



REAL ESTATE

Taxation of Real Estate Investment Trusts

An overview of the REIT regimes in Europe, Asia, the United States and Canada

April 2010

INVESTMENT MANAGEMENT - FINANCIAL SERVICES

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Introduction

Real Estate Investment Trusts (REITs) have been a longstanding feature of the landscape in the USA, and similar vehicles have also been popular for many years in other countries such as Australia and the Netherlands. In recent years, new regimes have been set up in many other parts of the world to meet the growing demand for tax efficient, liquid and transparent vehicles for investing in real estate. The most recent addition is the Philippines, who introduced a REIT regime broadly similar to those of other Asian countries, towards the end of 2009. The rules of the new REIT regime for the Philippines will be included in the next update of this document; please contact Emmanuel Bonoan of KPMG in the Philippines if you would like to discuss any aspect of the new rules (for contact details please see the final page).

Typically a REIT regime will offer exempt tax status to investment companies or other vehicles which meet certain criteria as to ownership and investment portfolio, on the basis that the vehicle then distributes all or most of its profits to shareholders. In many but not all cases, the vehicle must also be listed.

This summary aims to set out the key regulatory, tax and legal rules for the establishment and operation of REITs or their local equivalent in all the major jurisdictions of the world which have introduced such a regime. The information is intended to be a guide only, and should not be relied on for investment decisions as the rules are liable to regular amendment and local interpretation. It is intended to be an overview of the position in each country, enabling a quick understanding to be gained of the type of regime in operation and how it compares to other regimes in the region or more widely. The information contained in this report was current at 31 March 2010.

We hope you will find the information here of value.

REITs - Europe

	UK	France (SIIC)	Belgium (SICAFI)	Italy (FIL)	Italy (SIIQ)	Germany	Netherlands (BI)	Spain (SOCIMI)
Enacted year	2007	2003	1995	1994	2007	Applicable from 1 January 2007 onwards	1969	2009
Governed by or under supervision	<ul style="list-style-type: none"> Tax law 	<ul style="list-style-type: none"> Tax law Governed by the Autorité des Marchés Financiers (AMF) 	<ul style="list-style-type: none"> Regulatory laws and tax laws Supervision by the Belgian Commission for Banking, Finance and Insurance 	<ul style="list-style-type: none"> Governed by Civil and Tax law Under the supervision of Bank of Italy and Consob (Italy's market watchdog) 	<ul style="list-style-type: none"> Governed by Tax law Under the supervision of Bank of Italy and Consob (i.e. Italy's market watchdog) 	<ul style="list-style-type: none"> Real Estate Investment Trust Act, supported by other tax regulations 	<ul style="list-style-type: none"> Tax regime BIs, which are listed or marketed to the public, fall under the supervision of the Dutch Financial Market Authority 	<ul style="list-style-type: none"> Tax Law
Formalities & procedure	<ul style="list-style-type: none"> Provide notice to HMRC in writing before the beginning of the accounting period from which the regime will apply Provide various financial statements in addition to the statutory accounting statements Provide a reconciliation of reserves split between tax exempt and taxable activities 	<ul style="list-style-type: none"> Send an election letter to the French tax administration before the end of the fourth month of the tax year for which the SIIC regime will first apply 	<ul style="list-style-type: none"> Registered on a list of all of Belgium's recognized investment institutions Obtain a licence from the Belgian Banking and Finance Commission The Articles of Association must contain a number of specific provisions and be accepted by the Belgian Commission for Banking, Finance and Insurance Must appoint a trustee who is accepted by the Belgian Commission for Banking, Finance and Insurance 	<ul style="list-style-type: none"> Comply with a number of detailed regulatory provisions which must be included in the by-laws of the Fund The by-laws of FILs must be scrutinised and approved by the Bank of Italy Under certain circumstances, the filing of a prospectus may be needed 	<ul style="list-style-type: none"> Opt for the application of this regime by providing notice in writing to the Italian tax authorities before the beginning of the tax period from which the regime will apply; the option is irrevocable unless the regime conditions are no longer met "Entry taxation", alternatively: (i) substitute tax; (ii) ordinary taxation. 	<ul style="list-style-type: none"> Comply with a number of detailed regulatory provisions combined with a respective application of registration as REIT joint stock corporation with the Commercial Register 	<ul style="list-style-type: none"> Elect to apply the BI regime in its corporate income tax return, which is filed after the end of the year for which the BI regime is to apply 	<ul style="list-style-type: none"> Option to apply the regime by filing an election letter before the Spanish tax administration, before the last quarter of the tax year for which the SOCIMI regime will first apply Prior approval of the shareholders (via a General Shareholders Meeting) is required
Legal form & share capital	<ul style="list-style-type: none"> Be UK resident (and not dual resident) Not an open ended investment company The only classes of shares allowed are ordinary or non participating preferences shares Not be a close company Not be party to a loan which is non commercial or profit linked 	<ul style="list-style-type: none"> Entity listed on a French stock exchange or on a foreign stock exchange complying with the requirements of Directive 2004/39/EC Minimum share capital is 15m Must be subject to French corporate income tax (could potentially be a foreign company, via a French branch) 95% subsidiaries of a SIIC and/or a SPPICAV (new French real estate investment vehicle) may elect for the SIIC regime 	<ul style="list-style-type: none"> Limited liability company or a limited partnership with shares under Belgian law Must be a resident of Belgium Minimum share capital is €1.25m 	<ul style="list-style-type: none"> Formed as a closed ended (in certain circumstances semi-closed ended) fund. The management company (SGR) must be an Italian resident joint stock company (i.e. SpA). Unit-holders are not allowed to sell their participations to third parties and the duration of FILs can vary between 10 and 30 years Minimum share capital €m for the SGR 	<ul style="list-style-type: none"> Italian resident joint stock company (i.e. SpA) Minimum share capital €0m (in order to be admitted to the Italian stock exchange) "SIIQ" must be included as part of the company's name 	<ul style="list-style-type: none"> In the legal form of a joint stock corporation Registered office and the actual seat of management in Germany Minimum stated capital €15 million "REIT-AG" or "REIT-Aktiengesellschaft" are protected as part of the company's name 	<ul style="list-style-type: none"> Public limited (liability) company (NV) with minimum share capital €45,000 Private company with limited liability (BV) with minimum share capital €18,000 A unit trust /mutual fund Entities incorporated in other jurisdictions may be acceptable provided that certain conditions are met 	<ul style="list-style-type: none"> Stock company Minimum share capital required is €5 million "Sociedad Cotizada de Inversión en el Mercado Inmobiliario, Sociedad Anónima" or "SOCIMI, SA" should be included as part of the company's name

REITs - Europe

	UK	France (SIIC)	Belgium (SICAFI)	Italy (FIL)	Italy (SIIQ)	Germany	Netherlands (BI)	Spain (SOCIMI)
Restriction on shareholdings	<ul style="list-style-type: none"> Tax charge on REIT if distributions paid out to corporate shareholders with 10% or more of share capital, or beneficial entitlement to 10% or more of voting or dividend rights 	<ul style="list-style-type: none"> At least 15% of the share capital must be held by shareholders which each hold less than 2%; A single shareholder (or several shareholders acting together) must not hold more than 60% of the SIIC's share capital or voting rights; The SIIC is subject to a levy equal to 20% of the amount of the dividends paid out of the tax exempt income and gains to shareholders which <ul style="list-style-type: none"> (i) hold at least 10% of the SIIC share capital; and (ii) are not subject to corporate income tax (or bear a corporate income tax less than one third of the French corporate income tax) unless they are subject to a 100% distribution obligation on the dividends received. 	<ul style="list-style-type: none"> No restrictions 	<ul style="list-style-type: none"> No restrictions Minimum of two investors required 	<ul style="list-style-type: none"> No shareholder may hold, directly or indirectly, 51% or more of the voting rights or be entitled to 51% or more of the profits At the regime election date, at least 35% of SIIQ's shares must be held by shareholders not holding, directly or indirectly, 2% or more of the voting rights or 2% or more of dividend rights 	<ul style="list-style-type: none"> At least 25% of its shares must be 'widely held'¹ at the time of stock exchange listing At least 15% of its shares must be widely held at all times No shareholder is allowed to hold directly 10% or more If a shareholder holds 10% or more shares in a REIT, the REIT does not lose its tax exemption. However, foreign shareholders cannot claim treaty benefits which are available for a shareholder who holds 10% or more in a stock corporation 	<ul style="list-style-type: none"> One single entity, or two or more affiliated entities, that are subject to tax may not hold an interest of 45% or more in the BI² (excludes a listed BI, a BI/asset manager of the BI with a licence or a BI exempt from such a licence) A resident company may not, through the interposition of mutual funds/unit trusts or corporate entities that are not resident in the Netherlands, hold an interest of 25% or more in the BI A single natural person may not hold an interest of 25% or more of the BI 	<ul style="list-style-type: none"> No restrictions
Mandatory listing on stock exchange	<ul style="list-style-type: none"> Must be listed on a recognised stock exchange 	<ul style="list-style-type: none"> The parent company must be listed on a French or foreign (subject to conditions) stock exchange before the first day of application of the tax regime 	<ul style="list-style-type: none"> Mandatory listing on a Belgian stock exchange IPO must include a 30% public offering 	<ul style="list-style-type: none"> Optional 	<ul style="list-style-type: none"> SpA must be listed on a recognised European / white listed State stock exchange 	<ul style="list-style-type: none"> Mandatory listing in a public exchange in a member state of the European Union or the European Economic Area 	<ul style="list-style-type: none"> Optional 	<ul style="list-style-type: none"> Must be listed on a recognised Spanish stock exchange or in a member state of the European Union or the European Economic Area
Leverage	<ul style="list-style-type: none"> Tax charge on REIT if the interest cover is less than 1.25 	<ul style="list-style-type: none"> Unlimited. 	<ul style="list-style-type: none"> Limited to 65% of the SICAFI's assets at the time when the loan agreement is concluded Interest expense limited to 80% of total income 	<ul style="list-style-type: none"> Limited to 60% of fiscal book value of real property and 20% of the value of other assets 	<ul style="list-style-type: none"> No compulsory limit is set up by law; the SIIQ must determine its own leverage limit on based on regulatory provisions 	<ul style="list-style-type: none"> The equity must amount to at least 45% of the fair market value of the real properties 	<ul style="list-style-type: none"> Limited to 60% of fiscal book value of real property³ and 20% of fiscal book value of all other investments 	<ul style="list-style-type: none"> In general terms, the finance debt ratio cannot exceed 70% of the company's total assets
Distribution on operative income	<ul style="list-style-type: none"> 90% of the profits of the tax exempt business (calculated using normal tax rules) 	<ul style="list-style-type: none"> 85% of the tax-exempt profit derived from leasing of real estate or subletting of real properties held through financial leases 100% of dividends received from a subsidiary elected to be within the SIIC regime 	<ul style="list-style-type: none"> At least 80% of net profit (excluding capital gains which are reinvested within 4 years) 	<ul style="list-style-type: none"> No obligation 	<ul style="list-style-type: none"> 85% compulsory distribution of net profit deriving from the letting business (i.e. tax-exempt business) 	<ul style="list-style-type: none"> 90% of distributable income calculated based on German GAAP (only straight line depreciation is allowable). If the REIT fails to comply, penalties of 20%-30% of the difference will be imposed 	<ul style="list-style-type: none"> 100% of taxable profit (direct income) 	<ul style="list-style-type: none"> 90% of the profits obtained by the REIT (not derived from transfer of real estate or shares in other SOCIMIs) 100% of the dividends obtained from other SOCIMIs In any case, the statutory reserve cannot exceed 20% of the Share capital

1. Widely held: no one shareholder holds 3% or more of the shares

2. Different shareholders tests apply to BIs that are not listed on the Amsterdam stock exchange, do not have a licence (or the asset-manager of the BI does not have a licence) based on the Act of Financial Supervision (Wet op het financieel toezicht) or are exempt of such a licence. If a BI is not listed, does not have a licence or is exempt of such a licence, an interest of 75% or more should be held by natural persons, entities which are not subject to tax/or tax exempt, or directly/indirectly by listed BIs. Furthermore a single natural person may, together with his/her spouse tax partner, not hold an interest of 5% or more. A resident company may not, through the interposition of mutual fund/unit trusts or corporate entities that are not resident in the Netherlands, hold an interest of 25% or more in the BI.

