT to Japanese corporate investors and non-Japanese corporate investors with a PE in Japan ("Corporate Investors") are currently subject to 7% withholding tax. In principle, a portion of such withholding tax is creditable against corporate tax payable or refundable upon the filing of the corporate tax returns.

Dividend distributions paid by a J-REIT to non-resident investors without a PE in Japan ("Non-Resident Investors") are currently subject to 7% withholding tax in the absence of an applicable tax treaty. Notwithstanding the foregoing, the above withholding tax rate would be 20% for individual Non-Resident Investors whose ownership is 5% or more.

Tax treatment at the investor level

Resident investors

Individual investors

Dividends distributions paid by a J-REIT to Individual Investors are currently subject to 10% (including local portion of 3%) or 20% withholding tax as described above.

Generally, Individual Investors are required to file an income tax return reporting such dividends as dividend income. In principle, this income is aggregated with the Individual Investor's other income and is subject to income tax at the graduated rate. However, Minor Individual Investors are able to elect for separate assessment taxation in filing such income, in which case the capital loss from the transfer of units can be used to offset dividend income and the balance is currently taxed at 10% (including local portion of 3%). Individual Investors can credit in full any withholding taxes against their income tax due.

Notwithstanding the above, Minor Individual Investors may elect not to report the income; however, in such cases no credit would be available for withholding taxes paid.

Capital gains derived from the transfer of units in a J-REIT are treated as a separate income and are currently subject to Japanese capital gains tax at 10% (including a local portion of 3%) upon filing.

Corporate investors

Dividend distributions paid by a J-REIT to Corporate Investors are currently subject to 7% withholding tax as described above. As the dividend exclusion rule does not apply to dividends paid by a J-REIT, the entire portion of such dividends are subject to corporate tax at a rate of approximately 42%. In principle, a portion of the 7% withholding tax on such dividends is creditable against corporate tax payable or refundable upon the filing of the corporate tax returns.

Capital gains derived from the transfer of units in a J-REIT are included in taxable income and subject to Japanese corporate taxes at an effective tax rate of approximately 42%.

Non-resident investors

In the absence of an applicable tax treaty, dividend distributions paid by a J-REIT to Non-Resident Investors are currently subject to 7% or 20% withholding tax, as described above. This withholding tax is a final tax and a tax filing is not required.

Capital gains derived from the transfer of units in a J-REIT are generally subject to Japanese capital gain tax at the rate of 30% for corporate Non-Resident Investors, or 15% for individual Non-Resident Investors if a transferor owns more than 5% (in the case of a listed J-REIT), or 2% (in the case of a non-listed J-REIT) of the units in the J-REIT as of the end of the fiscal year immediately prior to the year in which the transfer occurs.

Transition to REIT/ Tax privileges

Acquisition tax

A J-REIT is currently entitled to the following concessionary rates:

- 1.33% for the acquisition of a non-residential building;
- 1.0% for the acquisition of residential building; and
- 0.5% for the acquisition of land.

Registration tax

A J-REIT is currently entitled to the concessionary rate of 1.1% of the assessed value for buildings and land excluding warehouse.

Malaysia

The Malaysian REIT industry started off with Property Trust Funds (PTF) listed on the Kuala Lumpur Stock Exchange (KLSE) in 1989. The term REIT was subsequently adopted, and the industry grew with an increasing number of listed REITs.

REITs in Malaysia are either listed or unlisted. Malaysian REITs can be sector specific (e.g. industrial, offices, etc.) or diversified. Malaysia saw the establishment of its first Islamic REIT in 2005.

Jennifer Chang
PwC (Malaysia)
+60 3 2173 1188
jennifer.chang@my.pwc.com

While the Malaysian REIT market is still relatively small and untapped compared to other regional markets such as Singapore or Australia, it is expected to continue growing. As of 28 February 2011, there are 14 listed REITs, three of which are Islamic funds.

REITs in Malaysia are principally governed by the Securities Commission of Malaysia (SC). Malaysian REITs are managed by management companies approved by the SC, while properties are held by appointed trustee(s).

Legal form

Malaysian REITs are governed by general trust law. Trusts are not separate legal entities, but are generally a set of obligations accepted by a trustee in relation to the properties held in trust for beneficiaries.

Capital requirements

The initial size of a REIT should be at least RM100 million (approx. EUR23.3 million as of 1 April 2011). The SC, however, reserves the right to review the reasonableness of the REITs size.

Listing requirements

Only REITs registered with the SC are allowed to be listed on Bursa Malaysia.

Restrictions on investors

Minimum number of investors

There is no minimum requirement on the number or composition of units that must be subscribed to.

Restrictions on non-resident investors

There are no restrictions on non-resident unitholders of REITs.

Asset/income/activity tests

A REIT may only invest in the following assets:

- Real estate;
- Single-purpose companies;
- Real estate-related assets;
- Non-real estate-related assets; and
- Cash, deposits and money market instruments.

At least 50% of the REITs total asset value must be invested in real estate and/or single-purpose companies at all times. Investment in non-real estate-related assets and/or cash, deposits and money market instruments must not exceed 25% of the REITs total asset value.

REITs are not permitted to extend loans or any other credit facilities; or develop properties; or acquire vacant land.

All real estate acquired by REITs must be insured for full replacement value, including loss of rental, where appropriate, with insurance companies approved by the trustee.

Restrictions on foreign assets

There are no restrictions on the acquisition of foreign assets.

Distribution requirements

Distribution of income should only be made from realised gains or realised income. There is no minimum requirement on how much REITs have to distribute to unitholders.

Tax treatment at REIT level

The taxation of a REIT depends on the amount of income that is distributed to unitholders. If a REIT distributes 90% of its taxable income, tax transparency rules will apply, and the REIT would not be subject to corporate income tax. If this 90% condition is not met, the REIT would be subject to tax at the prevailing corporate income tax rate of 25%. General deductibility rules would apply to the REIT.

In any case, most investment income earned by REITs is generally not subject to corporate income tax.

Other tax incentives include exemptions from stamp duty in respect of all instruments of transfer of real property and instruments of deed of assignments to REITs; exemption from real property gains tax; and allowable deductions on establishment expenditure incurred by REITs.

Withholding tax on distributions

Where a REIT has been brought to tax for a Year of Assessment (i.e. failed to meet the 90% distribution requirement), income distributed to resident unitholders will have tax credits attached to it. Non-resident unitholders, on the other hand, will not be subject to any further Malaysian tax.

If a REIT does not pay corporate income tax due to tax transparency, distributions received by unitholders are taxed via a withholding tax mechanism.

Individual resident unitholders are taxed at a scaled rate of up to 26%. Individual non-resident and institutional investor unitholders are taxed at a flat rate of 10%, effective 1 January 2009 until 31 December 2011.

Resident and non-resident corporate investors are taxed at the prevailing corporate income tax rates, currently at 25%.

Tax treatment at the investor level

There is no capital gains tax regime in Malaysia. With the exception of financial institutions or companies dealing in investments, gains received by unitholders from the disposal of REIT units will not be subject to Malaysian income tax.

Resident investors

Individual investors

Where a REIT does not pay corporate income tax, individual resident unitholders would be subject to a 10% withholding tax, effective 1 January 2009 until 31 December 2011. The withholding tax imposed is a final tax and individual resident unitholders need not declare the income received from the REIT in their personal income tax returns.

Where income tax is paid by the REIT, individual resident unitholders would be entitled to a tax credit.

It is important to note that from 2012 onwards, the concessionary tax rates may revert to the prevailing personal income tax rates.

Corporate investors

Resident corporate REIT unitholders are subject to normal corporate income tax rates.

Tax relief in order to avoid double taxation

Income that has been taxed at the REIT level will have tax credits attached when subsequently distributed to resident unitholders.

Like individual resident unitholders, resident corporate investors would also be subject to income tax at their respective rates on REIT distributions and entitled to tax credits representing tax already paid by the REIT.

Please note that resident companies with paid up capital of RM2.5 million (approx. EUR582,750 as of 1 April 2011) and below are subject to a corporate income tax rate of 20% for the first RM500,000 (approx. EUR116,550 as of 1 April 2011) of chargeable income, with the balance being taxed at the normal corporate income tax rate, currently 25%.

