Ireland introduces REIT Legislation
Finance Act 2013

The new legislation is welcome at a time when there is significant overseas interest in acquiring Irish real estate.

Real Estate Investment Trusts (REITs) are recognised as important vehicles for property investment in over 30 jurisdictions throughout the world. Irish REITs will be listed on the main market of a recognised stock exchange in an EU member state and should have the effect of attracting fresh capital into the Irish property market and thus improve further the stability of the property market. It will also allow smaller scale investors the opportunity to access quality commercial property returns in a regulated environment.

Key features of the legislation are set out below:

Tax exemption

- Tax exemption within the REIT in respect of the income and chargeable gains of a property rental business.
- A company becomes a REIT when notice is given to Revenue and certain conditions are met.
- The provisions allow a REIT to have 100% subsidiaries that also qualify for the tax exemption.

REIT constitution and ownership

- Must be Irish incorporated and tax resident.
- Its shares must be listed on a recognised stock exchange in an EU member state.
- Cannot be a closely controlled company (unless owned by certain "qualifying investors"), such as pension funds, a QIF and NAMA.
- Ordinary shares can be of only one class. There can be fixed rate non voting preference shareholders.

Key conditions

- Must derive at least 75% of its aggregate income from its property rental business, but the tax exemption applies only to the income and chargeable gains of the property rental business. It can carry on a residual business, as defined, which is taxed in the normal manner.
- In addition, 75% of the market value of the REIT must relate to assets of the property rental business.
- Within three years of commencement, a REIT must hold at least three properties, none of which have a market value exceeding 40% of the total value of properties of the property rental business.
- At least 85% of property income (excluding capital gains) must be distributed to shareholders on or before the tax return filing date for the relevant accounting period.
- Maintain a loan to market value ratio up to a maximum of 50%.
- Where the ratio of property income and property financing costs goes below a ratio 1.25: 1 the excess up to an amount of 20% of the property income, is subject to corporation tax.
- In addition, debt levels must not exceed 50% of the market value of the assets of the REIT.
- It can hold non Irish assets. Therefore an Irish REIT holding foreign investment property either directly or via a subsidiary is allowed.

Irish Withholding Tax and tax charges

- Property income dividends paid by the REIT are subject to Irish Dividend Withholding Tax (current rate 20%), which is taxable in the hands of the shareholders wherever tax resident. For non resident shareholders, treaty relief should be available to mitigate.
- A tax charge will arise if the REIT pays a dividend to shareholders with 10% or more of the share capital, distribution or voting rights in the REIT (other than "qualifying investors" ie pension funds and others as defined) unless reasonable steps were put in place to prevent the making of the distribution to such person.
- A corporation tax charge will arise where a property asset is developed at a cost exceeding 30% of its market value and sold within a three year period.

Costs of converting to or transferring assets to a REIT

- Stamp duty, which is currently at 2%, will apply to properties acquired. A transfer of shares in a REIT will also be liable to stamp duty at a rate of 1%.
- Where a company converts to a REIT, whilst there is no conversion charge, there will be a deemed sale and reacquisition of its assets at market value on that date. This may not in some cases trigger capital gains given the market is recovering.

Contacts

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