large number of the treaties currently in force include an immovable property company provision.[138]

218 Article 13(4) attributes primary taxation rights to the *situs* state on gains derived from the alienation of shares deriving more than 50% of their value from immovable property situated in this state. The attribution of taxation rights provided for in Article 13(4) is not in any way connected to the existence of an immovable property provision in the law of the state where the immovable property is situated. Hence, states that tax capital gains derived by non-resident persons from the alienation of shares in companies (for whatever reason) will no longer be prevented from taxing such gains by Article 13(5), if the alienated shares derive more than 50% of their value from immovable property situated in their territory. Thus, the provision in question clearly goes beyond merely solving a possible conflict of interpretation where there are domestic anti-abuse sourcing rules.

219 As already mentioned in §1.04[D][4][a] above, the provision aims at achieving equality in the treaty regimes for the direct and indirect alienation of immovable property, that is, Article 13(4) is aimed at applying to gains deriving from the alienation of shares in an immovable property company the same treaty regime that would have been applicable had the underlying immovable property been disposed of. The OECD Commentary points out:[139]

> By providing that gains from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in a Contracting State may be taxed in that State, paragraph 4 provides that gains from the alienation of such shares and gains from the alienation of the underlying immovable property, which are covered by paragraph 1, are equally taxable in that State.

220 Article 13(4) stems from the domestic sourcing provisions in force in a number of states and from the related treaty practice, which is also reflected in several of the model conventions other than the OECD Model. In each case, immovable property company provisions have an anti-abuse aim. Article 13(4) clearly has an anti-abuse goal: that is, to prevent rule shopping through the use of legal entities as interposed owners of immovable property. The 1989 OECD Tax Treaty Override Report, in commenting on similar (domestic) provisions, confirms this by stating that, 'the overriding measure is clearly designed to put an end to the improper use of its tax treaties'.[140] In light of the above, one may say the following:

138. See, e.g., all the treaties concluded by Canada currently in force; most of the treaties concluded by Australia, Canada, China (P.R.C.), Estonia and the United States; many of the treaties concluded by Austria, Belgium, Bulgaria, Bangladesh, Czechoslovakia, Denmark, Egypt, Finland, France, Germany, Kazakhstan, India, Ireland, Israel, Latvia, Lithuania, Malta, the Netherlands, Poland, Singapore, Spain, Sweden, Ukraine and the United Kingdom and some (more than ten) of the treaties concluded by Albania, Armenia, Azerbaijan, Belarus, Croatia, Hungary, Italy, Korea (R.O.K.), Mexico, Norway, Pakistan, Philippines, Portugal, Romania, Russia, South Africa and Switzerland.
139. See para. 28.3 of the OECD Commentary on Art. 13. See also para. 23 of the OECD Commentary on Art. 13.
140. See OECD, *Tax Treaty Override*, Paris (1989), para. 32.

(a) the introduction of Article 13(4) in the OECD Model was targeted at preventing a rule-shopping tax planning tool that had already been addressed by a number of states in their treaty practice;
(b) the purpose of Article 13(4) is to put the alienation of shares in immovable property companies and the alienation of the underlying immovable property on an equal footing, from a treaty regime perspective; and
(c) Article 13(4) is drafted as an autonomous distributive provision, the application of which is not limited to abusive situations (i.e., an assessment of the abusive intent of the transactions is not a requirement for application of the provision).

[b] Applicability of Article 13(4) to Disposals of Interests in REITs

221 In the case of REITs organized in the form of corporations the conditions for the application of Article 13(4) are generally met and, thus, primary taxation rights are attributed to the *situs* state, this being the state where the relevant property is situated (in most of the cases this is the state under whose laws the REIT is organized).

222 In this respect some issues arise, which are also discussed by the OECD Report:

(a) the scope of Article 13(4) is confined to the alienation of shares;
(b) no difference is made between small and large investors;
(c) a double exemption may arise from the application of Article 13(4).

223 The following sections analyse these issues and some other relevant issues concerning Article 13(4).

[i] Scope: Gains Derived from Alienation of Shares

224 The scope of Article 13(4) is limited to gains derived from the alienation of shares having certain characteristics (i.e., deriving more than 50% of their value from immovable property situated in a Contracting State). The context appears to be sufficiently defined so not to allow any leeway for applying domestic rules on the definition of 'shares'. In fact, the term 'shares' is also used by Article 10(3) of the OECD Model. Moreover, the OECD Commentary thereon clearly states that 'shares' means 'holdings in a company limited by shares (joint-stock company)'.

225 From the above, it follows that the scope of Article 13(4) does not encompass: (i) interests in entities other than joint-stock companies or (ii) interests in joint-stock companies other than shares.

[ii] Exclusion of Interests in Other Entities

226 Confirmation of the fact that 'shares' has to be interpreted narrowly can be gleaned from the OECD Commentary on Article 13(4). It discusses a broad version of the

resident in the residence state (where the person alienating the shares is resident), but rather in a third state. This problem – which in the first instance has to do with the domestic sourcing rule and then with the application of the treaty – can be split into four levels:

(a) obtaining information about the application of the value test;
(b) obtaining information about the occurrence of an alienation;
(c) obtaining information necessary to determine the amount of the gain; and
(d) collecting taxes.

254 As already mentioned, collecting all the information necessary to apply the value test can be rather complex. Even assuming that a treaty with an exchange of information article is in force between the *situs* state and the state where the company is resident, the complexity of the monitoring activity that would have to be done (continuously) by both states would be likely to render the use of such an instrument meaningless. Complex ownership structures with several entities resident in different states would make the task almost impossible.

255 This is very likely one of the main reasons why countries such as the United States exclude gains derived by non-residents from the alienation of shares in foreign companies from the scope of the immovable property company provision even though the shares derive their entire value from immovable property situated in its territory.[156] To mitigate such problems, domestic law may, for example, contain:

(a) presumptive mechanisms through which, if certain minimum requirements are met, a foreign company owning immovable property situated in the territory of the state is assumed to fulfil the condition for the application of the domestic immovable property company provision (unless proof to the contrary is provided). In this way, the burden of proof is, de facto, shifted to the taxpayer. Nevertheless, it should be emphasized that, in the case of non-substantial investors, the taxpayer itself may have difficulty obtaining all the relevant information. In any case, the question then boils down to the application of the treaty, and may lead to cumbersome mutual agreement procedures; or
(b) obligations for the foreign company to provide, on an yearly basis, certain information regarding its property (e.g., value, nature and location) and its shareholders (e.g., identity, address, number of shares held). On the one hand, the source state, being the *situs* state of the immovable property owned by the company, can easily require the company to fulfil such an obligation. On the other hand, the system would probably become ineffective if there is a chain of companies (i.e., when the alienation relates to shares in a company different from the one owning directly the relevant immovable property).

156. In fact, US sourcing rules provide for the taxation in the United States of gains derived from the alienation of shares of US immovable property companies only. See I.R.C. s. 897(c)(1)(A)(ii).