Non-resident investors

Individual investors

Where the REIT is not subject to income tax due to tax transparency, individual non-resident unitholders are subject to a final 10% withholding tax until 31 December 2011.

Individual non-resident unitholders who receive distributions from REITs which have paid corporate income tax would not be subject to any further Malaysian tax. Where individual non-resident unitholders are subject to income tax in their respective jurisdictions, depending on the provisions of their country's tax legislation, they may be entitled to tax credits paid by the REIT.

It is important to note that the concessionary tax rates may revert to the prevailing income tax rates from 2012 onwards.

Corporate investors

Whether distributions received by non-resident corporate unitholders come from a REIT that has or has not paid corporate income tax, non-resident corporate unitholders would be subject to a final withholding tax of 25%.

Where corporate income tax has not been levied at the REIT level, non-resident institutional investors (i.e. pension funds and collective investment schemes or such other person approved by the Minister of Finance) are subject to a final withholding tax of 10% up to 31 December 2011, after which the concessionary tax rate may revert to normal corporate income tax rates.

Distributions to non-resident institutional investors which have been taxed at the REIT level would not suffer further income tax, and depending on the provisions of their country's tax legislation, they may be entitled to tax credits paid by the REIT.

Transition to REIT/ Tax privileges

There are no specific exit tax concessions. Transfer of properties from a property owner to an approved REIT is exempted from Real Property Gains Tax and stamp duty. Disposals of properties by REITs subsequently will be subject to a 5% Real Property Gains Tax from 1 January 2010 onwards.

Mexico

The 2005 tax reform introduced the first rules for Mexican REITs. With the objective of fostering investment in real estate infrastructure in Mexico, a number of provisions were incorporated into the Mexican Income Tax Law (MITL), which established the requirements for a trust to receive a particular – beneficial – tax treatment.

Mexican REITs were welcomed by Mexican investors. However, investors remain cautious as their legal framework initially suffered considerable amendments. The first Mexican REIT listed on the Mexican Stock Exchange was put in place in 2011.

David Cuellar
PwC (Mexico)
+52 55 5263 5816
david.cuellar@mx.pwc.com

Francisco J. Zamora Valencia
PwC (Mexico Tax Desk in UK)
+44 20 72133608
francisco.zamora@uk.pwc.com

Marco Nava
PwC (Mexico)
+52 55 5263 6000 Ext. 5469
marco.nava@mx.pwc.com

During 2010 the Mexican Stock Exchange intensified the promotion of REITs in Mexico. Mexican authorities have stated in public business forums that the legal framework for REITs was completed with the amendments made in 2008 and that no further changes will be introduced in years to come. The market has now a "first mover" known as Fibra Uno.

Legal form

Mexican REITs can only have the legal form of trusts, incorporated under Mexican laws, and with a Mexican resident credit institution acting as trustee.

Mexican corporations or limited liability companies incorporated under Mexican laws that pursue substantially the same business purpose of Mexican REITs may also qualify for some of the tax benefits available for Mexican REITs. These figures are called real estate investment corporations (Mexican REICs).

Capital requirements

There are no specific capital requirements for Mexican REITs.

At least 70% of the equity of the Mexican REIT should be invested in real estate projects (or rights derived from them). The surplus of such equity (the other 30%) should be invested in government bonds.

Listing requirements

Mexican REITs should be listed on the Mexican Stock Exchange. It is possible to have a privately funded Mexican REIT or corporation, but it will not have access to all the tax benefits available for Mexican REITs.

Restrictions on investors

Minimum number of shareholders

Participation certificates for the goods that are part of the Mexican REITs equity are issued by the trustee. These certificates must be publicly traded or acquired by a group of investors formed by at least 10 unrelated parties, whereby none of them may individually hold more than 20% of the total amount of the certificates issued.

Restrictions on foreign shareholders

There are no restrictions on foreign shareholders.

Asset/income/activity tests

The Mexican REITs main purpose must be the construction or acquisition of real estate intended for lease (and possible subsequent alienation), the acquisition of the right to obtain revenues from such leases and the granting of financing for said purposes guaranteed by the assets.

As previously mentioned, the Mexican REIT must invest at least 70% of its equity in real estate or rights derived from it. The other 30% should be invested in government bonds.

The real estate acquired or developed must be owned for a period of at least four years after the date on which such real estate was acquired or developed before alienating it.

Mexican REITs are not allowed to have investments in subsidiaries.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

The Mexican REIT must distribute at least once per year before 15 March, at least 95% of its prior year's taxable income to its holders.

Tax treatment at REIT level

The taxation of Mexican REITs taxable income occurs at the holder level. The trustee will determine the taxable income according to the general rules provided in the MITL, considering the income generated by the Mexican REITs assets.

Once determined, the taxable income will be divided between the number of participation certificates issued by the trust to determine the amount of the taxable income that corresponds to each holder.

Lastly, the trustee will withhold the corresponding income tax from the amount of the distribution made to each holder by applying the 28% tax rate.

Withholding tax on distributions

Aside from the income tax that must be withheld by the trustee on the distribution made to each holder, there should be no additional withholding taxes on distributions. In general, dividend distributions by the Mexican REIT to both residents and non-residents that do not have a permanent establishment in Mexico are not subject to withholding tax as per the MITL.

Tax treatment at the investor level

Resident investors

Individual investors

Mexican resident individuals will consider the income received from the Mexican REIT as income arising from certificates in immovable property. They will accrue the total amount of the taxable income related to their participation certificates, without claiming a deduction for the income tax withheld by the trustee. Such income tax will be creditable against their income tax liability of the corresponding year.

With regard to capital gains derived from the disposal of the Mexican REIT certificates, Mexican resident individual holders will be subject to Mexican income tax on the gain arising from the sale of the certificates in the Mexican REIT. The gain will be the difference between the sale price of the certificates and their tax basis.

When the Mexican REIT certificates are publicly traded and sold on recognised stockmarket, Mexican individual holders will be exempt from Mexican income tax on the sale of such certificates.

Corporate investors

Mexican resident corporate holders must accrue the total amount of the taxable income related to their participation certificates, without claiming a deduction for the income tax withheld by the trustee. Such income tax will be creditable against their income tax liability of the corresponding year. Holders that are exempt from Mexican income tax with respect to the income generated by the trust should not accrue said income.

Capital gains derived from the disposal of the Mexican REIT certificates will be taxable in Mexico on the gain arising from the sale of the certificates in the Mexican REIT. The gain will be the difference between the sale price of the certificates and their tax basis.

Non-resident investors

Individual investors

Non-resident individuals holding Mexican REIT certificates will consider the withholding carried out by the trustee as a final income tax payment.

For the case of capital gains from the disposal of a Mexican REIT certificates, the buyer must withhold and remit to the tax authorities the income tax related to the transaction. The MITL provides a 10% withholding rate on the gross amount of the sale. This will not apply to the extent the foreign resident seller is exempt from income tax on the income arising from the Mexican REITs assets (e.g. some pension funds).

When the Mexican REIT certificates are publicly traded and sold on a recognised stock market, foreign resident individual holders will be exempt from Mexican income tax on the sale of such certificates.

Corporate investors

The same applies as for foreign individual shareholders.

Transition to REIT/ Tax privileges

The specific tax incentives for Mexican REITs include:

- Deferral of the income tax on the contribution of real estate to a Mexican REIT. The holders of the Mexican REIT certificates should consider as taxable income the gain on such contribution until they sell the corresponding certificates, or the Mexican REIT sells the real estate contributed by the holders. The deferred gain should be restated by inflation as from the moment in which the real estate was contributed into the Mexican REIT until the moment in which the certificates or the real estate are sold.
- The Mexican REIT is not obliged to file monthly estimated advanced income tax or flat tax payments. This results in no cash disbursements for income or flat tax until the moment in which the annual tax return is filed.
- Foreign resident pension funds investing in a Mexican REIT will be exempt from Mexican income tax on the amount related to their investment, to the extent such funds are exempt from income tax in their country of residence and they are registered before the Mexican tax authorities, provided several conditions are met.

Singapore

The REIT regime in Singapore was officially launched in 1999, although the first Singaporean REIT (S-REIT) was listed on the Singapore Exchange (SGX) in 2002.