3. Interests of 33,33% in other REITs (the assets consist of 90% or more of real estate) qualify as real property

REITs - Europe

	UK	France (SIIC)	Belgium (SICAFI)	Italy (FIL)	Italy (SIIQ)	Germany	Netherlands (BI)	Spain (SOCIMI)
Restrictions on activities & investments	<ul style="list-style-type: none"> • Must have at least 3 properties throughout the accounting period, each of which should not have a value exceeding 40% of the value of all the properties • Derive at least 75% of its total profits from its tax exempt property letting business • At least 75% of the total value of assets held by the REIT must be held for the tax-exempt property letting business. An exemption from this test is allowed for the first accounting period. • Owner occupied property is excluded from the property rental business of the REIT 	<ul style="list-style-type: none"> • The main activity of the SIIC must be (passive) investment in real estate • Financial leasing may not exceed 50% of the company's gross assets • Other activities may not exceed 20% of the company's gross assets. The tax privileges do not apply to these other activities • Can invest outside France and double tax treaty provisions should apply. Rental income and capital gains derived from foreign real estate properties should benefit from the SIIC tax regime where double tax treaties do not grant the exclusive right to tax to the State of location of the property 	<ul style="list-style-type: none"> • The main activity of the SICAFI must be (passive) investment in real estate (immovable property) • No more than 20% of assets can be invested in one real estate project (at start-up exceptions may be allowed) • Developments are allowed, but cannot be sold within five years of completion • The bylaws may provide that the SICAFI can temporarily and additionally invest in securities and hold cash under certain circumstances • Can invest outside Belgium either directly or via foreign subsidiaries 	<ul style="list-style-type: none"> • Not less than 2/3rds of the total value of the fund must be invested in real estate, property rights with respect to real estate and shares of property companies; this limit may be reduced under certain conditions; • Only 1/3rd of the value of the fund can be invested, directly or through subsidiaries, in a single real property asset having unitary town-planning and functional features; • No more than 10% of the fund's own activities can be invested, directly or through subsidiaries, in real estate companies that carry out development activities; • restrictions apply to financial activities 	<ul style="list-style-type: none"> • The main activity of the SIIQ must be a property letting business (i.e. tax-exempt business); this means that: <ul style="list-style-type: none"> (i) At least 80% of the total value of assets held by the SIIQ must be intended for the letting business, and (ii) At least 80% of the total revenues of the SIIQ must be derived from the letting business (in each tax period) In order to meet these two conditions, interests held in other SIQs or in non-listed Italian companies carrying out a letting business may be considered as well (under certain conditions); 	<ul style="list-style-type: none"> • At least 75% of the REIT's assets must consist of real estate. If the REIT fails to comply, penalties of 1-3% of the difference between the actual property rate and the prescribed rate of 75% will be imposed • At least 75% of its gross revenues must be derived from the rental, leasing, or sale of real estate. If not met, penalties of 10% - 20% of the difference between the actual gross income derived from the rental, leasing, or sale of real estate and the prescribed rate of 75% will be imposed • No property trading is allowed, i.e. revenues from disposals over 5 years must be 50% or less of the average property portfolio value over the same period • Holding interests in German real estate companies is not allowed. However, domestic real estate investment via domestic partnerships is permissible. • Foreign real estate may be held directly, or via foreign or German partnerships, or through wholly owned foreign corporations • Holding shares in foreign REITs whose shares are traded at a public market is not allowed • Management/advisory services provided to other parties must not have a volume of more than 20% of the gross revenue of REIT-AG and must be located in a subsidiary of the REIT. The assets of such subsidiaries are not permitted to comprise more than 20% of the REIT-group's assets 	<ul style="list-style-type: none"> • The exclusive activity of the BI must be portfolio investment activities (passive investments) • A Dutch BI can (re)develop real estate for the benefit of its own portfolio provided that these activities are performed by a taxable subsidiary. 	<ul style="list-style-type: none"> • 80% of the assets must be invested in i) real estate held for rental; and/or ii) land for the developing of real estate in the following 3 years and/or iii) the acquisition of shares in other REITs or other similar entities. • 80% of the income of the corresponding tax period (excluding the income derived from the transfer of real estate or shares held in other REITs) must be derived from the rental of real estate or from dividends which come from shares held in other SOCIMIs • The real estate included in the company's Balance Sheet must be rented or offered for rental (where the offer is outstanding for less than 1 year) for at least 3 years (or 7 years if the REIT was the real estate developer) • The company must have at least 3 buildings and the value of each cannot exceed 40% total assets.

REITs - Europe

	UK	France (SIIC)	Belgium (SICAFI)	Italy (FIL)	Italy (SIO)	Germany	Netherlands (BI)	Spain (SOCIMI)
Distribution on capital gain on disposed investments	<ul style="list-style-type: none"> No requirement to distribute the exempt gains. If gains are distributed, the distribution is subject to the deduction of basic rate income tax. 	<ul style="list-style-type: none"> 50% of capital gains from the disposal of either real estate or shares in real estate partnerships or shares in a corporate subsidiary which is itself exempt under the SIIC regime, and from the transfer of rights in financial leases 	<ul style="list-style-type: none"> Capital gains remain tax free and are not included in the distribution obligation, provided the capital gains are reinvested within four years 	<ul style="list-style-type: none"> No obligation 	<ul style="list-style-type: none"> No obligation 	<ul style="list-style-type: none"> At most 50% of capital can be reinvested immediately or kept as reserve for two years Remaining capital gains must be included in distributable income After two years the reserve has to be either reinvested or added to distributable income 	<ul style="list-style-type: none"> Capital gains/losses are allocated to a tax free reserve and do not form part of the taxable profit/distribution obligation 	<ul style="list-style-type: none"> 50% of capital gains from the disposal of either real estate or shares must be distributed The remaining 50% must be reinvested in three years. If it is not reinvested it must be distributed
Timing of distribution	<ul style="list-style-type: none"> 90% of the profits of the tax exempt business (calculated using normal tax rules) on or before corporate tax self-assessment filing date 	<ul style="list-style-type: none"> Operating income must be distributed before the end of the tax year following the year in which it was realised Capital gains must be distributed before the end of the second tax year following the year in which they were realised 	<ul style="list-style-type: none"> Annually 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Annually 	<ul style="list-style-type: none"> No later than the end of the following fiscal year 	<ul style="list-style-type: none"> Within 8 months after the end of the financial year 	<ul style="list-style-type: none"> Within six months after the close of the business year and must be paid in the following month
Income tax	<ul style="list-style-type: none"> Profit arising from the tax-exempt property business – not subject to tax (see shareholder comments) Non tax-exempt business – taxable in the ordinary manner at the main rate of corporation tax (currently 28%) 	<ul style="list-style-type: none"> Eligible activities – exempt Non-eligible activities – taxed at the rate of 33.33% (increased to 34.43% by surcharge) 	<ul style="list-style-type: none"> In principle subject to the standard corporation tax rate (33.99%), but the qualifying real property income is excluded from the taxable basis 	<ul style="list-style-type: none"> Exempt 	<ul style="list-style-type: none"> Income arising from the letting business (i.e. tax-exempt business) – not subject to tax Income arising from other businesses (i.e. taxable businesses) – taxable in the ordinary manner 	<ul style="list-style-type: none"> Exempt 	<ul style="list-style-type: none"> Income is taxed at a 0% rate 	<ul style="list-style-type: none"> Rental profits are taxed at 19%. This tax rate will be applied to the taxable base in proportion to the dividend distributed Notwithstanding the above, a 20% exemption will be applied on the income obtained from the rental of housing (where more than 50% of the company's assets are used as housing). Income is taxed at 30% when the real estate has been sold or rented by a related entity, or an entity resident in a country with an effective exchange of information, or the minimum permanence period of the real estate has not been observed
Capital gains tax	<ul style="list-style-type: none"> Gains from the disposal of an asset used exclusively for the purposes of the tax-exempt business will be exempt Gains arising to in the non tax-exempt part will be chargeable at the main rate of corporation tax (currently 28%) 	<ul style="list-style-type: none"> Gains resulting from disposal of assets, transfer of rights in financial leases, or participation belonging to the eligible activities and duly distributed are exempt 	<ul style="list-style-type: none"> In principle subject to the standard corporation tax rate (33.99%), but the qualifying real property gains are excluded from the taxable base 	<ul style="list-style-type: none"> Exempt 	<ul style="list-style-type: none"> Gains will be taxed in the ordinary manner 	<ul style="list-style-type: none"> Exempt 	<ul style="list-style-type: none"> Capital gains can be allocated to a tax free capital gains reserve 	

REITs - Europe

	UK	France (SIIIC)	Belgium (SICAFI)	Italy (FII)	Italy (SIIQ)	Germany	Netherlands (BI)	Spain (SOCIMI)
Withholding tax	<ul style="list-style-type: none"> Basic rate income tax (currently 20%) deducted at source from distributions paid out of tax exempt profits. This may be partially reclaimed under provisions of a tax treaty 	<ul style="list-style-type: none"> 15% dividend withholding tax on dividends paid to a non-profitable entity resident in a EU Member State, Iceland or Norway 18% dividend withholding tax on dividends paid to an individual resident in a EU Member State, Iceland or Norway 50% dividend withholding tax on dividend paid in a non-cooperative State or territory (i.e. tax heaven) 25% dividend withholding tax in the other cases These rates may be reduced under the provisions of tax treaties to 15%, 10%, 5% or 0% 	<ul style="list-style-type: none"> 15% dividend withholding tax, which may be reduced by relevant tax treaties 0% where a SICAFI's investments consist of at least 60% in Belgian residential property 		<ul style="list-style-type: none"> No withholding tax is levied on distributions received from subsidiaries 	<ul style="list-style-type: none"> 25% dividend withholding tax plus solidarity surcharge 1.375% 	<ul style="list-style-type: none"> 15%, which may be reduced pursuant to a double taxation treaty Provided certain conditions are met, the amount of the tax free capital gain reserve is considered "capital" for withholding tax purposes, which is, in principle, not subject to withholding tax 	<ul style="list-style-type: none"> No withholding tax is applied
Other taxes			<ul style="list-style-type: none"> Property taxes ("précompte immobilier") Regional taxes Local taxes 	<ul style="list-style-type: none"> For funds not listed on a recognised market holding assets of €100m and less: 1% substitute tax is due on the Net Value of fund if certain conditions are met (broadly, if the number of investors is less than 10 or if more than 2/3 of the fund's quotas are held by members of the same family). It is charged annually on the SGR. 				