In addition, it is hard for the *situs* state: (i) to become cognizant of the fact that a taxable event has occurred and (ii) to obtain the information necessary to determine the amount of the taxable gain that has to be taken into account. Certainly, once the source state is aware that the shares of the foreign company satisfy the value test, an exchange of information procedure may solve both of the above problems. 256

The last problem is the collection of taxes. This may be burdensome if the foreign taxpayer does not have any other interests in the source state. The tax system of the residence state of the alienator may also play a part with regard to the regime applicable to capital gains and to the relief method chosen to avoid international juridical double taxation. In fact, for exemption systems, there is a big incentive for the taxpayer to evade the tax due in the source state. On the other hand, in states with credit systems if the taxes paid in the source state are entirely creditable against the taxes due in the residence state, there is no economic incentive for the taxpayer to avoid payment of taxes in the source state. The same cannot be said if the taxes paid in the source state are not (or are not entirely) creditable against the taxes due in the residence state, since in such a case the payment of the taxes in the source state would increase the overall tax burden.[157] 257

From a source state perspective, two factors may be considered: (i) location of the immovable property and (ii) joint liability of the purchaser. Even the location of the immovable property does not seem to protect the source state from tax evasion. In theory, a state cannot have a lien on the immovable property, since the owner of this property (the foreign company) is not the taxpayer that owes income taxes. The source state may take advantage of the conflict of interest existing between seller and purchaser, by providing for joint liability for the purchaser for the taxes owed by the seller. For example, Canadian law contains a withholding tax and clearance requirement system the key element of which is the onus put on the purchaser of the shares, even though this is a foreign resident. Under this system, the purchaser of the shares has to levy a withholding tax (25%) on the gross amount of the purchase price of the shares (to be remitted to the Canadian tax authorities), unless the alienator provides the purchaser with a clearance certificate issued (upon request) by the Canadian tax authorities. To obtain the certificate, the seller has either to pay or to provide acceptable security in relation to his tax liability. Obviously, such a measure is more effective where the purchaser is a resident of the source state. Moreover, in the case of a treaty-protected purchaser, the possibility of collecting taxes from it is questionable. US law has a substantially similar system with regard to the alienation of shares in a US immovable property company. A similar system seems to apply in Mexico. In Australia, the absence of a collection mechanism specifically applicable to capital gains derived by non-residents has been acknowledged to be a weakness of the tax system. 258

157. In the case of the exemption of capital gains in the residence state, no credit would likely be given. In the case of a tax burden in the residence state that is lower than the taxes paid in the source state, only a partial credit would likely be granted, with the effect that at the end the real tax burden is the one incurred in the source state.

satisfy the 50% stake test, an alternative same business test may be utilized. However, this is only available for listed trusts (and their wholly owned sub trusts).

62 There are no trust loss rules applicable to Australian REITs in order to utilize prior year capital losses.

[c] Taxation of Income from Taxable/Non-taxable Subsidiaries

63 In order to retain 'flow-through' tax status, a REIT cannot control a subsidiary that would result in the REIT being a public trading trust. It is for this reason that most REIT subsidiaries are also trusts that invest in rental properties. A trust subsidiary is taxed in the same way as a REIT (i.e., on a 'flow-through' basis). Therefore, a trust subsidiary is typically not taxable in its own right. Rather, the REIT is required to include the income from the trust subsidiary in its taxable income. Unitholders of the REIT pay tax on the taxable income of the REIT (see section §1.03[B][1][a] below).

64 With the emergence of investment by REITs in foreign real estate, some REITs now have corporate subsidiaries (e.g., a Luxembourg company or US REIT). Dividends paid by a subsidiary company are included in the taxable income of the REIT.

[d] Taxation of Foreign Income

65 Foreign sourced income derived by a REIT is included in the taxable income of the REIT. Foreign sourced income retains its character when distributed to unitholders. If the REIT has paid tax in the foreign jurisdiction in relation to that income (including withholding tax), then the REIT may be eligible to recognize a foreign tax credit in respect of the tax paid and distribute those credits to unitholders.

[2] Value Added Tax

66 Australia has a Value Added Tax (VAT) system with a tax rate of 10%. Where the REIT holds a direct interest in the property, the REIT should be subject to VAT of 10% in respect of its Australian sourced rental income. A REIT will also pay VAT on the acquisition of Australian real estate unless it is an acquisition of a going concern. If VAT is payable in respect of an acquisition, it should be creditable but transfer taxes will be paid on the VAT inclusive purchase price. A REIT should generally be eligible for a credit for VAT paid. There are however notable exceptions, for example where the property is held through sub-trusts. In these circumstances, the REIT holding the units in the sub-trusts will not be entitled to recover VAT in full as the costs relate to a financial supply. In which case a reduced credit for the VAT paid may be available.

[3] Withholding Taxes

All Australian sourced income and capital gains relating to Taxable Australian Property (TAP) of a REIT distributed to non-resident unitholders will be subject to withholding tax. Where the REIT satisfies the definition of a Managed Investment Trust (refer below) the rate of withholding tax is 15% unless the investor is resident in a country that does not have an exchange of information agreement with Australia, in which case the rate of withholding tax will be 30%. Where the capital gain is a discount gain, the withholding tax is applied to the gross capital gain that is, before applying the 50% discount concession. 67

This withholding tax is a final tax. Accordingly, a non-resident taxpayer will not be due a refund for any tax withheld in excess of their taxable income after any concessions and/or deductions. 68

Broadly, a trust will be a Managed Investment Trust if the following conditions are satisfied: 69

(a) The trust has the relevant connection with Australia.
(b) The trust must meet certain regulatory requirements, including being a MIS.
(c) The trust must meet certain widely held requirements. Broadly, a retail fund must be listed or have at least fifty members and a wholesale fund must have at least twenty-five members. For this purpose, special tracing rules apply. There is also an additional concessional test if the REIT is a registered MIS (known as the '25/60 rule').
(d) The trust is not a trading trust (refer to § 1.02[A][2] above).
(e) A substantial proportion of the trust's investment management activities in relation to certain Australian assets is undertaken in Australia.
(f) The trust satisfies certain closely held restrictions.
(g) The trustee or manager has an appropriate AFSL.

For a REIT which does not qualify as a Managed Investment Trust, the relevant withholding rate will be as follows: 70

(a) Non-resident individual: individual marginal tax rate, currently commencing at 29%.
(b) Non-resident company: corporate tax rate, currently 30%.
(c) Non-resident trustee: highest individual marginal tax rate, currently 45%.

This withholding tax is not a final tax (unlike for a Managed Investment Trust). 71

[4] Other Taxes

Transfer taxes of up to 7.25% of the higher of market value or consideration paid may be liable on the transfer of property or transfer of units in unlisted property trusts (depending on the ownership of the units and State in which the real estate is located). There is no transfer tax on the transfer of listed trust units. 72

47 Furthermore, the SICAFI must make up an investment budget plan which allows it to meet the risk diversification criteria within two years after its registration.

[2] Marketing/Advertising

48 In the file attached to the request for authorization, the promoters have to commit themselves to ensure that 30% of the voting shares are held publicly within one year after the approval as SICAFI. A dual listing on NYSE Euronext Brussels and on another European stock exchange is possible. The listing of a SICAFI's shares has to be preceded by the publication of a prospectus. The prospectus has to contain sufficient information to enable the public to make a well-informed decision (taking into account the characteristics of the transaction). All marketing materials for the shares (including the prospectus) have to be approved in advance by the FSMA. Following receipt of the marketing materials, the FSMA has fifteen days to grant or deny approval of the materials.

49 To protect the investors, the prospectus should contain a number of specific disclosures to the public investors, including amongst others:

- an outline of the organization of the SICAFI;
- the identity and references of the founders and shareholders (>10%) of the SICAFI and independent experts;
- a description of the investment policy and the risk diversification criteria of the SICAFI;
- a description of the real estate owned by the SICAFI including options on real estate;
- in case of a capital increase, evolution of the stock price compared to the net inventory value;
- information about future dividend distributions in the hands of the SICAFI;
- copy of by-laws;
- the promoter's commitment to reimburse to the investors the invested amounts (including fees and costs) in case the total equity funds are lower than the funds mentioned in the investment budget.

[3] Redemption

50 The redemption of its own shares by the SICAFI is allowed provided the consideration consists only of cash. Note however, that as a SICAFI is a closed-end fund, it may not redeem its own shares at the request of the shareholder. Redemption at the request of the shareholder is prohibited by the legislator because the assets of a SICAFI mainly consist of real estate, and SICAFIs lack liquid assets to fund a redemption. The requirements and constraints imposed by the Belgian Companies Code have to be obeyed. The FSMA has to be informed about the decision to redeem shares.