The S-REIT market has grown exponentially in the last few years and has established itself as one of the largest in Asia. To date, 22 S-REITs and 3 business trusts are listed on the SGX. More are likely to be listed once the stock market conditions improve. The total market capitalisation of S-REITs was approximately S$37 billion as of March 2011.

David Sandison
PwC (Singapore)
+65 6236 3675
david.sandison@sg.pwc.com

Wee Hwee Teo
PwC (Singapore)
+65 6236 3672
wee.hwee.teo@sg.pwc.com

Multiple factors fuelled the accelerated growth of the S-REIT market. On the regulatory front, a strong framework and comprehensive investment guidelines for property funds were put in place to instil confidence in the S-REIT industry. The tax regime was also crafted to confer attractive tax concessions to S-REITs in terms of flow-through treatment for certain classes of income, exemption of specified foreign income, stamp duty remission on property transfers, etc.

Legal form

In Singapore, an S-REIT is constituted as a unit trust and is governed by the Collective Investment Scheme regime.

Capital requirements

There are strictly no regulatory capital requirements for an S-REIT. However, a listed REIT must still achieve a minimum asset size threshold (S$20 million if the REIT is denominated in Singaporean dollars and US$20 million or equivalent if it is denominated in a foreign currency) prescribed by the SGX in order to maintain its listing.

Listing requirements

Although S-REITs can be listed or unlisted, listing is necessary to qualify for tax concessions.

Restrictions on investors

Minimum number of investors

For listed S-REITs denominated in Singapore dollars, at least 25% of the share capital or units must be held by a minimum of 500 public shareholders. For S-REITs denominated in foreign currencies, the "spread of holders" requirement must be complied with.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

An S-REIT, being a property fund, is bound by the Code on Collective Investment Schemes (the "Code") and the Property Fund Guidelines (PFG) appended to the Code.

The scope of investments which an S-REIT is allowed to make is restricted to the following types of "permissible investments":

- Real estate in or outside Singapore;
- Real estate-related assets;
- Debt securities and listed shares of non-property corporations;
- Securities issued by a government, supranational agency or Singapore statutory board; and
- Cash and cash equivalents.

Moreover, an S-REIT is also subject to the restrictions in terms of its investment activities including:

- At least 75% of the deposited property should be invested in income-producing real estate;
- The fund should not undertake property development activities or invest in unlisted property development companies unless it intends to hold the developed property upon completion;
- The fund should not invest in vacant land or mortgages (except for mortgage-backed securities);
- The total contract value of property development activities and investments in uncompleted property developments should not exceed 10% of the value of deposited property; and
- Not more than 5% of the deposited property should be invested in any one issuer's securities or manager's funds.

Restrictions on foreign assets

There are no restrictions on the ownership of foreign assets.

Distribution requirements

Strictly, there is no legal or regulatory requirement for an S-REIT to distribute any predetermined percentage of its income as distributions for a given financial year.

However, in order to enjoy tax transparency treatment, an S-REIT will be required to distribute at least 90% of its "Taxable Income" in a financial year. "Taxable Income" refers to the following:

a) Rental income or income from the management or holding of immoveable property but excluding gains from the disposal of immovable property;

b) Income that is ancillary to the management or holding of immoveable property but excluding gains from the disposal of immoveable property and Singaporean dividends;

c) Income (excluding Singaporean dividends) that is payable out of rental income or income from the management or holding of immoveable property in Singapore, but not out of gains from the disposal of such immoveable property; and

d) Distributions from an approved sub-trust of the real estate investment trust out of income referred to in (a) or (b) above.

Tax treatment at REIT level

Subject to obtaining a Tax Ruling from the Inland Revenue Authority of Singapore (IRAS), an S-REIT can enjoy "tax transparency" treatment for taxable income distributed to its unitholders. Under this treatment, the trustee will not be taxed in respect of the S-REITs income. Instead, tax (if any) is levied only at the level of the unitholder. Any portion of the specified income not distributed will be assessed to a final tax at the trustee level.

Foreign-sourced dividend income received by an S-REIT may be exempt from tax under section 13(8) of the Income Tax Act (ITA), provided certain qualifying conditions are met. If the foreign-sourced dividend income does not qualify for the section 13(8) exemption, or if the foreign income is not dividend income (e.g. interest income on shareholders' loans), the S-REIT may apply to the IRAS for tax exemption under section 13(12) of the ITA for qualifying foreign-sourced income that is received in Singapore on or before 31 March 2015.

Rental and related income derived by an S-REIT will likely be treated as income derived from the business of the making of investments in accordance with section 10E of the ITA. These provisions do not allow the carry forward or set-off of any tax losses or unused tax depreciation for a particular year of assessment.

Withholding tax on distributions

Distributions out of taxable income

No tax will be withheld on distributions to the following unitholders:

- Individuals;
- Companies incorporated and resident in Singapore;
- Branches in Singapore that have obtained approval to receive such distributions without deduction of tax; and
- A body of persons incorporated or registered in Singapore.

Tax will be withheld at 10% on distributions to non-resident non-individuals. Tax will be withheld at the prevailing corporate tax rate (currently 17%) on distributions to all other persons.

Distributions out of other income

Distributions made by an S-REIT out of the following will be exempt from Singaporean tax in the hands of all unitholders:

- Income taxed at the trustee level;
- Capital gains;
- Income originating from the holding of foreign properties, which is exempt under sections 13(8) or 13(12) of the ITA; and
- Dividends from Singaporean companies.

Tax treatment at the investor level

Resident investors

Individual investors

- Distributions made by an S-REIT to individuals will be exempt from Singaporean income tax unless the distributions are made out of taxable income and they receive the distributions as their trading income or through a partnership, in which case the distribution will be subject to income tax at the prevailing rate.
- Any gain derived by unitholders from the sale of their units will not be subject to tax as long as the gain is not derived from the carrying on of a trade or business in Singapore. Unitholders who trade or deal in investments will be subject to tax on any gain derived from the disposal of the units.

Corporate investors

- Distributions by an S-REIT out of taxable income to companies incorporated and resident in Singapore are subject to Singaporean income tax at the prevailing corporate tax rate (currently 17%). Distributions out of other income as specified above will be exempt from tax.

Non-resident investors

Individual investors

- As above, distributions made by an S-REIT to individuals will be exempt from Singaporean withholding tax.

Corporate investors

- Distributions by S-REITs to non-individual persons who are not tax resident in Singapore and either do not have a permanent establishment (PE) in Singapore or, where they carry out operations through PEs in Singapore, do not use funds from these operations to acquire units, will be subject to 10% withholding tax (for distributions made on or before 31 March 2015). This tax is a final tax.

Although Singapore has concluded a wide network of tax treaties, S-REITs will in reality find it difficult to access the benefits provided under these treaties because the IRAS, as a matter of policy and practice, has been reluctant to certify an S-REIT as a Singaporean tax resident for tax treaty purposes.

Transition to REIT/ Tax privileges

Stamp duty remission is granted on the transfer of any Singaporean immoveable property (on or before 31 March 2015) into a listed S-REIT or into one to be listed within six months from the date of transfer. Stamp duty remission is also available for the transfer of shares in a special purpose vehicle that holds, directly or indirectly, immoveable property located outside Singapore.

S-REITs that derive primarily dividend income or distributions (which are not taxable supplies for goods and services tax purposes) can claim input tax on business expenses incurred between 17 February 2006 and 31 March 2015 by way of remission.

South Korea

There are three types of REITs (comprehensively "the REIT") in Korea: Self-managed REIT (K-REIT), Paper company type REIT (P-REIT) and Corporate Restructuring REIT (CR-REIT). P-REIT and CR-REIT are paper companies (special purpose companies).

K-REIT and CR-REIT were introduced by the so-called Real Estate Investment Company Act (REICA), which was enacted in April 2001. In October 2004, the REICA was amended, expanding the CR-REITs corporate income tax exemption to P-REIT as well.

David Jinyoung Lee
PwC (South Korea)
+82 2 709 0557
jylee@samil.com

Taejin Park
PwC (South Korea)
+82 2 709 8833
tjpark@samil.com

Yongjoon Yoon
PwC (South Korea)
+82 2 709 0781
yjoonyoon@samil.com

So as to develop the Korean REIT market, the Korean Ministry of Land Transport and Maritime Affairs (MLTM) amended the REICA again in October 2007 by simplifying the double process of preliminary approval and incorporation approval into a single step of operation approval and lowering the minimum capital.

