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Dbriefs

Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs): Taking stock and opportunities

The Dbriefs M&A Tax series

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Agenda

- India
  - Regulatory evolution
  - Regulations
  - Tax implications
  - Recent IPOs
- Singapore
  - Taxation of S-REITs
  - Taxation of S-REITs ETF
- Australia
- Observations on the key differences
- Questions and answers

India

Regulatory evolution

REIT and InvIT

Timeline

2008
SEBI initially planned to introduce concept of REIT in India

October 2013
SEBI introduced draft REIT regulations in India

July 2014
SEBI introduced draft InvIT regulations

2014 – Quarter 2
SEBI issues final REIT and InvIT regulations

2016
SEBI issues guidelines for public issue of REIT and InvIT

May 2017
IRB InvIT Fund – First InvIT listed

April 2018
Guidelines for issuance of debt securities issued for REIT and InvIT

June 2018
Guidelines for preferential issue of InvIT units notified

April 2019
Embassy Office Park REIT – First REIT listed

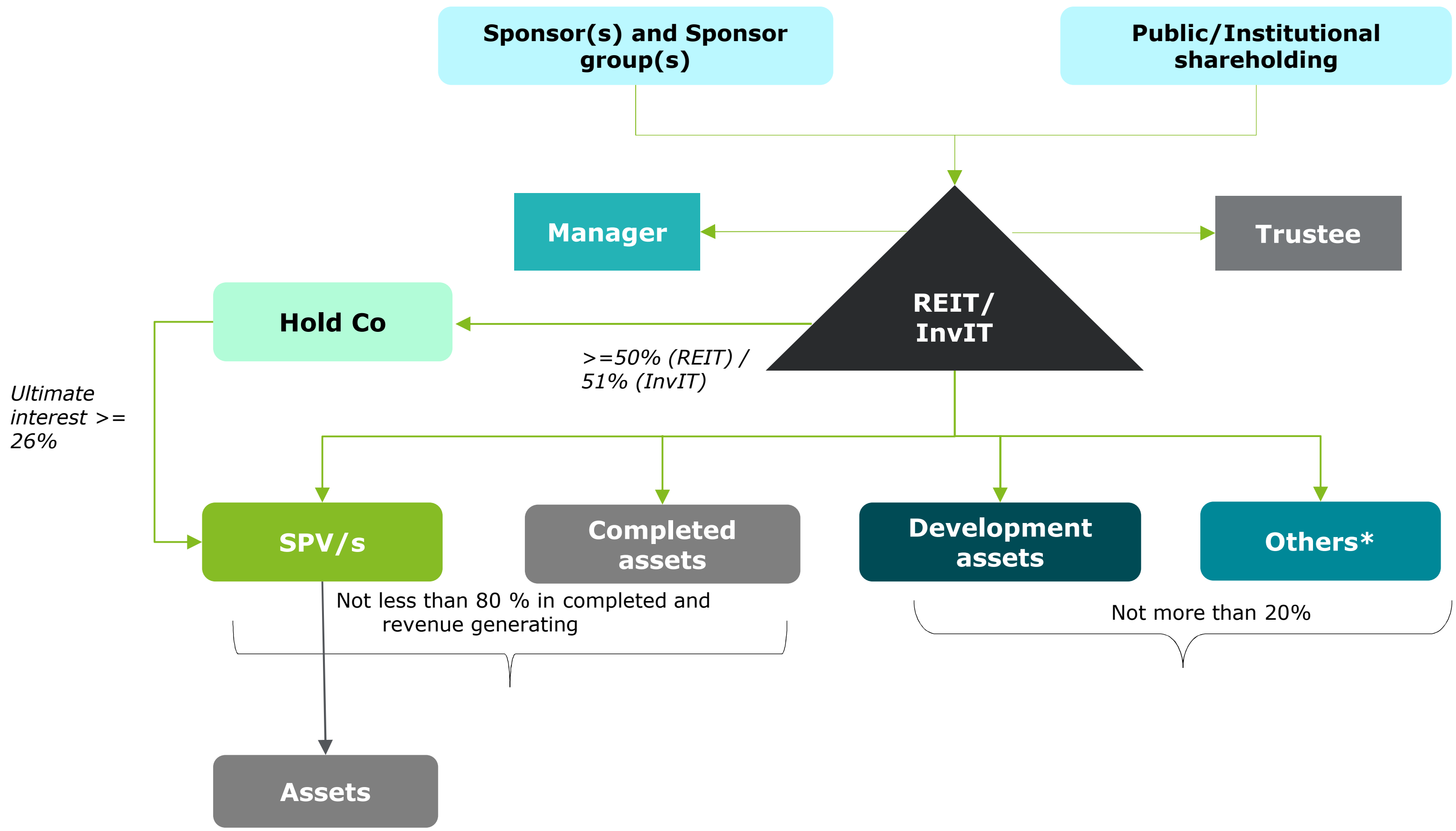
April 2019
SEBI issued guidelines for bidding allotment and trading lot size