[4] Valuation of Shares/Units for Redemption and Other Purposes

51 The valuation of the shares is important for the reporting requirements and for the share transactions carried out by the SICAFI, such as redemption and emission of new shares.

52 At the end of each financial year, an independent real estate expert values the real property (including relating rights in rem, option rights and leasing rights) owned by the public SICAFI or by real estate companies controlled by the SICAFI (including the institutional SICAFI). The assets which have been leased and which have to be accounted for as receivables under IFRS are excluded from this valuation. This valuation is binding as regards the drafting of the statutory and consolidated annual accounts of the public SICAFI (see section §1.02[F][7] below). Furthermore, the expert updates the total valuation at the end of the first three quarters of the subsequent financial year based on the market evolution and the specifics of the real estate properties concerned.

53 In the case of an emission of new shares, listing of additional shares or redemption of shares other than through the stock exchange, the expert has to make a new valuation which, although not binding, should be used by the public SICAFI to justify the valuation of the emission or acquisition price. No new valuation is needed if the shares are issued within four months after the latest valuation or actualization thereof if the independent real estate expert confirms that no new valuation is required.

[5] Investment Restrictions

54 In principle, the exclusive purpose of a SICAFI is the collective investment in 'real estate', which is broadly defined to include:

- real estate and rights in rem;
- shares with voting rights issued by real estate companies which are under the exclusive or joint control of the SICAFI; a real estate company is defined as a company whose main statutory goal is the erection, the acquisition, the management, the renovation or the sale or letting of real estate for its own account or holding shares in a company with a similar goal;
- options rights on real estate;
- shares in other public and/or institutional SICAFI duly registered with the FSMA; for institutional SICAFI, it is required that the public SICAFI has the exclusive or joint control;
- shares in REITs established in the European Economic Area which are subject to a similar supervision;
- real estate certificates (provided these are publicly listed);
- immovable leasing rights or similar rights as defined under IFRS.

55 Whereas the Royal decree of 10 April 1995 allowed investments in affiliated real estate companies without any further restriction, the Royal Decree of 7 December 2010 contains a set of rules regarding such investments. These rules only apply to public

[B] Taxation of the Investor

[1] *Private Investors*

[a] Taxation of Current Income (i.e., All Income Derived from REIT in Holding Phase)

56 A final withholding tax of 5% is levied on the gross amount of dividends distributed by the REIT to a Bulgarian or a non-resident individual.

57 Non-resident individuals can lower or eliminate the withholding tax on dividends under the provisions of an applicable Double Tax Treaty (DTT). See section §1.03[C][2] below.

[b] Taxation of Capital Gains (from Disposal of REIT Shares)

58 Capital gains from the sale of the shares in the REIT by resident and EU/EEA resident individuals are exempt from tax if the sale was made on a Bulgarian, EU/EEA regulated market of securities. The disposal of shares on these markets by non-EU/EEA residents, as well as the disposal on other markets by resident and non-resident individuals would trigger 10% tax on the capital gain. The taxable gain is the difference between the acquisition price and the sales price of the shares.

59 Non-resident individuals can lower or eliminate the tax on capital gains from the sale of shares under the provisions of an applicable DTT. The application of the DTT is subject to the same conditions as for the withholding tax on dividends.

[2] *Institutional Investors*

[a] Taxation of Current Income (i.e., All Income Derived from REIT in the Holding Phase)

60 Dividends Distributed by the REIT are included in the taxable income of a resident institutional investor, and are subject to corporate income tax at a rate of 10%.

61 Under the Bulgarian tax legislation there is a 5% withholding tax on dividends distributed by the REIT to a non-resident institutional investor. No Bulgarian withholding tax is due if the investor is an EU/EEA tax resident.

[b] Taxation of Capital Gains (from Disposal of REIT Shares)

62 Capital gains from the disposal of shares in the REIT (i.e., difference between the acquisition price and the sales price of the shares) by a resident institutional investor are exempt from taxation if the disposal of the shares is done on a Bulgarian, EU/EEA regulated market. If the sale is made on other markets, the capital gains are included in the taxable income of the company, and are subject to 10% corporate income tax.

63 Similarly, capital gains from the disposal of shares in the REIT by a non-resident institutional investor are exempt from taxation if the disposal of the shares is done on a Bulgarian, EU/EEA regulated market. If the sale is made on other markets, the capital gains are subject to 10% withholding tax on the difference between the acquisition price and the sales price of the shares.

64 The withholding tax can be reduced or eliminated by following the applicable DTT procedure.

[3] *Penalties Imposed on Investors*

65 There are no specific tax penalties for investors in REITs under the Bulgarian tax legislation. REIT investors are subject to the general corporate income tax and personal income tax penalties for non-compliance.

[C] Tax Treaties

[1] *Treaty Access*

66 Bulgaria has a large treaty network with more than sixty countries around the world. However, pursuant to the legal restrictions established by the Act, a REIT cannot have foreign source income in respect of which to apply a favourable DTT regime (see section §1.03[A][1][d] above).

67 If the respective treaty provides for a lower rate for income payable by a REIT to a foreign resident, such relief may be applied. However, it should be noted that there are some legal restrictions on the transactions which may be entered into by local REITs, and accordingly the items of income which could be payable to a foreign resident are limited.

[2] *WHT Reduction*

68 An advance clearance procedure for DTT relief must be followed if the income accrued to the foreign recipient exceeds BGN 500,000 (EUR 255,646) for the calendar year.

69 If the accrued income is less than BGN 500,000, the DTT can be applied directly by the REIT. For direct application of the DTT relief, the non-resident must give the REIT a tax residence certificate and a declaration of beneficial ownership of the income.

[D] Exit Tax/Tax Privileges/Concessions

70 There are no specific exit tax regulations in respect of REITs.

14 The periodic filings include:

- quarterly financial statements together with a management discussion and analysis or 'MD&A';
- annual financial statements together with a MD&A;
- annual report;
- annual information form (AIF);
- annual CEO and CFO Certification;
- distribution declaration;
- corporate governance disclosure; and
- security-based compensation arrangement disclosure.

15 The event-driven filings include:

- material information;
- material change;
- business acquisition;
- insider trading;
- rights offerings and other securities issues;
- grants of options;
- normal course issuer bids;
- redemptions of units; and
- capital reorganizations.

16 Canada has a web-based or electronic filing system called SEDAR. Generally, the information referred to above is filed on SEDAR and is accessible by the public through the website: <www.sedar.com>.

[E] Registration Procedures

[1] Preparatory Measures

17 Not applicable.

[2] Obtaining Authorization

18 There is no registration or authorization necessary to operate a MFT as a REIT.

[3] Other Requirements for the Establishment of a Trust

19 The formation of a trust is a relatively simple process. A trust may be established upon the execution of the DOT.

[4] Obtaining Listing Exchanges

[a] Costs

20 Original listing fees for the TSX range between CAD 5,000 and CAD 50,000, as determined by the market value of the REIT at the point of listing. During the life of the listing, there are additional fees for certain transactions such as property acquisitions, public offerings and private placements. As well, there is an annual sustaining fee payable after the first year of the listing.

[b] Time

21 The time required to list a REIT will depend on several factors including the size and complexity of the transaction, the state of the market and how quickly funds are received from investors.

[F] Requirements and Restrictions

[1] Capital Requirements

22 In order to list on the TSX, a REIT must have at least 1 million free trading public shares, CAD 4 million held by public shareholders and 300 public shareholders each holding a board lot. If the operations of the REIT have a track record, the minimum net tangible asset (NTA) requirement is CAD 2 million. If the REIT is merely forecasting profitability, it will require a minimum NTA of CAD 7.5 million.

[2] Marketing/Advertising

23 A listed REIT is required to issue a Prospectus when it seeks to list or raise equity. The Prospectus sets out the terms of the transaction, provides information about the REIT, includes various experts' reports, if applicable, includes financial information and information on the real estate owned or to be owned by the REIT. The Prospectus is filed with the relevant provincial securities regulator(s).

