

# **IRAS e-Tax Guide**

## **Income Tax Treatment of Real Estate Investment Trusts and Approved Sub-Trusts**



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# **Income Tax Treatment of Real Estate Investment Trusts and Approved Sub-Trusts**

## **1 AIM**

- 1.1 This e-Tax guide explains the income tax treatment for a real estate investment trust (“REIT”)<sup>1</sup> and an approved sub-trust of a REIT<sup>2</sup>.
- 1.2 The guide will be relevant to you if you are a trustee<sup>3</sup>, manager, unit holder or potential investor of a REIT and an approved sub-trust of a REIT.

## **2 AT A GLANCE**

- 2.1 The Comptroller of Income Tax (“CIT”) will accord tax transparency treatment to a REIT on the specified income distributed by the trustee, subject to certain conditions. The specified income will not be taxed in the hands of the trustee of the REIT, but will only be taxed in the hands of the unit holders, unless the unit holders are specifically exempted from tax.
- 2.2 This e-Tax guide sets out the:
  - a. tax transparency treatment;
  - b. tax treatment of the trustee;
  - c. withholding tax applicable to REIT distributions;
  - d. tax treatment of the unit holder; and
  - e. administrative procedures:
    - i. Application for tax transparency treatment;
    - ii. Application for an approved sub-trust of a REIT;
    - iii. Units held by unit holders who are individuals;
    - iv. Units held by nominees;
    - v. Information and documentation of unit holders;
    - vi. Claim for refund of tax over deducted from distributions;
    - vii. Return of capital by the trustee; and
    - viii. Filing tax returns and estimated chargeable income.

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<sup>1</sup> It replaces the e-Tax guide on “Income Tax Treatment of Real Estate Investment Trusts” published on 3 Nov 2015.

<sup>2</sup> It replaces the e-Tax guide on “Income Tax Treatment of Approved Sub-Trust of a Real Estate Investment Trust” published on 14 May 2008.

<sup>3</sup> The e-Tax guide “Tax Exemption under Section 13(12) for Specified Scenarios, Real Estate Investment Trusts and Qualifying Offshore Infrastructure Project/Asset” published on 6 Jan 2017 may be relevant to the trustee/manager.

### **3 GLOSSARY**

#### **3.1 Approved sub-trust of a REIT**

This refers to a sub-trust of a REIT which has been granted an approved sub-trust status as it has met the qualifying conditions set out in paragraph 9.1 of the e-tax guide.

#### **3.2 Qualifying Non-resident Non-individual Unit Holder**

This refers to a non-resident non-individual unit holder who:

- does not have any permanent establishment in Singapore; or
- carries on any operation through a permanent establishment in Singapore, where the funds used by that person to acquire the units in that REIT are not obtained from that operation.

#### **3.3 Qualifying Unit Holders**

Qualifying unit holders<sup>4</sup> will receive distributions from the trustee of a REIT without deduction of tax. They comprise:

- i. an individual;
- ii. a company incorporated and resident in Singapore;
- iii. a Singapore branch of a company incorporated outside Singapore that has obtained the CIT's approval for distributions to be made to it by the REIT without deduction of tax for distributions received by the branch before 1 January 2015. For distributions received on or after 1 January 2015, a Singapore branch of a company incorporated outside Singapore will receive such distributions without deduction of tax<sup>5</sup>. There is no need for the branch to obtain prior approval from CIT;
- iv. a body of persons<sup>6</sup> incorporated or registered in Singapore, including a charity registered under the Charities Act (Cap. 37) or established by any written law, a town council, a statutory board, a co-operative society registered under the Co-operative Societies Act (Cap. 62) or a trade union registered under the Trade Unions Act (Cap. 333); and

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<sup>4</sup> Do not include a person acting in the capacity of a trustee.

<sup>5</sup> Section 45G(4A) of the ITA.

<sup>6</sup> As defined in section 2(1) of the ITA.

- v. an international organisation that is exempt from tax on such distributions by reason of an order made under the International Organisations (Immunities and Privileges) Act (Cap. 145)<sup>7</sup>.

### **3.4 REIT**

For income tax purposes, a REIT<sup>8</sup> refers to a trust that is constituted as a collective investment scheme authorised under section 286 of the Securities and Futures Act (Cap. 289) and listed on the Singapore Exchange, and that invests or proposes to invest in immovable property and immovable property-related assets.

### **3.5 Rental Support Payment**

Rental support payment<sup>9</sup> in relation to immovable property, means any payment:

- a. made under an agreement —
  - i. made at the time of the sale mentioned in section 43(2A)(a)(v)(A) or 43(2A)(b)(iii)(A) of the ITA; and
  - ii. that provides for such payment to be made only for a fixed period of time; and
- b. that is intended to compensate a party to the agreement in the event that the amount of rental income from the property over a period of time is less than an amount agreed as the expected rental income for such period, taking into account prevailing and forecasted market conditions at the time of that sale.

### **3.6 Specified Income of a REIT**

The types of REIT income that qualify for tax transparency treatment under section 43(2A)(a) and (b) of the Income Tax Act, Revised Edition 2014 (Cap. 134) ("ITA") are:

- a. rental income or income from the management or holding of immovable property but not including gains from the disposal of immovable property;
- b. income that is ancillary to the management or holding of immovable property<sup>10</sup> but not including gains from the disposal of immovable property;

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<sup>7</sup> Section 45G(4B) of the ITA.

<sup>8</sup> As defined in section 43(10) of the ITA.

<sup>9</sup> As defined in section 43(10) of the ITA.

<sup>10</sup> This refers to income that the trustee derives from carrying out activities ancillary to its primary activities of managing or holding immovable properties. Examples of such income include interest income derived by the trustee from placing cash surpluses in bank deposits or debt securities.

- c. income that is payable out of rental income or income from the management or holding of immovable property in Singapore, but not out of gains from the disposal of such immovable property;
- d. rental support payment that is paid to the trustee on or after 29 Dec 2016 by:
  - i. the seller who sold to the trustee the property or any interest in the owner of the property;
  - ii. a person who wholly owns (directly or indirectly) the seller; or
  - iii. any other person approved by the Comptroller.