India

Gist of regulations

REIT and InvIT

Typical structure



*Permissible investments detailed in following slide

REIT and InvIT
Eligible assets

Particulars	REIT	InvIT
Completed and revenue generating assets	>=80%	>=80%
Trust's stake in Hold Co	>=50%	>=51%
Trust's holding in the underlying projects (under a Hold Co structure)	>=26%	>=26%
Investment in under development assets/projects (investment in vacant land is specifically prohibited)	<=20% of value of REIT assets (subject to condition that such property will be held for at least 3 years after construction)	<=10% of value of the InvIT assets
Permissible other securities • Mortgage backed securities • Government securities • Money market instruments • Equity shares of listed companies*	<=20% of value of REIT assets (including under-development assets)	<=20% of value of REIT assets (including under-development assets)

*Subject to the condition that listed entity derives at least 75% of its operating income from real estate activity (in the case of a REIT) and at least 80% of its operating income from infrastructure sector (in the case of an InvIT)

REIT and InvIT
Listing obligations

REIT assets >= INR 5 Bn
Public unit holders >= 200
IPO size >= INR 2.5 Bn
Minimum investment INR 0.05 Mn
Minimum subscription >= 90%

Particulars	REIT/InvIT
Minimum public float	• Post issue capital < INR 16 Bn – at least 25% of total outstanding units • Post issue capital >= INR 16 Bn < INR 40 Bn - at least INR 4 Bn • Post issue capital >= INR 40 Bn – not less than 10% of total outstanding units
Participation by strategic investors	• Can invite subscriptions from the STI not less than 5% and not more than 25% of the total offer size
Offer for sale by existing unitholders	• Units can be offered for sale if units have been held by existing unit holders/seller for a minimum period of 1 year prior to filing of draft offer with SEBI • Holding period for the equity shares (including compulsorily convertible securities) or interest in SPV against which units to be issued shall be considered for above purposes
Timelines for listing	• Within 3 years of registration with 1 year of extension
Debt securities	• May issue debt securities in the manner specified by the SEBI, provided the debt securities shall be listed on recognized stock exchange(s)
Private placement route	• An InvIT may opt for private placement route instead of a public issue (with at least 5 investors, each subscribing to INR 10 Mn each)

InvIT assets >= INR 5 Bn
IPO size >= INR 2.5 Bn
Minimum investment INR 0.1 Mn
Subscription per applicant 100 units
Minimum subscription >= 90%

REIT and InvIT
Distribution conditions

Particulars	REIT	InvIT
SPV to REIT/InvIT/ Hold Co	• Minimum of 90% of net distributable cash flows shall be distributed to the REIT/InvIT/Hold Co	
Hold Co to REIT/InVIT	• Distributions shall be in the following manner – 100% of the cash flows received from SPVs; and – Minimum of 90% of net distributable cash flows generated on its own	
REIT/InvIT to unitholder	• Minimum of 90% of net distributable cash flows to be distributed to unit holders	
Due date of declaration	• Once every six months in every financial year	
Payment of distribution	• Not later than 15 days from the date of declaration	

India

Tax implications

REIT and InvIT
Tax implications

Particulars	REIT	InvIT
For Sponsors (prelisting/set-up stage)		
Transfer of shares of the SPVs to the REIT/InvIT in exchange of units of the REIT/InvIT	• Transaction **not regarded** as a "transfer" and hence no tax liability at the time of the exchange • Exempt from MAT	
Transfer of assets to the REIT/InvIT in exchange of units of the REIT/InvIT	• Taxable transaction since no specific exemption provided • No exemption from MAT	
For sponsors/investors (ongoing transactions)		
Sale of units of REIT/InvIT	• STCG would be taxed at 15% and LTCG would be taxable at 10% (exceeding INR 0.1 Mn) • For non-resident sponsors, rates would be subject to applicable DTAA	

*The above tax rates are excluding applicable surcharges and cess

REIT and InvIT
Tax implications (Cont'd)

Particulars	REIT	InvIT
For SPV/Hold Co		
Income derived from the asset	• Taxed as Business income/HP income	• Taxed as business income
Gains on sale of asset	• Taxable as capital gains	
Interest paid on loans availed from REIT/InvIT	• Deduction from income of SPV (only if related to the asset acquisition)	
Distribution of income in the form of dividends	• Exempt if 100% of equity share capital of the SPV/Hold Co is directly held by the REIT • DDT of 15% would apply at the SPV level in all other cases (including in cases where SPVs are held through a Hold Co)	

*The above tax rates are excluding applicable surcharges and cess

REIT and InvIT
Tax implications (Cont'd)

Particulars	REIT	InvIT
For REIT		
Interest received from SPVs	• Exempt in the hands of the REIT/InvIT • Withholding tax – Resident – 10% – Non-resident – 5%	
Income from directly held assets	• Exempt in the hands of the REIT • Withholding tax – Resident – 10% – Non-resident – 5%	• Taxed at maximum marginal rate
Dividend income from SPVs	• Exempt if 100% of equity share capital of the SPV/Hold Co is directly held by the REIT • Else, exemption is available provided DDT has been paid at the SPV level	
Capital gains on sale of assets/shares of SPVs	• Taxed at applicable rates (20%, 15%)	
Other income	• Taxed at maximum marginal rate	

