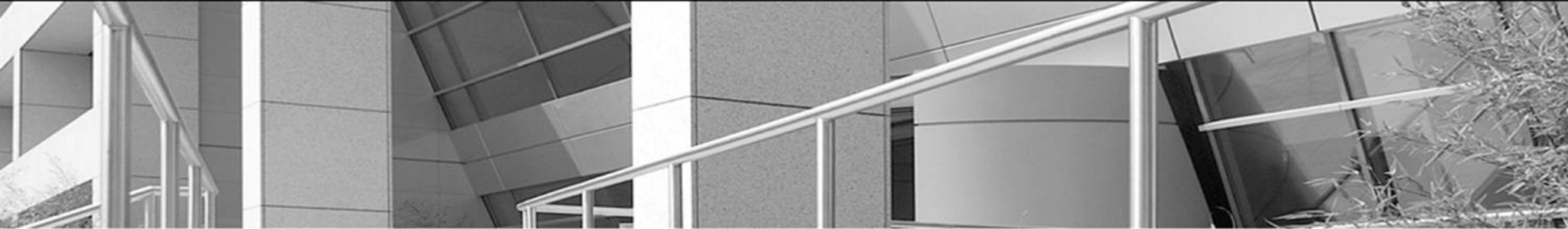


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Real Estate Investment Trusts

The global experience

Real Estate Workshop, Bangalore, July 12, 2007

Keith O'Donnell, Global Real Estate Head, Taxand

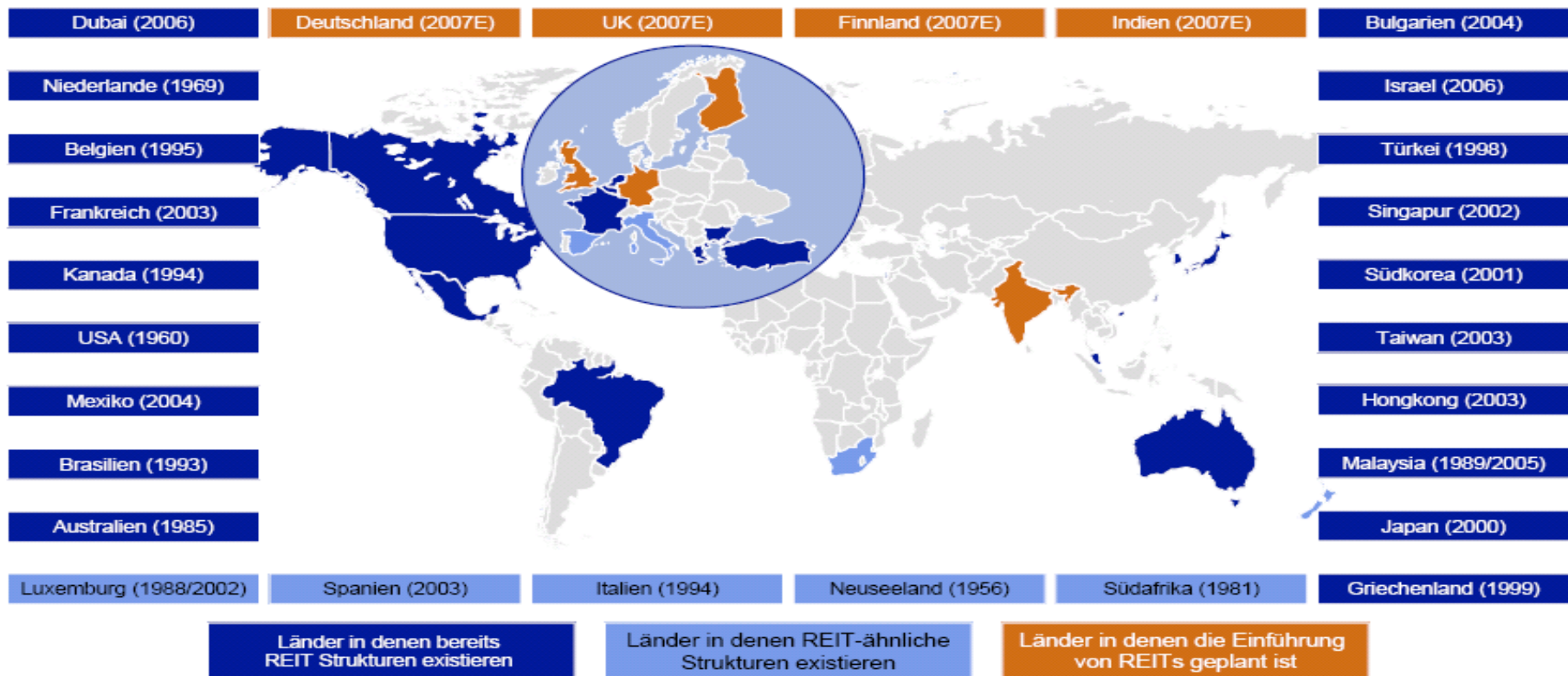
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- The REIT world map
- Objectives of REIT systems: stated and unstated
- Common features
- Review of some existing REIT systems
- Lessons learned