The rental support payment must be on an open market value basis. Any amount of rental support payment which is in excess of the shortfall in market rental income will not be granted tax transparency and will be taxed in the hands of the trustee; and

- e. distribution from an approved sub-trust<sup>11</sup> of the REIT in cash out of the following types of income:
  - i. rental income or income from the management or holding of immovable property but not including gains from the disposal of immovable property;
  - ii. income that is ancillary to the management or holding of immovable property but not including gains from the disposal of immovable property; and
  - iii. rental support payment that is paid to the trustee of the sub-trust on or after 29 Dec 2016 by:
    - a) the seller who sold to the trustee the property or any interest in the owner of the property;
    - b) a person who wholly owns (directly or indirectly) the seller; or
    - c) any other person approved by the Comptroller.

The rental support payment must be on an open market value basis. Any amount of rental support payment which is in excess of the shortfall in market rental income will not be granted tax transparency and will be taxed in the hands of the trustee of the sub-trust.

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<sup>11</sup> Tax transparency treatment will only be accorded to the distributions of a REIT made out of the distribution it receives from an approved sub-trust, if the sub-trust enjoys approved sub-trust status during the period the sub-trust derived its income (out of which the distribution is made) and at the point of distribution to the REIT.



## **4 BACKGROUND**

- 4.1 This e-Tax guide provides details on the tax transparency treatment on certain types of income derived and distributed by the trustee of a REIT and an approved sub-trust of a REIT as well as the administrative procedures relating to the tax treatment.

### **(A) INCOME TAX TREATMENT OF A REIT**

## **5 TAX TRANSPARENCY TREATMENT**

- 5.1 Under section 43(2) of the ITA, the CIT may agree not to charge the trustee of a trust with any tax, and to subject the beneficiary to tax on the distribution received from the trustee.
- 5.2 The trustee / manager of a proposed/newly constituted REIT or its sponsor needs only to submit an application form (see paragraph 10 for details) to the CIT to apply for the tax transparency treatment.
- 5.3 The tax transparency treatment is subject to the following conditions:
- a. The trustee distributes at least 90% of its taxable income to the unit holders in the same year in which the income is derived by the trustee. For the avoidance of doubt, the income in this condition refers to the specified income that could be accorded the transparency treatment under section 43(2A) of the ITA; and
  - b. The trustee and manager jointly undertake to comply with section 45G of the ITA and the conditions set out in Annex 2 of this e-Tax guide.

## **6 TAX TREATMENT OF THE TRUSTEE**

- 6.1 A trustee of a REIT is taxed at the prevailing corporate tax rate on its income. Where the tax transparency treatment applies, the specified income that is distributed to the unit holders will not be taxed in the hands of the trustee. Consequently, the trustee is taxed on the following income that do not qualify for tax transparency treatment:
- a. Specified income derived by the REIT but not distributed to the unit holders in the same year in which the income is derived; and
  - b. Income other than the specified income including gains from the disposal of any investments such as immovable properties, shares, etc. that are determined by the CIT to be revenue gains chargeable to tax.

- 6.2 Whether the REIT is trading in immovable properties or shares is a question of fact. The trustee shall not distribute any gain arising from the disposal of any immovable properties or shares until the CIT agrees on the nature of the gain and its taxability. However, this condition was lifted from 3 Nov 2015. This means that the trustee is not required to seek CIT's agreement before it can distribute any gain from the disposal of investments made on or after 3 Nov 2015 to the unit holders<sup>12</sup>. Where the gain from the disposal of any investment is revenue in nature, the trustee will be liable to tax on the assessment raised on the revenue gain.
- 6.3 The trustee of a REIT will not be taxed on any distribution from the trustee of an approved sub-trust of a REIT that is made out of income that has been subjected to tax at the sub-trust level. If the trustee of the REIT onward distributes such distribution to its unit holders, such distribution will also be not taxed in the hands of the unit holders.

#### **Distributions out of specified income in units (in lieu of cash)**

- 6.4 The trustee may make distributions out of specified income either in cash or units in the REIT<sup>13</sup>. For distributions made in units in the REIT, the trustee has to provide a confirmation in writing at the time of submitting the tax return, that the following conditions have been met for distributions made in the relevant period:
- a. The distribution is made on or after 1 April 2012<sup>14</sup>, out of specified income and the distribution is made in the same year in which the income is derived by the trustee (more details at paragraph 8.12);
  - b. Before making the distribution, the trustee has given to all unit holders receiving the distribution an option to receive the same, either in cash or units in the REIT; and
  - c. The trustee has sufficient cash available<sup>15</sup> on the date of such distribution to demonstrate that it could have made the distribution fully in cash had no option of choosing between the distributions in cash or units in the REITs been given to the unit holders.
- 6.5 Such distributions in units will be taxed in the hands of the unit holders as if they had received the distributions in cash, unless they are specifically exempted from tax on such distributions.

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<sup>12</sup> If the trustee of the REIT distributes the gain, such distribution will not be taxed in the hands of the unit holders.

<sup>13</sup> The option of making distributions in units does not apply to the sub-trust of a REIT.

<sup>14</sup> As announced in Budget 2012. The distribution that was made at any time from 1 July 2009 to 31 December 2010 would also qualify under the temporary measure granted to address difficulties faced by REITs during the 2009 financial crisis.

<sup>15</sup> "Sufficient cash available" includes the credit facilities that the trustee of the REIT has actually obtained from its banks/financial institutions for the specific purpose of making the distribution. CIT may call for supporting documents for verification purposes.