REITs - Europe

	UK	France (SIIC)	Belgium (SICAFI)	Italy (FIL)	Italy (SIQ)	Germany	Netherlands (BI)	Spain (SOCIMI)
Conversion into REIT status	<ul style="list-style-type: none"> Entry charge of 2% of the market value of properties used in the tax exempt business at the date the company or group joins the regime Losses of the tax exempt business may not be offset against profits of the non tax exempt business and vice versa A loss of the property rental business arising from a pre UK-REIT period may not be offset against any profits of the tax exempt business. Other losses (e.g. capital losses) may be carried into the REIT period. For capital allowances purposes, assets are deemed to be transferred at tax written down value and no balancing charge or allowances will arise 	<ul style="list-style-type: none"> An exit tax amounting to 19% of the unrealised capital gains on the assets in the eligible portfolios is due – paid in four instalments over four years Tax losses carried forward are deductible from the exit tax basis It may be possible to step-up the accounting base cost of the real estate properties to market value and to offset exit-tax against the revaluation reserve 	<ul style="list-style-type: none"> All unrealised capital gains on property will be taxed at a reduced corporate tax rate – 16.995% upon conversion(exit tax) Tax losses carried forward are deductible from the exit tax basis 	<ul style="list-style-type: none"> It is not possible to convert companies in FILs or vice versa 	<ul style="list-style-type: none"> Entry substitute tax of 20% of the unrealised capital gains on properties held at the regime election date and used for the tax-exempt business; this tax may be paid in five annual equal instalments. Alternatively, capital gains can be taxed in the ordinary manner. The market value of these assets is recognised as their new tax value starting from the fourth subsequent tax period Option to also apply for the entry substitute tax for properties held at the regime election date and intended for sale (i.e. taxable businesses) Tax losses arising from pre conversion tax periods may be carried forward; these may be offset against capital gains due to the entry substitute tax or against the taxable income deriving from the taxable businesses 	<ul style="list-style-type: none"> Provided certain conditions, including the legal form and activity restrictions are met, registration with the Federal Tax Office as Pre-REIT is possible. Pre-REIT is fully taxable. Application for listing on the stock exchange is required within 4 years after registration with the Federal Tax Office as Pre-REIT. 	<ul style="list-style-type: none"> The unrealised capital gain is subject to corporate income tax at normal rate Necessary revaluation of all assets/liabilities to market value at the end of the year prior to the year the entity is converted into a BI 	<ul style="list-style-type: none"> Tax Losses pending to be applied at the date of conversion into SOCIMI can be offset against future profits Unrealised gains from real estate owned before the conversion into SOCIMI will be considered as generating income linearly during the ownership period, with the resulting profits subject to the corresponding tax treatment at that time they are deemed to have arisen Pending deductions will be applied in the terms of the general tax regime
Registration duties		<ul style="list-style-type: none"> No proportional capital duty on capital contributions Transfer tax at around 5% on acquisition of real estate or acquisition of shares in an unlisted real estate company No transfer tax on the sale of the listed SIIC shares. 	<ul style="list-style-type: none"> 0% capital duty concerning contributions in cash or kind to a SICAFI (exemption) 10% or 12.5% real estate transfer tax (depending on the region of the property) – optimization may be possible through long lease structure³ 0.2% real estate transfer tax on (long) lease rights No registration duty on the transfer of shares 		<ul style="list-style-type: none"> No VAT applies on contribution of real estate. Further, €168 registration tax and €336 (€168 x 2) transfer tax are due Purchase of non residential real estate by REIT is: <ul style="list-style-type: none"> – VAT exempt under the ordinary regime (plus registration tax €168 + 2% “reduced” transfer tax) – Optionally subject to VAT (plus registration tax €168 + 2% “reduced” transfer tax) 		<ul style="list-style-type: none"> 6% real estate transfer tax on purchase of Dutch real estate and the acquisition of an interest of 33 1/3% or more (through shares) in a Dutch real estate company 	
Other benefits of REIT status		<ul style="list-style-type: none"> Until December 31, 2011, a French SIIC, or its subsidiaries, can buy (i) a real estate property booked as a fixed asset, (ii) shares of real estate companies or (iii) rights in a financial lease and the vendor benefits from a reduced rate of taxation of its capital gains of 19.63%. 	<ul style="list-style-type: none"> REIT tax status can be extended to the REIT's subsidiaries 			<ul style="list-style-type: none"> Until 31 December 2009, a 50% exemption from capital gains tax on sale of real estate to REIT (or pre-REIT) was available. However, this has now been withdrawn. 	<ul style="list-style-type: none"> Under circumstances the REIT may receive a reduction regarding the payment of the withholding taxes due on the distributed dividends distribution (the so-called afdrachtvermindering). This may be the case if the BI receives income on which foreign or local withholding tax is being withheld 	

Tax at shareholders' level – Europe

Domestic corporate shareholders

	UK (REIT)	France (SIC)	Belgium (SICAFI)	Italy (FIL)	Italy (SIQ)	Germany	Netherlands (BI)	Spain (SOCIMI)
Dividends	<ul style="list-style-type: none"> Treated as profits of UK property business Separate to other UK property businesses UK companies can receive dividends gross from the tax exempt business 	<ul style="list-style-type: none"> Dividends paid out of the tax exempt income and gains are fully taxed at 34.43% Dividends paid out of the taxable income are fully taxed at 34.43%. However, qualifying parent companies holding at least 5% of the share capital of the SIC are eligible for the parent – subsidiary 95% exemption Please see the comments on restrictions on shareholders regarding a charge which may arise on distributions to certain shareholders with >10% shareholding 	<ul style="list-style-type: none"> Included in taxable profit of the shareholders Participation exemption can only be claimed in very specific circumstances 15% WHT can be imputed on corporate income tax liability of shareholder 	<ul style="list-style-type: none"> 20% final withholding tax applied by SGR 	<ul style="list-style-type: none"> From the tax-exempt business: 20% advanced/ final withholding tax, depending on whether or not the SIQ's shares are held in connection with a business activity (in this case, withholding tax may be credited against the final tax liability); 15% advanced/ final withholding tax on the distribution of profits deriving from the letting of certain residential buildings From the taxable businesses: taxable in the ordinary manner 	<ul style="list-style-type: none"> Fully taxable without further tax credit on income from foreign countries or companies 	<ul style="list-style-type: none"> Included in taxable profit of shareholders. Cannot claim the participation exemption 15% withholding tax The dividend withholding tax can in principle be offset against the corporate income tax 	<ul style="list-style-type: none"> The gross dividend to be included in the taxable base (subject to the general tax rate of 30%) will be calculated by multiplying the dividend income x 100/81 and the taxpayer will be entitled to apply a tax credit (19% or the tax rate of the taxable entity where the rate is lower than 19%) to avoid double taxation
Capital gains on disposal of shares	<ul style="list-style-type: none"> Fully taxable in the ordinary manner 	<ul style="list-style-type: none"> Capital gains fully taxable at 34.43% However, if the shares are held for more than 2 years, capital gains could be taxed at a reduced 19.63% rate (subject to certain conditions) 	<ul style="list-style-type: none"> Fully taxable as ordinary profit at 33.99% Participation exemption can only be claimed in very specific circumstances 	<ul style="list-style-type: none"> 12.5% (20% for familiar funds) substitute tax applied by SGR 	<ul style="list-style-type: none"> Taxable in the ordinary manner PEX regime is not allowed 	<ul style="list-style-type: none"> Fully taxable (no 95% exemption) Losses fully tax effective 	<ul style="list-style-type: none"> Included in the taxable profit of shareholder Cannot claim the participation exemption 	<ul style="list-style-type: none"> The gross capital gain to be included in the taxable base (subject to the general tax rate of 30%), will be calculated by multiplying the income x 100/81 and the taxpayer will be entitled to apply a tax credit (19% or the tax rate of the taxable entity where the rate is lower than 19%) to avoid double taxation
Return of capital distribution	<ul style="list-style-type: none"> A share buy back will be a disposal for capital gains purposes and taxable in the ordinary manner 	<ul style="list-style-type: none"> In the framework of a share capital reduction and a share buyback, the amount allocated to the shareholder that exceeds the contribution made by the shareholder is in principle taxed as a dividend In addition, the share-buy-back may also give rise to a taxable capital gain 	<ul style="list-style-type: none"> In case of a share buyback, the amount allocated to the shareholder that exceeds the paid-in capital is in principle taxed as a dividend 	<ul style="list-style-type: none"> Does not constitute a tax event 20% final withholding tax applied by SGR on the difference between the redemption value and the subscription cost 	<ul style="list-style-type: none"> Not to be taxed 		<ul style="list-style-type: none"> (Partial) repayment of capital may be subject to Dutch dividend withholding tax to the extent that the BI has net profits Any Dutch dividend withholding tax imposed can in principle be offset against the corporate income tax 	<ul style="list-style-type: none"> In the framework of a share capital reduction and a share buyback, the amount allocated to the shareholder that exceeds the contribution made by the shareholder is taxed as a dividend
Substantial interest							<ul style="list-style-type: none"> No participation exemption is applicable in respect of a substantial interest in a Dutch BI 	