[3] Redemption

24 Although REIT units are almost always disposed of through the exchange, many REITs also provide a redemption procedure in order to avoid certain investment restrictions imposed on closed-end REITs by the income tax rules for MFTs. Redemptions are typically permitted at the end of each month for a redemption price that usually represents a discount to the trading price of the units. Further, the REIT typically has discretion to limit the amount of cash that it will pay out on redemptions in any month.

[D] Registration Procedures

[1] Obtaining Authorization

17 FIN-REIT's by-laws must be approved by the FIN-FSA before the FIN-REIT may begin its public marketing activities and before the FIN-REIT may accept funds from the public in accordance with the REF Act.

18 An application for FIN-REIT status must be filed with the Finnish Tax Authorities. The FIN-REIT status must be granted to the Finnish limited liability company under the conditions set forth in the FIN-REIT Act (see section §1.02[E][1]).

[2] Obtaining Listing

19 According to the FIN-REIT Act, one condition for tax exemption is the fact that FIN-REIT's shares must be listed on a regulated market or have been upon application admitted to trading on a Multilateral Trading Facility (MTF) in the European Economic Area.

[E] Requirements and Restrictions

[1] Requirements Set Out by FIN-REIT Act

20 In order for the FIN-REIT to obtain a tax exempt FIN-REIT status (i.e., exemption from Finnish corporate taxation in accordance with the FIN-REIT Act), the following requirements must be fulfilled in accordance with the FIN-REIT Act:

- FIN-REIT does not carry on any other activities than renting of property and certain ancillary activities, such as property administration and maintenance and cash management. Property development on own account is permitted;
- at least 80% of the total assets of the company must comprise residential real property (as defined in the relevant legislation), shares in an apartment housing company (i.e., a residential mutual real estate company), or shares entitling the shareholder to possess residential premises in such other mutual real estate company, which solely carries on holding and controlling of real estate and the buildings located on the real estate (measured using financial statements). In general terms, a mutual real estate company is a company the shares of which entitle the shareholder to possess (and lease out) the premises owned by the mutual real estate company (see section §1.03[A][1][b]);
- FIN-REIT does not hold any other assets than property, equipment required by its ancillary activities and liquid funds (as defined in the relevant legislation). The company may not, except for shares in mutual real estate companies, hold any shares in subsidiary companies;
- FIN-REIT's total liabilities may not exceed 80% of the total assets (measured using (consolidated) financial statements);

- each shareholder must hold less than 10% of the share capital of the company (however, 30% ownership may be applied until the end of 2013); and
- REF Act must apply to the company and hence it must be subject to the supervision of the FIN-FSA.

The following additional conditions for FIN-REIT status apply as of the beginning of the first tax year as a FIN-REIT: 21

- FIN-REIT must distribute at least 90% of its net income (excluding unrealized gains) unless the Finnish Companies Act restricts the company's possibility to distribute dividend (e.g., if the amount of unrestricted equity is not sufficient or there are solvency reasons for restricting the amount of distribution);
- FIN-REIT's shares must be listed on a regulated market or must be upon application admitted to trading on a Multilateral Trading Facility (MTF) in the European Economic Area (EEA). However, upon application to the Finnish tax authorities, this requirement may be disapplied during the first two tax years as a FIN-REIT;
- FIN-REIT does not make distributions in any other form than as dividends; and
- FIN-REIT or its mutual real estate company subsidiaries have not been involved in transactions the purpose of which is deemed to be tax avoidance.

[2] Capital Requirements

The share capital of FIN-REIT must amount to at least EUR 5 million in accordance with the REF Act. 22

[3] Investment Restrictions

The FIN-REIT is limited to the investments and activities as defined in the legislation (see sections §1.02[A][2] and §1.02[E][1] above). 23

[4] Reporting Requirements

FIN-REITs are subject to the general reporting requirements that apply to public limited companies and the reporting requirements in accordance with the REF Act and the Finnish Securities Market Act. Despite the FIN-REIT's tax exemption, the FIN-REIT is obliged to file a tax return. In the tax return, the FIN-REIT must provide information on whether it meets the requirements necessary to remain eligible for the tax exemption. 24

[5] Accounting

General accounting rules in accordance with the Finnish Accounting Act apply to FIN-REITs. Please note that public limited companies the shares of which are subject to 25

[c] Taxation of Income from Taxable/Non-taxable Subsidiaries

57 Taxable income realized by SIICs from tax transparent subsidiaries is exempt from CIT. Dividends received from qualifying 95% French subsidiaries is also exempt from CIT. The CIT exemption for dividends is conditioned on compliance with the required dividend distributions regulations.

[d] Taxation of Foreign Income

58 The SIIC tax exemption applies to income from directly held properties located abroad if the properties are not exclusively taxable in the country in which the properties are located according to the applicable tax treaty. Income from foreign properties can be taxable if an election is made to exclude the properties from the SIIC regime.

[2] 3% Contribution on Dividend Distributions

59 The second Amended Finance Bill for 2012[13] introduced an additional 3% contribution on dividend distributions or on sums treated in the same way for tax purposes. As from 17 August 2012, dividends paid by French and foreign entities subject to CIT fall within the scope of the 3% surtax. The 3% contribution applies to all types of beneficiaries (corporate, individuals located in France or in any foreign jurisdictions including in the European Union).

60 SIIC are 3% contribution exempt relating to dividend paid from tax exempt sector between 1 January and 31 December 2013[14] (i.e., temporary exemption up to the amount of the distribution requirements).

61 Dividends paid by SIIC beyond their legal requirements and dividend distributions from taxable sector are, in principle, subject to the 3% contribution. However distributions made by a SIIC subsidiary to its parent SIIC company are exempt to 3% contribution (i.e., exemption without time and amount limitation).

[3] Value Added Tax

62 There are no specific VAT rules for SIICs. Therefore the standard VAT rules are applicable.

63 The rental of non-furnished office or commercial premises is not subject to French VAT, except if the rent is assessed on the turnover or on the taxable income realized by the tenant. Nevertheless, the rental of non-furnished office or commercial premises could be subject to VAT at the standard rate of 19.6% under a special VAT election made with the French tax authorities.

13. Second Amended Finance Bill for 2012 n°2012-958 dated 16 Aug. 2012.
14. Third Amended Finance Bill for 2012 n°2012-1510 dated 29 Dec. 2012.

Conversely, the rental of furnished office or commercial premises is automatically subject to French VAT at the standard rate of 19.6% (20% as from 1 January 2014) (i.e., there is no need to elect for VAT). **64**

The rental of residential properties is exempt from French VAT (without any possibility of electing French VAT). **65**

The same rules apply if the properties are held by a subsidiary of the SIIC. **66**

Input VAT incurred by SIICs (or by subsidiaries of SIICs) is recovered under the standard rules. **67**

[4] Withholding Taxes

Under French domestic tax rules, dividends paid by a French SIIC to a non-French tax resident are subject to French withholding tax at a rate of: **68**

- 21% when the dividend is received by an individual who is resident in an EU country, Iceland, Norway or Lichtenstein.
- 30% when the dividend is received by an individual who is resident in a non-EU country (excluding Iceland, Norway or Lichtenstein) and by a non French company.
- 75% when the dividend is paid in a non cooperative state or territory.