## **Rollover Income Adjustments**

- 6.6 A REIT may fail to distribute according to its distribution policy due to differences in rounding off a distribution per unit to the nearest cent. For example, a REIT which has a 100% distribution policy could only distribute 99% due to such rounding off. The CIT allows such rounding difference to be added to or deducted from the taxable specified income/ tax exempt income of the trustee for the next distribution. This arrangement, known as the “Rollover Income Adjustments” (“RIA”), is accepted based on the understanding that:
- a. the shortfall in distribution is not material;
  - b. no major issue that would cause undue delay in reaching the agreement with the CIT is envisaged; and
  - c. CIT reserves the right to review such arrangement as and when needed.
- 6.7 In compliance with the conditions for tax transparency treatment, the trustee is required to distribute at least 90% of its taxable specified income to the unit holders. However, the taxable specified income as computed by the CIT may be different from that determined by the trustee for distribution purpose. To ease tax compliance and governance, the CIT allows the above difference to be included as RIA for the next distribution immediately after the difference has been agreed<sup>16</sup> with the CIT.

## **Tax exempt income**

- 6.8 Where the tax exempt income as computed by the CIT is different from that determined by the trustee for distribution purpose, the difference is to be included as RIA for the next distribution of the tax exempt income.
- 6.9 Examples of RIA computation are at Annex 3. Please also refer to paragraph 8.13.

## **7 WITHHOLDING TAX APPLICABLE TO REIT DISTRIBUTIONS**

- 7.1 Withholding tax requirement under section 45G of the ITA applies to distributions made to non-resident non-individual unit holders. The trustee has to deduct tax at the prevailing corporate tax rate<sup>17</sup> from the gross distributions except for distributions made to Qualifying Non-Resident Non-Individual Unit Holders. During the period from 18 February 2005 to 31 March 2020<sup>18</sup>, the tax rate is 10%. The tax deducted at the rate of 10% is a final tax.

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<sup>16</sup> Where taxpayer does not agree with the CIT’s adjustments, the CIT may tax the amount under dispute and issue a Notice of Assessment so that the dispute can be resolved in a timely manner.

<sup>17</sup> This withholding tax is not a final tax.

<sup>18</sup> Section 43(3B) of the ITA.

## 8 TAX TREATMENT OF THE UNIT HOLDER

- 8.1 Whether the distribution is taxed in the hands of the unit holder will depend on the type of income from which the distribution is made by the REIT and the type of unit holder.

### Types of Distribution

- 8.2 A unit holder may receive distributions from a REIT which are made out of the following:
- Specified income that is granted tax transparency treatment;
  - Income that has been taxed on the trustee;
  - Non-taxable income/receipts; and
  - Non-income like operating cash flows, unrealised income etc.

### ***Distributions made out of specified income that is granted tax transparency treatment***

- 8.3 The table below shows the tax treatment of the distributions based on the types of unit holders:

	Unit holders	Tax treatment	Remark
Qualifying Unit Holders	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	section 45G of the ITA does not apply
	Other Individuals	Exempted from tax under section 13(1)(zh) of the ITA	
	<ul style="list-style-type: none"> <li>Companies incorporated and resident in Singapore;</li> <li>Singapore branches of companies incorporated outside Singapore for distributions received on or after 1 Jan 2015</li> <li>Bodies of persons incorporated or registered in Singapore [Refer to paragraph 3.3]</li> <li>International organisations that are exempt from tax [Refer to paragraph 3.3]</li> </ul>	Tax at their respective tax rates unless otherwise exempt	

	Unit holders	Tax treatment	Remark
Non-Resident Non-individual unit holders	Qualifying Non-Resident Non-Individuals	Subject to a 10% final <sup>19</sup> withholding tax in respect of distributions made during the period 18 Feb 2005 to 31 Mar 2020 <sup>20</sup>	section 45G(1)(a) of the ITA applies
	Others (e.g. Singapore branches of non-resident company without waiver of withholding tax for distributions received before 1 Jan 2015)	Subject to withholding tax at the prevailing corporate tax rate <sup>21</sup>	section 45G(1)(b) of the ITA applies

***Distributions made out of income that has been taxed on the trustee***

- 8.4 Distributions made out of income that has been taxed on the trustee will not be subject to further tax when distributed to the unit holders. Accordingly, the unit holders will not be able to claim a tax credit in respect of the tax paid at the trustee level.

***Distributions made out of non-taxable income/receipts***

- 8.5 Non-taxable income/receipts of a REIT could be:
- i. Capital gains or
  - ii. Tax exempt income.
- 8.6 The above non-taxable income/receipts do not form part of the statutory income of the trustee. Thus, by virtue of section 35(15) of the ITA, distributions by a trustee out of the above non-taxable income/receipts are not taxable in the hands of the unit holders.

***Distributions made out of non-income***

- 8.7 Distributions made out of non-income (for example, operating cash flows, unrealised revaluation gains on the REIT's properties etc.) are regarded as "return of capital" in the hands of the unit holders.
- 8.8 The return of capital cannot be onward distributed as income by the unit holders and each subsequent level of unit holders. However, this condition was lifted from 1 July 2015. This means that distributions made out of non-income by the REIT and paid/payable to the unit holders on or after 1 July 2015 will no longer be subject to this condition.

<sup>19</sup> The unit holders cannot claim any expenses against the distributions received.

<sup>20</sup> As provided under section 43(3B) of the ITA.

<sup>21</sup> The tax deducted is not a final tax. The unit holder may submit a tax return to claim allowable expenses under the ITA and section 46(1)(d) of the ITA credit in respect of the tax deducted to obtain a refund of any tax deducted in excess of its actual tax liability.

- 8.9 Unit holders should reduce their cost of units by the amount of return of capital<sup>22</sup>. For traders who are liable to income tax on gains arising from the disposal of the units, they should use the reduced cost of units to calculate the amount of taxable trading gains when the units are subsequently disposed. If the amount of return of capital exceeds the cost of the units, the excess will be subject to tax as trading income of the unit holders. The proceeds from all subsequent sales of the remaining units will also be fully taxable.