Tax at shareholders' level – Europe

Domestic individual shareholders

	UK (REIT)	France (SIIC)	Belgium (SICAFI)	Italy (FII)	Italy (SIIQ)	Germany	Netherlands (BI)	Spain (SOCIMI)
Dividends	<ul style="list-style-type: none"> Taxed as if profits of a property rental business Treated as separate business to other property rental businesses Withholding mechanism for the distribution of income from the tax exempt business at the basic rate (currently 20%) - The withholding tax is creditable against the property rental business tax liability 	<ul style="list-style-type: none"> Dividends benefit from a 40% allowance, and are taxable at the global maximum rate of 52.1% Individuals may elect for the application of an 18% withholding tax (plus social contributions leading to a 30.1% rate) on the gross amount of dividends received. 	<ul style="list-style-type: none"> 15% withholding tax is the final levy Exemption of dividend withholding tax in case 60% of the SICAFI's assets relate to residential property 	<ul style="list-style-type: none"> Are subject to corporate income tax and taxed at ordinary rates 20% advanced withholding tax can be credited against the final tax liability 	<ul style="list-style-type: none"> From the tax-exempt business: 20% advanced withholding tax; 15% advanced withholding tax on the distribution of profits deriving from the letting of certain residential buildings. Withholding tax may be credited against the final tax liability From the taxable businesses: taxable in the ordinary manner 	<ul style="list-style-type: none"> From 2009 the 26,375% WHT (flat tax) is the final tax burden. No individual tax. No further tax credit on income from foreign countries or companies Lower taxation may be applicable, depending on individual circumstances. 	<ul style="list-style-type: none"> "Deemed income basis" - 1.2% income tax of the average value of investment 15% withholding tax is levied. The dividend withholding tax can in principle be offset against the income tax It is assumed that the shares are not (do not have to be) considered to be business assets and the shareholder is not considered to perform activities which go beyond passive investment in respect of the shares in the BI 	<ul style="list-style-type: none"> The dividends obtained from the SOCIMI are tax exempt
Capital gains on disposal of shares	<ul style="list-style-type: none"> Fully taxable in the ordinary manner 	<ul style="list-style-type: none"> Capital gains are taxable at the global rate of 30.1% 	<ul style="list-style-type: none"> Not taxable 	<ul style="list-style-type: none"> Are subject to corporate income tax and taxed at ordinary rates 	<ul style="list-style-type: none"> Taxable in the ordinary manner PEX regime is not allowed 	<ul style="list-style-type: none"> From 2009 onwards the 26,375% WHT (flat tax) is applicable on capital gain and is the final tax burden. This applies regardless of the holding period Lower taxation may be applicable, depending on individual circumstances. 	<ul style="list-style-type: none"> Not subject to any special tax 	<ul style="list-style-type: none"> There is a limited exemption over the part of the gain attributed to the tax period in which the entity has applied the SOCIMI Regime. This exemption is calculated as the positive difference between the following amounts: <ul style="list-style-type: none"> - 10% of the acquisition value multiplied by the number of years of share's possession in which the entity has applied the regime. - Amount of exempt dividends which have been received during the period of share's possession
Return of capital distribution	<ul style="list-style-type: none"> A share buy back will be a disposal for capital gains purposes and taxable in the ordinary manner 	<ul style="list-style-type: none"> A share buyback, performed according to the specific process provided for by Article 225-209 of the French Commercial Code (process used in most of the cases), gives rise to a taxable capital gain. In the framework of a share capital reduction and an ordinary share buyback, the amount allocated to the shareholder that exceeds the contribution made by the shareholder is in principle taxed as a dividend In addition, the share buy-back may also give rise to a taxable capital gain 	<ul style="list-style-type: none"> Not taxable 	<ul style="list-style-type: none"> Does not constitute a tax event 20% final withholding tax applied by SGR on the difference between the redemption value and the subscription cost 	<ul style="list-style-type: none"> Not subject to taxation 		<ul style="list-style-type: none"> (Partial) repayment of capital may be subject to Dutch dividend withholding tax to the extent that the BI has net profits 	<ul style="list-style-type: none"> In the framework of a share capital reduction and a share buyback, the amount allocated to the shareholder that exceeds the contribution made by the shareholder is taxed as a dividend

Tax at shareholders' level – Europe

Foreign shareholders

	UK (REIT)	France (SIIC)	Belgium (SICAFI)	Italy (FIL)	Italy (SIQ)	Germany	Netherlands (BI)	Spain (SOCIMI)
Dividends	<ul style="list-style-type: none"> Foreign shareholders receive dividends from the tax exempt business net of basic rate income tax (currently 20%). They may be able to reclaim some of this under the provisions of a double tax treaty. 	<ul style="list-style-type: none"> 15% dividend withholding tax on dividends paid to a non-profitable entity resident in a EU Member State, Iceland or Norway 18% dividend withholding tax on dividends paid to an individual resident in a EU Member State, Iceland or Norway 50% dividend withholding tax on dividend paid in a non-cooperative State or territory (i.e. tax heaven) 25% dividend withholding tax in the other cases These rates may be reduced under the provision of tax treaties to 15%, 10%, 5% or 0% Please see the comments on restrictions on shareholders regarding a charge which may arise on distributions to certain shareholders with >10% shareholding 	<ul style="list-style-type: none"> 15% withholding tax May be reduced under the tax treaty Exempt if 60% of the SICAFI's assets relate to residential property Exempt if the foreign shareholder is not engaged in profit-making activities or in the operation of a business and benefits from an income tax exemption in his home country (e.g. pension funds) 	<ul style="list-style-type: none"> 20% final withholding tax Foreign unit holders residing in countries that provide for an adequate exchange of information with the Italian tax authorities are exempt from such withholding tax provided they are the beneficial owners 	<ul style="list-style-type: none"> From the tax-exempt business: 20% final withholding tax; 15% final withholding tax on the distribution of profits deriving from the letting of certain residential buildings. No exemption for shareholders as resident in countries that provide for an adequate exchange of information with the Italian tax authorities. The EU parent directive is not applicable, so that no exemption may be granted DTT benefits might be applicable (Foreign Tax Credit might fully recover, locally, the final WHT paid at source). Taxable in the ordinary manner if profits are derived from the SIQ's taxable businesses 	<ul style="list-style-type: none"> 25% in general +5.5% solidarity surcharge thereon, i.e. 26.375% Reduction of withholding tax according to some tax treaties Final tax burden No affiliation privilege if capital stake is 10% or more EU Parent/Subsidiary Directive not applicable, since REIT AG is tax exempt 	<ul style="list-style-type: none"> Not taxable in the Netherlands, assuming that the shareholder: <ul style="list-style-type: none"> is not a resident nor deemed to be a resident nor has opted to be treated as a resident in the Netherlands does not have an enterprise or an interest in an enterprise that, in whole or in part, is carried on through a permanent establishment or a permanent representative in the Netherlands and to which permanent establishment or permanent representative the shares are attributable does not have a deemed Netherlands enterprise to which enterprise the shares are attributable does not have, or is not deemed to have, a 5% substantial interest in the share capital of the BI Cannot claim the participation exemption 15% withholding tax May be reduced under the double tax treaty 	<ul style="list-style-type: none"> The dividends obtained from the SOCIMI are tax exempt (provided the foreign shareholder is not tax resident in a country in which there is no effective information exchange with Spain)

Tax at shareholders' level – Europe

Foreign shareholders

	UK (REIT)	France (SIIC)	Belgium (SICAFI)	Italy (FII)	Italy (SIIQ)	Germany	Netherlands (BI)	Spain (SOCIMI)
Capital gains on disposal of shares	<ul style="list-style-type: none"> Foreign shareholders receive dividends from the tax exempt business net of basic rate income tax (currently 20%). They may be able to reclaim some of this under the provisions of a double tax treaty. 	<ul style="list-style-type: none"> Where a foreign investor directly or indirectly holds at least 10% of the SIIC share capital, capital gains are subject to a 33.33% withholding tax, subject to the application of tax treaties. This rate is reduced to 19% for investors located in a EU Member State, Iceland or Norway This rate is increased up to 50% for foreign investors located in a non-cooperative State or Territory (i.e. tax heaven) Non-profitable entities located in a EU Member State, Iceland or Norway are exempt 	<ul style="list-style-type: none"> Not taxable in Belgium 	<ul style="list-style-type: none"> 20% final withholding tax Foreign unit holders residing in countries that provide for an adequate exchange of information with the Italian tax authorities are exempt from such withholding tax provided they are the beneficial owners. Otherwise, 12.5% (20% for familiar funds) substitute tax applied by SGR 	<ul style="list-style-type: none"> Taxable in the ordinary manner PEX regime is not allowed 	<ul style="list-style-type: none"> May be exempt from German tax 	<ul style="list-style-type: none"> Not taxable in the Netherlands, assuming that the shareholder conditions directly above are met Cannot claim the participation exemption 	<ul style="list-style-type: none"> Limited capital gain exemption over the part of the gain attributed to the tax period in which the entity has applied the SOCIMI Regime. The tax exemption is limited to the positive difference between the following amounts: <ul style="list-style-type: none"> - 10% of the acquisition value multiplied by the number of years of share's possession in which the entity has applied the regime; and - Amount of exempt dividends which have been received during the period of share's possession. <p>The tax exemption is applicable provided the foreign shareholder is not tax resident in a country with which Spain has no exchange of information agreement)</p>
Return of capital distribution		<ul style="list-style-type: none"> In the framework of a share capital reduction and a share buyback, the amount allocated to the shareholder that exceeds the contribution made by the shareholder is in principle taxed as a dividend In addition, the share-buy-back may also give rise to a taxable capital gain 		<ul style="list-style-type: none"> Does not constitute a tax event 20% final withholding tax applied by SGR on the difference between the redemption value and the subscription cost <p>No taxation in case of foreign shareholders resident in countries that provide for an adequate exchange of information with the Italian tax authorities (ie. "white list countries") if they are the beneficial owners.</p>	<ul style="list-style-type: none"> Not subject to taxation 		<ul style="list-style-type: none"> (Partial) repayment of capital may be subject to Dutch dividend withholding tax to the extent that the BI has net profits. 	<ul style="list-style-type: none"> In the framework of a share capital reduction and a share buyback, the amount allocated to the shareholder that exceeds the contribution made by the shareholder is taxed as a dividend

REITs – Asia Pacific

	Hong Kong (REIT)	Singapore (SREIT)	Australia	Japan (JREIT)	South Korea (General REIT, CR-REIT, Entrusted Management REIT)
Enacted year	2003	2002	No specific REIT regime CGT regime: 1985 MIT withholding tax rules: 2008	2000	<ul style="list-style-type: none"> General REIT & CR-REIT: 2001 Entrusted Management REIT: 2005
Governed by or under supervision	<ul style="list-style-type: none"> Regulated by the Securities and Future Commission (SFC) 	<ul style="list-style-type: none"> Governed by the Monetary Authority of Singapore (MAS) and the Singapore Exchange Regulated by the Property Funds Guidelines, the Securities and Futures Act, the Code of Collective Investments Scheme, the listing manual of the Singapore Exchange, and the Code of Corporate Governance 2005 	<ul style="list-style-type: none"> Governed by the Income Tax Assessment Acts 1936 and 1997, Tax Administration Act 1953 and Corporations Act 2001 	<ul style="list-style-type: none"> Governed by the Investment Trust and Investment Corporation Law, Additionally, JREITs must observe self regulating rules established by the Investment Trusts Association JREITs must comply with the Japanese tax law in order to be tax qualified 	<ul style="list-style-type: none"> Governed by the Real Estate Investment Company Act
Formalities & procedure	<p>Must comply with the REIT Code. This includes, subject to certain de minimis thresholds:</p> <ul style="list-style-type: none"> All connected party⁴ transactions to be subject to voting by unit holders, with those holding a material interest in the transactions to abstain from voting The management company and the trustee must function independently but they may be part of the same corporate group if certain requirements are fulfilled The management company has to appoint financial advisors Valuation reports are required at least annually 	<ul style="list-style-type: none"> Application to the Inland Revenue Authority of Singapore for tax transparency ruling 	<ul style="list-style-type: none"> No special legal or regulatory requirements need to be a REIT However, to benefit from withholding tax changes, the REIT must at least be a Managed Investment Trust ("MIT"), for which the requirements are: <ol style="list-style-type: none"> The trustee of the trust is an Australian resident or the central management and control of the trust is in Australia; The trust is a 'managed investment scheme' operated by a 'financial services licensee' whose licence covers operating such an investment scheme (as defined in the Corporations Act); and Either: <ol style="list-style-type: none"> units in the trust are listed for quotation in an approved stock exchange in Australia; or the trust has at least 50 members; or one of the members is a specified entity (e.g. a superannuation fund or another MIT) provided that one foreign resident individual does not hold (directly or indirectly) a 10% or greater interest in the trust⁵. In addition, to benefit from the proposed new deemed capital rules, the following requirements must be satisfied: <ol style="list-style-type: none"> the REIT must satisfy the relevant MIT definition⁶; and the REIT must make an election within the required time limit. 	<ul style="list-style-type: none"> Bylaws must be prepared and filed with the Prime Minister Registration with the Prime Minister is required to obtain investment corporation status 	<ul style="list-style-type: none"> General REIT – manages assets by themselves, must obtain approval from the Ministry of Construction and Transportation. Often manages with the assistance of investment advisory companies CR-REIT – paper company (must describe its duration in its article of incorporation). Entrusts the management of assets to asset management companies (which are licensed by the Ministry of Construction and Transportation) Entrusted Management REIT – must entrust management of assets to an Asset Management Company which is licensed by the Ministry of Construction and Transportation
Legal form & share capital	<ul style="list-style-type: none"> Unit trust listed in Hong Kong No formal minimum capital requirements in REIT Code but subject to listing rules No limits are placed on the REIT's cash holdings Assets of the REIT are held on trust and segregated from the assets of its trustees 	<ul style="list-style-type: none"> Unit Trust constituted by Trust Deed US\$20m minimum assets size (to be listed on Singapore Exchange) 	<ul style="list-style-type: none"> Resident/non-resident (public) unit (fixed) trust May adopt one of two structures: <ul style="list-style-type: none"> Stand-alone unit trust, passively holding real estate portfolio; or Form part of a listed stapled security where a company share(s) and unit trust(s) unit(s) are stapled such that they cannot be sold separately. Usually, the company will undertake arrange of activities relating to the real estate owned by the trust [eg. management, rent to use (e.g. hotel, hospital), funds management, etc]. Managed by a corporate trustee/responsible entity/fund manager No minimum capital requirements exist Larger LPTs now involve stapled structures 	<ul style="list-style-type: none"> Trust or Corporation Minimum capital required for corporate type is JPY 100 million 	<ul style="list-style-type: none"> Self-Management REIT – a stock company CR-REIT is a paper company (i.e. special purpose company that has a finite life) where its main shareholders are financial institutions, minimum share capital of KRW 10 billion Entrusted Management REIT – a paper company with a minimum share capital of KRW 10 billion REITs are allowed to start with a share capital of KRW 1 bln., which is to be increased to at least KRW 10 bln. within six months of obtaining the business approval from the MLTM