*The above tax rates are excluding applicable surcharges and cess

REIT and InvIT
Tax implications (Cont'd)

Particulars	REIT	InvIT
For Unit holders/Investors		
Interest income	• Taxed at applicable rates of resident unit holders • For non resident unit holders, taxed at 5%	
Any other income distributed (including dividend income)	• Exempt in the hands of the unit holders	
Sale of units of REIT	• Resident - STCG would be taxed at 15% and LTCG at 10% (exceeding INR 0.1 Mn) • For non-resident unitholders rates would be subject to applicable DTAA	
Rental income	• Taxed at applicable rates for resident unit holders • For non resident unit holders, taxed at 40% (subject to DTAA)	• Not applicable

*The above tax rates are excluding applicable surcharges and cess

REIT and InvIT

Illustration - tax cost at business trust/SPV/unit holders

Business trust holding assets through SPV/s

Particulars	Structure without debt	Structure with debt from investors
At SPV Level		
Gross income	1,000	1,000
Less: Deductible expenses (Including depreciation/amortization of 50)	(100)	(100)
Less: Interest on loan	-	(500)
Profit before tax	900	400
Tax at 34.94%	(314)	(140)
Profit after tax	586	260
DDT on above	-	-
At business trust Level		
Net distribution from SPV	636	810
Gross income	NA	NA
Less: Deductible expenses*	NA	NA
Less: Interest on loan	NA	NA
Tax	Nil	Nil
Profit after tax	636	810

REIT and InvIT

Illustration - tax cost at business trust/SPV/unit holders (Cont'd)

Business trust holding assets through SPV/s

Particulars	Structure without debt	Structure with debt from investors
At investor level (resident)		
Distributions from business trust	636	810
Tax on interest component at 34.94%	-	(175)
Tax on dividend component	-	-
Tax on rental component at 34.94%	NA	NA
Net income	636	636
At investor level (non-Resident)		
Distributions from business trust	636	810
Tax on interest component at 5.25%	-	(26)
Tax on dividend component	-	-
Tax on rental component	NA	NA
Net income	636	784

*This is based on a position that the rental income would constitute business income in the hands of the non-resident unit holders and in the absence of PE in India there would not be any tax in their hands (under the DTAA)

REIT and InvIT
Some open issues

- No exemption from capital gains tax for the sponsor on the transfer of assets in exchange of units of the REIT and InvIT
- Only exchange of shares held as capital assets (and not other securities like CCDs or shares held as stock in trade) are eligible for the exemption
- No relief on stamp duty on transfer of assets
- No exemption from DDT for SPVs unless the REIT/InvIT holds 100% of the equity shares of the SPV
- Ambiguity around applicability of additional dividend tax of 10% on dividends received by the REIT
- Requirement of holding the REIT units for more than 36 months to qualify as long-term capital asset may act as a disincentive for investors to invest in the REIT vis-à-vis listed equity shares where the period of holding to qualify as long-term capital asset is more than 12 months. Parity is required to make it lucrative for investors to invest in units of a REIT