Pursuant to Section 119 *ter* of French Tax Code, dividends paid by French companies to a non-French Parent Company (resident in EU country, Iceland or Norway) are withholding tax exempt under certain conditions (i.e., the distributed profits have to be subject to CIT at standard rate). **69**

As French SIIC are partly tax exempt, it is therefore doubtful that the withholding tax exemption also applies to dividends collected from tax results benefiting from the CIT exemption. **70**

Meanwhile, under tax treaties, the rate of the withholding tax can be reduced. **71**

No French withholding tax is levied when dividends are paid by French SIICs to French tax residents (companies or individuals). **72**

[5] Other Taxes

[a] Transfer Duty

Concerning the shares or interest in French unlisted real estate subsidiaries or partnerships, the acquisition is subject to registration duties at a rate of 5%. **73**

Finance Bill for 2012 provides that the taxable basis on the disposal of shares in real estate companies have to be determined based on (i) the fair market value of the real estate assets or rights (including shares in real estate companies) less the liabilities **74**

shareholders. Therefore, if the real estate corporation distributes its profits to the G-REIT, a double tax would occur with respect to the real estate corporation's income. To provide relief from double taxation, the REITA, under certain conditions, enables investors to make use of the privileged dividend taxation (see section §1.03[B] below).

64 G-REIT service corporations and corporate general partners are subject to standard taxation. If the corporation is a resident in Germany, the corporation is subject to corporate income tax at 15.8% (including solidarity surcharge) and trade tax at approximately 12.5% to 17% of its taxable income. Whether withholding tax of 15.825% on dividends distributed by a domestic service corporation or corporate general partners to the G-REIT is final or subject to a refund, is not entirely clear. If there were a final withholding tax double tax occurs. The REITA, under certain conditions, enables investors to make use of the privileged dividend taxation (see section §1.03[B] below).

[d] Taxation of Foreign Income

65 The G-REIT is not taxed on foreign income earned, but it may be taxed on that income in other jurisdictions. Since the G-REIT is a tax-exempt entity, the foreign tax credit amounts to nil. However, if the foreign taxes are comparable to German corporate income tax, the REITA grants relief from double taxation at the level of the G-REIT investors under certain conditions (privileged dividend taxation, see section §1.03[B] below).

[2] Value Added Tax

66 Germany has a VAT system with a standard rate of 19%. Where the G-REIT or its subsidiaries hold a direct interest in domestic real estate, the rental income is VAT-exempt. In return, the G-REIT or its subsidiaries are not eligible for input tax relief on services received. Under certain conditions it is possible to opt to VAT in order to benefit from input tax relief. An option to VAT is possible provided that the real estate property is let to an entrepreneur who uses the property both for his own business and solely for supplies that do not exclude input tax relief.

67 If the transfer of German real estate property is deemed to be a transfer of an entire business, the transfer is not subject to VAT. A transfer of an entire business occurs if the purchaser may continue the business without noteworthy financial expenditures. Typically, this will be the case if the purchaser enters into the tenancy agreements concluded by the vendor. If a transfer of an entire business does not occur, the transfer of German real estate is still VAT-exempt. The VAT-exemption avoids the double tax burden of VAT and real estate transfer tax. However, an option for VAT is possible if the property is sold to an entrepreneur who acquires the property for his own business. If the G-REIT or its subsidiaries intend to lease out property subject to VAT, the G-REIT is eligible for input tax relief on the acquisition costs. However, if the circumstances regarding the initial input tax relief change, a correction of input tax relief might occur.

Transfers of corporate shares and partnership interests are also VAT-exempt. Again, an option for VAT is possible under certain conditions. 68

[3] Withholding Taxes

A 26.4% withholding tax (including solidarity surcharge) is levied on dividend distributions by the G-REIT. 69

As at the beginning of 2009, the final withholding tax (Abgeltungsteuer) was introduced in Germany. The final withholding tax only applies to resident individual shareholders holding the G-REIT shares as private assets. Under the final withholding tax (26.4% on the dividend distributions), resident individual shareholders' income tax will be considered as paid. 70

The German Income Tax Act provides that foreign corporate shareholders can claim a refund of two-fifths of German withholding taxes paid, resulting in a withholding tax of 15.8% (including solidarity surcharge) on dividends distributed by the G-REIT. However, most German double tax treaties already provide for German withholding tax rates of 15%. 71

A shareholder that holds at least 10% in the G-REIT would (according to most German double tax treaties) normally qualify for the international affiliation privilege, resulting in reduced withholding tax rates. However, the prevailing REITA stipulates that a G-REIT shareholder is not entitled to receive such a privilege. 72

The EU-Parent-Subsidiary Directive is not applicable due to the G-REIT's tax-exempt status. 73

[4] Other Taxes

G-REITs are only exempt from corporate income and trade tax. With regard to other taxes, the general rules apply. Real Estate Transfer tax with rates currently ranging between 3.5% and 5% is levied on the direct transfer of real estate property, on the transfer of interests and shares and on certain corporate reorganizations and restructurings. 74

German municipalities levy a yearly land tax on real estate situated in their district. The tax base is the assessed unitary value to which the municipalities apply their local multiplier. The land tax charge is relatively low, deductible for income tax purposes and typically charged to the tenant. 75

[5] Penalties Imposed on REIT

If G-REITs breach the requirements for tax exemption, the REITA provides a detailed catalogue of penalties. Penalty payments are imposed as a first step. The following penalty payments may be assessed: 76

5 The SIIQ is exempt from corporate income tax (Imposta sul Reddito delle Società, IRES), which usually applies at a rate of 27.5%, and regional tax (Imposta Regionale sulle Attivitá Produttive, IRAP), which usually applies at a rate ranging from 3.9% to 4.82%, on any income derived from rental activities and on income from investments in other SIIQs and in SIINQs. The SIIQ's profits are subject to withholding tax at a rate of 20% when they are distributed to shareholders, and a reduced withholding rate of 15% applies to the distribution of certain residential rental profits.

6 When the SIIQ regime is applied by a permanent establishment of a foreign company, the annual income derived from the rental activity is subject to a 20% substitute tax, in lieu of the ordinary corporate income taxation (the substitute tax replaces the withholding tax levied on dividend distributions to SIIQ shareholders).

7 Upon election for SIIQ status, the basis of the corporation's rental real estate properties and its rental real estate rights is stepped up to fair market value. Any built-in gain, net of loss, is favourably taxed at 20%. The tax can be paid, with interest, over a five-year period. The favourable tax treatment only applies if the SIIQ retains the assets for at least three years. Alternatively, the company may opt to treat the built-in gains, net of losses, as ordinary business income, and the income is taxed accordingly.

8 Unlike Italian real estate investment funds designed primarily for passive investors, the newly-introduced SIIQ regime allows active and strategic investors to exercise control over real estate transactions and strategic management decisions.

[B] History of REIT

9 The SIIQ regime was introduced by Law No. 296, dated 27 December 2006, and was amended by Law No. 244, dated 24 December 2007, and lastly by Law No. 166, dated 20 November 2009. The law applies to SIIQ elections made after 30 June 2007.

10 Certain implementation rules were introduced by the Ministerial Decree No. 174, dated 7 September 2007 (the 'Implementing Decree'). The Italian tax authorities issued preliminary guidance in November 2007, and then more comprehensive instructions were issued in January 2008. However, some aspects of this regime are still unclear.

11 To date only very few companies have adopted the SIIQ regime.

[C] REIT Market

12 The SIIQ market is still at a very early stage, and only a couple of corporations have adopted or are in the process of adopting the SIIQ regime.

§1.02 REGULATORY ASPECTS

[A] Legal Form of REIT

[1] *Corporate Form*

13 Stock corporations ('*Società per Azioni*', '*S.p.A.*') which are resident in Italy for tax purposes may opt for the SIIQ regime. The option is irrevocable.

[2] *Investment Restrictions*

14 The following shareholding requirements in the SIIQ must be met: (i) No shareholder shall hold, directly or indirectly, more than 51% of the voting rights in the general meeting, and no shareholder shall participate to more than 51% in the company's profits; and (ii) at least 35% of the shares in the SIIQ shall be held as free float. For this purpose, at least 35% of the SIIQ shares have to be owned by shareholders who each hold, directly or indirectly, no more than 2% of the voting rights in the general meeting and no more than 2% of participation in the company's profits.