REITs – Asia Pacific

	Hong Kong (REIT)	Singapore (SREIT)	Australia	Japan (JREIT)	South Korea (General REIT, CR-REIT, Entrusted Management REIT)
Restriction on shareholdings	<ul style="list-style-type: none"> Minimum public float applies 	<ul style="list-style-type: none"> At least 500 public shareholders holding 25% of its units 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> One of the following requirements must be met: <ol style="list-style-type: none"> there is a public offering of units with a total issue price of JPY 100 million; there are 50 or more unitholders at the end of the fiscal year; or 100% of units are held by qualified institutional investors at the end of the fiscal year More than 50% of the units must be issued domestically The largest unitholder and its affiliates do not collectively hold more than 50% of the outstanding units at the end of the fiscal year 	<ul style="list-style-type: none"> Self-Management REIT - Minimum 30% public float and each investor holding less than 30% CR-REIT – no limitation on shareholding by individual Entrusted Management REIT – Minimum 30% public float and each investor holding less than 30%
Mandatory listing on stock exchange	<ul style="list-style-type: none"> Mandatory to list on Hong Kong Stock Exchange 	<ul style="list-style-type: none"> REIT must be listed on the Singapore Exchange to be eligible for tax concessions In order to be able to list must have S\$20 mln. of assets 	<ul style="list-style-type: none"> Optional requirement to list on Australian Stock Exchange – in order to be able to list must have 500 unit holders each holding a parcel of units with a value of at least A\$2,000 To qualify as a MIT – easier if listed on Australian Stock Exchange 	<ul style="list-style-type: none"> Optional to list on a Japanese Stock Exchange. A number of requirements must be met in order to be able to list 	<ul style="list-style-type: none"> Self-Management REIT and Entrusted Management REIT – mandatory listing on the Korea Stock Exchange (or trading in the association brokerage market of the Korea Securities Dealers Association) CR-REIT – optional
Restriction on activities & investments	<ul style="list-style-type: none"> Can invest in real estate anywhere in the world Investing in hotels and recreation parks is permitted Cannot invest in vacant land or participate in property development activities Real estate must generally be income generating, exceptions allowed for buildings in the course of substantial redevelopment or refurbishment Some restrictions when investing through SPVs 	<ul style="list-style-type: none"> At least 70% of the funds deposited property should be invested in real estate and real estate related assets May also invest in immovable property related assets such as listed or unlisted debt securities, listed shares of property companies, mortgage-backed securities, other property funds, and assets incidental to the ownership of immovable property, listed shares of non-property corporations and government securities Cannot undertake development activities, whether directly, through joint ventures or indirectly including investment in unlisted property development companies. Not allowed to invest in vacant land and mortgages In principle, can invest in overseas real estate, however, Tax Ruling is premised on SREITs only investing in Singapore real estate 	<ul style="list-style-type: none"> Unit trusts are able to invest offshore Public unit trusts (broadly, unit trusts that are listed, have at least 50 unit holders or 20% of the units are held by superannuation funds and certain exempt entities) can only undertake development activity to 'primarily derive rental income' and/or certain other eligible activities. Otherwise, the development activity will be deemed a "trading business" such that the trust will not be eligible for flow through tax treatment, but will be treated as a company for tax purposes. Hence, the adoption of stapled security structures. Safe harbour rules: <ul style="list-style-type: none"> – 25% safe-harbour allowance for non-rental, non-trading income from investments in land – 2% safe-harbour allowance at the whole of trust level for non-trading income that is incidental and relevant to the 'eligible investment business' applies – Property trusts can hold investment properties indirectly through SPVs 	<ul style="list-style-type: none"> Investments only in "Qualified Assets". These include real estate and leasehold rights in real estate REITs are no longer prohibited from investing in foreign assets Cannot hold 50% or more of the total issued shares of another company 	<ul style="list-style-type: none"> Self-Management REIT: at least 70% of assets must be invested in real estate assets, at least 10% in real estate associated securities CR-REIT: at least 70% of the asset must be invested in real estate placed in the market as a result of corporate restructuring Entrusted Management REIT: at least 70% of assets must be invested in real estate assets, at least 10% in real estate associated securities
Minimum real estate holding period	<ul style="list-style-type: none"> 2 years (may sell earlier subject to unitholders' approval) 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Self-Management REIT and Entrusted Management REIT: 3 years CR-REIT: no restriction

4. For the purpose of the Code, a connected party transaction is any transaction between the REIT scheme and any of the connected persons (such as the management company, the property valuer, the trustee, a significant holder of 10% or more of the outstanding units of the REIT scheme, etc) as defined in the Code or any transaction between two or more REIT schemes which are managed by the same management company.

5. The Australian Government has announced that it intends to amend the current MIT definition for withholding tax purposes to allow certain 'widely held' trusts to qualify.

6. Broadly, under the proposed new rules, the REIT must either satisfy the current MIT definition for withholding tax purposes or satisfy an extended definition for certain 'widely held' trusts.

REITs – Asia Pacific

	Hong Kong (REIT)	Singapore (SREIT)	Australia	Japan (JREIT)	South Korea (General REIT, CR-REIT, Entrusted Management REIT)
Leverage	<ul style="list-style-type: none"> Borrowings shall not exceed 45% of the total gross asset value 	<ul style="list-style-type: none"> 35% of its deposited property May exceed 35% of its deposited property (up to a maximum of 60%) if the REIT has obtained a credit rating from either Fitch Inc, Moody's or Standard and Poor's, which is then disclosed to the public. The REIT must then continue to disclose its credit rating until its borrowings drop to 35% (or below) of its deposited property 	<ul style="list-style-type: none"> If the thin capitalisation rules apply, the listed property trust is broadly allowed to gear 75% of its adjusted Australian asset base Debt deductions (e.g. interest expenses) will be reduced where the amount of debt exceeds the permitted gearing ratio of 3:1. There are certain de-minimus exemptions 	<ul style="list-style-type: none"> Unlimited, but any borrowings by a J-REIT must be from a qualified financial institution 	<ul style="list-style-type: none"> Ten times REIT's net worth, albeit subject to a special resolution of the REIT's general meeting of shareholders
Distribution on operative income	<ul style="list-style-type: none"> At least 90% of its audited annual net income after tax. Trustee can exclude certain revaluation gains and capital profits 	<ul style="list-style-type: none"> 90% of taxable income arising from the letting of properties in Singapore No requirements with respect to the income from investment in overseas properties, as tax transparency is not applicable 	<ul style="list-style-type: none"> No requirement. However, trustee of trust is taxable if unitholders are not entitled to 100% of the income of the trust at year end Where stapled structure adopted, no minimum dividend requirements exist for the company 	<ul style="list-style-type: none"> At least 90% of accounting income or distributable profit 	<ul style="list-style-type: none"> At least 90% of distributable income
Distribution of capital gain on disposed investments	<ul style="list-style-type: none"> No requirement, subject to trust deed 	<ul style="list-style-type: none"> No requirement 	<ul style="list-style-type: none"> No requirement. However, trustee of trust is taxable if unitholders are not presently entitled at year-end to 100% of capital gains realised on disposal of property 	<ul style="list-style-type: none"> At least 90% of accounting income or distributable profit 	<ul style="list-style-type: none"> At least 90% of distributable income
Timing of distribution	<ul style="list-style-type: none"> Annually 	<ul style="list-style-type: none"> Annually 	<ul style="list-style-type: none"> Annually 	<ul style="list-style-type: none"> Annually 	<ul style="list-style-type: none"> Depends on Articles of Association of REIT
Income tax	<ul style="list-style-type: none"> Hong Kong property held through SPVs are subject to property tax of 15%, or profits tax of 16.5% from the 2008/09 year of assessment Dividend income from SPVs is tax exempt No Hong Kong tax on income from foreign properties 	<ul style="list-style-type: none"> Not taxable if SREIT's taxable income from Singapore properties is distributed within the financial year Any taxable income not distributed within the financial year is subject to tax at the prevailing tax rate, currently 17% 	<ul style="list-style-type: none"> Trustee is not taxable provided that unit holders are presently entitled to income of the trust at year-end Net income for tax purposes that unitholders are not presently entitled to at year-end is taxed in the hands of the trustee at the current rate of 46.5% 	<ul style="list-style-type: none"> JREIT is subject to tax (42%) but distributions are deductible if certain requirements are met 	<ul style="list-style-type: none"> Subject to corporate income tax (12.1%, including resident surtax, for taxable income up to KRW 200 mln. and 24.2% above), but distributions are deductible if 90% or more of the distributable profits are declared or distributed as dividend in only CR-REIT, Entrusted Management REIT
Capital gains tax	<ul style="list-style-type: none"> No capital gains tax 	<ul style="list-style-type: none"> No capital gains tax 	<ul style="list-style-type: none"> Net capital gain (if any) included in taxable income of trust 50% capital gains tax discount may be available to individuals and trusts 33% capital gains tax discount may be available to complying superannuation funds Non-residents exempt from tax for capital gains and losses in relation to 'non-taxable Australian assets'. <p>Under proposed new deemed capital rules, if the trust makes a valid election, certain assets (broadly, real estate, shares in companies and units in unit trusts) are deemed to be held on capital account and therefore disposal of these assets may be eligible for the capital gains tax discount for residents, and exemption for non-residents (where assets are 'non-taxable Australian assets'). If no election is made, the assets will be deemed to be held on revenue account (with the exception of real estate which will be taxed according to the ordinary capital/revenue distinction).</p>	<ul style="list-style-type: none"> Treated the same as ordinary income 	<ul style="list-style-type: none"> Subject to corporate income tax (12.1%, including resident surtax, for taxable income up to KRW 200 mln. and 24.2% above), but distributions are deductible if 90% or more of the distributable profits are declared or distributed as dividend in only CR-REIT, Entrusted Management REIT Additionally, the sale of certain tainted assets such as housing or non-business land is subject to capital gains surtax at a rate of 33%, including resident surtax.