The REIT map

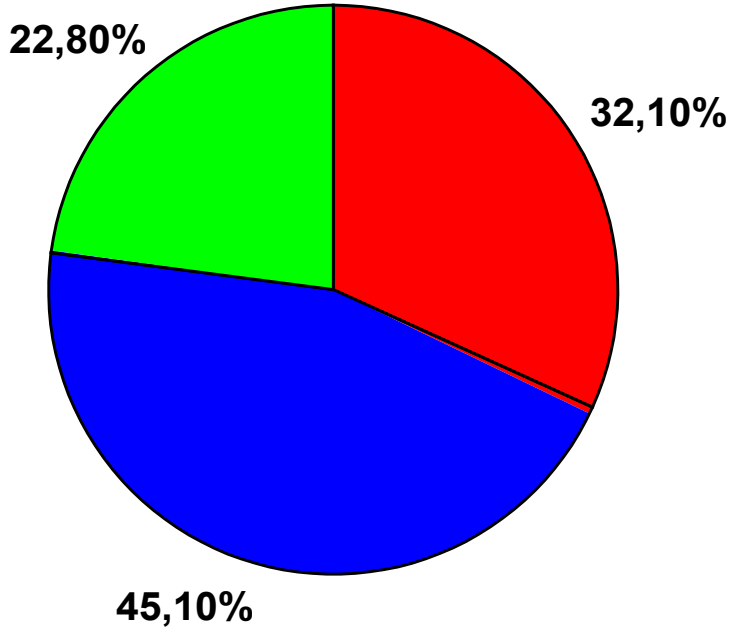


Source:  Bundesministerium der Finanzen

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Global REIT market capitalization of EUR 696,5 billion

(Source UBS)



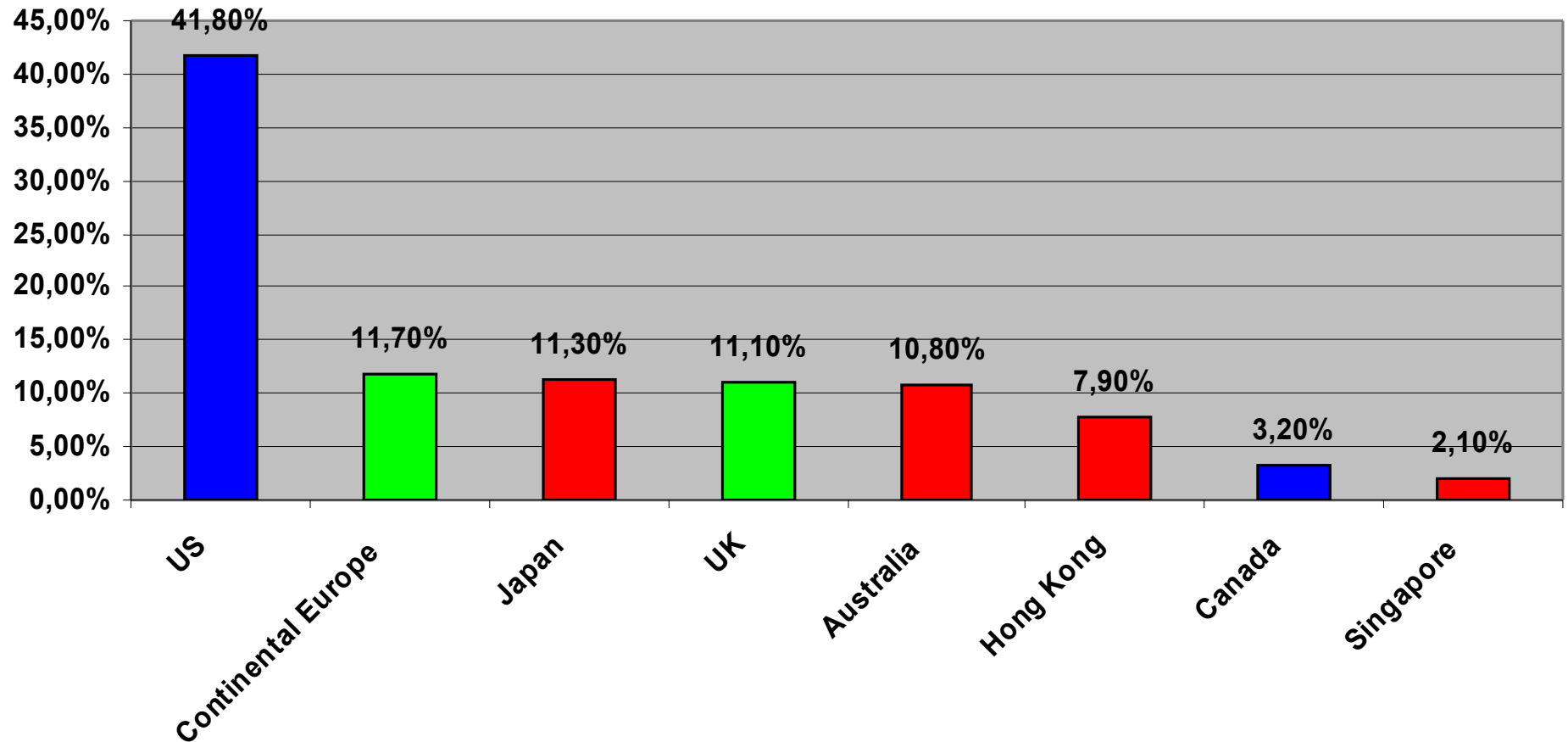
■ Asia ■ North America ■ Europe

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Detailed global REIT market capitalization