[B] Regulatory Authorities

15 SIIQs are subject to the supervision of the Bank of Italy and the Italian National Commission for Listed Companies and the Stock Exchange ('Consob').

16 The SIIQ by-laws define the SIIQ's investment policies, the limits on risks concentration, and the maximum admitted leverage.

[C] Legislative and Other Regulatory Sources

17 The following are the main legal and tax sources governing the SIIQ:

- Law No. 296, dated 27 December 2006 (as amended by Law No. 244, dated 24 December 2007, and by Law No. 166, dated 20 November 2009), introducing the SIIQs.
- Ministerial Decree No. 174, dated 7 September 2007 (the 'Implementing Decree'), defining in particular the basic regulatory framework, valuation rules and certain tax provisions.
- Regulations issued by Borsa Italiana S.p.A. (the regulator of the Italian Stock Exchange), dated 8 November 2010, relating to listing requirements and procedures (for listing in Italian Exchanges).
- Head of Tax Office's Decision, dated 28 November 2007, providing for regulations governing the exercise of the option for the SIIQ regime, and approving the relevant application-form.

[8] Accounting

52 A REIT is required to prepare annual audited financial statements in accordance with approved accounting standards. Listed REITs are also required to prepare an interim financial statement which, like the annual audited financial statements, has to be submitted to the SC within two months after the closing period.

§1.03 TAXATION

[A] Taxation of the REIT

[1] Corporate Income Tax

[a] Tax Accounting

53 The Inland Revenue Board of Malaysia (MIRB) has issued three new Public Rulings in relation to REIT in October and November 2012 to replace the Guidelines on Real Estate Investment Trusts or Property Trust Funds (REITs/PTF) dated 29 June 2005. They are:

- Public Ruling No.7/2012 'Taxation of Unit Holders of Real Estate Investment Trusts / Property Trust Funds'.
- Public Ruling No.8/2012 'Real Estate Investment Trusts / Property Trust Funds – An Overview'.
- Public Ruling No.9/2012 'Taxation of Real Estate Investment Trusts / Property Trust Funds'.

54 The REIT's income is not be taxed at REIT level provided that at least 90% of its total taxable income is distributed to its investors. If the REIT distributes less than 90% of its total taxable income, the REIT is subject to corporate income tax on its total taxable income. The regular corporate income tax rate is currently at 25% (as at year of assessment 2013).

55 Since REITs are considered to be unit trusts, certain income is exempt from tax, including interest or discount from the following investments:

(a) securities or bonds issued or guaranteed by the Government;
(b) debentures or Islamic securities, other than convertible loan stocks, approved by the Securities Commission;
(c) Bon Simpanan Malaysia issued by Bank Negara Malaysia;
(d) Interest income from Islamic securities originating in Malaysia, other than convertible loan stock issued in a foreign currency and approved by the Securities Commission and Labuan Financial Services Authority; and
(e) bonds issued by Pengurusan Danaharta Nasional Berhad.

56 Interest paid or credited by any bank or financial institution licensed under the Banking and Financial Institutions Act 1989 or the Islamic Banking Act 1983 is tax exempt.

Income received by the REIT from overseas investment is also tax exempt. 57

The income exempted at the REIT level is also exempt from tax upon distribution to Unitholders. 58

[b] Determination of Taxable Income

Generally, the taxable income of the REIT consists of rental income, interest (other than interest which is exempt from income tax) and other investment income derived from or accruing in Malaysia. Rental income from the letting of real property is treated as business income, and expenses incurred wholly and exclusively in the production of such gross rental income is deductible against business income. Business deductions can include management fees, interest land taxes, and the REIT manager's remuneration. Fees paid to the trustee do not qualify for tax deduction. Any business expenses in excess of business income cannot be carried forward, and they cannot be offset against other sources of income. 59

Expenses incurred to set up an entity are not allowed as a tax deduction as these expenses are regarded as pre-commencement expenses. However, as an incentive, the Income Tax (Deduction for Establishment Expenditure of Real Estate Investment Trust or Property Trust Fund) Rules 2006 provide that the legal, valuation and consultancy fees incurred for the purpose of establishing a REIT which is subsequently approved by SC will be allowed as a tax deduction when the business of the REIT commences. Costs of obtaining financing (other than interest), including legal costs and stamp duty on new loan transactions, are also generally not deductible. Specific tax deductions are given for financing costs incurred in relation to the issuance of certain Islamic Securities/bonds up to YA 2010. This incentive has been extended for another five years, until YA 2015. 60

Normally, the accounting depreciation of land and buildings does not qualify for a tax deduction. Moreover, tax depreciation is not available for residential and commercial buildings. Where a building can be classified as an industrial building (e.g., factory, warehouse, certain hotel buildings, etc.), and it is used for business, or is leased to a tenant who uses the premises as an industrial building, a capital allowance known as an Industrial Building Allowance can be claimed against the business or rental income of the building owner. Generally, the initial allowance is 10%, and the annual allowance is 3% of the building cost. Buildings constructed under an agreement with the government on a build-lease-transfer basis (approved by the minister of finance), however, qualify for an annual allowance of 6%. In addition, the following types of buildings qualify for annual allowances of 10% per annum: 61

(a) Buildings used as living accommodation for employees by a person engaged in a manufacturing business, hotel or tourism business or approved service project.

If the foreign-sourced dividend income does not qualify for the section 13(8) exemption, or if the foreign income is not dividend income (e.g., interest income on shareholders' loans, trust distribution), the REIT can apply for tax exemption under section 13(12) of the ITA for qualifying foreign-sourced income that is received in Singapore on or before 31 March 2015. The section 13(12) exemption is subject to the approval of IRAS, who can impose conditions on that approval. Any foreign withholding taxes paid on foreign income are not credited against other REIT taxes or refunded.

[2] Value Added Tax

61 A REIT can be registered for GST (Singapore VAT) in Singapore. Once registered, the REIT has to charge GST (at the prevailing rate of 7%) on the rental and related income derived from its property holding, property management, and related activities. This is termed as Output GST, which the REIT has to collect and remit to the IRAS, net of any Input GST. Input GST refers to GST incurred by a REIT on its expenses such as management fees, statutory audit and tax fees, property maintenance expenses, etc.

62 However, REITs that primarily derive dividends or distributions which are not taxable supplies for GST purposes from special purpose vehicles or sub-trusts may not be able to register for GST, and thus are not able to claim input tax on their business expenses. As a concession, these REITs will be able to claim GST incurred on business expenses incurred between 17 February 2006 and 31 March 2015. This is subject to meeting certain conditions but the concession is available regardless of whether the REIT can be registered for GST.

[3] Withholding Taxes

63 No withholding applies to distributions to individuals or Qualifying Unitholders. The Trustee and the Manager of a REIT have to deduct tax on distributions out of the REIT's Taxable Income (as defined in section §1.03[A][1][b] above) to any other Unitholders. Where the Unitholders are Qualifying Foreign Non-Individual Unitholders, the Trustee and Manager must deduct Singapore income tax at a rate of 10% on distributions made on or before 31 March 2015.

64 A 'Qualifying Unitholder' is a Unitholder who is a:

- Singapore-incorporated company which is tax resident in Singapore;
- body of persons registered or constituted in Singapore (e.g., a town council, statutory board, registered charity, registered cooperative society, registered trade union, management corporation, club or trade association); or
- the Singapore branch of a foreign company which has presented a letter of approval from the IRAS granting a waiver from withholding tax on distributions from the REIT.

65 A 'Qualifying Foreign Non-Individual Unitholder' is a person, other than an individual, who is not a tax resident in Singapore, and either does not have a permanent establishment in Singapore or, where he does carry on operations in Singapore through a permanent establishment, the funds used to acquire the Units are not obtained from that operation.

