Real Estate Investment Trusts (REIT)

IN

INDIA

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Introduction

A report by real estate consultancy firm Cushman and Wakefield estimates that Indian commercial real estate (like office, retail assets) offers investment opportunities for REITs worth $7.9 billion (Rs. 51,800 crores) by 2019 across top cities[1].

"Owing to high rentals, Mumbai has the potential to generate the highest rental income for REITs till 2019, while in 2016, Bengaluru's rental income potential is expected to surpass that of Delhi-NCR's led by increased Grade A supply expected. At a time when balance sheets of developers are stretched, REITs would help developers resolve their fund-raising issues and allow real estate developers with an option to exit projects. Overall, the REITs system is expected to provide a level-playing field for investors and increase transparency in the real estate sector which till date has largely remained opaque," ***says Sanjay Dutt, Managing Director, India, Cushman & Wakefield.***

Indian real estate is going through a phase of transition in the process of its development from being an unorganized sector traditionally to the organized real estate sector gradually. After years of sluggish growth, the Indian Economy is witnessing a revival in the business and consumer confidence since 2014 on account of liberalization of foreign direct investment rules for real estate sector, international real estate players and Indian Corporate houses supplemented by introduction of Real Estate (Regulation and Development) Bill, 2003 and other reforms.

Better late than never! REITs were conceptualized in 2008. With growing urbanization and emergence of new business models like e-commerce, the demand for commercial real estate has surged. However, due to various evaluation of framework and regulations, India approved creation of real estate investment trusts in the budget of 2014. The government firmed up regulations for real estate investment trusts (REITs) and infrastructure investment trusts (InvITs) in 2014 with the aim of encouraging higher foreign investment, reducing the burden on the banking system, and allowing developers to monetize income-generating assets and facilitate the financing of commercial assets from a large pool of investors. Owing to lack of clarity on tax related reforms and challenges in pass through status of the REITs, the real estate and infrastructure companies were slow to respond to these structures. However, the recent regulatory amendments announced in the Union Budget 2016-17 have addressed their concerns, pointing to exciting times ahead for these innovative structures. **Though India has been a late entrant in this space, we can today boast of REIT Regulations that measure up to the finest REIT Regulations internationally along with REIT Regulations of United States, Singapore and Malaysia and other countries.**

Indian REITs (country specific/generic version I-REITs) will help individual investors enjoy the benefits of owning an interest in the securitized real estate market. The government and Securities and Exchange Board of India through various notifications is in the process of making it easier to invest in real estate in India directly and indirectly through foreign direct investment, through listed real estate companies and mutual funds. Business Trusts like REITs and InvITs can play a pivotal role in India as these investment vehicles can be used to attract private investment in these sectors while relieving the burden on formal banks.

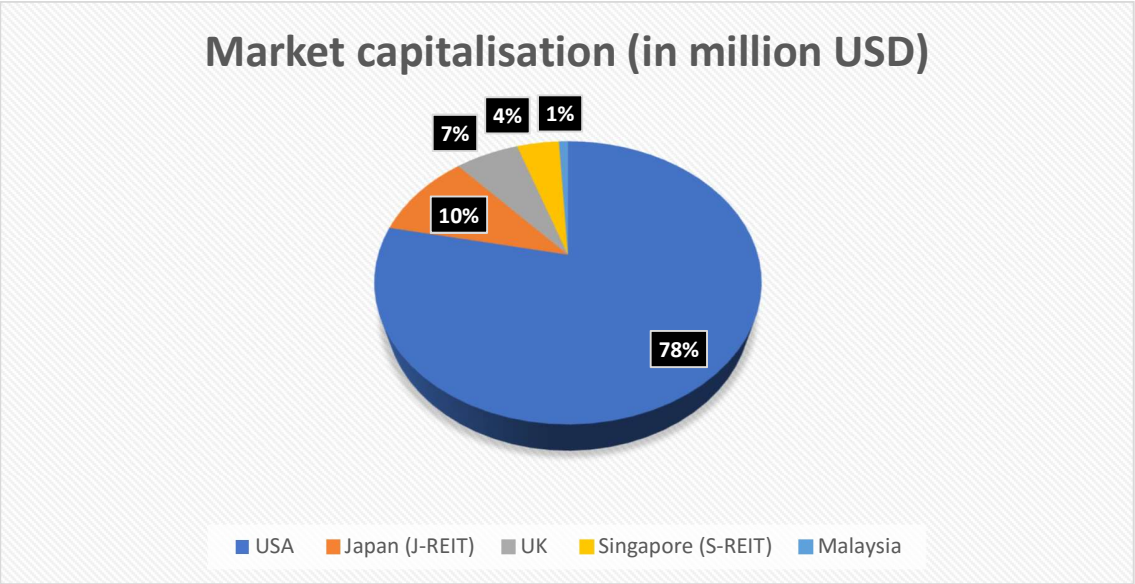
[1] Source: Report on "Opportunities for Foreign Investors in Indian Real Estate" by Real Estate consultancy firm "Cushman & Wakefield.