### **Character of the income distributed to unit holders**

- 8.10 The income distributed to the unit holders does not retain the original character of the income when it first accrues to the trustee. How the distributions are assessed in the hands of the unit holders depends on whether the unit holders are holding the REIT units for trading purpose or purposes other than trading. The distributions received by unit holders who hold the REIT units for trading purpose will be assessed to tax under section 10(1)(a) of the ITA. For the unit holders who hold the REIT units for purposes other than trading, the distributions will be assessed to tax as a “charge” under section 10(1)(e) of the ITA.

### **Application of section 35(15) of the ITA**

#### **Determination of basis period for applicable tax rate**

- 8.11 The Year of Assessment (“YA”) in which a unit holder will be assessed on the income distributed from a REIT follows the YA in which that income is derived by the REIT. This is regardless of when that income is received by the unit holder.

For example:

Basis period of the REIT for the YA 2016	1 Jan 2015 to 31 Dec 2015
Relevant period of the REIT’s taxable income out of which the distribution was made to unit holders (Distribution period)	1 Oct 2015 to 31 Dec 2015
Date of distribution	18 Feb 2016
YA in which the unit holder will be assessed on the distribution	YA 2016

- 8.12 The distribution out of specified income of the last quarter of the REIT’s financial year within the first 3 months of its subsequent financial year is regarded as having met the requirement of “income to be distributed to unit holders in the same year in which the income is derived”. Thus, in the above example, the distribution made on 18 Feb 2016 is considered distribution made in the YA 2016. The unit holder will be assessed on this

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<sup>22</sup> As provided in section 35(15A) of the ITA.

distribution in YA 2016, regardless of the basis period of the unit holder's YA.

- 8.13 The above rule does not apply to distributions which are made out of RIA. The RIA will be treated as part of the taxable specified income of the trustee for the distribution period ending immediately after the adjustment has been agreed with the CIT (see Annex 3 for examples).

**(B) *INCOME TAX TREATMENT OF AN APPROVED SUB-TRUST OF A REIT***

**9 TAX TREATMENT OF AN APPROVED SUB-TRUST**

- 9.1 A sub-trust of a REIT can apply for an approved sub-trust status if it meets the following conditions:

- a. the sub-trust is an unlisted special purpose vehicle that is constituted to hold / own real estate;
- b. the REIT has acquired interest in the sub-trust and is free to dispose of such interest;
- c. the joint venture agreement, memorandum and articles of association and/or other constitutive documents of the sub-trust should provide for, inter alia:
  - i. a specified minimum percentage of distributable profits that will be distributed to the beneficiaries, of which the REIT should be entitled to receive its pro rata share;
  - ii. veto rights of the REIT over key operational issues, including:
    - (a) amendment of the joint venture agreement, memorandum and articles of association or other constitutive documents;
    - (b) cessation or change of the business;
    - (c) winding up or dissolution;
    - (d) changes to the equity capital structure;
    - (e) changes to the distribution policy;
    - (f) issue of securities;
    - (g) incurring of borrowings;
    - (h) creation of security over the assets;
    - (i) transfer or disposal of the assets;
    - (j) approval of asset enhancement and capital expenditure plans for the assets; and
    - (k) entry into interested party transactions;
  - iii. a mode for the resolution of disputes between the property fund and joint venture partners; and
- d. the sub-trust has in place a mechanism to properly track and

differentiate the distributions to beneficiaries that are REITs vis-à-vis beneficiaries that are non-REITs.

### **Income qualifying for tax transparency**

- 9.2 For the trustee of an approved sub-trust, tax transparency treatment will be applicable only to that part of the approved sub-trust's specified income<sup>23</sup> that is distributed to the trustee of a REIT in the same year the income is derived.
- 9.3 Tax transparency treatment will be accorded to the distributions of a REIT made out of the distribution it receives from an approved sub-trust, if the sub-trust enjoys approved sub-trust status during the period the sub-trust derived its income (out of which the distribution is made) and at the point of distribution to the REIT.

### **Income not qualifying for tax transparency**

- 9.4 Where the approved sub-trust derives:
- a. specified income but does not distribute such income to its beneficiaries in the same year in which the income is derived;
  - b. specified income but distributes such income to a non-REIT beneficiary; or
  - c. income other than specified income set out in paragraph 3.6(e),

tax transparency treatment will not be applicable and such income will be subject to tax at the level of the trustee of the approved sub-trust. Any distribution made from such after-tax income is capital and will not be subject to any further tax when received by the REIT or other beneficiaries and unit holders of the REIT upon onward distribution by the REIT.

### **Determination of basis period for applicable tax rate**

- 9.5 Where tax transparency treatment is applicable and the accounting year end of the sub-trust is different from that of a REIT or unitholder of the REIT, any distribution derived by the trustee or by the unitholders of the REIT, as the case may be, will be assessed to tax in the hands of such trustee or unitholders in the YA relating to the basis period in which the specified income is derived by the approved sub-trust.

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<sup>23</sup> Paragraph 3.6(e) above defines the types of approved sub-trust's income that qualify for tax transparency treatment.



For example:

Date of distribution of approved sub-trust's taxable income	18 Feb 2016 <sup>24</sup>
Basis period of the approved sub-trust's taxable income out of which the distribution was made	1 Jan 2015 to 31 Dec 2015 (YA 2016)
Basis period of the REIT	1 Apr 2015 to 31 Mar 2016 (YA 2017)
Basis period of a unitholder of the REIT	1 Jun 2015 to 31 May 2016 (YA 2017)
YA in which the REIT will be assessed on the approved sub-trust's distribution	YA 2016
YA in which the unitholder of the REIT will be assessed on the approved sub-trust's distribution	YA 2016

### **(C) ADMINISTRATIVE PROCEDURES**

## **10 APPLICATION FOR TAX TRANSPARENCY TREATMENT**

10.1 The trustee / manager of a proposed / newly constituted REIT or its sponsor can apply for tax transparency treatment in respect of the following income:

- rental income; or
- income from the management or holding of immovable properties (such as service charges and car park fees); or
- rental support payment if such payment is on an open market value basis and is made by the seller of the property or any interest in the owner of the property, or a person who wholly owns (directly or indirectly) the seller; or
- distribution from an approved sub-trust of the real estate investment trust out of income referred to in paragraph 3.6(e); or
- interest income from temporary short-term placement of surplus cash as deposits with banks in Singapore and investment in debt securities.