India

Recent IPOs

REIT and InvIT

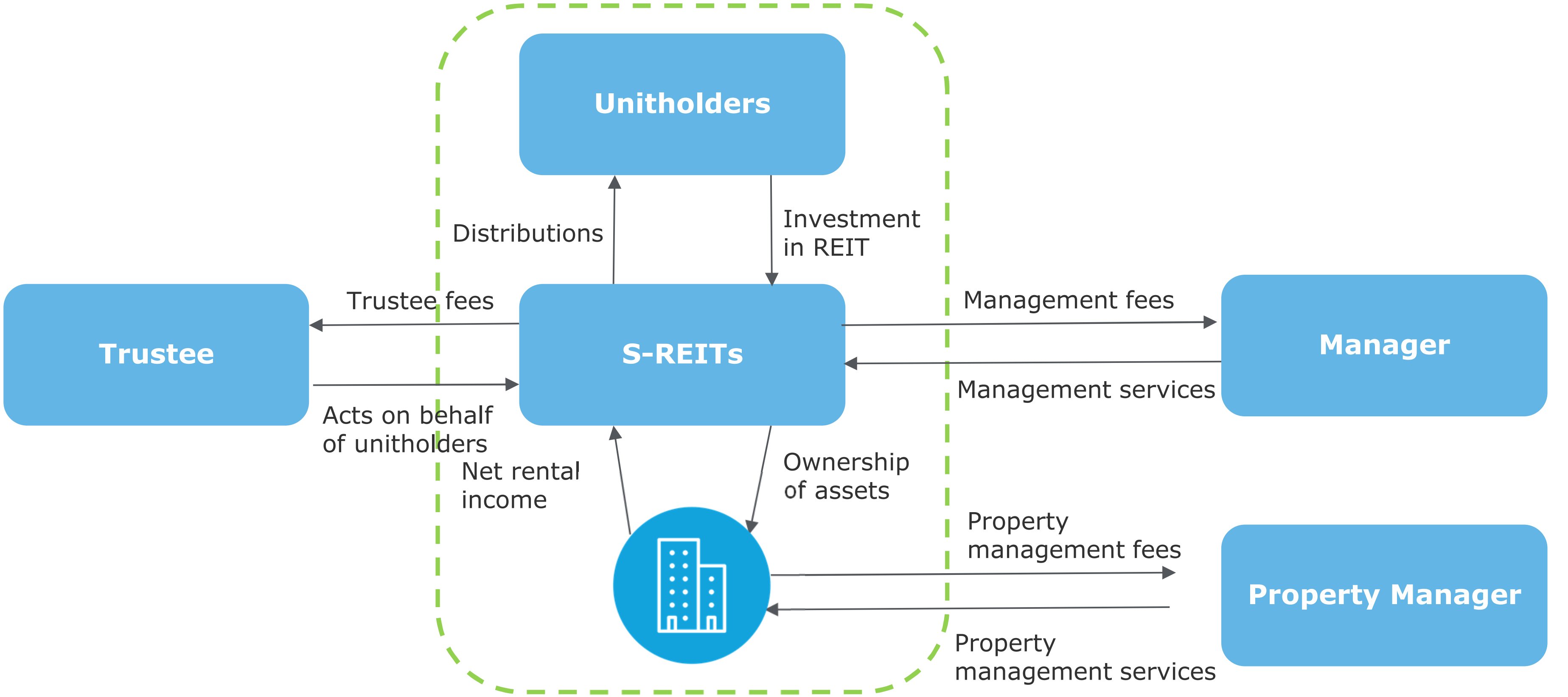
Particulars	Embassy Office Park REIT	IRB InvIT	IndiGrid InvIT
Market capitalization*	INR 251,562 Mn	INR 39,328 Mn	INR 23,810.80 Mn
Anchor investors	59 Anchor investors subscribing 36.70% of the total units offered	28 Anchor investors subscribing 35.37% of the total units offered	19 Anchor investors subscribing 45% of the total units offered
Offer price	INR 300	INR 102	INR 100
Market price*	INR 326	INR 67.75	INR 83.99

^While 11 InvITs have been registered, only 2 of them have made public issues up to date
*Market Price as on 3 May 2019