REITs – Asia Pacific

	Hong Kong (REIT)	Singapore (SREIT)	Australia	Japan (JREIT)	South Korea (General REIT, CR-REIT, Entrusted Management REIT)
Withholding tax	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Withholding tax at the prevailing corporate tax rate, currently 17%, is applicable on distributions made by SREITs, except where the distributions are made to: Individuals who will receive the distributions free of withholding tax, unless these are received through a Singapore partnership Qualifying unit holders (such as Singapore resident corporate unit holders, Singapore branches of foreign companies, bodies of persons, etc) who will receive the distributions free of withholding tax Qualifying foreign non-individual unit holders who will receive distributions at the reduced rate of 10% for distributions made until 31 March 2015⁷ 	<ul style="list-style-type: none"> The trustee must withhold tax in relation to the Australian source income distributions to foreign unit holders 30% withholding tax for unfranked dividends and 10% on interest on distributions to non-resident unit holders. May be reduced by double tax treaty Dividend distributions to an Australian branch of a foreign resident individual are not subject to withholding tax. Such dividends will be taxed on an assessment basis (ie. an Australian income tax return must be lodged) Partly or fully unfranked dividends may be exempt from dividend withholding tax under conduit foreign income rules For other types of Australian source income (with the exception of a capital gain in respect of a non taxable Australian asset, which will be exempt), the rate of withholding tax depends on whether the trust is a MIT. For a non-MIT, tax of 30% is withheld by the trustee from distributions to non-resident companies. Non-resident marginal tax rates apply to non-resident individuals. However, this is not the final tax. Foreign unit holders may lodge an Australian income tax return and receive a credit for tax paid by trustee. If tax assessed on lodgement of the Australian tax return is less than tax withheld, unit holders can obtain a refund of tax withheld by trustee For an MIT, foreign investors in a country with which Australia has an effective exchange of information (EOI) on tax matters⁸ are subject to the following withholding tax rates: <ul style="list-style-type: none"> a 15% final withholding tax for distributions in the 2009-10 income year a 7.5% final withholding tax for distributions in the 2010-11 income year and beyond. For foreign investors in a country with which Australia does not have an effective EOI, the trustee of a MIT is required to withhold final tax at the rate of 30% 	<ul style="list-style-type: none"> 7% withholding tax (for corporate unit holders and foreign individual unit holders of listed JREITs) until 31.12.2011; 15% thereafter 10% withholding tax (for domestic individual unit holders of listed JREITs who own less than 5% of issued units) until 31.12.2011; 20% thereafter 20% tax (for individual unit holders of listed JREITs who own 5% or more of issued units) 20% for unit holders of unlisted JREITs 	<ul style="list-style-type: none"> 15.4% tax for distributions to resident individuals No withholding tax for distributions to resident corporations 22% for distributions to non-residents which may be reduced under the applicable tax treaty.
Conversion into REIT status	<ul style="list-style-type: none"> No specific transition regulations 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> No special transition regulations 	<ul style="list-style-type: none"> Confirmation with relevant authorities necessary (i.e. Ministry of Land Transport and Maritime Affairs, Financial Supervisory Commission of Korea)

REITs – Asia Pacific

	Hong Kong (REIT)	Singapore (SREIT)	Australia	Japan (JREIT)	South Korea (General REIT, CR-REIT, Entrusted Management REIT)
Registration duties	<ul style="list-style-type: none"> Progressive rate of stamp duty up to a maximum of 3.75% on higher of transfer consideration or market value of Hong Kong real estate 0.2% stamp duty on higher of transfer consideration and market value of shares in Hong Kong SPVs payable by the transferor and transferee at 0.1% each 	<ul style="list-style-type: none"> No capital duty Stamp duty (3%) on the acquisition of Singapore properties. SREITs may apply for a remission from stamp duty for acquisitions made on or before 31 Mar 2015⁸ SREITs need to register for GST if their rental income from Singapore non-residential properties in a 12 month period exceeds US\$1million Self accounting of GST by SREITs on the acquisition of Singapore non-residential properties from GST-registered suppliers 	<ul style="list-style-type: none"> No capital duty Stamp duty <ul style="list-style-type: none"> transfer of land in Australia at rates of up to 6.75% 0.6% for transfer of shares and units transfers of shares in certain land rich entities subject to rates of up to 6.75% on the value of the land held 	<ul style="list-style-type: none"> Registration tax on transfer of real property (excluding warehouses) of 0.8% until 31 March, 2010. This registration tax relief will be phased out under the 2010 tax reform, as follows: 0.8% until 31 March, 2011; 1.1% until 31 March, 2012, 1.3% until 31 March 2013, and 2% thereafter 2/3 reduction of tax basis for calculating acquisition tax if JREIT satisfies certain requirements until 31 March 2011. 	<ul style="list-style-type: none"> Generally, 0.48% capital registration tax (including surtax) on the par value of the shares issued upon incorporation and on the par value of the shares issued in subsequent capital increases. 0.96%-2.2% acquisition tax and 2.4% registration tax if purchased by ordinary company; 50% reduction on acquisition and registration tax for all types of REITs if real estate in Korea is purchased by December 31, 2012

7. This concessionary WHT rate of 10% was extended in the 2010 Budget for distributions made up to 31 Mar 2015. Thereafter the WHT rate will be the prevailing corporate tax rate at the time unless this concession is again extended..

8. The 37 countries with which Australia has an effective EOI on tax matters are: Argentina, Bermuda, Canada, China, Czech Republic, Denmark, Fiji, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan, Kiribati, Malta, Mexico, Netherlands, Netherlands Antilles, New Zealand, Norway, Papua New Guinea, Poland, Romania, Russia, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Taipei, Thailand, United Kingdom, United States of America and Vietnam.

9. The stamp duty remission was extended in the 2010 Budget for property acquisitions on or before 31 Mar 2015.

Tax at shareholders' level – Asia Pacific

Domestic corporate shareholders

	Hong Kong (REIT)	Singapore (SREIT)	Australia	Japan (JREIT)	South Korea (General REIT, CR-REIT, Entrusted Management REIT)
Dividends	<ul style="list-style-type: none"> Not subject to Hong Kong tax 	<ul style="list-style-type: none"> Subject to Singapore income tax at the current corporate tax rate of 17% 	<ul style="list-style-type: none"> Subject to corporate tax rate of 30% for taxable portion of trust distributions 	<ul style="list-style-type: none"> Dividend aggregated with other income is subject to tax at an effective rate of approximately 42% Does not qualify for the dividend received exclusion Withholding tax may be creditable against corporate income tax 	<ul style="list-style-type: none"> Subject to corporate income tax of 12.1% (including surtax) for taxable income up to KRW 200 million and 24.2% above the KRW 200 million
Capital gains on disposal of shares	<ul style="list-style-type: none"> Not taxable unless on revenue account and arise from trade, profession or business carried on in Hong Kong 	<ul style="list-style-type: none"> Not taxable unless they arise or are connected with activities of a trade or business carried on in Singapore 	<ul style="list-style-type: none"> Taxed at corporate tax rate of 30% 	<ul style="list-style-type: none"> Taxed at an effective rate of approximately 42% which is paid by filing a tax return There is no withholding tax 	<ul style="list-style-type: none"> Subject to 12.1% (including surtax) corporate income tax for taxable income up to KRW 200 mln. and 24.2% above
Return of capital distribution	<ul style="list-style-type: none"> Not subject to Hong Kong tax 	<ul style="list-style-type: none"> Not taxable 	<ul style="list-style-type: none"> Only taxable to the extent that it exceeds the cost base of the unit holder's investment 	<ul style="list-style-type: none"> May be regarded as a deemed dividend or a deemed capital gain 	<ul style="list-style-type: none"> Only taxable to the extent that the amount returned exceeds the amount contributed
Income from foreign investments	<ul style="list-style-type: none"> Not subject to Hong Kong tax 	<ul style="list-style-type: none"> Subject to the approval of the Inland Revenue Authority of Singapore, such income may be exempt from Singapore income tax at the trustee level upon meeting certain conditions. Distributions out of such exempt income are also exempt in the hands of the unit holder 	<ul style="list-style-type: none"> Same treatment as domestic investment above 	<ul style="list-style-type: none"> Same treatment as domestic investment above 	<ul style="list-style-type: none"> Same treatment as ordinary dividends above

Tax at shareholders' level – Asia Pacific

Domestic individual shareholders

	Hong Kong (REIT)	Singapore (SREIT)	Australia	Japan (JREIT)	South Korea (General REIT, CR-REIT, Entrusted Management REIT)
Dividends	<ul style="list-style-type: none"> Not subject to Hong Kong tax 	<ul style="list-style-type: none"> Individuals who hold units as investment assets are exempt from Singapore income tax unless these are received through a Singapore partnership Individuals who hold units as trading assets are subject to Singapore income tax at their respective tax rates 	<ul style="list-style-type: none"> On a progressive basis, up to 46.5% on share of the trust's net income for an income year 	<ul style="list-style-type: none"> For investors in listed J-REITs who own less than 5% of the issued investment units – subject to withholding income tax of 10% (national tax 7%, local tax 3%) until 31 December, 2011; thereafter, 20% (national tax 15%, local tax 5%) Investors who own 5% or more of the issued investment units are subject to withholding income tax of 20%. Withholding tax may be a final tax; otherwise, also included in ordinary taxable income and subject to income tax at progressive tax rates of up to 50% or flat tax at 20% (10% until 31 December 2011) 	<ul style="list-style-type: none"> Subject to 15.4% tax rate if the aggregate interest and dividend income is below KRW 40 million in the calendar year, otherwise the shareholder is subject to the ordinary individual income tax rates (6.6%–38.5% including surtax)
Capital/revenue gains on disposal of shares	<ul style="list-style-type: none"> Not taxable unless on revenue account and arise from trade, profession or business carried on in Hong Kong 	<ul style="list-style-type: none"> Not taxable unless they arise or are connected with activities of a trade or business carried on in Singapore 	<ul style="list-style-type: none"> Taxed on a progressive basis up to 46.5% Entitled to 50% discount on capital gains (including deemed capital gains under proposed new capital rules) if held for more than 12 months 	<ul style="list-style-type: none"> Subject to a reduced withholding tax rate of 10% until 31.12.2011 for units of listed JREITs transferred through a securities dealer; 20% thereafter 20% tax for units in unlisted JREITs 	<ul style="list-style-type: none"> Subject to 22% tax with exemption granted where: <ul style="list-style-type: none"> unit holder owns less than 3% of listed REIT shares, and fair market value of units owned by the unit holder is less than KRW 10 billion
Income from foreign investments	<ul style="list-style-type: none"> Not subject to Hong Kong tax 	<ul style="list-style-type: none"> Subject to the approval of the Inland Revenue Authority of Singapore, such income may be exempt from Singapore income tax at the trustee level upon meeting certain conditions. Distributions out of such exempt income are also exempt in the hands of the unit holder 	<ul style="list-style-type: none"> Taxed at progressive personal income tax rates up to 46.5% May be entitled to foreign tax credits for withholding taxes paid in foreign jurisdiction 	<ul style="list-style-type: none"> Depends on the type of investment 	<ul style="list-style-type: none"> Same treatment as for ordinary dividends if such income is distributed as a dividend

