

Cross-Border Real Estate Structuring: REITs

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Real Estate Investment Trusts (REITs)

- Originated in the U.S. as early as the 19th century
- Purpose seems to be to make diversified real estate investments available to the general public
- May have favoured tax treatment, such as no entity-level taxation
- Currently, more than 35 countries have a REIT regime

REITs – Key Concepts

- Tax benefits
 - Any considerations that limit tax-advantaged status?
- Cross-border issues
 - Limitations on foreign investors?
 - Limitations on holding foreign assets?
- Stock exchange listing
 - Required, or any limitations for a private or unlisted REIT?

REITs – Key Concepts (cont'd)

- Capitalization
 - Minimum capital requirements?
 - Leverage (debt/equity) restrictions?
- Open-ended or closed-ended
 - Redemption rights for investors?
 - Tradeable shares or fund units?
- Currency
 - Hedged to residence country of REIT; denominated in currency of source country?

REITs – Key Concepts (cont'd)

- Types of assets permitted
 - Limited to real estate?
 - Residential and commercial?
- Transferring assets or converting to a REIT
 - Taxable transaction?
 - Structuring considerations to make a conversion to a REIT tax-deferred?
- Business activities – any restrictions?
 - Any structuring available for real estate development?

Comparison of REIT Requirements and Features

	U.S.	U.K.	Germany	Canada
Type of Entity	Corporation, Trust or Association	Corporation	Corporation	Trust
Entity-level Tax	Taxable, but distributions to investors deductible	Tax-exempt on real estate rentals	Generally tax-exempt	Taxable, but distributions to investors deductible
Distribution Requirements	90%, (other than net capital gain) but incentive to maximize distributions to obtain deductions	90% of real estate sourced income	90%	None, but incentive to maximize distributions to obtain deductions
Foreign Investors Permitted	Yes	Yes	Yes	Yes (subject to 50% restriction if investment is Canadian real estate)

Comparison of REIT Requirements and Features

	U.S.	U.K.	Germany	Canada
Withholding Tax on Distributions	None to US shareholders, generally 30% to non-US shareholders unless favorable treaty rate applies – Under US/Canada treaty 15% rate for individual owners owning less than 10% of REIT equity	20%; exception for UK corporations, UK pension funds, UK charities and other prescribed bodies. Reduced treaty rates?	26.4% to German residents. Reduced treaty rates for non-residents?	0% - 25%, depending on the type of income; reduced treaty rates available
Foreign Assets Permitted	Yes	Yes, but results in entity-level tax	Yes	Yes

Comparison of REIT Requirements and Features

	U.S.	U.K.	Germany	Canada
Types of Assets Permitted	Commercial or residential	Commercial or residential	Commercial; restrictions on residential	Commercial or residential
Conversion to REIT	Gains taxed, subject to structuring	Conversion charge of 2% of property value	Gains taxed (subject to structuring?)	Gains taxed, subject to structuring
Minimum Capital	No minimum	No minimum	€15,000,000	CAD \$75,000
Leverage	No debt restrictions	Some restrictions	Some restrictions	No debt restrictions
Stock Exchange Listing	Optional for tax purposes	Required	Required	Optional for tax purposes

Examples of Cross-Border REITs

- Milestone Apartments REIT
 - Canadian-based REIT with property in the United States
- WPT Industrial REIT
 - Canadian-based REIT with property in the United States
- Dundee International REIT
 - Canadian-based REIT with property in Germany
- No non-resident ownership restrictions because underlying property is not “taxable Canadian property” (e.g. Canadian real estate)

Impact of BEPS on REITs

- Nothing in BEPS is specifically targeted at REITs
- However, certain action plans could affect certain REIT structures, for example:
 - Action 2 – Hybrid mismatch arrangements
 - Action 4 – Base erosion using interest deductions or financing
 - Action 6 – Treaty abuse

Conclusion

- Tax efficiencies make REITs favourable for pension or exempt investors
- Cross-border REITs are possible in four countries surveyed
- Opportunities for clients to access capital in other markets
- Investors can access diversified real estate investments in other markets
- Consider demographic opportunities in emerging markets

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