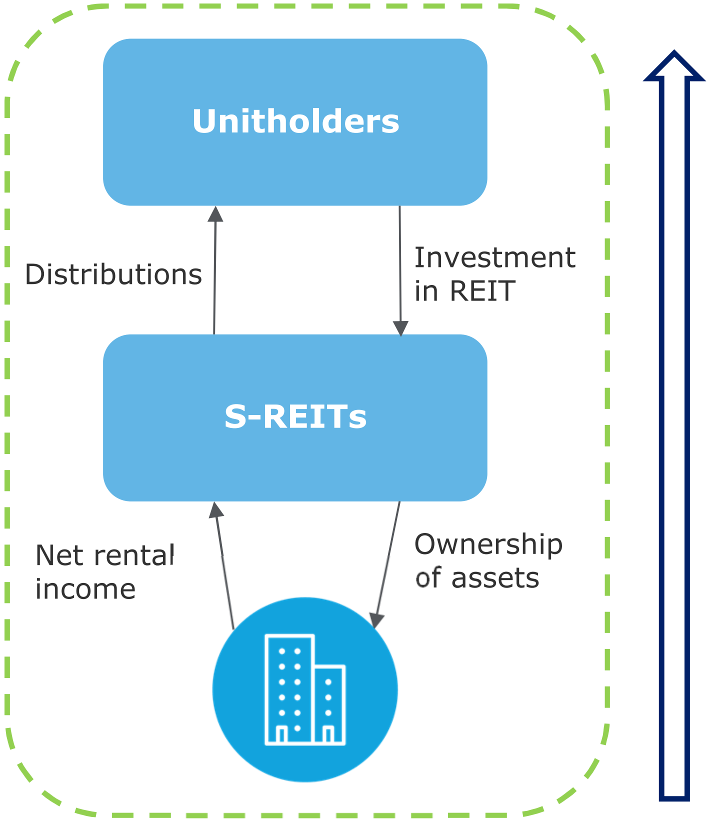
Singapore

Taxation of S-REITs

Overview of S-REITs ecosystem



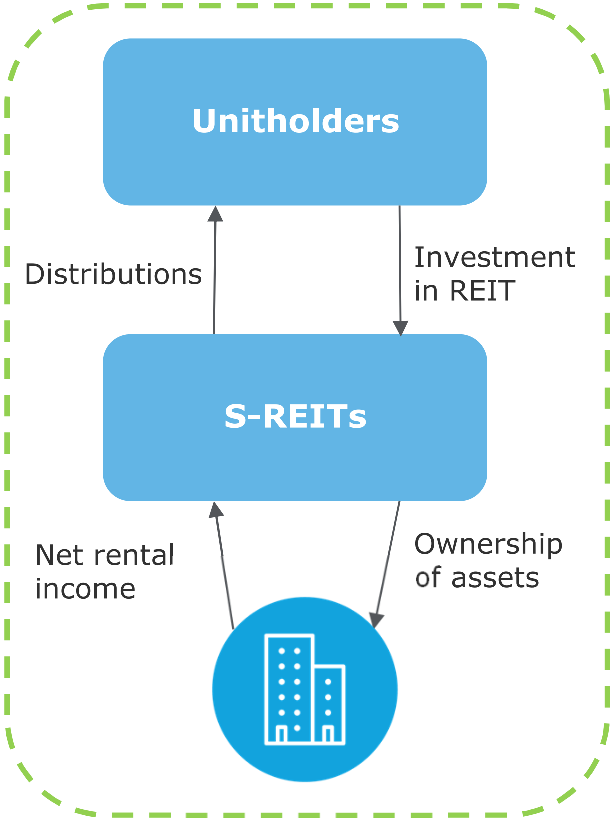
Taxation of S-REITs



Tax transparency treatment

- No tax will be imposed at the trustee level and the beneficiaries are subject to tax on the distributions received if the trustee distributes at least 90% of its taxable specified income to the unitholders in the same year in which the specified income is derived by the trustee

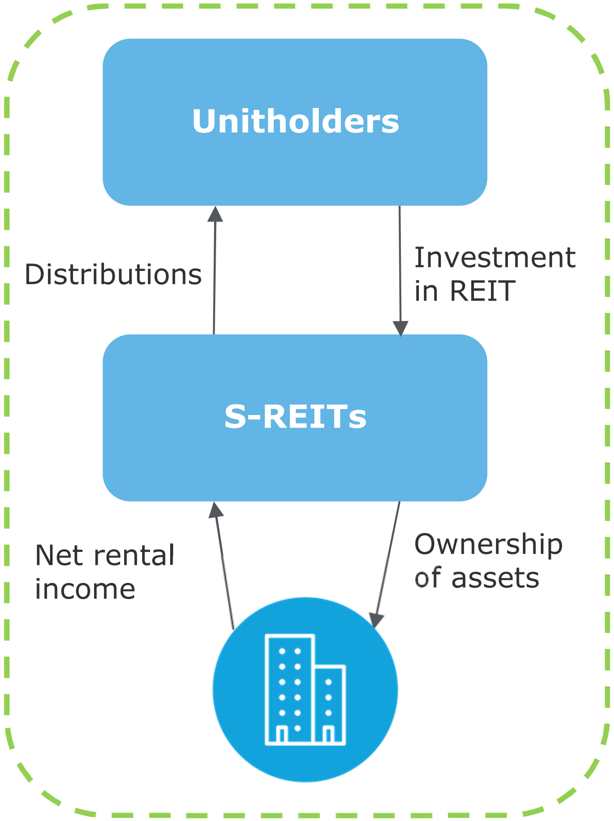
Taxation of S-REITs (Cont'd)



Tax treatment of unitholders

Qualifying unitholders	Tax treatment
Individuals who derive any distribution through a partnership in Singapore or from the carrying on of a trade, business or profession	Tax at the individual's tax rates
Other Individuals	Exempted from tax
• Companies incorporated and resident in Singapore; • Singapore branches of companies incorporated outside Singapore for distributions received on or after 1 January 2015 • Bodies of persons incorporated or registered in Singapore • International organisations	Tax at their respective tax rates unless otherwise exempt

Taxation of S-REITs (Cont'd)