As of February 2011, there are 30 CR-REITs, 13 K-REITs and 13 P-REITs showing a total asset value of KRW7,410 billion and an equity value of KRW3,983 billion.

Legal form

The REIT, as a legal entity, is incorporated as a form of general stock corporation.

Capital requirements

The required minimum capital amount is KRW0.5 billion at establishment. However, the REIT must increase capital up to KRW5 billion within the minimum capital preparation period, which is six months from the date of operation approval.

Listing requirements

K-REIT and P-REIT must publicly offer more than 30% (temporarily lower the rate at 20% until 31 December 2012) of total issued shares within the minimum capital preparation period. Then it must list its stocks on the securities market of the Korea Stock Exchange or register them with the Korea Stock Exchange or in the association brokerage market of the Korea Securities Dealers Association if certain conditions are met.

CR-REIT is not restricted in this public offer rule.

Restrictions on investors

Minimum number of investors

One shareholder and anyone who is specially related with the shareholder shall not possess in excess of 30% (temporarily easing the restriction at 35% until 31 December 2012) of the total stocks issued by K-REIT and P-REIT after the minimum capital preparation period.

This provision does not apply within the minimum capital preparation period. CR-REITs are not subject to this restriction.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

Except for CR-REIT, at least 80% of a K-REIT and P-REITs total assets must be invested in real estate, real estate-related securities and cash as of the end of each quarter after the minimum capital preparation period. In addition to those requirements, at least 70% of a K-REIT and P-REITs total assets must be real estate (including buildings under construction).

In case of CR-REIT, 70% or more of the CR-REITs total assets must consist of real estate that a company sells in order to repay its existing borrowings, real estate for the purpose of the execution of a financial restructuring plan and the execution of a corporate restructuring plan.

The minimum real estate holding period of a REIT is three years. There are no restrictions on a CR-REIT.

REITs are allowed to invest their entire assets in real estate development projects.

REITs shall not acquire more than 10% of the voting shares in other companies except for the cases including merger and acquisition.

Restrictions on foreign assets

There are no clear guideline on the REITs holding foreign assets.

Distribution requirements

The REIT is obliged to distribute at least 90% of its distributable income. The term "distributable income" is the net asset value excluding capital and capital reserve.

Tax treatment at REIT level

Under Article 51-2 of the Corporate Income Tax Act (CITA), if a CR-REIT or a P-REIT declares 90% or more of its distributable income as dividend, the amount declared as dividend can be deducted from the REITs taxable income.

Moreover, legal reserve of retained earnings is not required to be accumulated.

Therefore, income derived by a CR-REIT or a P-REIT is effectively exempt from Corporate Income Tax (CIT) to the extent a CR-REIT or a P-REIT declares the income as dividend.

Withholding tax on distributions

Dividend distributions by the REIT to residents are subject to a 15.4% withholding tax (including residential surtax).

Dividend distributions to non-residents that do not maintain a permanent establishment (PE) in Korea are subject to 22% withholding tax. If the tax treaties are applicable, the withholding tax rate can be reduced by Korean double tax treaties.

For domestic corporations, dividend income received by a REIT is not subject to withholding tax.

A foreign company that does not have permanent establishment is subject to withholding tax at a rate of 22% including a residential surtax. In the case of a tax treaty, the rate can be reduced.

Tax treatment at the investor level

Resident investors

Individual investors

When a resident individual shareholder disposes of REIT shares that are listed on the Korean Stock Exchange or that are registered with KOSDAQ, the capital gains will be treated as follows:

- Capital gains are exempt from income tax if an individual is a minor shareholder, i.e. a shareholder (including related parties to him/her) that holds less than 3% of REIT shares that are listed on the Korean Stock Exchange or less than 5% of REIT shares that are registered with KOSDAQ;
- If an individual shareholder (including related parties to him/her) holds more than 3% in REIT shares that are listed on the Korean Stock Exchange or more than 5% in REIT shares that are registered with KOSDAQ, respectively, capital gains are subject to income tax at a rate of 22% (33% if the shares are sold within one year from the acquisition date).

Corporate investors

Dividends and capital gains derived from the disposal of REIT shares are fully subject to corporate income tax at a rate of 24.2%.

Non-resident investors

Individual investors

The disposal of REIT shares is not taxable if the respective REIT is listed on the Korean Stock Exchange or registered with KOSDAQ and the non-resident individual shareholder (including related parties to him/her) holds or has held less than 25% of the REIT shares at any time during the year of disposal and the preceding five calendar years.

Capital gains arising from the disposal of REIT shares by non-resident individual shareholders are subject to Korean withholding tax. Withholding tax is assessed at the lesser amount of 22% on the capital gain or 11% on the gross proceeds. In the case of non-listed REIT shares, the individual income tax return will be required and then the total tax burden will be 6.6% to 38.5%, depending on the tax bases with the above withheld amount being deducted.

Corporate investors

If the respective REIT is listed on the Korea Stock Exchange or registered with KOSDAQ, the same exception applies as for foreign individual shareholders. In that case a capital gain from disposal is not taxable.

Capital gains arising from the disposal of REIT shares by foreign corporations that do not have a PE in Korea are subject to Korean withholding tax. The withholding tax is the lesser amount of 22% (including Resident surtax) on the capital gains or 11% (including Resident surtax) on the gross proceeds. In the case of non-listed REIT shares, a corporate income tax return will be required and then the final tax burden will be 24.2%, depending on the tax bases, with the above withheld amount being deducted.

Transition to REIT/ Tax privileges

Acquisition tax on transfer of real estate is generally levied at a rate of 4.6% including Agriculture and Fishery Tax, and Education surtax. However, if the respective real estate is acquired before 31 December 2012, REITs may benefit from a 30% acquisition tax exemption. As far as the acquisition tax exemption applies, no Agriculture and Fishery Tax is levied.

Spain

Spain introduced in October 2009 the SOCIMI regime ("Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario"), the Spanish version of a REIT vehicle. SOCIMIs are listed corporations whose main activity is direct and indirect investment in real estate for lease.

Unlike REITs in other countries, SOCIMIs are subject to a corporate rate of 19%, which is still more attractive when compared to the regular Spanish corporate rate of 30%. This flat rate will generally be the final taxation in Spain on regular income for individuals and non-resident investors (without a permanent establishment) as dividends shall not be subject to withholding tax at source. Additionally, it should be noted that this tax regime is applicable to qualifying subsidiaries of REITs listed in the EU or EAA.

Santiago Barrenechea
PwC (Spain)
+34 91 568 4561
santiago.barrenechea
@es.landwellglobal.com

Antonio Sánchez
PwC (Spain)
+34 91 568 5615
antonio.sanchez.recio
@es.landwellglobal.com

José L. Lucas
PwC (Spain)
+34 91 568 5607
jose_luis.lucas.chinchilla
@es.landwellglobal.com

The main aim of this investment vehicle is to revitalise and increase the competitiveness of the Spanish real estate market. Please find below the main features pursuant to the applicable legislation.

Legal form

The only legal form that is permissible for a SOCIMI is a Spanish joint stock corporation (SA – Sociedad Anónima).

Capital requirements

The nominal capital of a SOCIMI must amount to at least EUR15 million.

There is a maximum threshold for external debt up to 70% of the value of the SOCIMI assets (leverage provision).

Listing requirements

SOCIMIs must be listed on an organised stock market in Spain, the EU or the EEA.

Restrictions on investors

Minimum number of investors

There are no specific provisions for SOCIMI. Pursuant to the applicable stock exchange regulations and standard practice, a listed entity must have at least 100 shareholders with an interest lower than 25% each, and a minimum 25% free float is required.

Restrictions on non-resident investors

There are no specific restrictions on non-resident investors.

Asset/income/activity tests

The corporate activity of the SOCIMI must be the following:

- The acquisition and development of urban real estate for rent;
- The holding of shares in other SOCIMIs or in foreign companies subject to a similar REIT regime;
- The holding of shares in Spanish or foreign companies with the same corporate activity, dividend distribution obligations, leverage restrictions, asset and income tests as SOCIMIs; and
- The holding of units in Spanish regulated real estate collective investment institutions.

At least 80% of the value of the assets must consist of qualifying real estate assets and shares.