10.2 The trustee / manager has to complete an application form and submit it together with supporting documents to the Corporate Tax Division (Large Corporation Branch) of IRAS. Soft copies of the application form and letter of undertaking are available at the IRAS website. Please refer to Annexes 1 & 2 for the specimens of the application form and letter of undertaking. The application should be made at least three months before the REIT

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<sup>24</sup> The distribution out of specified income within the first 3 months of its subsequent financial year is regarded as having met the requirement of "income to be distributed to beneficiaries in the same year in which the income is derived".

derives the abovementioned income for which the tax transparency treatment is sought.

- 10.3 The CIT will endeavour to notify the applicant of the outcome of the application within 8 weeks from the date of receipt of the application, or complete information, whichever is later.
- 10.4 If an application for tax transparency treatment is approved, it will take effect from the listing of the REIT on the Singapore Exchange. Subsequent to obtaining the approval for tax transparency treatment, the trustee / manager is required to notify the CIT if it is unable to meet any of the conditions imposed. The approved tax transparency treatment will then cease to apply from the date any of the conditions imposed is not met.

#### **Application to be made by way of advance ruling**

- 10.5 Application for tax transparency treatment has to be made by way of advance ruling on all income derived by REITs other than the income specified in paragraph 10.1 above. This includes a scenario where the rental support payment is made by a person other than (i) the seller of the property or any interest in the owner of the property, or (ii) the person who wholly owns (directly or indirectly) the seller.

#### **Application for an approved sub-trust status of a REIT**

- 10.6 Any application for an approved sub-trust status of a REIT has to be made by the trustee of the sub-trust (or an authorised signatory of the trustee of the sub-trust where the trustee is a company) to the Corporate Tax Division (Large Corporation Branch) of IRAS, and should be accompanied by a duly completed declaration and undertaking form (see Annex 4), confirming that all the conditions enumerated in paragraph 9.1 above are met, as well as undertaking to inform the Comptroller of any change to any of these conditions. Where there is such a change in conditions, the approved sub-trust status (if granted) will cease to take effect from the date of the change.

### **11 UNITS HELD BY UNIT HOLDERS WHO ARE INDIVIDUALS**

- 11.1 The trustee has to inform the unit holders, who are individuals, that the tax exemption under section 13(1)(zh) of the ITA does not apply to distributions received by them:
- through a partnership in Singapore; or
  - from the carrying on of a trade, business or profession;

and that these unit holders must declare their distributions as income in their tax returns.

## 12 UNITS HELD BY NOMINEES

12.1 The units in a REIT may also be held by nominees on behalf of the unit holders. In this case, whether section 45G of the ITA applies to distributions made by the trustee to the nominees will depend on the identity and residency status of the beneficiaries.

12.2 To ensure that the correct amount of tax is deducted from distributions made to nominees, the trustee / manager have to comply with the following procedures:

a. Declaration forms to be submitted by nominees

In reviewing the declaration forms completed by the nominees providing the particulars of the beneficiaries, the trustee may adopt any methods to verify the beneficiaries' identities. It is the responsibility of the trustee to ensure that they have adequate data and records (besides the above declaration forms) to prove the identity of the beneficiaries and are satisfied that the distributions made to the beneficiaries are subjected to correct withholding tax rates;

b. Units held through more than one-tier of nominees

Where the units are held through more than 1-tier of nominees, the trustee / manager must obtain confirmation from the ultimate beneficiaries that they are qualifying unit holders or qualifying non-resident non-individual unit holders for the purpose of satisfying paragraph (i) of the letter of undertaking. The confirmation from the ultimate beneficiaries may either be submitted to the trustee/ manager or to the depository agents. It could be a one-off declaration when they first purchase the units in a REIT. Thus the ultimate beneficiaries need not provide a confirmation for each distribution. If the ultimate beneficiaries do not provide a confirmation of their status, the trustee / manager must withhold tax on the distribution;

c. Maintenance of records

The trustee / manager of the REIT must maintain adequate records of the amounts distributed to each beneficiary through the nominees and provide such records to the CIT when required;

d. Recovery of tax

If it is found that the trustee / manager has relied on incorrect information on the beneficiaries as provided by the nominees and had not deducted the correct amount of tax, the trustee / manager must take immediate action to recover from the nominees the shortfall in the amount of tax which should have been deducted. The trustee / manager can recover such taxes out of any future amounts payable to those nominees who have given incorrect information on the beneficiaries' status.

### **13 INFORMATION AND DOCUMENTATION OF UNIT HOLDERS**

13.1 For the purpose of paragraph (i) of the letter of undertaking, the trustee / manager of the REIT has to ensure that sufficient information and documentation are available to verify the identity of the unit holders and beneficiaries.

a. Unit holders that invest directly in a REIT through the Central Depository (Pte) Ltd ("CDP")

Since the necessary information of such unit holders are available with the CDP, the trustee / manager can be satisfied that the requirement under paragraph (i) of the letter of undertaking is met. Moreover, the unit holders (other than individuals) would complete the Declaration for Singapore Tax Purposes Form (Form A) and submit it directly to the trustee prior to every distribution.

b. Unit holders that invest in a REIT through depository agents

The depository agents have to obtain the necessary information and documentation on the identity of the ultimate beneficiaries in order to fill in the Declaration by Depository Agents for Singapore Tax Purposes Form (Form B). Notwithstanding that the information and documentation on the beneficiaries are with the depository agents and not the trustee / manager, the trustee / manager is responsible to ensure that sufficient information and documentation for the purpose of paragraph (i) of the letter of undertaking. The said information and document should also be made available to IRAS as and when required.