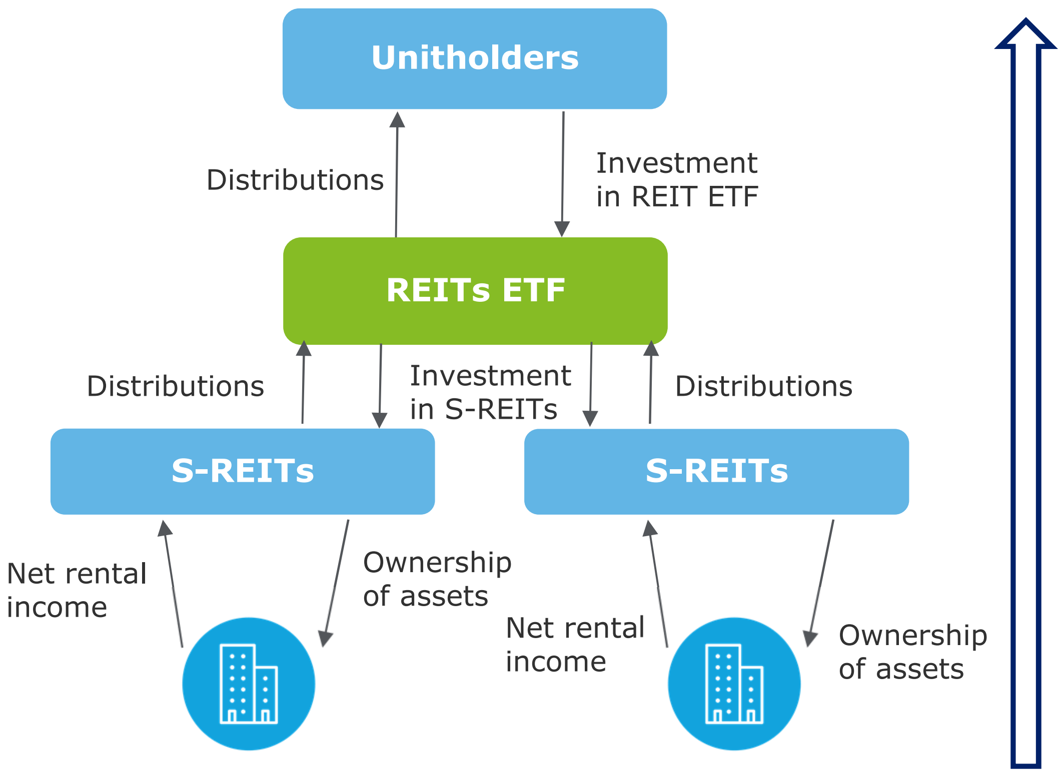
Tax treatment of unitholders

Non-resident non-individual unitholders	Tax treatment
• Qualifying non-resident non-individuals who – Does not have any PE in Singapore; or – Carries on any operation through a PE in Singapore, where the funds used by that person to acquire the units in that S-REIT are not obtained from that operation	• Subject to a 10% final withholding tax in respect of distributions made during the period 18 Feb 2005 to 31 Dec 2025 • From 1 Jul 2019 to 31 Dec 2025, qualifying non-resident non-individual investors will apply to a qualifying fund under sections 13CA, 13X or 13Y that is not resident in Singapore
• Others (e.g., Singapore branches of non-resident, non-Singapore incorporated company without waiver of withholding tax for distributions received before 1 Jan 2015)	• Subject to withholding tax at the prevailing corporate tax rate

Singapore

Taxation of S-REITs ETF (Exchange Traded Funds)