(Source UBS)



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Objectives of REIT systems: stated and unstated

- To make Real Estate more liquid as an asset
- To encourage broader ownership of Real Estate
 - Evidence that a valuable addition to a portfolio in terms of diversification, low volatility and low correlation
- To encourage investment in certain types of Real Estate
- To reduce discounts to NAV on publicly quoted real Estate stocks
- To level playing field with foreign investors
- To prop up distressed property markets..

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Common features

- Real estate investment vehicles in varying legal forms:
 - Trust, association, company...
 - Company more common in many recent systems (UK, France, Germany, Italy)
- Generally required to be publicly quoted and/or widely held (eg min 50 investors, max 10%)
- Favourable tax treatment:
 - Basic Idea: to allow real estate investment companies to benefit from a tax transparent "flow through" treatment, ie taxed in hands of investor
 - Practical implementation often involves an exempt vehicle with a withholding tax on distributions
- Often limited for investment real estate: ie rental activity as opposed to development
- Sometimes selective as to type of Real Estate (eg residential or social housing)
- Often favourable tax rules for transfers to REITS

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EU REIT Regimes – Belgium

- **SICAFI (Société d'Investissement à Capital Fixe Immobilière)**
 - Qualifying investments: participations in real estate companies, holding of long leaseholds on real estate assets, debt-instruments that are linked to real estate, etc (also other non-real estate assets provided the investment is secondary or temporary)
 - Maximum debt to equity ratio of 1:1
 - SICAFI must be quoted on a regulated stock exchange that is recognized as such by the Belgian Banking Commission
 - 80% of net profit to be distributed each year

EU REIT Regimes - Belgium

- SICAFI is not tax transparent
- Provided the distribution requirements are met, the taxable base of a SICAFI is limited to:
 - Disallowed expenses (i.e., specific expenses that are not tax deductible within the common corporate tax regime) – impact of these for SICAFI's is normally almost nil, except for regional taxes that often aim at taxing real estate (i.e., Brussels tax on office space)
 - Non-arm's length income received by the SICAFI (i.e., above market rent)
- 15% withholding on distributions (but exemptions and reductions may apply)
- “Exit tax” of 16.995% of the inherent capital gains will be payable by companies wishing to convert to SICAFI status in the year of conversion
- Annual tax of 0.06% on net book value of shares

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REIT Regimes - France

- **SIIC (Sociétés d'Investissements Immobiliers Cotées)**
 - Activity limited to acquisition or construction of buildings for rental purposes and/or the direct or indirect holding of shares in companies having the same corporate purpose
 - Should be listed on a French stock exchange
 - Thin cap rules (only applicable to related party debt): deduction of interest expense incurred by French corporate taxpayers (including SIICs) capped to either 1.5 times their net equity or 25% of their net income before tax and interest expenses, whichever is greater
 - Distribution rules depending from the income type at SIIC level (dividend from a SIIC subs: 100%; rental income: 85%; capital gains: 50% under certain conditions)

REIT Regimes - France

- SIIC is not tax transparent
- Non-qualifying activities that may be performed within certain limits remain taxable under the standard income tax rules, qualifying activities are exempt
- 25% withholding on foreign dividend distributions (Reduced rates under tax treaties; Parent-Subsidiary Directive not applicable except if dividend from a basket of earnings taxed at the standard corporate income tax rate). Distributions to French residents are exempt.
- Upon election, a 16.5 % exit tax is due on latent real estate capital gains this exit tax is paid over four years in four equal installments
- Loss of SIIC status by the quoted company within ten years from the election triggers taxation at the standard rate (the exit tax paid upon election is however creditable against the corporation tax)

REIT Regimes - France

- Rental income from the sub-leasing of property leased by a SIIC under finance lease arrangements (“credit bail immobilier”) entered into from 01 Jan 05 and gains realized from the disposal of rights pertaining to such finance lease arrangements may now be exempt from French CIT
- Legal restructurings involving SIICs as of 01 Jan 05, such as mergers or spin-offs, do not trigger negative tax consequences under certain conditions.

REIT Regimes - France

- Rate of French transfer tax applicable to the sale of French immovable property and to the sale of shares in companies that primarily hold, directly or indirectly such property: 5% for transactions entered into from 1/1/06
- Long-term capital gains realized upon the disposal of shares in companies that are predominantly real estate companies are excluded from the new participation exemption for capital gains instituted over the three-year period (from 2005 to 2007). Such long-term capital gains will continue to be subject to French capital gains tax at a reduced rate of 15% (plus applicable surcharges) instead of the current 19%

REIT Regimes - France

- The additional Finance Act for 2006 contains several provisions on the legislation applicable to SIICs and also to newly created French real estate SICAVs, “SPPICAV”.
- These new provisions aim at introducing more constraints on SIIC companies in terms of control and holding by exempt shareholders.