Tax at shareholders' level – Asia Pacific

Foreign shareholders

	Hong Kong (REIT)	Singapore (SREIT)	Australia	Japan (JREIT)	South Korea (General REIT, CR-REIT, Entrusted Management REIT)
Dividends	<ul style="list-style-type: none"> Not subject to Hong Kong tax 	<ul style="list-style-type: none"> Subject to meeting qualifying conditions, foreign non-individual unit holders are subject to withholding tax at 10% for distributions receivable on or before 31 Mar 2015¹⁰. This withholding tax is a final tax For foreign individual unit holders, the distributions are exempt from tax, unless they are derived through a partnership in Singapore Distributions made out of capital gains (except trading gains) are exempt from tax 	<p>Taxation of trust distributions will depend on components of the income of the trust.</p> <ul style="list-style-type: none"> Subject to 10% withholding tax on interest and 30% on unfranked company dividends. No withholding tax applies to company dividends to the extent they are franked. Dividends to foreign-owned Australian branches and conduit foreign income, subject to reduction under double tax treaty. No further tax is generally levied on such interest or dividend portion Trustee must withhold tax with respect to non-interest and non-dividend Australian sourced income distributed to foreign unit holders (with the exception of a capital gain in respect of a non-taxable Australian asset, which will be exempt). The rate of withholding tax depends on whether the trust is an MIT (refer above). For non MITs tax of 30% is withheld by the trustee from distributions to non-resident companies (except for Australian branches). Foreign unit holders taxed on assessment basis on the non-dividend/interest income (i.e. must file an Australian income tax return) and receive a credit for tax paid by trustee. To the extent that foreign unit holders have deductible expenses that relate to their units (e.g. interest), unit holders can obtain a refund of tax withheld by trustee following lodgement of tax return. For an MIT, final tax of 30% is withheld from distributions to investors in countries which have not concluded an agreement with Australia on exchange of tax information¹¹. Other investors are subject to reduced 15% withholding tax in the 2009-10 income year (7.5% for 2010-11 and beyond) 	<ul style="list-style-type: none"> Subject to a 7% withholding tax (for listed JREITs) until 31.12.2011 (excluding individuals who own 5% or more of the issued investment units, who are subject to 20% withholding tax); 15% thereafter For unlisted REITs, subject to 20% withholding tax Tax rate may be reduced by an applicable treaty 	<ul style="list-style-type: none"> The Korean domestic withholding tax rate for dividends to a foreign shareholder is 22%, including resident surtax Subject to reduction based on applicable tax treaties

10. The concessionary WHT of 10% was extended in the 2010 Budget for distributions made to 31 Mar 2015

11. The 37 countries with which Australia has an effective EOI on tax matters are: Argentina, Bermuda, Canada, China, Czech Republic, Denmark, Fiji, Finland, France, Germany, Hungary, India, Indonesia, Ireland, Italy, Japan, Kiribati, Malta, Mexico, Netherlands, Netherlands Antilles, New Zealand, Norway, Papua New Guinea, Poland, Romania, Russia, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Taipei, Thailand, United Kingdom, United States of America and Vietnam.

Tax at shareholders' level – Asia Pacific

Foreign shareholders

	Hong Kong (REIT)	Singapore (SREIT)	Australia	Japan (JREIT)	South Korea (General REIT, CR-REIT, Entrusted Management REIT)
Capital/revenue gains on disposal of shares	<ul style="list-style-type: none"> Not taxable unless on revenue account and arise from trade, profession or business carried on in Hong Kong 	<ul style="list-style-type: none"> Not taxable unless they arise or are connected with activities of a trade or business carried on in Singapore 	<ul style="list-style-type: none"> Disposal of units in trust not subject to Australian capital gains tax if the trust's assets consist mainly of non-Australian assets. Non-residents are liable to capital gains tax only on Australian real property held directly or indirectly through an interposed entity Individuals and trusts may qualify for the 50% CGT discount concession. 	<ul style="list-style-type: none"> Not subject to capital gains tax provided that the shareholder does not sell 5% or more of the shares in a public JREIT in a single tax year The above rates may be reduced by an applicable treaty 	<ul style="list-style-type: none"> In the case of corporate foreign shareholders, capital gains are subject to tax at the lesser of 11% of the transfer price or 22% of the gain realised on the transfer. However, in the case of shares in a real property company (i.e. REIT), the foreign investor needs to file and ultimately pay tax at 24.2% on gains realised. Subject to change based on applicable tax treaty Exempt from tax if; (i) the foreign seller which does not have a permanent establishment in Korea owns less than 25% of the shares in the publicly listed entity at any time during the last five years and in the year when the shares are officially transferred; and (ii) such share transfer is made on the Korean Stock Exchange.
Return of capital distribution	<ul style="list-style-type: none"> Not subject to tax in Hong Kong 	<ul style="list-style-type: none"> Not subject to tax 	<ul style="list-style-type: none"> Individuals and trusts may qualify for the 50% CGT discount concession. 	<ul style="list-style-type: none"> May be regarded as deemed dividend or deemed capital gain 	<ul style="list-style-type: none"> Only taxable to the extent that the amount returned exceeds the amount contributed
Income from foreign investments	<ul style="list-style-type: none"> Not subject to tax in Hong Kong 	<ul style="list-style-type: none"> Subject to the approval of the Inland Revenue Authority of Singapore, such income may be exempt from Singapore income tax at the trustee level upon meeting certain conditions Distributions out of such exempt income are also exempt in the hands of the unit holder 	<ul style="list-style-type: none"> Not taxed if distributed income is foreign sourced 	<ul style="list-style-type: none"> Generally not subject to tax in Japan 	

REITs – US & Canada

	U.S. (REIT)	Canada (REIT)
Enacted year	1960	2007
Governed by or under supervision	<ul style="list-style-type: none"> By tax laws and regulatory laws 	<ul style="list-style-type: none"> By the federal Income Tax Act (the "ITA")
Formalities & procedure	<ul style="list-style-type: none"> File a special tax return (Form 1120-REIT) in the year the company wishes to become REIT Send letters to its shareholders of record requesting details of beneficial ownership of shares annually 	<ul style="list-style-type: none"> A REIT is typically structured so as to qualify as a mutual fund trust (a "MFT") as defined in the ITA If a trust qualifies as a MFT before the 91st day after the end of its first taxation year, and elects in its tax return for that year, the trust will be deemed a MFT from the beginning of its first taxation year
Legal form & share capital	<ul style="list-style-type: none"> Any entity taxable as a domestic corporation under US law Share must be transferable and the entity must be managed by one or more trustees or directors 	<ul style="list-style-type: none"> An inter vivos trust created by written agreement typically called a "trust deed" or "declaration of trust" Trustees hold legal title to and manage the trust property for the benefit of the beneficiaries of the trust The interest of each beneficiary under the trust is described by reference to units of the trust A MFT must be a "unit trust" resident in Canada (e.g., majority of trustees resident in Canada) A "unit trust" may be 'open-ended' (at least 95% of the fair market value of issued units of the trust are redeemable on demand) or 'closed-ended'
Restriction on shareholdings	<ul style="list-style-type: none"> Min. 100 direct shareholders Have no more than 50% of its shares held directly or indirectly by five or fewer individuals during the last half of the taxable year Shares must be transferable 	<ul style="list-style-type: none"> A MFT must have a minimum 150 unit holders each of whom holds <ul style="list-style-type: none"> (i) not less than one "block of units" (e.g., 100 units if the fair market value of 1 unit is less than \$25) and (ii) units having an aggregate fair market value of not less than \$500 A MFT cannot be established or maintained primarily for the benefit of non-residents of Canada (e.g., non-resident unit holders must hold <50% of outstanding units of the trust)
Mandatory listing on stock exchange	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Mandatory listing of units on Canadian stock exchange if the "unit trust" is 'closed ended' and 80% or more of its property was Canadian real property To qualify as a MFT, a class of units of the trust must be "qualified for distribution" or there must be a lawful distribution to the public of units of the trust and a prospectus or similar document was not required to be filed under provincial law
Restrictions on activities & investments	<ul style="list-style-type: none"> At least 75% of total assets in real estate assets, cash and government securities At least 75% of gross income from rents from real estate property or from interest on mortgages on real estate property At least 95% of gross income from the above sources plus certain passive sources such as non-mortgage interest and dividends No more than 20% of its assets consist of taxable REIT subsidiaries, which cannot operate or manage lodging or healthcare facilities A REIT can develop properties for its own portfolio A REIT can invest in overseas properties Complex rules restrict REIT tenant services to customary management activities, but taxable REIT subsidiaries generally not restricted 	<p>A trust resident in Canada throughout a taxation year is a REIT if:</p> <ul style="list-style-type: none"> the trust at no time in the taxation year holds any non-portfolio property¹² other than qualified REIT property; not less than 95% of the trust's revenues for the taxation year are derived from (i) rent from real or immovable properties, (ii) interest from mortgages, or hypothecs, on real or immovable properties, (iii) capital gains from the dispositions of real or immovable properties, (iv) dividends, and/or (v) royalties; at no time in the taxation year is the total fair market value of all properties held by the trust, each of which is a real or immovable property, indebtedness of a Canadian corporation represented by bankers' acceptance, cash, a deposit with a credit union, or certain government debt, less than 75% of the equity value of the trust at the time <p>To qualify as an MFT, the trust's only undertaking must be:</p> <ul style="list-style-type: none"> The investing of its funds in property other than real property or an interest in real property The acquiring, holding, maintaining, improving, leasing or managing of any real property that is capital property of the trust Any combination of the foregoing activities In addition, at least 80% of a 'closed-ended' trust's property must consist of any combination of shares, cash, real property situated in Canada; not less than 95% of its income must be derived from the foregoing investments; and not more than 10% of its property must consist of bonds, securities or shares of one corporation or debtor (other than a federal or provincial government) In addition, at least 80% of a 'closed-ended' trust's property must consist of any combination of shares, cash, real property situated in Canada; not less than 95% of its income must be derived from the foregoing investments; and not more than 10% of its property must consist of bonds, securities or shares of one corporation or debtor (other than a federal or provincial government)