Taxation of S-REITs ETF



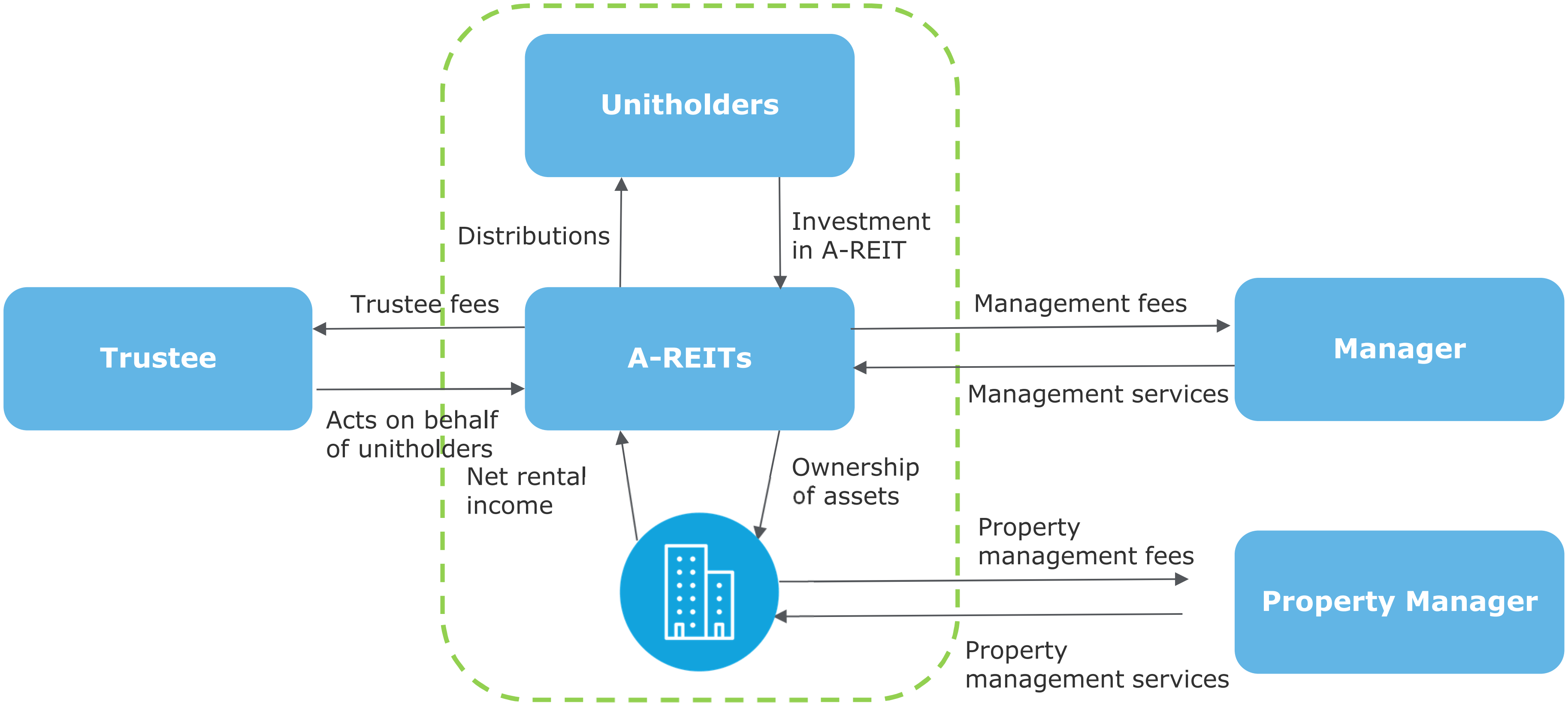
Tax transparency treatment

- Broadly, tax transparency treatment of a S-REIT is extended to an approved REIT ETF with effect from 1 July 2018 [Section 43(2AA)]
- Salient features include
  - No tax will be imposed on the trustee of an approved REIT ETF in respect of qualifying S-REIT distributions received by the REIT ETF, provided the REIT ETF distributes **all** qualifying S-REIT distributions (net of expenses) in each relevant period to the unit holders by the next available distribution period
  - Reduced withholding tax rate of 10% applies to distributions made by REIT ETF to qualifying non-resident unitholders from 1 July 2018 to 31 December 2025. Qualifying funds under sections 13CA, 13X, or 13Y that are not resident in Singapore could qualify as non-resident unitholders from 1 July 2019 to 31 December 2025