REIT Regimes - France

- Introduction of a **majority ownership capped to 60% of the voting right and/or the beneficial ownership**: threshold would be applicable as of **January 1st 2009** for the existing SIIC and as of **January 1st 2007** for the companies electing for the SIIC regime as from 2007.
- Introduction of a **free float requirement of 15%**, where each shareholder should own less than 2% of the equity and voting rights of the SIIC. This condition should be fulfilled on the first day of the year for which the company elects for the SIIC regime. Only newly listed companies, electing for the SIIC status as of January 1st, 2007 are concerned.

REIT Regimes - France

- Introduction of a **withholding of 20%** applicable to distributions of dividends by a SIIC to any exempt entity or any entity that would be exempted or subject to a significantly limited income tax rate (equal or below 11% of effective tax rate), provided that such entity owns directly or indirectly at least 10% of the SIIC company (beneficial ownership). This provision would not be applicable (a) to SIIC or SPPICAV companies receiving dividends from another SIIC company (so called “SIIC of SIIC”) and also (b) to companies subject to a 100% distribution duty on dividends received from the SIIC. The withholding would be due by the SIIC and not offset against the dividends paid to the exempt shareholder.

REIT Regimes - France

- French authorities remained sensitive to maintain the attractiveness of the regime and extent their favorable tax regime on acquisitions until 2009;
- **As** far as the encouraging measures are concerned, the new law provides for an extension of the favourable tax regime of Article 210 E of the French tax code, so-called « SIIC 3 », until December 31, 2008 (the original regime was to be terminated on December 31 2007).

EU REIT Regimes - Luxembourg

- Real Estate Investment Funds: FCP (collective investment fund, pool of assets with no legal personality), SICAV (variable capital investment company), SICAF (fixed capital investment company)
 - No more than 20% of net assets may be invested in any one property (not applicable during a start up period not exceeding four years)
 - Total borrowings may not exceed 50% of the market value of all properties (Supervisory Authority may however authorize an increase up to 70% leverage)
 - No restrictions in terms of distribution; redemption at unit-holder request (may be provided but no obligation)

EU REIT Regimes - Luxembourg

- FCP is tax transparent, SICAV/Fs is not
- No WHT on distributions (disregarding the status of shareholder/ unit-holder)
- No profit or capital taxes, except the initial capital duty on incorporation of € 1,250
- Annual subscription tax of 0.05% of total net asset value. This subscription tax is reduced to 0.01% for Specialized Investment Funds (“SIFs”) and reduced to 0% for funds of funds and for pension funds
- No stamp duty on share issues or transfers
- Exemptions apply for Luxembourg real estate income and gains: in practice, used widely for international real estate investments

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EU REIT Regimes - the Netherlands

- **FBI/BI (Fiscal Investment Institution/Fiscale Beleggingsinstelling)**
 - Passive investments only (i.e. not from property development);
 - 25% dividend withholding tax on dividend distributions to foreign shareholders (or reduced rates under DTT; distribution of qualifying capital gain dividends from tax free reinvestment reserve are free from withholding tax)
 - Restrictions on long term debts: 60% of book value of real estate property, 20% for other investments. Shares in subsidiaries owning real estate are subject to the above-mentioned 20% limit.
 - Distribution of all or most of its profits (capital gains excluded)

EU REIT Regimes - the Netherlands

- FBI is not tax transparent
- No capital tax upon incorporation since Jan 1st, 2006
- Capital gains can be reinvested in a tax- free reinvestment reserve
- Dutch resident public company (NV), or limited company (BV), and funds for joint account can opt for the Dutch FBI status
- Does not qualify for the EU parent-subsidiary directive
- Qualifies for tax treaty benefits
- Profit is subject to 0% Dutch corporate tax rate
- FBI may receive a credit for foreign withholding taxes under certain conditions
- Entrance tax when opting for FBI regime, i.e. taxable mark-to-market rule in year of adopting FBI regime
- Payment of entrance tax is due in year of status change

EU REIT Regimes - the UK

- After a lengthy period of consultation, legislation governing Real Estate Investment Trusts ("REITs") was published in the Finance Act 2006 and the new regime became available to companies in relation to accounting periods commencing on or after 1 January 2007.
- As a tax-exempt entity a REIT will not be exposed to the distortions caused by tax charges arising at the entity level. From a taxation perspective, investors will be deemed to own a fractional share of the underlying real estate assets and will be able to make their investments whilst incurring relatively low transaction costs in doing so.

