

## [25a.00.01] Real Estate Investment Trusts (REITs)

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## 1. Introduction

Section 41, Finance Act 2013 introduced a tax regime for Real Estate Investment Trusts (REITs). REITs are companies whose income is derived from the rental of commercial and/or residential property. REITs are not chargeable to either corporation tax in respect of income from their property rental business or chargeable gains accruing on disposal of assets of their property rental business. A REIT may be a single company or a group of companies.

### 1.1. Legislation

The relevant legislation is contained in Part 25A – sections 705A to 705Q of the Taxes Consolidation Act (TCA) 1997. Sections 153(4A) and 172D(3B) are also of relevance in this regard.

## 2. Conditions applying to a REIT

A company electing to be a REIT, or a group electing to be a group REIT, must meet specific conditions. Some conditions need not be met immediately but must be met within a period of 3 years from the date the company or group becomes a REIT or group REIT.

During the accounting period in which the company or group elects to be a REIT or a group REIT, the REIT or principal company of a group REIT must –

- be resident in the State and not in another territory;
- be incorporated under the Companies Acts;
- have its shares listed on the main market of a recognised stock exchange in the EU; and
- not be a close company within the meaning of Chapter 1 of Part 13.

Additionally, the following conditions must be met by a REIT or a group REIT by the end of the accounting period in which the company or group elects to be a REIT or group REIT –

- it must derive at least 75% of its aggregate income from property rental business;
- it must have at least three properties, the market value of no one of which is more than 40% of the total market value of all its properties;
- it must maintain a property to financing costs ratio of 1.25:1;
- at least 75% of the aggregate market value of the assets must relate to assets of the property rental business;
- it must ensure that the aggregate of the specified debt does not exceed 50% of the aggregate market value of the business assets; and

- it must have a diversified share ownership and distribute at least 85% of its property income annually.

### 3. Notice to become a REIT

A company or the principal company of a group must give a notice to Revenue of its intention to become a REIT or group REIT and confirm that the conditions in paragraph 2 above are met. The notice must be in writing and specify the date, on or after 1 January 2013, from which the company or group is to be a REIT or group REIT. In the case of a group REIT, all the members of the group must be listed. Furthermore, under Finance Act 2014 (section 29), each time a new member is added to the group, a revised notice must be submitted to Revenue.

Forms [REIT 1](#), [REIT 2](#) and [REIT 2A](#) .

## 4. Taxation

### 4.1. Taxation of a REIT

A company which is either a REIT or a member of a group REIT is not chargeable to corporation tax (CT) on income from its property rental business. Equally, it is not chargeable to capital gains tax (CGT) accruing on the disposal of assets of its property rental business.

However, if a REIT or group REIT acquires an asset and following that acquisition, develops that asset to the extent that the cost of development exceeds 30% of the market value of the asset at the time the development commenced and the asset is then disposed of within 3 years of completion of the development, then, the CT and CGT exemptions applicable to the REIT or group REIT, as the case may be, no longer apply.

A REIT or group REIT will be charged to corporation tax under Case IV of Schedule D if it makes a distribution of less than 85% of its annual property income.

In addition, under Finance Act 2014 (section 29), the exemption from DIRT applicable to other similar investment vehicles was extended to a REIT or group REIT.

### 4.2. Taxation of shareholders in a REIT

The general Dividend Withholding Tax (DWT) provisions apply to distributions from a REIT. Therefore, an Irish resident individual will suffer DWT on distributions. An Irish resident “excluded person”, such as a pension scheme or charity investing in the REIT, may receive distributions gross, subject to completion of the appropriate Schedule 2A declaration. Distributions from a company in a group REIT to another company in the same group REIT are exempt from corporation tax.

Non-resident investors are subject to DWT on distributions from a REIT as section 41, Finance Act 2013 dis-applied the provisions of subsections (2) and (3) of section 172D (as referred to in paragraph 1.1 above). However, non-resident investors who are resident in countries with which Ireland has a double taxation agreement (DTA) or treaty may be able to reclaim some of the DWT, if the relevant tax treaty permits.

Forms [DWTDEC&SCH-REIT](#) and [DWT Claim Form- REIT](#)

## **5. Annual Statement**

A REIT, or the principal company of a group REIT, must make a statement to Revenue by 28 February in the year following the end of its accounting period, confirming that the conditions in paragraph 2 above have been met throughout the accounting period. Where a REIT or group REIT fails to make a statement, or makes an incomplete statement, it will be liable to a penalty of €3,000 and Revenue will treat the company or group as having ceased to be a REIT or group REIT.

If a REIT or group REIT has breached the conditions in paragraph 2 above and cannot make the statement, it must notify Revenue of the breach and of the steps taken to rectify it. If, within a reasonable time limit imposed by Revenue, a REIT or group REIT fails to remedy the breach, Revenue will treat the company or group as having ceased to be a REIT or group REIT.

A REIT, or the principal company of a group REIT, must also file an annual corporation tax return and comply with the mandatory e-filing requirements.

[Form REIT 3](#)

## **6. Contact details for further information**

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