### **14 CLAIM FOR REFUND OF TAX OVER DEDUCTED FROM DISTRIBUTIONS**

14.1 In the event that tax has been wrongly deducted and accounted to the CIT by the trustee / manager, the CIT will refund the tax to the trustee directly on a quarterly basis. The trustee, in turn will refund this amount to the nominees who will then refund it to the beneficiaries. For this purpose, the trustee / manager must submit a claim for refund on a consolidated basis in the format as shown in Annex 5<sup>25</sup> and attach the original subsidiary income tax certificates showing the tax that has been deducted. Where applicable, a confirmation from the non-resident non-individual beneficiary that it qualifies as a non-resident non-individual unit holder should also be provided. Please address the claim to:

Comptroller of Income Tax  
Revenue Accounting Branch  
Inland Revenue Authority of Singapore  
55 Newton Road  
Revenue House  
Singapore 307987

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<sup>25</sup> A copy can be downloaded from the IRAS website.

## **15 RETURN OF CAPITAL BY THE TRUSTEE**

- 15.1 The trustee making distributions out of non-income (a return of capital for tax purpose) must comply with the following procedures:
- a. Ensure that the tax treatments set out in paragraphs 8.8 (where applicable) and 8.9 are included in the Annual Dividend Statement that the CDP issues to the depositors and depository agents; and
  - b. Ensure that the REIT has enough capital to make a return of capital to its unit holders by maintaining an account to track the amount of capital contributed. The annual account, to be submitted with the REIT's income tax computation, must show the following details as at each date of the capital distribution (in chronological order):
    - i. the amount of capital contributed;
    - ii. the amount of capital returned to unit holders; and
    - iii. the amount of capital available after each return of capital.

## **16 FILING TAX RETURNS AND ESTIMATED CHARGEABLE INCOME**

- 16.1 The trustee is required to file the Form UT issued by the CIT to each REIT annually. This form must be filed together with the audited accounts and tax computation by 15 April each year. There is no need to file the estimated chargeable income ("ECI")<sup>26</sup>.
- 16.2 However, if the REIT needs an extension of time to submit the Form UT, it will have to furnish the ECI before the CIT grants an extension. The CIT may waive the requirement for the trustee to file an ECI except where the trustee derives income other than specified income. The CIT may review this arrangement when needed.

## **17 CONTACT INFORMATION**

For general enquiries or clarifications on this e-Tax guide, please call 1800- 3568622.

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<sup>26</sup> As provided in section 63 of the ITA.

## **Application Form**

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**Application for Tax Transparency Treatment  
under Section 43(2) of Income Tax Act in respect of  
Income derived by a Trustee of  
a Real Estate Investment Trust (REIT)**



**INLAND REVENUE  
AUTHORITY  
OF SINGAPORE**

## **INSTRUCTIONS**

(applicable to the trustee and manager of a REIT or the authorised agent making the application)

1. This form is applicable to a proposed/newly constituted REIT making the initial application for tax transparency treatment on the following income:
  - rental income; or
  - income from the management; or
  - holding of immovable properties (such as service charges and car park fees); or
  - rental support payment if such payment is at open market value and is made by the seller of the property or any interest in the owner of the property, or a person who wholly owns (directly or indirectly) the seller; or
  - interest income from temporary short-term placement of surplus cash as deposits with banks in Singapore and investment in debt securities.
2. To assist us in evaluating your application expeditiously, please provide the information requested as completely as possible. If the space provided is insufficient, you may use a separate sheet.
3. Where information is not yet available or inapplicable, please indicate accordingly.
4. It may take you 10 minutes to fill up this form.
5. This application should be sent to:

The Comptroller of Income Tax  
Corporate Tax Division (Large Corporation Branch)  
Inland Revenue Authority of Singapore  
55 Newton Road  
Singapore 307987.

**1. Details of the Real Estate Investment Trust (REIT)**

Name	
Address	
Date of constitution	
Income Tax Reference No.	
Nature of business/activity	

**2. Details of trustee, sponsor or manager of the REIT**

Name of trustee/sponsor <sup>#</sup>	
Address	
Income Tax Reference No.	

Name of manager	
Address	
Income Tax Reference No.	

**3. Details of person making the application (“Applicant”)**

Capacity of person making the application	Trustee/Sponsor/Manager/Agent <sup>#</sup>
Name	
Name and designation of individual for contact purposes	
Contact No.	
Address	
Email Address	

**4. Description of assets and income to be derived therefrom for which tax transparency treatment is sought**

Asset	Income to be derived from the asset (see note)

Note: Please refer to paragraph 10.1 of IRAS e-tax guide on “Income Tax Treatment of Real Estate Investment Trusts and Approved Sub-Trusts” published on 6 Jan 2017 for the types of income for which application for tax transparency treatment can be made via this application form.

<sup>#</sup> (delete where applicable).



## 5. Checklist of documents to be submitted

		Yes	No
a	Joint undertaking by the Trustee and Manager of the REIT*		
b	Copy of the Trust Deed*		
c	Sample of the Declaration Forms used by the trustee to determine the applicable rate at which tax is to be deducted from the distributions		
d	Copies of Sales and Purchase Agreement, Rental Support Agreement and Valuation Report on how the rental support payment is arrived at		

\* To be submitted within 14 days from the date of constitution of the REIT if they are not available as at date of application.

## 6. Applicant's Declaration

- a) I declare that the details stated above are true and correct to the best of my knowledge<sup>#</sup>; or
- b) I declare that the details stated above are true and correct to the best of my knowledge and acknowledge that the application for tax transparency treatment, if approved, is subject to the submission and acceptance of the supporting documents mentioned in paragraph 5 above within 14 days from the date of constitution of the REIT<sup>#</sup>.