EU REIT Regimes - the UK

- 6 main conditions that a company that carries on a property rental business must meet in order to obtain the benefits of the REIT regime:
 - Corporate structure: UK tax resident company
 - Open ended company restriction
 - Listed status: on a recognize stock exchange
 - Close company status
 - Share capital: single class of ordinary shares in principle
 - Loan creditors: REITs may not enter into any financing arrangements in certain circumstances

EU REIT Regimes - the UK

- Requirements for the tax exempt status of the REIT: it will be necessary for the REIT, throughout an accounting period, to have the following characteristics:
 - at least 3 properties in its property rental business.
 - no single property represents 40% or more of the total value of the properties in the property rental business.
 - the property rental business does not involve property that would be regarded under generally accepted accounting practice as being owner occupied.
 - at least 90% of the profits of the profit rental business are to be distributed by way of dividend within 12 months of the end of the respective accounting period

REITs will need to ensure that they have practical procedures in place that enable them to confirm that the necessary qualifying conditions are met throughout an accounting period.

EU REIT Regimes - the UK

- Entry charge: an entry charge of 2% of the market value of the assets in the tax-exempt business will be applied on entry to the REIT.
- Maximum shareholding: No corporate shareholder in the company may, directly or indirectly, hold an interest of 10% or more in the REIT. 'Interest' includes reference to the dividends, share capital and the voting rights.
- Profit: financing-cost ratio: the level of the gearing that may be assumed by the REIT in respect of its tax-exempt business is fixed by reference to the following ratio:

$$\frac{P + F}{F} > 1,25$$

"P" represents the profits of the tax-exempt business before the offset of capital allowances
"F" the financing costs arising in the respective accounting period.

The figure of 1.25 has been specified by HMRC, taking account of current market conditions, but it may in future be changed by Regulations.

EU REIT regimes - Germany

- At the end of March, Germany's parliament finally ratified legislation retroactive to 1 January, 2007 for property assets to be held under real estate investment trust (REIT) rules.
- REITs work by rolling property portfolios into a trust that enjoys zero taxation at the pay-out point providing that the funds meet certain prescribed investment and profit distribution rules.
- G-REITs must have a free float of at least 85%, no shareholder may hold more than 10% of the fund, 90% of income must be paid out as a dividend, and 75% of profits must come from real estate.
- G-REITs pay a conversion charge of around 20% of capital gains, and gearing will be limited to 60% loan-to-value.
- Residential properties built before 2007 are excluded from being incorporated into G-REITs.

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Other REIT Regimes - Turkey

- REIT (Gayrimenkul Yatirim Ortakligi)
 - Requirements to qualify
 - Offering at least 49% of stocks in Istanbul Stock Exchange as of 1,3 or 5th year of establishment depending on the amount of capital.
 - Minimum share capital of TRY 6.5 Million
 - Cash contribution by minimum 25% of share capital
 - 1 leader entrepreneur representing minimum 25% of share capital
 - Main business purpose:
 - Acquisition of real estate for trading or rental purposes,
 - direct shareholdings in tax-transparent entities for the accomplishment of a certain project,
 - Trading of real estate certificates, asset backed securities that are issued against housing loans and other similar securities that are deemed acceptable by Capital Market Board.

Other REIT Regimes - Turkey

- Tax treatment:
 - Tax exemption of portfolio income of REITs
 - Withholding tax on the exempt income (however, current rate is 0%)
 - No exit tax or similar application.
 - Dividend distribution: 10% dividend withholding tax (There are some opinions claiming that Dividend WHT should not be applied to dividends distributed by REITs. However, in a very recent ruling, MoF has confirmed 10% WHT). WHT is however not applied to dividends distributed to resident corporate shareholders.

Other REIT Regimes - Turkey

- Taxation of Investors on dividends from REITs:
 - Non Resident Institutional Investors
 - Not subject to Turkish Taxes. Withholding on the dividend is the final tax.
 - Non Resident Individuals:
 - Not subject to Turkish Taxes. Withholding on the dividend is the final tax.
 - Resident Institutional Investors
 - Subject to CIT at normal CIT rate.
 - Resident Individuals:
 - Half of the dividend is exempt from tax. Remaining half is subject to income tax only if it exceeds certain amount.

North American REIT Regimes – The US

- Legal Form: can be organized as a corporation, trust or association, but must be treated as a corporation for US federal tax purposes.
- Investors' requirements: must be owned by 100 or more persons. Avoid having ≤ 5 individuals holding more than 50% of the shares.
- Activity test: 75% and 95% income tests and 75% asset test
- Leverage limits: None
- Distribution obligation: 90% of taxable income

North American REIT Regimes – The US

- Tax treatment of fund: does generally not pay US federal income tax or state income tax on income distributed to shareholders.
- Withholding tax treatment: dividend distributions out of operating income are subject to 30% withholding tax and distributions out of sales of US real property are subject to 35% withholding tax.
- Conversion charge regime: a corporation can elect to become a REIT without tax, but asset sales within 10 years after conversion result in tax on gain built-in at time of conversion.

