KPMG

Real Estate Investment Trusts (REITs)

Updated 2017

The Finance Act 2013 contained comprehensive provisions for the introduction of a tax regime for Real Estate Investment Trusts (REITs)

This was a progressive and welcome development aimed to provide a significant, modern collective investment ownership structure at a time when Irish Real Estate was attracting considerable investor interest. At the time of writing, there are three publicly listed REITs in Ireland.

The following is a summary of the tax consequences for REITs and their shareholders:

Tax treatment of REIT

Provided the REIT meets the various conditions of the legislation, the REIT will not be liable to corporate tax on income and capital gains arising from its property rental business.

Taxation of REIT's shareholders

Irish resident shareholders in a REIT will be liable to income tax on income distributions from the REIT plus PRSI and USC. Irish resident corporate investors will be liable to 25% corporate tax on such distributions.

Irish resident investors will be liable to capital gains tax at a rate of 33% on a disposal of shares in the REIT.

Non resident investors will not be liable to Irish capital gains tax because the REIT is a publicly listed company. However, the investors may be liable to such taxes in their home jurisdictions. In relation to dividends, it is intended that the REIT will apply dividend withholding tax (DWT) at the rate of 20% from income distributions to non residents. Certain non residents may be entitled, under their tax treaties, to recover some of this DWT from Ireland or otherwise should be able to claim a credit for DWT against taxes in their home jurisdictions.

Certain Irish resident pension funds, insurance companies and other exempt persons will be exempt from DWT.

The transfer of shares in the REIT will be subject to 1% stamp duty.

Qualification as a REIT

In order to qualify for the REIT tax regime, a REIT must:

1. Be resident in Ireland and not resident elsewhere
2. Be incorporated under the Irish Companies Acts
3. Be a listed quoted company which is traded on a main Stock Exchange in an EU Member State*
4. Not be a close company (subject to certain 'good shareholder' exceptions)*
5. Derive at least 75% of its profits from the carrying on of a property rental business*
6. The business must consist of at least three properties, no one of which must be more than 40% of the total
7. Maintain a 1.25:1 ratio of income to financing costs
8. Hold at least 75% of its assets, by market value, in its property rental business
9. Maintain a loan to value ratio of not more than 50%, and
10. Distribute at least 85% of its income by way of dividend to its shareholders (income does not include capital gains)

* Several of the requirements above are subject to being met within a 'grace period' of 3 years and provisions entitle a REIT to work with the Revenue Commissioners to remedy certain temporary breaches.

A REIT must file a notice with the Revenue Commissioners declaring itself to be a REIT and, in the case of groups, nominating which members of the group shall also be deemed to be a REIT. The legislation contains some rules to define the maximum financing ratio. There are also measures to permit scrip dividends and measures to allow the 85% distribution test to be met where there are limitations on distributable reserves.

There are negative consequences of rapidly dealing development property and making distributions to greater than 10% shareholders (though several classes of collective investment shareholders are excluded from this).

Conversion charge

The legislation is written from the perspective of a new company becoming a REIT although it is possible for an existing company to convert to a REIT. In the case of a company converting to a REIT it will be deemed for capital gains tax purposes to have sold its assets the day of conversion and will be liable to Irish capital gains tax on any inherent gains up to that point. This means that a REIT cannot be used to eliminate inherent capital gains but, other than that, there is no specific conversion charge on becoming a REIT.

This note is general guidance only based on the Irish REIT regime in 2017 and is subject to change. Specific advice should be taken by any party considering investing in a REIT.

Contact us

Jim Clery
Head of Real Estate
KPMG in Ireland
01 410 1172
jim.clery@kpmg.ie

Olivia Lynch
Tax Partner
KPMG in Ireland
01 410 1735
olivia.lynch@kpmg.ie

Carmel Logan
Director
KPMG in Ireland
01 700 4056
carmel.logan@kpmg.ie

Colm Rogers
Tax Partner
KPMG in Ireland
01 410 2166
colm.rogers@kpmg.ie

kpmg.ie

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