In addition, at least 80% of earnings must relate to rents and dividends from qualifying shares.

Qualifying assets must be held for a minimum period of three years, extended to seven years for self-developed real estate.

Restrictions on foreign assets

There are no restrictions on foreign assets assuming that they are located in a jurisdiction with information exchange with Spain.

Distribution requirements

The SOCIMI is obliged to distribute the following amounts:

- At least 90% of profits derived from rental income and ancillary activities;
- At least 50% of capital gains derived from qualifying real estate assets and shares. The remaining gain shall be reinvested within a three-year period or fully distributed once the three-year period has elapsed and no reinvestment has been made; and
- 100% of profits derived from dividends received from other SOCIMIs, foreign REITs, qualifying subsidiaries and collective investment institutions.

Distribution of dividends shall be agreed within the six-month period following the end of the financial year, and be paid within the month following the date of the distribution agreement.

Tax treatment at REIT level

The SOCIMI must be a Spanish tax resident. The taxable base corresponding to the portion of qualifying income whose sourced-profits distribution has been approved shall be subject to a 19% corporate tax rate as opposed to the standard rate, which currently stands at 30%. All other income will be taxed at the standard tax rate. A 20% exemption on income from residential property is available when the majority of assets held by the SOCIMI are dwellings for lease.

The SOCIMI's 100% subsidiaries may benefit from this tax regime.

In addition, qualifying Spanish subsidiaries of REIT vehicles listed in the EU or EEA are eligible for the SOCIMI regime for their Spanish rental income.

There is no entry tax charge established for the transition to the SOCIMI regime.

Delisting, waiver of the regime, substantial non-compliance of reporting information, or dividend distribution obligations, or any other requirements will result in removal from the SOCIMI regime.

Transfer tax, capital duty and stamp duty benefits may be of application.

Withholding tax on distributions

Dividend distributions by the SOCIMI, both to residents and non-residents, are not subject to Spanish withholding tax.

Tax treatment at the investor level

Resident investors

Individual investors
Dividends derived from SOCIMI shares are exempt from personal income tax.

Capital gains derived from the disposal of SOCIMI shares are partially exempt. The exemption is equal to 10% of the acquisition value of the shares multiplied by the number of years the shares have been held, less exempt dividends received during the holding period.

Corporate investors
Dividends are subject in their entirety to corporate income tax at the general rate (30%). Those dividends distributed out of profits taxed at the reduced rate at the level of the SOCIMI are entitled to a tax credit to avoid double taxation equal to 19% (effective taxation of 11% at the level of shareholders). Those dividends taxed at the general rate are entitled to the same tax privileges that apply to ordinary dividends.

Capital gains derived from the disposal of SOCIMI shares shall be subject to the general income rate.

Non-resident investors

Individuals and corporate investors without a Spanish permanent establishment
Dividends and capital gains are subject to the same rules as resident individuals, assuming there is an information exchange between Spain and the shareholder's country of residence.

Individuals and corporate investors with a Spanish permanent establishment
Dividends and capital gains are subject to the same rules described above for resident corporate shareholders assuming there is an information exchange between Spain and the shareholder's country of residence.

Transition to REIT/ Tax privileges

New or existing companies and collective investment institutions can opt for the SOCIMI regime by notifying the Tax Administration. The regime applies retroactively from the start of the financial year in which the SOCIMI has validly applied for this tax regime.

The Netherlands

The FBI regime was introduced in the Netherlands in 1969. The Dutch regime was the first REIT look-a-like regime in Europe.

The FBI regime enjoys a corporate income tax rate of 0% (a de facto full exemption). Dividends paid by an FBI are subject to 15% dividend withholding tax. Individuals, financial institutions like pension funds and insurance companies make frequent use of FBIs.

Jeroen Elink Schuurman
PwC (The Netherlands)
+31 88 79 26428
jeroen.elink.schuurman
@nl.pwc.com

Serge de Lange
PwC (The Netherlands)
+ 31 88 79 26390
serge.de.lange@nl.pwc.com

Legal form

The FBI regime is open for Dutch public companies, limited liability companies and mutual funds. Also, non-Dutch entities established under the laws of an EU Member State, the Dutch Antilles or Aruba, or a country that has concluded a tax treaty with the Netherlands containing a non-discrimination clause may qualify for the FBI regime under the condition that the entity has similar characteristics as a Dutch public company, limited liability company or mutual fund.

Capital requirements

Based on Dutch civil law, a Dutch limited liability company has a minimum share capital requirement of EUR18,000. For Dutch public companies the minimum required share capital is EUR45,000. There is no minimum share capital requirement for mutual funds.

Moreover, gearing restrictions should be observed. In principle, investments may be financed out of borrowings (both shareholder and third-party loans) up to:

- a maximum of 60% of the tax book value of directly- or indirectly-held real estate investments; and
- a maximum of 20% of the tax book value of other investments.

Listing requirements

The FBI regime does not require listing on a stock exchange.

Restrictions on investors

For the shareholder restrictions a distinction must be made between public and private FBIs. FBIs whose shares are officially quoted on a stock exchange, FBIs that hold a permit to issue shares to the public are considered a public FBI. Public FBIs are able to benefit from more relaxed shareholder restrictions than private FBIs.

Minimum number of investors

Public FBIs

- No single entity that is subject to tax on its profits (or the profits of which are subject to tax at the level of the shareholders/ participants of such entity) may, together with related entities, own 45% or more of the shares in the FBI;
- No individual may hold an interest of 25% or more.

Private FBIs

75% or more of the total shares in an FBI must be held by:

- Individuals; and/or
- Entities that are not subject to a taxation on their profits or are exempt from tax and the profits of which entities are not subject to tax at the level of the shareholders/participants of such entities; and/or
- Public FBIs;
- No individual may hold a substantial interest (which broadly means a direct or indirect interest of 5% or more).
- Dutch resident entities may not hold an interest of 25% or more in the FBI through

In addition to the above described shareholding requirements, the following restriction applies to public and private FBIs:

Dutch resident entities may not hold an interest of 25% or more in the FBI through non-resident mutual funds or through non-resident entities with a capital fully or partly divided into shares.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

The statutory purpose, as well as the actual activities of the FBI must consist solely of passive investment activities.

Investment activities may include any type of investment including real estate or investments of a financial nature (such as loan notes, shares or other securities). Activities such as trading in real estate or real estate development are generally not allowed.

The FBI is allowed to manage and hold shares in an entity carrying out real estate development activities for this entity itself, for the FBI, or for certain related entities. This development subsidiary is taxed on its profits and/or losses at the regular corporate income tax rate of a maximum 25%.

The improvement or expansion, including maintenance of real estate is considered a passive investment activity if it is less than 30% of the official market value of the real estate.

Guarantees towards third parties in relation to obligations of subsidiaries and the on-lending of third-party financing to subsidiaries are considered passive investments activities.

Restrictions on foreign assets

There are no restrictions on foreign assets.

Distribution requirements

An FBI is required to distribute its entire taxable profit within eight months following the financial year-end.

Capital gains do not have to be distributed if they are contributed to a reinvestment reserve.

Tax treatment at REIT level

An entity can elect to apply the FBI regime in its corporate income tax return. The FBI regime can only be applied for with effect from the beginning of a financial year, with all statutory requirements being met from that date. The FBI is subject to Dutch corporate income tax at a rate of 0%.

Being an entity resident in the Netherlands, the FBI can benefit from the Dutch tax treaties.

Withholding tax on distributions

Dividends paid by an FBI are subject to a 15% dividend withholding tax. Reduction of this rate under applicable tax treaty may apply. Further, shareholders may credit the withholding tax levied against their Dutch income tax liability. Distributions out of the reinvestment reserve are exempt from withholding tax.

Tax relief in order to avoid double taxation

Dividends and interest payments received by the FBI may be subject to Dutch dividend or foreign withholding tax. FBIs are entitled to credit the Dutch and foreign withholding tax against the obligation of withholding Dutch dividend withholding tax on outgoing dividend distributions. The credit is maximised to 15%.

Tax treatment at the investor level

Resident investors

Individual investors

Dutch resident individuals who own, alone or together with certain relatives, 5% or more of the shares in an FBI are considered the holder of a substantial interest for Dutch personal income tax purposes. Dividends, profit rights and capital gains derived from the substantial interest by Dutch resident substantial interest holders are subject to a flat 25% tax rate.