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Asian REIT Regimes – Hong-Kong

- The Securities and Future Commission (“SFC”) in Hong-Kong introduced the new Code on REIT on July 30, 2003, marking the introduction of this new form of collective investment scheme in Hong Kong;
- A REIT that is authorized by the SFC for sale in Hong Kong must be a unit domiciled in Hong Kong. It is mandatory requirement for the REIT to be listed on the Stock Exchange in Hong Kong (“HKSE”). It should have a transparent investment policy and it can only invest in real estate in Hong Kong for long-term investment purpose.
- The REIT may issue new units in accordance with the requirements set out in the Code. However, it is not allowed to redeem the units from time to time. Unit holders may divest their units by selling them on the HKSE.
- Some positive regulatory developments introduced in 2005 allowing overseas investments and increasing the maximum leverage;

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Asian REIT Regimes – Hong-Kong

- **Organizational rules:**

- The REIT must be listed on the Stock Exchange of Hong Kong;
- It must be structured in the form of a trust;
- It must appoint a trustee that is functionally independent of the management company of the REIT and that acts in the best interest of the unit holders;
- It must appoint a management company acceptable to the Securities and Futures Commission (SFC);
- It must appoint an independent property appraiser;
- The valuation of REIT assets must be done on an annual basis;
- If the name of the REIT indicates a particular type of real estate, it must invest at least 70% of its non-cash assets in such type of real estate;
- Funds seeking REIT status must apply for a license through the SFC.

Asian REIT Regimes – Hong-Kong

- **Income and asset rules:**

- It must not acquire any asset that involves the assumption of any liability that is unlimited;
- It must hold its real estate for a period of no less than two years unless otherwise approved by its unit holders.

- **Distribution rules:**

- The REIT must distribute at least 90% of net income as dividends to unit holders annually. No withholding tax is imposed on dividend income in Hong Kong.

- **Leverage restrictions:**

- Since June 2005, the leverage ratio limit is 45% (35% before) of the gross asset value of the REIT following the removal of the restrictions for foreign investments.

Asian REIT Regimes - Japan

- REITs in Japan are known as Japanese Real Estate Investment Trusts (“J-REIT”);
- J-REITS were created on November 30, 2000 by the Law Concerning Investment Trusts and Investment Corporations of Japan;
- The Tokyo Stock Exchange established the REIT market as from March 1, 2001;
- J-REITS are popular not only among financial institutions but also among individual investors thanks to their medium risk/return nature;
- There are 3 types of J-REITS:
 - Settlor-directed investment trusts (units; eligible fund manager);
 - Non-settlor-directed investment trust (units; trustee becomes the fund manager; each investor becomes settlor and beneficiary while having no rights regarding investment decisions);
 - Investment corporations (shares, collective investment vehicle, fund management outsourced to authorized fund manager)
- In practice, virtually all of the listed REITs are investment corporations. Following developments focus mainly on this type of vehicle.

Asian REIT Regimes - Japan

- **Organizational requirements:**

- Registration is required and governed by the Investment Trust Law;
- To fulfill one of the following two conditions: (tax requirement)
 - Be publicly offered with an issuing amount of at least 100 million yen upon incorporation;
 - Be owned by at least 50 investors at the end of the fiscal year or entirely owned by the qualified institutional investors.
- It must not be a closely-held corporation at the end of the fiscal year i.e. the three largest investors must own less than 50% of the investment certificates. (tax requirement)
- Articles of incorporation reflect that more than 50% of the issuing investment certificates have been offered within Japan. (tax requirement)
- Net asset value must be at least 1 billion yen (approximately EUR 6,400,000) (unit listing requirement).
- Net asset value per unit must be at least 50,000 yen (approximately EUR 320) (unit listing requirement)
- Total asset book value must be at least 5 billion yen (approximately EUR 32,000,000) (unit listing requirement).
- At least 4,000 units (unit listing requirement)
- At least 1,000 unit holders (unit listing requirement)
- The 10 largest investors must own less than 75% of the units (unit listing requirement)

Asian REIT Regimes - Japan

- **Income and asset rules:**
 - At least 75% of investment in real estate (unit listing requirement)
 - At least 50% of total assets must be income producing and not likely to be sold within a year (unit listing requirement)
 - It must not hold 50% or more of the equity in other companies except for investment in Tokutei Mokuteki kaisha (TMK) where J-REITS hold 100% of the preferred investment certificates issued. (tax requirement)

- **Distribution rules:**
 - At least 90% of the profits must be paid as dividends (tax requirement);
 - The J-REIT receives dividends paid deduction for qualifying dividend distributions.

- **Leverage restrictions:**
 - No leverage restrictions but loans must be from qualified institutional investors.

Asian REIT Regimes - Japan

- **Tax considerations:**
- 42% Corporate Income Tax but dividend paid is tax deductible as long as the tax requirement mentioned above are fulfilled,
 - Listed J-REITS are subject to the special withholding tax regime on distribution of profits up until March 31, 2008, i.e. the rate is 10% (7% national tax and 3% local inhabitants tax). For individual residents in Japan, no further tax will be imposed. The association of real estate securitization industry is lobbying for the extension of term of the special tax regime and the 2007 tax reform plan announced by the ruling party is including a plan of the extension. For non-resident individuals and foreign corporations, only the national tax at the rate of 7% is imposed, provided there is no permanent establishment in Japan. Reduced rate may apply under tax treaties. In order to complete explanation, any resident corporation in Japan is subject to the 42% Corporate Income tax and the withholding tax will be credited.
 - Non listed J-REITS would be subject to the regular withholding tax regime, i.e. 20% withholding tax on foreign distributions. Reduced rates may apply under tax treaties.