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Name of authorised signatory of the Applicant

\_\_\_\_\_  
Designation of authorised signatory of the Applicant

\_\_\_\_\_  
Signature of authorised signatory of the Applicant

\_\_\_\_\_  
Date

# (delete where applicable).

## Annex 2 – Joint Undertaking by the Trustee and Manager

Date:

The Comptroller of Income Tax  
Inland Revenue Authority of Singapore  
Corporate Tax Division (Large Corporation Branch)  
55 Newton Road  
Revenue House  
Singapore 307987

Dear Sirs

### DECLARATION AND UNDERTAKING FOR THE PURPOSE OF APPLYING FOR TAX TRANSPARENCY TREATMENT

I, \_\_\_\_\_ of \_\_\_\_\_,  
Name of authorised signatory Name and Tax Reference No. of trustee of the REIT

hereby declare that \_\_\_\_\_ is the trustee of  
Name of trustee of the REIT

\_\_\_\_\_; and  
Name of the REIT

I, \_\_\_\_\_ of \_\_\_\_\_,  
Name of authorised signatory Name of manager of the REIT

hereby declare that \_\_\_\_\_ is the manager of  
Name of manager of the REIT

\_\_\_\_\_.  
Name of the REIT

In consideration of the Comptroller of Income Tax ("CIT") applying the provisions of section 43(2) of the Income Tax Act, Revised Edition 2014 (Cap 134) ("ITA") to the specified income of the applicant REIT, we jointly undertake:

- (a) To distribute at least 90% of the REIT's taxable specified income, the income being income that could be accorded transparency treatment under section 43(2A) of the ITA, to the unit holders in the same year in which the income is derived by the trustee;
- (b) If for any accounting period, the taxable specified income of the trustee, which has been agreed with the CIT, should be higher or lower than that as determined by the trustee / manager for distribution, the difference will be added to or deducted from the taxable income determined for the distribution period ending immediately after the difference has been agreed with the CIT ("Rollover Income Adjustment"). The operation of this condition is set out in the worked examples in Annex 3 of the e-Tax guide on "Income Tax Treatment of Real Estate Investments Trusts and Approved Sub-Trusts";

- (c) To comply with the rules set out in section 45G of the ITA with regard to the payment to the CIT of the tax that has been or should have been deducted from distributions. The CIT will recover the amount of tax owing to it, impose penalties and take actions in the manner set out in section 45 of the ITA if the trustee does not comply with the rules (particularly in the event where there is a shortfall in the amount of tax deducted and accounted to the CIT by the trustee / manager);
- (d) To deduct tax at the final withholding tax rate of 10% from distributions made to qualifying non-resident non-individual unit holders during the period 18 February 2005 to 31 March 2020<sup>27</sup>. A qualifying non-resident non-individual unit holder is a non-individual person who is not a resident in Singapore for income tax purposes and:
  - (i) who does not have any permanent establishment in Singapore; or
  - (ii) who carries on any operation in Singapore through a permanent establishment in Singapore, but the funds used to acquire the units in the REIT are not obtained from that operation in Singapore;
- (e) To deduct tax at the prevailing corporate tax rate from distributions made to unit holders other than qualifying non-resident non-individual unit holders mentioned in paragraph (d) above and the following types of unit holders<sup>28</sup> (collectively referred to as Qualifying Unit Holders):
  - (i) Individuals (including those who purchased units in the REIT through agent banks or SRS operators which act as their nominee under the CPF Investment Scheme or the Supplementary Retirement Scheme respectively);
  - (ii) Companies incorporated and resident in Singapore;
  - (iii) Singapore branches of companies incorporated outside Singapore;
  - (iv) Bodies of persons incorporated or registered in Singapore, including charities registered under the Charities Act (Cap 37) or established by any written law, town councils, statutory boards, co-operative societies registered under the Co-operatives Societies Act (Cap 62) or trade unions registered under the Trade Unions Act (Cap.333); and
  - (v) International organisations that are exempt from tax on such distributions by reason of an order made under the International Organisations (Immunities and Privileges) Act (Cap. 145).

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<sup>27</sup> Under section 43(3B) of the ITA.

<sup>28</sup> Do not include a person acting in the capacity of a trustee.

- (f) To inform the individual unit holders of the REIT that tax exemption under section 13(1)(zh) of the ITA does not apply to distributions received by them:

- through a partnership in Singapore; or
- from carrying on a trade, business or profession;

and that these unit holders must declare their distributions received as income in their tax returns.

- (g) To ensure that mechanism will be put in place to allow the trustee to ascertain whether or not tax is to be deducted from a distribution (including the content of any prescribed form that has to be completed and submitted by the unit holders, and the retention period of such form);
- (h) To ensure that there is sufficient information and documentation (besides the declaration forms submitted by the unit holders and nominees) to verify the identity of the unit holders and beneficiaries and be satisfied that they qualify for, a waiver of withholding tax, the final withholding tax rate of 10% or exemption of tax;
- (i) To obtain confirmation from the ultimate beneficiaries that they are qualifying unit holders or qualifying non-resident non-individual unit holders, where the units are held through more than 1-tier of nominees;
- (j) To provide information on distributions made to the unit holders [similar to that provided to The Central Depository (Pte) Limited] in electronic form when required by the CIT. In this respect, the Trustee may consult and seek the advice of the CIT on the data fields that have to be incorporated and any other related matters.
- (k) To provide the CIT with a copy of the external auditors' certificate on the adequacy of the internal controls put in place to detect errors or omissions in deducting the tax at source. This certificate will be submitted to the CIT together with the annual tax computation of the REIT;
- (l) To make continuing effort to provide general information on the tax treatment of the REIT's income and the distributions made by the trustee provided that the information disseminated does not constitute binding tax advice to the investing public;
- (m) To answer any questions that the unit holders may have on the amount of distribution made to them, including how the amount of taxable distribution is arrived at;
- (n) To submit to the CIT a copy of the REIT's audited accounts for any accounting period accompanied by a tax computation no later than 15 April of the following year (or such other longer period as may be determined by the CIT to be reasonable in the circumstances);

- (o) Not to change the REIT's accounting year end without obtaining approval from the CIT;
- (p) To ensure that the rental support payment is at open market value and is made by the seller of the property or any interest in the owner of the property, or a person who wholly owns (directly or indirectly) the seller;
- (q) To notify the CIT if the REIT is unable to meet any of the above conditions, subsequent to obtaining the approval for tax transparency treatment. We understand that the approved tax transparency treatment will cease to apply from the date any of the above conditions is not met.