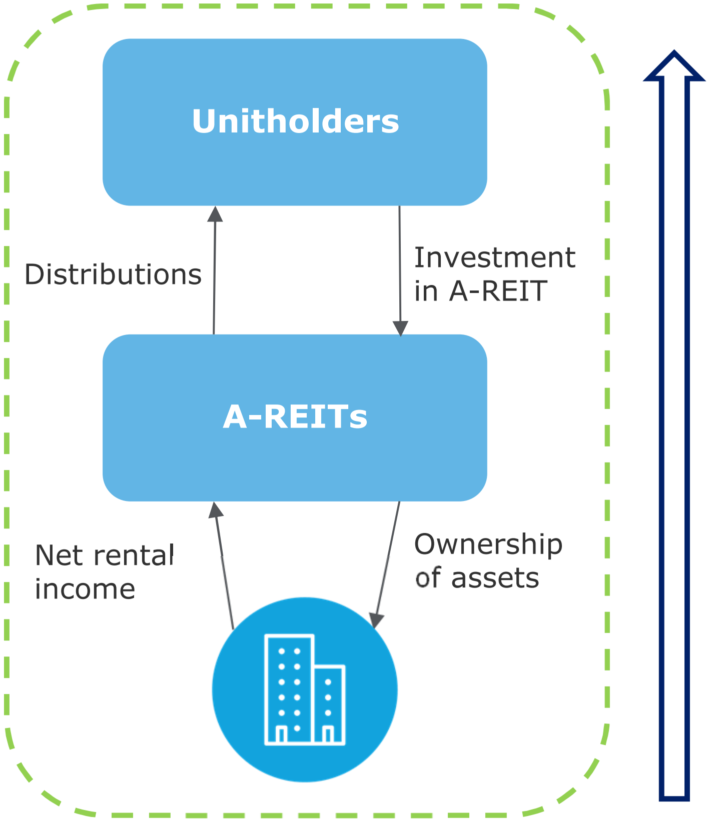
Australia

Overview and taxation of A-REITs

Overview of a typical A-REIT ecosystem



Taxation of A-REITs

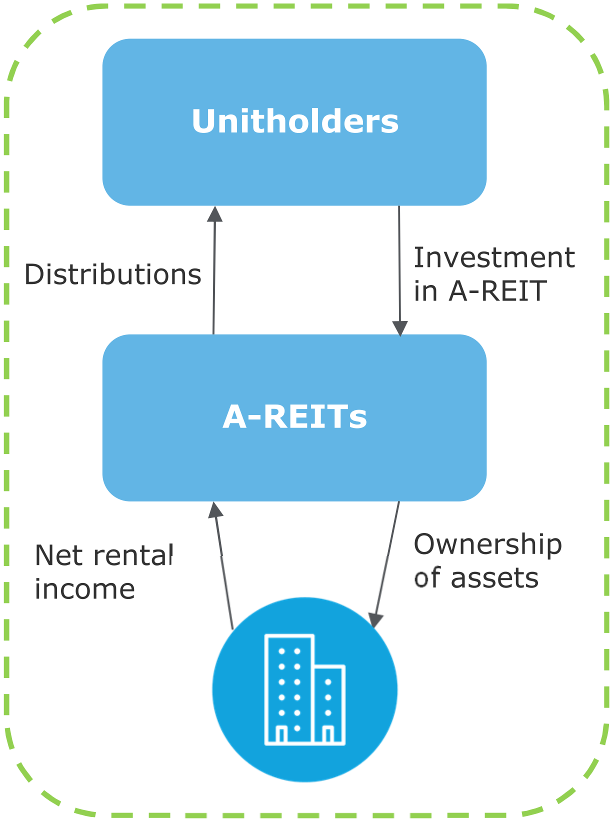


Tax flow-through treatment

The trustee should not be liable to tax on the A-REIT's income if

- In the case where the A-REIT is an Attribution Managed Investment Trust (AMIT) – the unitholders are attributed all the determined trust components for the income year
- In the case where the A-REIT is not an AMIT – the unitholders are made presently entitled to the income of the A-REIT in respect of the income year

Taxation of A-REITs



General treatment of unit trust distributions of taxable income

Unitholder type	Tax treatment
Australian tax resident individuals	Tax at the individual's tax rates
Australian tax resident companies	Tax at 27.5% or 30%
Australian complying superannuation funds	Tax at 0% or 15%
Non-residents where A-REIT is a Managed Investment Trust (MIT) and the unitholder is in an "information exchange country"	Trustee withholds 15% from net rental income and capital gains
Non-residents where A-REIT is a MIT and the unitholder is **not** in an "information exchange country"	Trustee withholds 30% from net rental income and capital gains
Non-residents where A-REIT is **not** a MIT	Non-final tax (30% if company beneficiary)

* 10% withholding for MITs that hold investments in certain efficient energy buildings

Cash distributions in excess of trust taxable income generally not taxable up to cost of investment – amounts greater than cost of investment subject to capital gains tax treatment

Taxation of A-REITs

Other considerations for investing in Australian real property

- Foreign resident capital gains withholding (FRCGW)
- Goods and services tax (GST)
- Stamp duty
- Tax depreciation
- Corporate Collective Investment Vehicles (CCIVs)

Infrastructure investments

- Historical use of stapled structures
  - Operating company/trust – derives active income such as management fees, licence fees, development profits, etc.
  - Asset trust – derives “passive” income, including rent from the operating company/trust
  - Operating company/trust profits subject to 30% tax rate
  - Asset trust a “flow through” with income (including rent from operating company/trust) subject to MIT withholding (15% or 30%) for foreign investors
- Recent staple entity integrity measures
  - Prevents active business income from accessing the 15% MIT withholding rate
  - Transitional measures for existing stapled entity structures

India, Singapore, and Australia

Key observations of differences

Observation of the differences of REIT regimes

Parameters	India	Singapore	Australia
Exchange of shares of SPV for REIT units	• Exempt	• Non taxable if it is capital in nature	• Generally taxable transaction (certain rollovers may apply)
Exchange of assets for REIT units	• Taxed at applicable capital gains rates	• Non taxable if it is capital in nature	• Taxable transaction (rate depends on investor profile)
Sale of REIT units by the sponsor/investors	• Taxable at 15%/10%	• Non taxable if it is capital in nature	• Taxable transaction (rate depends on investor profile)
Levels of tax on asset income	• Single (at SPV level/at investor level where property is held directly by REIT)	• Single, at investor level	• Single, at investor level

- Structurally, S-REITs, and A-REITs hold properties directly whereas the I-REIT tax regime discourages such a structure
- Transfer of shares of SPV to a REIT at the set-up stage is exempt in India, whereas there are no special concessions under S-REITs and A-REITs regimes
- REIT distributions from rental income source received by non-residents in India is charged at maximum marginal rates (subject to DTAA). However, such income derived by non-residents in Singapore and Australia is typically subject to withholding tax at a relatively lower rate in some cases
- No special benefits to pension/superannuation fund in India. In Australia, pension/superannuation funds have a concessionary taxation regime (0% or 15% tax rate)

Questions and answers

Glossary

Bn	Billion
CCD	Compulsory Convertible Debenture
DDT	Dividend Distribution Tax
DTAA	Double Taxation Avoidance Agreement
Hold Co	Holding Company
HP	House Property
INR	Indian National Rupee
InvIT	Infrastructure Investment Trust
InvIT regulation	Securities Exchange Board of India (Infrastructure Investment Trust) Regulations 2014
IPO	Initial Public Offer
LTCG	Long Term Capital Gain
MAT	Minimum Alternate Tax
MN	Million
NBFC	Non- Banking Financial Company
PE	Permanent Establishment
REIT	Real Estate Investment Trust
REIT regulation	Securities Exchange Board of India (Real Estate Investment Trust) Regulations 2014
SEBI	Securities Exchange Board of India
SPV	Special Purpose Vehicles
STCG	Short Term Capital Gain
STI	Strategic Investors

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