Asian REIT Regimes - Singapore

- First publicly listed REIT established in July 2002;
- Singapore REIT regime are largely adapted from the US and Australian REITs;
- Singapore REITs are regulated by the Monetary Authority of Singapore;
- The REIT is managed by an asset manager and administered by a trustee;
- Units freely tradable as the REIT is always listed.

Asian REIT Regimes - Singapore

- **Organizational requirements:**
 - REITs must comply with the listing rules applicable in order to be listed on the Singapore Stock Exchange : at least 25% of the units issued should be held by at least 500 public shareholders.
 - Regulatory requirements apply to public REITs only (whether or not listed);

- **Income and asset rules:**
 - The REIT's income must be derived from qualifying investments;
 - At least 70% of investment in real estate and real estate related assets inside or outside Singapore;
 - REITs cannot engage in property development activities

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Asian REIT Regimes - Singapore

- **Distribution rules:**
 - At least 90% of the REIT's taxable income must be distributed annually;
 - Undistributed REIT income is taxed at 20% corporate tax rate.

- **Leverage restrictions:**
 - The REIT's maximum leverage is 35% of the fair market value of the real estate assets of the REIT;
 - The limitation does however not apply if the borrowings or the REIT itself has a certain credit rating.

- **Tax considerations:**
 - Tax transparency treatment can be granted by the Inland Revenue Authorities of Singapore (tax ruling) to REITs that own real estate properties located in Singapore;
 - Offshore property REITs i.e. whose underlying assets are located in Hong Kong through Hong Kong taxable companies which receive income under the form of dividend are tax exempt because the Hong Kong company has been paying tax on that income. If no taxation in Hong Kong, tax will be assessed on the income in the name of the trustee. Consequently, distributions made by the offshore properties REITs out of such income will also be chargeable to income tax in the hands of the beneficiaries, but with a tax credit for the tax paid by the trustee.
 - A 20% withholding applies on foreign distributions. This is reduced to 10% for distributions made during the period from February 18, 2005 to February 17, 2010;
 - Stamp duty applies at approximately 3% for the acquisition of properties. The remission of stamp duty is granted for the transfer of properties located in Singapore by a company or an individual to a REIT listed or to be listed on the Singapore Stock Exchange if the transfer is executed during the period February 18, 2005 to February 17, 2010;
 - No stamp duty applies on the transfer of units.

Australian REIT regime

- Real Estate Investment Trust (“REIT”) known as Listed Property Trust (“LPT”) has been introduced in Australia in the early 1970s.
- Australia is the highest securitized property market internationally with almost 70% of investments grade properties held in the property trusts (listed and unlisted). This compares to 12% in the US market and only 3% in Europe. As such there are significant growth opportunities in the international REIT markets.
- From Australia’s point of view, LPTs performed relatively well over the most recent year, with an average return of 18.3%, the third largest country. However, over a three year period, performance was slightly less impressive at 17.2%, which was seventh in ranking on a country basis.

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Australian REIT regime

▪ Organizational rules

- REITs in Australia are organized as a listed or unlisted fixed trust. The listed REITs are known as Listed Property Trusts (“LPT”).
- If eligible (passive property holdings), it is taxed as flow-through vehicle (i.e. the net income of the trust is taxed in the hands of the unit holders upon distribution and not at the level of the trust), otherwise the REIT is taxable as a domestic company (e.g. if engaged in property management/redevelopment).
- It is common for Australian property trust to form part of a stapled security with a stapled company/trading trust undertaking a range of activities relating to passive property holdings (i.e. management, redevelopment, funds managements etc.).
- There is no minimum/maximum shareholder requirement.
- The trust must be managed by a corporate trustee/responsible entity/fund manager.

Australian REIT regime

- **Income and asset rules**

- In order to be eligible for flow-through taxation treatment, widely held Australian property trusts must not directly or indirectly carry on a “trading business” (i.e. a business that does not consist wholly of an eligible investment business).
- The trust must invest in :
 - Land either inside or outside Australia for the primary purpose of deriving rental income (>50% of holdings); or
 - In real estate companies that derive primarily rental income.

Australian REIT regime

- **Distribution rules**

- There are no minimum distribution requirements however taxable income that is not distributed to unit holders is taxed in the hands of the trustee/ the responsible entity at the top marginal rate for individual (i.e. 46.5%).
- It is common for an Australian listed property trust to distribute all its taxable income. The distribution policy is typically embedded in the trust's constitution.

- **Gearing restrictions**

- The thin capitalization rules (maximum 75% of debt allowed) apply if the Australian LPT is either foreign controlled (either five or fewer entities own 50% or more of the Australian LPT or a single foreign entity owns at least 40% of the issued units) or the Australian LPT controls a foreign entity. If the thin capitalization rules apply, the LPT is broadly allowed to gear 75% of its adjusted Australian asset base.