Name and signature of authorised signatory of the trustee of the REIT	Designation	Date
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Name and signature of authorised signatory of the manager of the REIT	Designation	Date
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<b>For Official Use</b>		
<p>Comments:</p>          <p>Verified by:</p>		
Name and signature of Officer	Designation	Date

### **Annex 3 – Rollover Income Adjustments**

#### **EXAMPLE 1**

The CIT's computation of the trustee's taxable specified income is higher than that determined by the trustee / manager for distribution purposes

Taxable income of the trustee for year ended 31 Dec 2015  
(i.e. YA 2016) as agreed with the CIT, say on 18 Mar 2016 (A) \$10,000

Taxable income of the trustee for year ended 31 Dec 2015  
as determined by trustee / manager for distribution (B) \$9,500

Taxable income of the trustee for year ended 31 Dec 2015  
distributed by trustee and taxable in the hands of unit holders (C) \$9,500  
(assuming 100% is distributed)

Taxable income of the trustee to be added to the distribution  
immediately after 18 Mar 2016 (D) = (A)-(C) \$500  
(distribution period 1 Jan 2016 to 31 Mar 2016)

Taxable income of the trustee as determined by trustee / manager  
for distribution period from 1 Jan 2016 to 31 Mar 2016 (E) \$5,400

Total taxable income of the trustee for distribution period (F) = (D)+(E) \$5,900  
1 Jan 2016 to 31 Mar 2016 available for distribution on 18 May 2016

#### **EXAMPLE 2:**

The CIT's computation of the trustee's taxable specified income is lower than that determined by the trustee / manager for distribution purposes

Taxable income of the trustee for year ended 31 Dec 2015  
(i.e. YA 2016) as agreed with the CIT, say on 18 Mar 2016 (A) \$10,000

Taxable income of the trustee for year ended 31 Dec 2015  
as determined by trustee / manager for distribution (B) \$10,300

Taxable income of the trustee for year ended 31 Dec 2015  
distributed by trustee and taxable in the hands of unit holders (C) \$10,300  
(assuming 100% is distributed)

Taxable income of the trustee to be deducted from the (D) = (C)-(A) \$300  
distribution immediately after 18 Mar 2016  
(distribution period 1 Jan 2016 to 31 Mar 2016)

Taxable income of the trustee determined by trustee / manager (E) \$5,400  
for distribution period from 1 Jan 2016 to 31 Mar 2016

Total taxable income of the trustee for distribution period (F) = (E)-(D) \$5,100  
1 Jan 2016 to 31 Mar 2016 available for distribution on 18 May 2016

## **Annex 4 – Declaration and undertaking for the purpose of applying for approved sub-trust status**

**Attn: The Comptroller of Income Tax  
Inland Revenue Authority of Singapore**

### **DECLARATION AND UNDERTAKING FOR THE PURPOSE OF APPLYING FOR APPROVED SUB-TRUST STATUS**

I, \_\_\_\_\_ of \_\_\_\_\_ (“the  
Name of authorised signatory Name of applicant sub-trust  
applicant sub-trust”), hereby declare that:

- a. the applicant sub-trust is an unlisted special purpose vehicle that is constituted to hold/own real estate;
- b. the Real Estate Investment Trust, \_\_\_\_\_  
Name of REIT  
 (“the REIT”), in respect of which the applicant sub-trust is applying for approved sub-trust status, has acquired interest in the applicant sub-trust and is free to dispose of such interest;
- c. the joint venture agreement, memorandum and articles of association and/or other constitutive documents of the applicant sub-trust provides for, inter alia:
  - i. a specified minimum percentage of distributable profits that will be distributed to the beneficiaries, of which the REIT should be entitled to receive its pro rata share;
  - ii. veto rights of the REIT over key operational issues, including all of the following:
    - (a) amendment of the joint venture agreement, memorandum and articles of association or other constitutive documents;
    - (b) cessation or change of the business;
    - (c) winding up or dissolution;
    - (d) changes to the equity capital structure;
    - (e) changes to the distribution policy;
    - (f) issue of securities;
    - (g) incurring of borrowings;
    - (h) creation of security over the assets;
    - (i) transfer or disposal of the assets;
    - (j) approval of asset enhancement and capital expenditure plans for the assets; and
    - (k) entry into interested party transactions;
  - iii. a mode for the resolution of disputes between the REIT and other joint venture partners (or “beneficiaries of the REIT”); and

- d. the applicant sub-trust has in place a mechanism to properly track and differentiate the distributions to beneficiaries that are REITs vis-à-vis beneficiaries that are non-REITs.

I also hereby undertake to notify the Comptroller of Income Tax of any changes to any of the aforementioned conditions. I understand that where there is any such change, the approved sub-trust status (if granted) will cease to take effect from the date of the change.

\_\_\_\_\_  
Name and signature of authorised signatory

\_\_\_\_\_  
Designation

\_\_\_\_\_  
Date

For Official Use

Comments:

Verified by:

\_\_\_\_\_  
Name and signature of Officer

\_\_\_\_\_  
Designation

\_\_\_\_\_  
Date



## Annex 5 – Claim for Refund of Tax Over Deducted from Distributions

Distribution Period :

Counter :

### Annex to Declaration Form

	Certificate Serial No.	Depository Agent	CDP sub Account No	Name of beneficiary holder(s)	Identification No*	Address	Number of units held	Gross distribution paid	Amount of tax deducted at prevailing corporate tax rate/10%#	Tax to be refunded at prevailing corporate tax rate/10%#
1										
2										
3										

\* For individuals, this refers to Singapore NRIC No., foreign ID No., or Passport No.

For non-individuals, this refers to the Unique Entity Number ("UEN") or tax reference number.

# Delete where applicable.