Real Estate Investment Trusts (REITs)

Part 25A-00-01

This document should be read in conjunction with Part 25A TCA 1997

Document last updated May 2021

Introduction

This manual outlines the 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. Legislation

The relevant legislation is contained in Part 25A – sections 705A to 705Q of the Taxes Consolidation Act (TCA) 1997. Sections 153(4A), 172D(3B), 617(1) and 739W TCA are also of relevance in this regard.

1.1. Conditions applying to a REIT [section 705B TCA]

A company electing to be a REIT, or a group electing to be a group REIT, must meet specific conditions. Some conditions, namely 3, 4 and 6 below, 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 –

1. be resident in the State and not in another territory;
2. be incorporated under the Companies Acts;
3. have its shares listed on the main market of a recognised stock exchange in a Member State;
4. not be a close company[1] within the meaning of Chapter 1 of Part 13 TCA 1997;

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 –

5. it must derive at least 75% of its aggregate income from property rental business;
6. 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 constituting the property rental business;
7. it must maintain a property to financing costs ratio of 1.25:1;
8. at least 75% of the aggregate market value of the assets of the REIT or of the group REIT must relate to assets of the property rental business;
9. it must ensure that the aggregate of the specified debt does not exceed 50% of the aggregate market value of the business assets of the REIT or of the group REIT; and

[1] Refer to TDM 13-01-02 for guidance on what constitutes a close company, and specifically to section 1 of that TDM in relation to the impact of the migration of Irish securities from the CREST system to Euroclear Bank in March 2021.

10. it must have a diversified share ownership and distribute at least 85% of its property income annually on or before the specified date of return date for the accounting period in relation to the REIT or the principal company of the group REIT.

1.2. Notice to become a REIT [section 705E TCA]

A company or the principal company of a group must give a notice to Revenue of its intention to become a REIT (form REIT 1) or group REIT (form REIT 2) and confirm that the conditions in paragraph 1.1. above are met. The notice must be in writing and specify the date 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 ss(3A) each time a new member is added to the group, a revised notice (form REIT 2A) must be submitted to Revenue within 30 days after the date on which the new member is added to the group.

2. Taxation

2.1. Taxation of a REIT [section 705G TCA]

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 CT under Case IV of Schedule D if it makes a distribution of less than 85% of its annual property income.

In addition, s.705G(3), extended the exemption from DIRT applicable to other similar investment vehicles to a REIT or group REIT.

A REIT or group REIT will be charged to CT under Case IV of Schedule D if, in computing the profits available for distribution, it has taken a deduction for any amount which is not wholly and exclusively incurred for the purposes of:

i) the property rental business, where it relates to the property rental business of the REIT, or

ii) the residual business, where it relates to the residual business of the REIT.

2.1.1 Use of funds raised and disposal proceeds by a REIT [sections 705I and 705IA]

Where a REIT or member of a group REIT disposes of a property from its property rental business, or raises cash from the issue of ordinary shares, and those funds are invested, then special rules can apply to the taxation of those investment returns.

For a period of 24 months from the date of disposal, or the date of share issue, any investment returns are to be treated as part of the property rental business (and therefore exempt from CT). Any such investment returns arising after the expiry of that 24 month period revert to being part of the residual business.

With effect from 8 October 2019, there are additional rules in relation to the use to which the proceeds from the disposal of a property from the property rental business can be put. Within a period commencing 12 months before the disposal and ending 24 months after the disposal, those proceeds should be used to:

i) repay debt used in the acquire, enhancement or development of the property being disposed of,

ii) acquire a property for use in the property rental business,

iii) develop or enhance other properties of the property rental business, or

iv) make a distribution to shareholders.

A practical difficulty may arise where a REIT is selling an older property, which was acquired with funding from the issue of ordinary shares, but wishes to reduce its -

- debt / asset ratio (referred to in section 705B(1)(b)(v)), and
- financing cost ratio (referred to in section 705H)

by (within the 24-month period after the disposal) repaying third-party debt used to acquire, enhance or develop another property of the property rental business. Revenue considers that a bona fide repayment of such third-party debt in those circumstances where in addition -

a) the debt of the REIT is all third-party debt,

b) both ratios are reduced, and

c) there is no tax avoidance[2],

can be treated as funds used in accordance with paragraph (i) above.

2.2. Taxation of shareholders in a REIT [section 705J TCA]

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
  - property income dividends, and
  - distributions paid out of the proceeds of the disposal of a property used in the property rental business from a REIT,

  as the provisions of subsections (2) and (3) of section 172D and subsection (4) of section 153 are disapplied[3].

[2] Including, but not limited to circular flows of funds.

- not subject to DWT on distributions from the profits of the residual business of the REIT.

However, non-resident investors who suffer DWT and 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.

Where shares in a REIT are held by an investment undertaking, that investment undertaking may be an IREF - Tax and Duty Manual Part 27-01b-02 refers.

Form DWT Claim Form- REIT refers.

3. Annual Statement [section 705M]

A REIT, or the principal company of a group REIT, must make a statement (Form REIT 3) to Revenue by 28 February in the year following the end of its accounting period, confirming that the conditions in paragraph 1.1 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 1.1 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.

[3] Note that section 172B(6) is not disapplied meaning that, in accordance with Ireland's transposition of the Parent / Subsidiary Directive in section 831(5), certain EU resident companies will not be subject to DWT on any distribution by a REIT. In addition, by virtue of section 831A, certain Swiss companies will not be subject to DWT on any distribution by a REIT.