REITs – US & Canada

	U.S. (REIT)	Canada (REIT)
Leverage	<ul style="list-style-type: none"> Not limited by legislation 	Not limited by legislation
Distribution on operative income	<ul style="list-style-type: none"> At least 90% of taxable income (in form of dividends), other than capital gains 	<ul style="list-style-type: none"> 100% income of the MFT for a taxation year so that MFT that is not a specified investment flow through trust (SIFT trust) does not incur tax. A trust that is a REIT throughout a particular taxation year is not a SIFT trust for that particular year.
Distribution on capital gain on disposed investments	<ul style="list-style-type: none"> No required distribution in order to maintain status, but to the extent that capital gains are not distributed corporate income tax is due 	<ul style="list-style-type: none"> 100% of any capital gain of the MFT for a taxation year so that MFT that is not a SIFT trust does not incur tax. A trust that is a REIT throughout a particular taxation year is not a SIFT trust for that particular year.
Timing of distribution	<ul style="list-style-type: none"> At least annually 	<ul style="list-style-type: none"> Must be paid or payable in the taxation year in order that MFT may claim a deduction for distributed amount in computing taxable income for that year. Typically distributions to unit holders are made monthly
Income tax	<ul style="list-style-type: none"> Dividend distributions are allocated to ordinary income Capital gains and return of capital may be taxed at a different rate Dividends are deductible from taxable income Pay corporate income tax to the extent it retains income 	<ul style="list-style-type: none"> A trust, including a REIT, is a taxpayer under the ITA and must compute taxable income each year and pay tax on any taxable income for the year In computing taxable income, a trust may deduct income paid or payable to unit holders in the year. A trust that is a SIFT trust may not deduct distributed non-portfolio earnings in computing taxable income. A trust that is a REIT throughout a particular taxation year is not a SIFT trust for that particular year. In general, income distributed by the REIT to unit holders is considered trust income¹³, however, trustees may designate taxable dividends received by the MFT to 'flow out' to resident unit holders as taxable dividends.
Capital gains tax	<ul style="list-style-type: none"> Follow the same system as ordinary income Gains distributed in the form of dividends are deducted from taxable income 	<ul style="list-style-type: none"> A REIT must include 50% of any capital gain ("taxable capital gain") realized in the year for purposes of computing taxable income and may offset the gain with any capital losses in the year or carried forward from previous years In computing taxable income, a REIT may deduct income, including net taxable capital gains, paid or payable to unit holders in the year The trustees may designate net taxable capital gains realized by the MFT to 'flow out' to unit holders as net taxable capital gains
Withholding tax	<ul style="list-style-type: none"> No withholding tax to U.S. shareholders 30% rate applied to ordinary dividends to non-US shareholders unless a lower treaty rate applies 35% withholding rate on REIT capital gain distributions to non-US shareholders 	<ul style="list-style-type: none"> No withholding on distributions made to residents of Canada 25% domestic withholding tax on income paid to a unit holder that is non-resident of Canada, unless a lower tax treaty rate applies 15% domestic withholding tax on amounts not otherwise subject to tax under the ITA paid to a unit holder that is non-resident of Canada by certain REITs
Conversion into REIT status	<ul style="list-style-type: none"> Potentially subject to corporate tax on the "built-in gain" This tax is due if company sells asset within ten years; however, it is avoided if the REIT holds the property for at least ten years All the accumulated earnings and profits generated before it becomes a REIT must be distributed to the shareholders no later than the end of the REIT's first taxable year 	<ul style="list-style-type: none"> Generally, no deemed or actual gain where a trust owning property commences to qualify as an REIT
Registration duties	<ul style="list-style-type: none"> Most states apply transfer taxes on acquisitions of real estate. Further, some states impose transfer taxes on acquisition of a controlling interest in an entity owning real estate 	<ul style="list-style-type: none"> Some provinces impose a transfer tax on the acquisition of real estate payable by the purchaser

12. Non-portfolio property includes, in general, securities of Canadian corporations, trusts, and partnerships where the securities represent more than 10% of the equity value of the Canadian corporation, trust or partnership; Canadian real property if the total fair market value of all such properties held by the trust exceeds 50% of the equity value of the trust; and a property that the trust, or a person with whom the trust does not deal at arm's length, uses in the course of carrying on business in Canada.

13. But proposed new regime will characterize non-deductible distributions by a SIFT as taxable dividends from a taxable Canadian corporation. Supra, footnote #6

Tax at shareholders' level – US & Canada

Corporate domestic shareholders

	U.S. (REIT)	Canada (REIT)
Ordinary dividends	<ul style="list-style-type: none"> Subject to corporate income tax (35%) 	<ul style="list-style-type: none"> Distributions of income of the REIT to unit holders resident in Canada included in the income of unit holders as trust income and subject to the normal rules of taxation Trustees of a REIT may designate taxable dividends from taxable Canadian corporations to 'flow out' to resident unit holders as taxable dividends from taxable Canadian corporations To the extent that the amounts are designated as taxable dividends from taxable Canadian corporations, a deduction in computing taxable income will be available to unit holders that are corporations, refundable tax under the ITA may be payable by unit holders that are private corporations, and additional refundable tax may be payable by Canadian-controlled private corporations
Capital gains distributions	<ul style="list-style-type: none"> Subject to corporate income tax (35%). However, up to 20% of some capital gain distributions may be treated as ordinary income 	<ul style="list-style-type: none"> Trustees of a REIT may designate taxable capital gains earned by the REIT in the year to 'flow out' to unit holders as net taxable capital gains To the extent that there is a designation by the trustees, the unit holders will include net taxable capital gains in income The non-taxable portion of any net realized capital gains of the REIT that is paid or payable to unit holders will not be included in computing the unit holders' income nor will it reduce the adjusted cost base of the units
Return of capital distribution	<ul style="list-style-type: none"> Only taxable to the extent it exceeds the cost base in shares 	<ul style="list-style-type: none"> Distributions by a REIT in excess of the total of (i) income (including any net taxable capital gains) and (ii) the non-taxable portion of any net realized capital gains will not be included in the unit holders' income (e.g., a return of capital distribution) A return of capital distribution will instead reduce the adjusted cost base of the units to the unit holders To the extent that the adjusted cost base of a unit is negative, the negative amount will be deemed to be a capital gain realized by the unit holder

Tax at shareholders' level – US & Canada

Individual domestic shareholders

	U.S. (REIT)	Canada (REIT)
Ordinary dividends	<ul style="list-style-type: none"> Subject to tax at graduated rates (35% top bracket) 	<ul style="list-style-type: none"> Distributions of income of the REIT to unit holders resident in Canada included in the income of unit holders as trust income and subject to the normal rules of taxation Trustees of a REIT may designate taxable dividends from taxable Canadian corporations to 'flow out' to resident unit holders as taxable dividends from taxable Canadian corporations To the extent that the amounts are designated as taxable dividends from taxable Canadian corporations, the gross-up and dividend tax credit provisions in the ITA will be applicable to unit holders who are individuals
Capital gains distributions	<ul style="list-style-type: none"> Generally subject to tax at 15% maximum federal rate through 2010 Portion attributable to recapture of previously claimed depreciation deductions subject to 25% maximum federal income tax rate 	<ul style="list-style-type: none"> Trustees of a REIT may designate taxable capital gains earned by the REIT in the year to 'flow out' to unit holders as net taxable capital gains To the extent that there is a designation by the trustees, the unit holders will include net taxable capital gains in income The non-taxable portion of any net realized capital gains of the REIT that is paid or payable to unit holders will not be included in computing the unit holders' income nor will it reduce the adjusted cost base of the units
Return of capital distribution	<ul style="list-style-type: none"> Subject to tax as gain on shares, only to extent distribution exceeds cost basis in shares 	<ul style="list-style-type: none"> Distributions by a REIT in excess of the total of (i) income (including any net taxable capital gains) and (ii) the non-taxable portion of any net realized capital gains will not be included in the unit holders' income (e.g., a return of capital distribution) A return of capital distribution will instead reduce the adjusted cost base of the units to the unit holders To the extent that the adjusted cost base of a unit is negative, the negative amount will be deemed to be a capital gain realized by the unit holder
Disposal of shares	<ul style="list-style-type: none"> Long term capital gains from sale of shares held more than one year generally subject to the 15% maximum federal rate through 2010 Short term gains on sales of shares held one year or less subject to ordinary income tax rates (35% top bracket) 	<ul style="list-style-type: none"> Must be paid or payable in the taxation year in order that MFT may claim a deduction for distributed amount in computing taxable income for that year. Typically distributions to unit holders are made monthly

Tax at shareholders' level – US & Canada

Foreign shareholders

	U.S. (REIT)	Canada (REIT)
Ordinary dividends	<ul style="list-style-type: none"> 30% withholding tax unless reduced under a DTT 	<ul style="list-style-type: none"> 25% withholding tax applies to distributions of income by the REIT to non-resident unit holders, unless a reduced tax treaty rate applies
Capital gains distributions	<ul style="list-style-type: none"> Capital gain distributions attributable to gains from sales or exchanges of U.S. real property interests are generally subject to 35% withholding tax Capital gain distributions to foreign corporate shareholders may also be subject to a 30% branch profits tax Capital gain distribution is taxed as ordinary dividend, if the foreign shareholder never owns more than 5% in value of a class of REIT stock (regularly traded on an established securities market), at any time during the 1-year period ending on the distribution date 	<ul style="list-style-type: none"> Trustees of a REIT may designate taxable capital gains earned by the REIT in the year to 'flow out' to unit holders as net taxable capital gains This designation works to avoid the application of the 25% withholding tax to the extent that the non-resident is not deemed to have received a "TCP distribution" from the REIT A non-resident unit holder may in general be deemed to have received a "TCP distribution" from the REIT if the REIT has any gains from the disposal of "taxable Canadian property" since March 23, 2004
Return of capital distribution	<ul style="list-style-type: none"> A distribution in excess of the cost basis is subject to 10% withholding tax unless the REIT is domestically controlled during the determination period or is not considered a U.S. real property holding corporation 	<ul style="list-style-type: none"> A non-resident unit holder that holds a "Canadian property mutual fund investment" (CPMFI) and receives an "assessable distribution" with respect to that investment is subject to withholding tax of 15% on the "assessable distribution" A CPMFI, in general, includes a unit of a MFT that is listed on a prescribed stock exchange and more than 50% of the fair market value of which is attributable to real property in Canada Assessable distributions are in general distributions that are not otherwise subject to tax under the ITA
Disposal of shares	<p>10% withholding tax (35% tax on gain) applies to sale proceeds unless:</p> <ul style="list-style-type: none"> The REIT is not considered a U.S. real property holding corporation; The REIT's shares are regularly traded on an established securities market, and the shareholder owns no more than 5% of the outstanding shares during the 1-year period ending on the disposal date; or The REIT is domestically controlled during a specified testing period 	<ul style="list-style-type: none"> Generally not taxable under the ITA Taxable if at any time during the 60-month period prior to the sale, it and/or non-arm's length persons, owned 25% or more of the units of the MFT A gain or loss is computed by subtracting the adjusted cost base of the units and disposition costs from the sale proceeds If the units are "capital property" to the unit holder, then only 50% of any gain will be taxed

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Designed and produced by KPMG LLP (UK)'s Design Services

Publication name: Taxation of REITs

Publication number: RRD-193468

Publication date: April 2010

Printed on recycled material.