Dutch resident individuals who own less than 5% of the shares in an FBI are not considered holders of a substantial interest. Income derived from such a shareholding is subject to a 1.2% tax.

Individual taxpayers can credit the Dutch dividend withholding tax against their Dutch income tax liability.

Corporate investors

Dividends received and capital gains realised by Dutch resident corporate investors from an FBI are subject to Dutch corporate income tax at the standard rates (25% for 2011). An investment in an FBI will, in principle, not qualify for the participation exemption.

Corporate taxpayers can credit the Dutch dividend withholding tax against their Dutch corporate income tax liability.

Tax-exempt institutions

Dutch pension funds are exempt from corporate income tax and are entitled to a full refund of the Dutch dividend withholding tax.

Non-resident investors

Individual investors

Non-resident individuals who own 5% or more of the shares in an FBI will also be considered the holder of a substantial interest and will be considered a non¬resident taxpayer for Dutch personal income tax purposes. Non-resident substantial interest holders are, in principle, subject to the tax rate of 25% applicable on dividends, capital gains on the FBI shares. Tax treaties may limit the right for the Netherlands to levy Dutch income tax on substantial interest income and gains.

Non-resident individuals who are not considered holders of a substantial interest are not subject to Dutch personal income tax.

Corporate investors

In general, Dutch (corporate) income taxation will only arise in case the non¬resident investor holds a substantial interest (5% or more of the shares of an FBI) and this interest is not attributable to a trade or business of the non-resident investor. Tax treaties may limit the right for the Netherlands to levy Dutch corporate income tax on substantial interest income and gains. Furthermore, taxation may arise in cases where the FBI shares are attributable to a Dutch permanent establishment (PE) of the non-resident investor.

In case of substantial interest taxation or allocation to a Dutch PE, dividend income received and gains realised by a non-resident corporate investor on the shares of an FBI are subject to 25% Dutch corporate income tax.

Non-resident taxpayers can credit the Dutch withholding tax on dividends against Dutch (corporate) income tax levied.

Tax-exempt institutions

EU-resident pension funds that are tax-exempt and that are comparable with Dutch pension funds are under conditions entitled to a full refund of Dutch dividend withholding tax levied on dividend distributions made by the FBI.

Transition to REIT/ Tax privileges

There are no specific exit tax concessions for taxable entities opting for the FBI regime. At the end of the year prior to the year that the entity converted to FBI regime , all assets are restated at market value. The capital gain resulting from such restatement is subject to the regular corporate income tax rate (25%).

Turkey

A Turkish Real Estate Investment Company (REIC) is a capital market institution that can invest in real estate and capital market instruments. Turkish REICs are corporate income tax-exempt stock companies that must be listed on an organised stock market in Istanbul. Currently, there are 21 REICs listed on the Istanbul Stock Exchange.

Starting from the beginning of 2009, the Capital Markets Board (CMB) announced another type of CMB-regulated company: the Infrastructure Real Estate Investment Company (IREIC). IREICs are closed-end, corporate tax-exempt, investment companies managing portfolios composed of infrastructure investments and services, projects based on infrastructure investments and services, capital market instruments based on infrastructure investments and services, infrastructure companies, other real estate investment trusts, companies operating foundations established within infrastructure investments and services (operating companies), and other capital market instruments. (Explanations below are specific to REICs. Please consult your adviser for detailed info regarding IREICs.)

Ersun Bayraktaroğlu
PwC (Turkey)
+90 212 326 6098
ersun.bayraktaroglu@tr.pwc.com

Baran Akan
PwC (Turkey)
+90 212 326 6534
baran.akan@tr.pwc.com

Legal form

The REIC must be a joint stock corporation. A REIC can be established by immediate establishment, i.e. by establishment of a new joint stock company. Moreover, an existing company can be converted into a REIC by amending its articles of association.

Capital requirements

The minimum capital requirement for a REIC is TRL21.54 million for the year 2011.

Listing requirements

At least 25% of the REIC's shares should be offered to the public. REICs are obligated to offer share certificates representing 25% of their capital to the public within 3 months following the registration of incorporation or amendment of the articles of association with the Trade Registry.

Restrictions on investors

At least one of the founders must be a leader equity owner (individually or by coming together owning shares equal to at least 20% of the capital).

Furthermore, it is required for real estate investment companies that:

- Real or legal person founders must not have any payable tax and insurance premium debt; and
- Leader equity owners and real or legal founders that have 10% or more of the capital shares must provide the required sources for the incorporation of REIC from their own commercial, industrial and other legal activities as free from any debt. Leader equity owners and real or legal founders that have 10% or more of the capital shares must have a good reputation as required by their status.

Restrictions on non-resident investors

There are no restrictions on non-resident investors.

Asset/income/activity tests

The portfolio of a general purpose REIC is required to be diversified, based on industry, region and real estate, and to be managed with a long-term investment purpose. If a REIC is established with the purpose of operating in certain areas or investing in certain projects, at least 75% of the REIC's portfolio must consist of assets mentioned in its title and/or articles of association.

REICs are required to invest in real estate, rights supported by real estate and real estate projects at a minimum rate of 50% of their portfolio values.

REICs can invest in time deposit and demand deposits in TRL or any foreign currency for investment purposes at a maximum rate of 10% of their portfolio values.

The rate of vacant lands and registered lands that are in the portfolio for a period of five years, which have not been subject to any project development should not exceed 10% of the portfolio value.

REIC's cannot:

- Engage in capital market activities other than portfolio management for its own portfolio limited to the investment areas;
- Be involved in construction of real estate as a constructor;
- Commercially operate any hotel, hospital, shopping centre, business centre, commercial parks, commercial warehouses, residential sites, supermarkets and similar types of real estate, or employ any personnel for this purpose;
- Engage in deposit business, conduct business and operations resulting in deposit collection;
- Engage in commercial, industrial or agricultural activities other than the transactions permitted; and

- Grant a loan or commit into any debit/credit transaction with their subsidiaries, which is not related to the purchase and sale of goods or services.

Restrictions on foreign assets

REICs can invest in foreign real estate and capital market instruments backed by real estate up to a maximum of 49% of the portfolio value.

Distribution requirements

As REICs are public companies, profit distributions of REICs are subject to the general regulations of the CMB.The distributable profit is calculated in line with both CMB and Turkish Commercial Code regulations. In order to secure the capital position of the REIC, the lesser of the net distributable profit calculated in line with the Turkish Commercial Code or in line with CMB regulations should be distributed. Under either calculation, net profit is generally the gross income of the REIC minus taxes, legal reserves, accumulated losses and donations within the year. Unrealised capital gain is not included in the calculation of gross income.

Tax treatment at REIC level

Profits generated from the activities of REIC are exempt from corporate tax and dividend withholding tax rate is determined to be 0% for REICs. The transactions of REICs are subject to VAT and most other transfer taxes.

Withholding tax on distributions

Taxation of investors receiving dividends from a REIC

Although dividend distributions to individual and non-resident shareholders of Turkish companies are currently subject to a 15% dividend withholding tax in Turkey (double tax treaty provisions are reserved), since the withholding tax rate is determined as 0% for REICs by the Council of Ministers, dividend distributions to individual and non-resident shareholders of the REICs currently have no dividend withholding tax burden.

Dividends received by resident corporations

Since REICs are exempt from corporate tax, "participation exemption" is not applicable for dividends received from REICs. So, dividends received by corporations in Turkey from REICs are subject to corporation tax. And then, if distributed to non-resident companies or individuals, those distributions are also subject to dividend withholding tax in line with local regulations.

Dividends received by non-resident corporations

Taxation of dividends in the hands of a non-resident corporation depends on the tax treatment of the country of residence.

Dividends received by resident individuals

Resident individual shareholders of REICs are obliged to declare half the dividends received from REICs if half of the dividends received is higher than the declaration limit (approximately EUR 10,600 for 2011). Declared income will be subject to income tax at the progressive rate between 15% and 35%.

Dividends received by non-resident individuals

Taxation of dividends in the hands of non-resident individuals depends on the tax treatment of the country of residence.

Tax treatment at the investor level

Capital gains received by resident corporations

The capital gains derived from the sale of REIC shares by resident legal entities are to be included in the corporate income and will be subject to corporate tax. However, corporate tax exemption method can be used to minimise the tax burden on the sale of shares.