Qualifying Unitholders and Qualifying Foreign Non-Individual Unitholders are required to disclose their tax status on a prescribed form provided by the Trustee. **66**

[4] Other Taxes

The sale or transfer of immovable property located in Singapore is usually subject to 3% Singapore stamp duty. This stamp duty is generally referred to as Buyer's Stamp Duty ('BSD') because the buyer is liable to pay the stamp duty unless otherwise agreed between the buyer and the seller. In addition to BSD, Additional Buyer's Stamp Duty ('ABSD') and Seller's Stamp Duty (introduced as measures to cool the Singapore property market) may also apply. **67**

ABSD is imposed in addition to the BSD that a buyer of residential property has to pay. It applies to direct purchases of Singapore residential property and is payable by property buyers. ABSD for entities (i.e. non-individuals) is imposed at 10% (for Contracts, Agreements, or Documents of Transfer dated between 8 December 2011 to 11 January 2013) or 15% (for Contracts, Agreements, or Documents of Transfer dated on or after 12 January 2013). **68**

SSD is payable by the seller of a property and may apply to the transfer of residential and industrial property located in Singapore. SSD is imposed at 5% to 15% (depending on how long the seller has held the property for) for transfers of Singapore industrial property, which were acquired by the seller on or after 12 January 2013 and sold/disposed within 3 years. For transfers of Singapore residential property, SSD of between 0.67% to 16% (depending on when the seller acquired the property and how long the seller held it for) generally applies if a property is held by the seller for 4 years or less. It is important to ensure that the seller has paid any applicable SSD. This is because, if the seller is liable but did not pay the SSD, the Agreement between buyer and the seller for the purchase of the property would not be considered as duly stamped (i.e. the Agreement cannot not be admitted as evidence in court in the event of disputes) even if buyer paid the BSD and applicable ABSD. **69**

Pursuant to a concession, a REIT is exempt from all stamp duty arising on any contract, agreement or instrument executed between 1 January 2006 and 11 January 2013 (both dates inclusive) relating to the conveyance, assignment or sale of Singapore immovable property to a REIT. A REIT is only exempt from BSD arising from any contract, agreement or instrument executed between 12 January 2013 and 31 March 2015 (both dates inclusive) relating to the conveyance, assignment or sale of Singapore immovable property to a REIT. A REIT is eligible for these exemptions if it: **70**

52 Article 5 of Agricultural and Fishery Tax Act (AFTA) stipulates that Agriculture and Fishery Tax is assessed at 20% on the exempt portion of taxes, including the Registration tax.

[c] Real Estate Holding Tax (Local Taxes and Surcharges)

53 Local Taxes paid by REIT are composed of Property Tax on buildings and land, Local Education Tax, Regional Resource and Facility Tax. Property Tax on buildings is levied at a rate of 0.3% (including the Education surtax) of 70% of statutory standard price as of 1 June of each year. Property Tax on land is levied at a rate of 0.24% (including the Education surtax) of 70% of statutory standard price as of 1 June of each year. A person or an entity that is subject to Property Tax on land and buildings may be liable to pay the additional Property Tax at a rate of 0.14% of Statutory standard price as of 1 June of each year based on the regulation of a local government. A person who benefits from facilities such as fire safety facilities is liable to pay the Regional Resource and Facility tax at a rate ranging from 0.04% to 0.12% for 70% of statutory standard price of a building.

[5] Penalties Imposed on REIT

54 Torts and negligence in operating and maintaining REITs' asset and shares will result in penalties, including imprisonment and fines up to KRW 100 million.

[B] Taxation of the Investor

[1] Private Investors

[a] Taxation of Current Income (i.e., All Income Derived from REIT in Holding Phase)

55 Dividend income received by a resident from a REIT is subject to withholding tax at a rate of 15.4%. Withholding tax is a final tax if the resident individual's aggregate interest and dividend income does not exceed KRW 20 million. If the individual's aggregate interest and dividend income is more than KRW 20 million, resident individuals are obliged to file a tax return. In this case, income tax is levied at the ordinary income tax rate which ranges from 6.6% to 41.8% (including resident surtax) depending on the tax base.

56 Dividends paid by a REIT to non-resident individual shareholders are subject to withholding tax at a rate of 22% at maximum. In case that a double tax treaty applies, the withholding tax rate will be reduced.

[b] Taxation of Capital Gains (from Disposal of REIT Shares)

57 When a resident individual shareholder disposes of REIT shares that are listed on the Korean Stock Exchange, or shares that are registered with Korean Securities Dealers Automated Quotations (KOSDAQ), the capital gains are exempted from income tax if the individual is a minority shareholder. A minority shareholder owns less than 2% of REIT shares that are listed on the Korean Stock Exchange, or less than 4% of REIT shares that are registered with KOSDAQ. Shares owned by related parties are included in the calculation of the shareholder's ownership interest.

58 If an individual shareholder including related parties to him holds more than 2% in REIT shares that are listed on the Korean Stock Exchange, or more than 4% in REIT shares that are registered with KOSDAQ, capital gains are subject to income tax at a rate of 22% (33% if the shares are sold within one year from the acquisition date).

59 Capital gains arising from the disposal of REIT shares by non-resident individual shareholders are subject to Korean withholding tax. Withholding tax is levied at the lesser of 22% on the capital gain, or 11% on the gross proceeds. In the case of non-listed REIT shares, an individual income tax return will be required, and then the total tax burden will be 6.6% to 41.8%, depending on the tax base. Withholding taxes can be credited against the capital gains tax.

60 The disposal of the REIT shares by non-resident individual is not subject to capital gains tax, and no tax is withheld if the respective REIT is listed on the Korean Stock Exchange or registered with KOSDAQ and the non-resident individual shareholder (including related parties to him) holds or has held less than 25% of the REIT shares at any time during the year of disposal, and the preceding five calendar years.

[2] Institutional Investors

[a] Taxation of Current Income (i.e., All Income Derived from REIT in Holding Phase)

61 Dividend Income received from REIT shares by a resident corporation is included in the taxable income, and thus will be subject to CIT. Currently, the basic Korean corporate tax rate is 11% (including Resident Surtax) on the first KRW 200 million of taxable income, 22% (including Resident Surtax) on the taxable income ranges from KRW 200 million to KRW 20 billion, and 24.2% (including Resident Surtax) on the excess taxable income.

62 Dividend income received by a foreign company that pursues its activities through a Korean permanent establishment is taxable at the same rates that apply to resident Korean corporations. Foreign companies that do not have a permanent establishment are subject to withholding tax at a rate of 22%. If a tax treaty applies, the withholding tax rate can be reduced.

group company to the parent company for use as a head office, and the property is subsequently let to a third party, there is a deemed disposal at market value, and tax is chargeable at the higher rate of corporation tax (currently 24%, reducing to 22%).

73 There is no exemption from tax on the disposal of shares in a subsidiary, joint venture or units in a unit trust. As an investment group the REIT cannot benefit from the UK substantial shareholder exemption on disposal of any subsidiaries.

[c] Taxation of Income from Taxable/Non-taxable Subsidiaries

74 In the UK REIT regime, companies may have property rental business income (e.g., rent) which is not taxable and residual income (e.g., interest) which is taxable. A dividend of taxable income paid by a UK tax resident subsidiary to the REIT parent is treated as an ordinary UK dividend which is not subject to withholding tax. Similarly, a distribution of property rental income from a non-UK tax resident subsidiary is treated as an ordinary dividend from a UK company, and is not subject to withholding tax for UK tax purposes (although the local tax authorities could levy withholding tax).

75 Following the revision of the UK rules on the taxation of dividends, a dividend from a non-resident subsidiary may not be subject to tax. (Note that there are complex anti avoidance rules which will need to be considered).

76 Similar provisions apply to non-UK joint ventures investing in UK property where the REIT is entitled to 40% or more of the income available for distribution.