Australian REIT regime

- The trustee of an Australian PLT must withhold tax in relation to the Australian source income distributed to foreign unit holders.
- Foreign unit holders are taxed on an assessment basis (i.e. they must file an Australian tax return) and receive a credit for tax paid by trustee. To the extent that the foreign unit holder has deductible expenses that relate to the units (e.g. interest), the unit holder can obtain a refund of tax withheld by the trustee following the filing of a return.
- Disposal of units by foreign unit holders are subject to Australian capital gain tax if the unit holder owns 10% or more of the issued units of the Australian trust.
- Trust income taxed on a flow-through basis retains its character in the hands of unit holders (i.e. as interest, rent, capital gains, etc.).
- Differences between the net income of the Australian LPT for income tax and accounting purposes due to variance in depreciation rates and capitalization policies will give rise to “tax preferred” distributions to unit holders. Broadly, this is a cash distribution that generally should not be subject to tax at either the trustee or beneficiary level.
- The receipt of a tax-preferred amount by unit holder will reduce the capital gains tax cost base of the units held by the unit holder. Where the tax-preferred distributions exceed the cost base of the units, a taxable capital gain will arise.
- Tax losses incurred by the LPT will be trapped in the trust.

Australian REIT regime

- **Upcoming tax changes to enhance international competitiveness of Australian REITs:**
 - The Australian Federal Government has recently announced changes to the tax laws to enhance the competitiveness of Australian REITs when competing for overseas assets.
 - The changes that have been announced, are in addition to changes announced by the Australian Federal Government in the May 2006 Budget, to extend the tax concessions for share ownership plans to employees in respect of certain stapled entities. The tax concessions for share ownership plans were not previously available to stapled entities, as they were only available to employees of a company participating in a relevant share ownership plan.

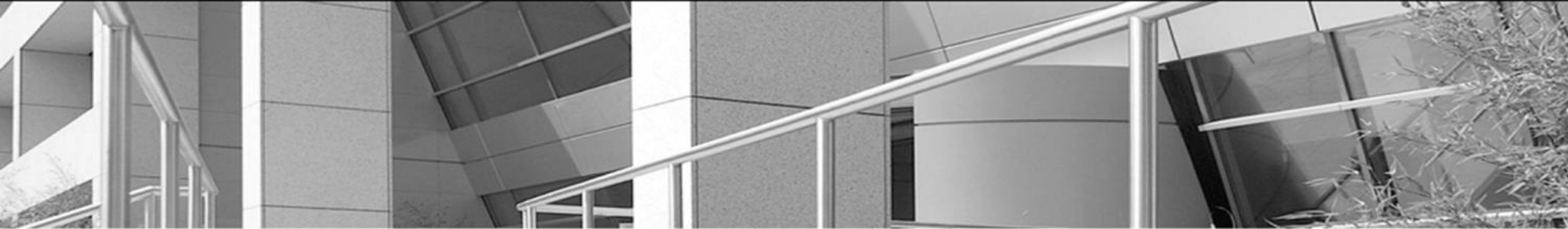
Lessons learned

- A REIT regime assists in creating a liquid real estate investment security.
- It can make Real Estate accessible as an investment to a wider class of investor through a simple vehicle and an attractive tax regime
- However it does not guarantee a stable market, nor one that automatically refelects the « true » value of the underlying real estate. This is driven by transparency, investor sentiment, fashion (!) etc..
- Some tensions may arise with other forms of investment vehicle : funds etc...consider giving similar tax treatment to other vehicles
- If objective is to encourage large scale investment in new buildings or infrastructure may need to go beyond usual « investment » assets
- Need to consider international dimension for investors and REIT

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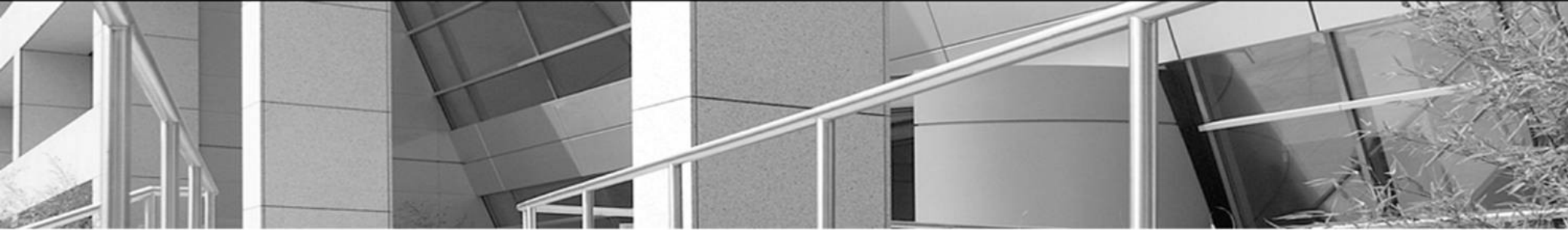
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