Capital gains received by non-resident corporations

Since REICs are public companies, capital gains derived from the sale of shares in the Istanbul Stock Exchange by non-¬resident legal entities that do not have a permanent establishment (PE) in Turkey will be subject to taxation via a withholding tax. The current rate of 0% withholding tax is applicable for the capital gains received by non-resident corporations, and that tax will be the final tax for those companies.

Please note that capital gains derived from the sale of unlisted Turkish company shares by non-resident corporations that do not have a PE in Turkey should be declared after the application of a cost adjustment. This declaration should be made within 15 days after the sale of shares, through a special corporate tax return, and be taxed at the standard corporation tax rate. (For the cost adjustment, the original cost is adjusted relative to the wholesale price index (WPI), except for the month the shares are disposed of, if the total increase in WPI is more than 10%.) Additionally, a dividend withholding tax will be applied to the net gains. But, since most double tax treaties prohibit Turkey's taxation right on these capital gains, depending on the holding period (one year in most cases) of the Turkish company shares, we strongly suggest the double tax treaties are examined before these transactions.

Capital gains received by resident individuals

Since REICs are public companies, capital gains derived from the sale of shares in the Istanbul Stock Exchange by resident individuals will be subject to taxation via withholding tax. The current rate of 0% withholding tax is applicable for the capital gains received by resident individuals, and that tax will be the final tax for those individuals.

Capital gains received by non-resident individuals

Since REICs are public companies, capital gains derived from the sale of shares in the Istanbul Stock Exchange by non¬resident individuals will be subject to taxation via withholding tax. The current rate of 0% withholding tax is applicable for the capital gains received by non-resident individuals and that tax will be the final tax for those individuals.

Transition to REIT/ Tax privileges

There are no specific exit tax concessions applicable on the disposal of real estate to the REIC.

United Kingdom

The UK REIT was introduced by provisions in the Finance Act 2006 and came into force on 1 January 2007.

A UK REIT comprises a group of companies carrying on a property investment business, with property let to third-party tenants. The parent company can be incorporated anywhere but must be a UK tax resident and listed on a recognised stock exchange. A UK REIT benefits from an exemption from UK tax on both rental income and gains relating to its property investment business. On conversion, the UK REIT must currently pay an entry fee. On an ongoing basis, the REIT business has to meet certain tests (detailed below) and the REIT is required to distribute 90% of its rental income in respect of each accounting period in order to obtain exemption from tax on its rental income.

Rosalind Rowe
PwC (UK)
+44 20 7213 5455
rosalind.rowe@uk.pwc.com

Since REITs have been introduced in the UK there have been a number of developments.

The legistation has been rewriten into the Corporation Tax Act 2010 as part of the tax law rewrite project. HM Revenue & Customs are currently updating guidance to reflect the new legislation and practical experience.

The ability to pay rental income distributions as stock dividends was introduced as part of the Finance (No 3) Act 2010.

The Government has launched a consultation as part of the 2011 budget anouncements on how to simplify and improve the legislation. The changes proposed include: abolition of the entry charge; permission to list on AIM and other more junior stock markets; simplification of shareholding requirements to encourage institutional investors, allowing a grace period when a new REIT could be "close" (see below for definition of close); enabling cash to be a good asset; and refining the definition of "finance" for the finance cost ratio. Any changes resulting from the consultation are not expected to be legislated until 2012.

Legal form

A UK REIT can be a group of companies with a parent company (or a single company listed REIT, although none currently exist).

The parent company cannot be an open-ended investment company.

The parent must own at least 75% of the shares of a member of the group ("75% subsidiary"). Any such member may also hold 75% subsidiaries, but the parent must ultimately own at least 50% of the shares of all of the group subsidiaries.

In order to become a UK REIT, the parent company must file a notice specifying when the REIT rules will apply from and this must be accepted by the tax authorities.

The REIT must pay an entry charge of 2% of its gross assets (market value before debt) to enter the regime. When a REIT is initially established it can elect to pay the entry charge over four years. However, if further companies join the REIT regime, then an entry charge is paid in respect of each company but spreading these additional charges is not permitted.

Where a REIT holds 40% or more in a company or group that owns UK investment property, then it can also elect its share of that company/group's income and gains into the REIT regime. An entry fee of 2% of the value of its share of the property is payable. The instalment option is only for joint venture (JV) interests held when the REIT is first formed.The JV company does not pay UK tax on the REITs share of income and gains arising from its UK property investments (and non-UK investment property if the JV company/group is a UK tax resident).

Capital requirements

There are no capital requirements, but there is a limitation on the type of shares that the parent company of a UK REIT can issue, being ordinary shares and non-voting preference shares, including convertible non-voting preference shares.

There are financing requirements. A UK REIT must generate profits from its rental business of at least 1.25 times its finance costs (e.g. interest, fees, debt break costs). There is an exemption where the REIT is suffering unexpected financial diffiiculties, which was introduced in the Finance Act 2009.

Any loans to the UK REIT should be on normal commercial terms and not provide for an interest rate that increases with improved performance (disguised dividend).

Listing requirements

A UK REIT must be listed on a stock exchange that appears on the list of worldwide stock exchanges recognised by the UK tax authorities, but not the Alternative Investment Market (AIM), which is an exchange for smaller companies in the UK.

Restrictions on investors

Minimum number of investors

A UK REIT cannot be close (that is under the control of only a few investors). At least 35% of the shares must be freely available to the public (free float) and the remaining shareholders must not be entitled to 85% or more of the votes.

UK REITs are penalised if they make distributions to any particular corporate shareholder that owns 10% or more of its shares; to prevent such penalties arising all UK REITs have amended their articles of association to prevent payments of such dividends.

Restrictions on non-resident investors
There are no additional restrictions on non-resident investors.

Asset/income/activity tests
At least 75% of the UK REITs gross assets must be used in the rental business and at least 75% of the UK REITs profits must be earned in its qualifying rental business.

It is possible for any members of a UK REIT to have other activities. Such activities must not involve more than 25% of the UK REITs gross assets, nor generate profits of more than 25%.

Such tests are carried out using the consolidated group results as set out in financial statements produced using International Financial Reporting Standards (IFRS) with adjustments for non-recurring or distortive items, e.g. movement on hedging, one-off transactions, etc.

There must be at least three properties with no one property accounting for more than 40% of the value of the REIT assets.

Restrictions on foreign assets
There are no additional restrictions on foreign assets.

Distribution requirements
The UK REIT is required to distribute at least 90% of its rental profits (being rental income after deducting finance costs, overheads and tax depreciation). The distribution requirement can now be met using stock dividends. There is no requirement to distribute gains.

Tax treatment at REIT level
The UK REIT must be a UK tax resident and not resident elsewhere. It is not subject to tax in respect of either rental income earned or capital gains realised in respect of its rental business assets. It is subject to corporation tax on all other income under the usual taxation rules.

There is no special exemption for UK REITs from value added tax, uniform business rates, employment taxes or transaction taxes (stamp duty land tax).

Withholding tax on distributions
Dividend distributions out of rental income and gains by the UK REIT are generally subject to a withholding tax of 20%; however, payments can be made gross to UK corporates, UK pension funds and UK charities.

Distributions out of taxed income are treated as ordinary dividends with no actual withholding (although they carry a deemed withholding credit of 10% where received by UK individuals).

If the UK REIT shares are held by UK resident individual shareholders, the withholding tax cannot be reduced.

Most UK double tax treaties provide for a reduced withholding tax rate of 15% for distributions to non-UK tax resident investors. The UK REIT legislation penalises UK REITs, which make distributions to any corporate shareholder that owns 10% or more of the UK REITs shares. Consequently, all UK REITs have amended their articles of association to prevent payments of such dividends and therefore the international affiliation privilege, which grants further reduction to foreign corporate shareholders, is generally not applicable. Moreover, the EU Parent Subsidiary Directive does not apply, due to the UK REITs tax exemption.

Tax treatment at the investor level
Resident investors
Individual investors
Dividends derived from UK REIT shares held by individuals are subject to a withholding tax of 20%.