[d] Taxation of Foreign Income

77 Income, other than from UK rental profits of the non-UK tax resident subsidiaries, may be subject to tax with relief for withholding taxes and underlying tax if the REIT has a significant interest in the investment. The UK legislation in respect of foreign companies is a complex area and is currently being substantially rewritten. A distribution of such income by a REIT is treated as an ordinary dividend by that REIT, and is not subject to withholding tax.

[e] Taxation of Income from other REITs

78 If, following FA 2013, a REIT invests in another REIT then the PID distribution received by the investing REIT has to be disclosed in a separate pot and distributed in residual income full to the investing REIT. Distributions of residual income may not have to be distributed, but this is subject to consultation.

[2] Value Added Tax

79 There are no special VAT provisions; a REIT has to comply with general legislation, case law and practice as it relates to VAT and property. For example, a REIT subsidiary

can choose to 'opt to tax' (charge VAT on rents) when leasing a commercial property, and recover VAT on its letting expenses. Where a REIT subsidiary buys residential property to let, it cannot charge VAT to its tenants, and therefore only part of the VAT cost can be recovered from HMRC.

[3] Withholding Taxes

80 REITs can pay a gross PID to a shareholder who is a UK company, UK charity, UK pension fund or a UK government body if that party gives the REIT a notice that it can be paid gross and the REIT has reasonable grounds for believing this. For all other investors such as an individual or partnership (wherever resident) or a non-UK tax resident corporate investor, withholding tax, currently 20%, is withheld. The same rules for withholding apply to deductions from annual interest, but with one key exception: it is not possible for a non-UK tax resident investor to apply to receive the PID gross. Instead, non-UK tax resident investors have to apply to the Centre for Non-Residents (a department of HMRC), to make a claim for a refund under the dividend article of the relevant treaty. Taxpayers are provided with vouchers showing the make up of the distribution, together with any withholding tax deducted. Such withholding taxes have to be accounted for on a quarterly basis by the REIT.

[4] Other Taxes

81 REITs are only exempt from direct tax on rental income and certain types of gain. They remain subject to UK Stamp Duty Land Tax at generally 4% on acquisitions of commercial property with a UK situs. FA 2011 introduced rules for purchases of residential property where the stamp duty is based on the average property value and thus may result in a rate of SDLT applying (between 1%–7%, or 15%. The 15% rate applies to residential property with a market value exceeding GBP 2 million where the owner is not an individual. However there are exemptions for property investors and developers, but the law is set out in FB 2013 which has not yet been enacted.

82 Following FA 2014 (Summer 2014), stamp duty will not be charged on transfer of AIM listed shares.

83 Other taxes also apply to a REIT, including VAT, business rates (local tax), landfill tax, and social security and employee taxes.

[5] Penalties Imposed on a REIT

84 There are various penalties that can be levied on a REIT. Some can result in financial penalties and others can lead to disapplication, or even termination of the REIT regime.

85 Where a REIT becomes 'close' through the actions of others (e.g., as the result of a bid where the public owns less than 35%), and is unable to rectify the position before the

Distribution of Capital Gains

48 36. The Working Party generally agreed that it would be appropriate to provide the same treatment for distributions from capital gains and distributions from rental income derived by the REIT. For that reason, the above proposal treats distributions of both types of income in the same way. The same conclusion has generally been reached with respect to all other types of income that could be derived by a REIT. It was noted, however, that in the case of distributions of capital gains, some countries use a different threshold to differentiate between a large investor that is subject to source country tax without limitation under the Convention and a small investor entitled to taxation at the rate applicable to portfolio dividend; these countries may wish to preserve that distinction in their bilateral treaties.

Treatment of Capital Gains on Interests in a REIT

49 37. The Working Party examined the possible application of paragraph 4 of Article 13 to gains realized on the alienation of an interest in a REIT. Given that the purpose of a REIT is primarily to hold immovable property, the conditions for the application of that paragraph would be met when shares in a REIT are alienated (in the case of REITs that are set up in a non-corporate form, the same result would follow from either paragraph 1 of Article 13, which could apply to some REITs set up as contractual arrangements, or the modified version of paragraph 4 that appears in paragraph 28.5 of the Commentary on Article 13).

50 38. Whilst it was agreed that applying paragraph 4 to allow the source taxation of gains resulting from the alienation of a large investor's interests in a REIT would be appropriate, different views were expressed as to whether that would also be an appropriate result for gains realized by small investors in a REIT.

51 39. For some members of the Working Party, paragraph 4 was intended to apply to any gain on the alienation of shares in a company that derives its value primarily from immovable property and there would be no reason to distinguish between a REIT and a publicly held company with respect to the application of that paragraph, especially since a REIT is not taxed on its income. These members considered that as long as a treaty does not provide an exception for the alienation of shares of companies listed on a stock exchange (as suggested in paragraph 28.7 of the Commentary on Article 13), there should not be a special exception for interests in a REIT.

52 40. Other members of the Working Party, however, disagreed. For them, a small investor's interest in a REIT should be treated as a security rather than as an indirect holding in immovable property. They considered that this treatment of the small investor's interest in a REIT as a security was consistent with this report's conclusion regarding the appropriate treatment of such interest for purposes of the taxation of distributions. These members also indicated that, in practice, it would be very difficult to administer the application of source taxation of gains on small interests in a widely held REIT. Some of them added that since REITs, unlike other entities deriving their

value primarily from immovable property, are required to distribute most of their profits, it is unlikely that there would be significant residual profits to which the capital gain tax would apply (as compared to other companies).

53 41. It was also noted that allowing source taxation of such gains could. result in a double exemption if the State of source did not exercise this taxing right and the State of residence of the investor was an exemption country (that problem, which is inherent to paragraph 4 of Article 13, is described in paragraph 28.9 of the Commentary on that Article).

54 42. The Working Party concluded that the Commentary on Article 13, which already discusses possible exceptions to paragraph 4, should be supplemented to address a possible additional exception for gains on small interests in a REIT. It therefore proposes the inclusion of the following new paragraphs in that Commentary.

Renumber Paragraph 28.9 of the Commentary on Article 13 as Paragraph 28.12 and add the Following New Paragraphs 28.9 to 28.11

55 28.9 Finally, a further possible exception relates to shares and similar interests in a Real Estate Investment Trust (see paragraphs 67.1 to 67.7 of the Commentary on Article 10 for background information on REITs). Whilst it would not seem appropriate to make an exception to paragraph 4 in the case of the alienation of a large investor's interests in a REIT, which could be considered to be the alienation of a substitute for a direct investment in immovable property, an exception to paragraph 4 for the alienation of a small investor's interest in a REIT may be considered to be appropriate.

56 28.10 As discussed in paragraph 67.3 of the Commentary on Article 10, it may 10 be appropriate to consider a small investor's interest in a REIT as a security rather than as an indirect holding in immovable property. In this regard, in practice it would be very difficult to administer the application of source taxation of gains on small interests in a widely held REIT. Moreover, since REITs, unlike other entities deriving their value primarily from immovable property, are required to distribute most of their profits, it is unlikely that there would be significant residual profits to which the capital gain tax would apply (as compared to other companies). States that share this view may agree bilaterally to add, before the phrase 'may be taxed in that other State', words such as 'except shares held by a person who holds, directly or indirectly, interests representing less than 10 per cent of all the interests in a company if that company is a REIT'. (If paragraph 4 is amended along the lines of paragraph 28.5 above to cover interests similar to shares, these words should be amended accordingly.)

57 28.11 Some States, however, consider that paragraph 4 was intended to apply 11 to any gain on the alienation of shares in a company that derives its value primarily from immovable property and that there would be no reason to distinguish between a REIT and a publicly held company with respect to the application of that paragraph, especially since a REIT is not taxed on its income. These States consider that as long as there is no exception for the alienation of shares in companies quoted on a stock