



## Information sheet - REITs in Germany

The German REIT Act (Act for the creation of German property companies listed on public stock exchanges) was announced on 1 June 2007 in the Federal Gazette, and came into force with retroactive effect from 1 January 2007.

As in many other countries, the establishment of REITs is now also possible in Germany. REITs are property companies which remain largely tax-exempt, provided that they meet the legal requirements, and are not subject to any particular product or managerial supervision by the Federal Financial Supervisory Agency (BaFin).

### Exit Tax

Until now, German companies have been faced with relatively high tax when they sell property, due to the exposure of hidden reserves. Now enterprises have the possibility of increasing their liquidity by investing the real estate they own tax-efficiently in REITs.

The exit tax for which the REIT Act makes provision enables the tax payable upon the sale of immovable assets to be halved until the end of 2009, i.e. only half of the difference between the selling price and the book value is taxed. The condition is that the real estate has formed part of the business assets for at least five years.

Sale and leaseback structures are allowed.

### Conditions for acceptance as a REIT

In Germany, REITs can only be established in the form of a listed public limited company (Aktiengesellschaft - AG). They are subject to neither corporation tax nor trade tax, provided that they meet and always comply with the legal requirements for fulfilment of REIT status.

A stock market listing is compulsory. The minimum share capital is €15 million.

90% of the net profit must be distributed to the REIT shareholders in the form of a dividend. The net profit from the REIT is taxed at shareholder level.

No investor may hold 10% or more of the shares issued, either directly or indirectly.

The core business of the REITs must consist of holding and managing real estate portfolios, not of trading in land. The REIT Act allows a maximum of half of the real estate to be sold within five years.

In addition,

- at least 75% of the assets must consist of property and
- at least 75% of the gross revenue must come from renting, leasing, letting and selling said property.

Furthermore, there is a limit on finance through borrowing. The equity may not be less than 45% of the value of the property.

Small investors must also have the opportunity to invest in REITs. It is stipulated that at least 15% of the shares must be in the hands of investors who each hold no more than 3% of the shares (widely spread shareholdings). Failure by the REIT fail to reach the minimum spread ratio in the long term may entail forfeiture of REIT status. 25% of the shares must be widely spread upon listing.

### **The route to a tax-exempt REIT**

First of all, a public limited company (Aktiengesellschaft – AG) must be established and entered in the Register of Companies in the traditional way and have its registered office and management in Germany.

The AG may then register with the Federal Central Tax Office as a pre-REIT.

Pre-REIT status facilitates the tax-favourable transfer (exit tax) of property to companies which are intended to become a REIT. However, this does not justify exemption from corporation or trade tax. After registration, the pre-REIT must prove to the Federal Central Tax Office at specified times that it fulfils the requirements of the objects of the company and the structure of the assets.

As soon as the pre-REIT fulfils the other requirements for a REIT, it may apply for a stock market listing. This must take place within three years of application to the Federal Central Tax Office, in order not to lose the status of a pre-REIT.

Once it has a stock market listing, the company may be entered in the Register of Companies as a REIT. Entry in the Register of Companies is crucial to commencement of tax exemption, which comes into force effective retroactively from the beginning of the current financial year of the REIT.