- Capital gains realised on the disposal of UK REIT shares held by individuals are subject to capital gains tax at the individual's marginal rate (18–28%).
- Dividends and capital gains that result from the rental business and which are distributed to UK tax resident individuals are subject to income tax at the highest rate with credit for the withholding tax of 20% which has been suffered.
- Distribution of other income is subject to UK tax as dividend income with a deemed withholding of 10% as these would be a distribution out of taxed profits (e.g. interest income). The individual would be subject to tax at his/her highest dividend rate on this income less the imputed 10% tax credit.

Corporate investors
Distributions of rental income and capital gains derived from the disposal of rental property are subject to corporate tax at the relevant coporation tax rate – currently 26% – but dropping to 23% by 2014 and 20% for small companies. Gains on the sale of shares disposed of by corporate shareholders are subject to tax at the relevant corporation tax rate.

Income or gains paid out of taxed income are treated as a normal distribution and are not generally subject to further tax when received by a UK corporate.

Tax relief in order to avoid double taxation
REITs are obliged to distribute 90% of their rental profits, which may be generated by UK members (owning UK and non-UK rental assets) and non-UK resident members owning UK property. Any non-UK tax is expensed against the rental income.

All other income is subject to tax and may be distributed as ordinary income with no withholding tax deducted.

Non-resident investors
Individual investors
Distributions of rental income and capital gains derived from the disposal of rental property are subject to withholding tax of 20% (subject to treaty relief – see above).

Distributions of taxed income are not subject to withholding tax.

Capital gains from the disposal of UK REIT shares are not subject to UK tax if the individual is resident outside the UK.

Corporate investors
Distributions of rental income and capital gains derived from the disposal of rental property are subject to withholding tax of 20% (subject to treaty relief – see above).

Distributions of taxed income are not subject to withholding tax.

Capital gains from the disposal of UK REIT shares are not subject to UK tax if the corporate is resident outside the UK.

United States

The US REIT regime was first enacted in 1960 and effective in 1961.

The year-end market value of publicly traded US REITs was more than US$300 billion in 2010, off from its peak of US$438 billion in 2006. Unlisted REITs held an additional US$70 billion in assets, a segment that continues to grow by about $7 billion annually.

The number of US publicly held REITs declined to 134 in 2010 from almost 200 in 2005.

Gary Cutson
PwC (USA)
+1 646 471-8805
gary.cutson@us.pwc.com

Legal form

A US REIT may be formed as a corporation, trust or an association taxable as a corporation, including a limited partnership or limited liability company. REIT status is principally a creation of the tax law rather than commercial law.

Capital requirements

A REIT is not limited on the amount of its borrowings although the deduction of interest to related persons is subject to the same earnings stripping and debt/equity considerations as other corporations.

Listing requirements

There is no requirement to be listed; both public and private REITs exist in the US.

Restrictions on investors

Minimum number of investors

A REIT must have at least 100 shareholders, but no minimum value for each shareholder is required. Generally, five or fewer individuals cannot own more than 50% of the value of the REITs stock – applying broad attribution rules – during the last half of its taxable year.

Restrictions on foreign investors

There is no restriction on ownership by foreign persons.

Asset/income/activity tests

- Annually, at least 75% of the REITs gross taxable income must be from real estate-related income such as rents from real property, interest on obligations secured by mortgages on real property, gain on sale of real property and mortgage loans, and dividends and gains from other US REITs.
- Annually, at least 95% of the REITs gross taxable income must be from sources including those qualifying for the 75% income test described above, other interest and dividend income, and gains on securities.
- Quarterly, at least 75% of the value of the REITs gross assets must consist of real estate assets (interests in real property, mortgages secured by real property and shares in other REITs), cash and cash items (including receivables), and US Government securities.
- Quarterly, a REIT cannot own more than 10% of the vote or value of the securities of another person, and these securities cannot comprise more than 5% of the value of the REITs gross assets. Shares in other REITs, 100%-owned subsidiaries (which are disregarded entities) and securities of taxable REIT subsidiaries are not subject to these restrictions.
- Quarterly, the value of all securities of taxable REIT subsidiaries owned by the REIT cannot be more than 25% of the value of the REITs gross assets.

A taxable REIT subsidiary can undertake activities that the REIT cannot, and this status is obtained by filing a tax election.

- A REIT is subject to a penalty tax of 100% on the gain from the sale of "dealer property" (property held primarily for sale to customers in the ordinary course of a trade or business).
- A REIT may operate or manage its own properties and provide "customary" services to tenants. Special rules apply to "non-customary" services, rental income from related parties and rents based upon net income rather than gross income of a tenant.

- A REIT must adopt the calendar year as its taxable year.

Restrictions on foreign assets

There is no limitation on ownership of foreign assets, but the REIT must meet the income and asset tests described above with special rules for currency gains.

Distribution requirements

The REIT must distribute at least 90% of its ordinary taxable income of each year. Distributions made after year-end may be applied to satisfy this requirement under certain circumstances.

Tax treatment at REIT level

The REIT must be formed in one of the 50 states or the District of Columbia. There is no residency requirement based upon place of management.

- A deduction is allowed for dividends paid to shareholders.
- Corporate level tax applies on any taxable income that is not distributed.
- Most states follow the federal treatment; however, some have enacted laws to restrict the ability to take the dividends paid deduction under certain circumstances.
- An excise tax of 4% applies to the extent that the REIT fails to distribute at least 85% of its ordinary income and 95% of its net capital gain within the tax year

Withholding tax on distributions

Domestic shareholders are not generally subject to withholding tax.

Foreign shareholders are subject to 30% withholding tax on ordinary dividends, 35% on capital gain dividends and 10% on return of capital unless a withholding certificate is obtained. Governmental entities may be exempt from withholding under domestic law.

Treaty access

– If a treaty rate applies, ordinary dividends are subject to withholding tax at reduced rates (generally from 10% to 25%, depending on the investor type, treaty country and ownership percentage in the REIT) . Benefits are often limited to investors who have 5% or less ownership of a public REIT and 10% or less if non-public, provided that the non-public REIT is "diversified". A diversified REIT generally must hold no interest in US real property that is more than 10% of all its real property holdings. Zero withholding tax is possible for pension funds or tax-exempt entities in certain treaty countries, mostly only if ownership is below a certain percentage.

– Capital gain dividends attributable to sale of US real property are subject to withholding tax at 35%. However, if the investor owns 5% or less of an REIT listed on a US stock exchange, the distribution is subject to the reduced treaty rates that apply to ordinary dividends.

A 10% withholding tax applies to the sales price of REIT shares when the REIT is not domestically controlled unless either (1) less than 5% of the REIT is owned, or (2) a withholding tax certificate is obtained.

Tax treatment at the investor level

Domestic investors

Distributions from a REIT are taxable as ordinary income (currently 35%) to the extent of earnings and profits.

Individuals, estates and trusts (determined under US tax principles) are generally subject to tax on capital gain dividends at a 15% rate (25% on gains attributable to accumulated depreciation).

The US tax rate on ordinary dividends and capital gain distributions will automatically revert back to 39.6% and 20%, respectively, after 2012, if no further Congressional action is taken.

Foreign investors

A foreign shareholder that is subject to tax on capital gain dividends or from a sale of shares must file a US tax return, even if its tax liability is fully withheld upon at source.

For foreign corporations, withholding tax on capital gain dividends or the sale of shares is credited against their substantive US tax of 35% plus any branch profits tax.

Foreign corporations may be subject to the branch profits tax at 30%, which is applied to gains less the regular income tax resulting in an effective rate of 54.5%. Many treaties provide for a reduction in rate on the branch profits tax. No branch profits tax applies to the sale of shares.

Individuals, estates and trusts (determined under US tax principles) are generally subject to tax on capital gain dividends at a 15% rate (25% on gains attributable to accumulated depreciation) through to 2012.

A tax-free exit is available upon sale of shares in publicly traded REITs (if less than 5% ownership limitation is met) and domestically controlled REITs. The exception must be satisfied for the previous five-year period.

Transition to REIT/ Tax privileges

A REIT election is made by filing its corporate income tax return on Form 1120-REIT. A regular corporation that elects REIT status is required to distribute its accumulated tax earnings and profits before the end of its first year as a REIT. Any net built-in gain in assets at the date of the election is subject to corporate level tax on gain recognized within the next 10 years. This tax can often be deferred by acquiring replacement property in a "like-kind exchange".

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