Evolution of REITs globally and in India

REITs have a long history in the developed markets. In USA, they were introduced in 1960s with the objective of providing real estate investments a structure similar to mutual funds. Since then, more than 35 countries world over have adopted REITs as a preferred mode of investment. Globally, there are over 500 REITs with a market capitalization of over US$1 trillion and real estate AUM (Assets Under management) of nearly US$2 trillion. The leading REITs markets like USA, Australia, UK, Japan, France and Singapore, in aggregate, account for over 80 per cent of the global REITs market share. In Asia, over the last 15 years REIT market has grown manifold to over 200 REITs with a market capitalization of over US$200 billion.

REIT MARKETS ACROSS GLOBE[2]

Country	Inception	Number of Listed REITs	Market Cap (USD millions)
USA	1960	231	8,25,493
Japan (J-REIT)	2000	53	1,07,099
UK	2007	30	67,357
Singapore (S-REIT)	1999	29	44,770
Malaysia	1989	17	9,611



[2] EPRA Reporting, Global REIT Survey 2014.

Do we need Real Estate Investment Trusts in India? Is our traditional fund raising method self-sufficient to satisfy needs of the growing Real Estate Sector?

The Real Estate sector, riding high on the back of rapid urbanization, positive demographics and increasing income levels overcoming the sluggish growth of the Indian economy, rising input costs and overall global economic sentiments, has attracted significant investment over the past few years. In the current scenario, developers are evaluating alternate sources of real estate funding, as traditional fund-raising channels are increasingly facing challenges.

Across the Globe, REITs has demonstrated its ability to attract and effectively manage investments in the real estate sector along with providing benefits to not only Developers / Builder group of the economy through access to Source of Finance, providing Opportunity for mid-tier developers to Invest and enabling Exit options for real estate developers but also to the Investor group consisting of common masses at large on account of following:

1. **Mutual Funds – Pooling of Funds:**

Investing in Property with just Rs. 2 Lakhs in hand has become a realty with SEBI's Approval to REITs. REITs are a corporatized vehicle that pool money from small investors for investment in real estate hence it would enable small investors to reap the benefits of appreciation in Real Estate which was till date beyond the reach of small and mid-tier investors.

2. **Hedge against Investment risks – Diversification of Portfolio:**

REITs are for investors who want to diversify their assets beyond gold and equity markets," says Neeraj Bansal, partner and head of real estate and construction practice, KPMG.

3. **Liquidity Concern:**

REITs addresses the liquidity concerns for an illiquid asset wherein the Investors can buy and sell units of REIT as and when required since the same are listed on stock exchange as compared to physical properties which are illiquid in nature. The greatest benefit will be that of fast and easy liquidation of investments in the real estate market unlike the traditional way of disposing of real estate.

4. **Creation of Wealth for stakeholders:**

The stakeholder/ Investors investing in REITs generally earn two type of Income from REITs:

1. Capital Gain Income on sale of units of REIT in the Open Market,
2. Dividend Income in the form of Rental Income accrued to REIT on income generating assets since 90% of the Income of REIT is required to be distributed. Hence, there is stability of income on the part of Investor.

5. **Professional Management**

REITs aim at creating a professionally managed eco system that is risk averse and is aimed at protecting the interest of public.

6. **Transparency**

At present, REIT is governed under SEBI (Real Estate Investment Trust) Regulations, 2014. Hence, there is an effective control of SEBI on the functioning of the REITs in India which till date remained largely opaque. For instance, REITs in United States are required to be registered with the Securities and Exchange Commission. Further, since valuation of REIT is required on a yearly basis through a certified valuer, dissemination of Net Asset Value of the REIT on the basis of valuation will ensure transparency in the functioning and performance of REIT.

7. **Investment vehicle for addressing Non-Performing Assets (NPAs) in Real Estate Sector:**

REITs can be used as an efficient investment vehicle to wipe out NPAs/sick or defunct companies holding large values of real estate mostly in the form of land. Sale of such NPAs/companies to REIT's will have a two-fold effect — realization of true value for the real estate and ease in liquidating the sick company after removal of the high value of real estate from its books. This will largely help financial institutions in regaining strong profitability positions which is currently being hampered through large NPAs being booked by them.

Structuring a REIT– Eligibility and basic conditions to be fulfilled under SEBI REIT Regulations

A. ELIGIBILITY: In a REIT structure, the parties involved are :

- **a.** REIT (viz. Trust which holds the underlying properties),
- **b.** Sponsor (like a promoter in case of a listed company),
- **c.** Trustee of the REIT and
- **d.** Manager (viz. a company or a LLP which manages assets and investments of the REIT and undertakes operational activities of the REIT).
- **e.** Special Purpose Vehicle (SPV)

I. REIT

a) **SEBI Registered:** No person shall act as a REIT unless it is registered with the SEBI under REIT Regulations.
b) **Trust Deed:** It is a trust and the instrument of trust is in the form of a deed duly registered in India under the provisions of the Registration Act, 1908.

II. Sponsor

a) **Number of Sponsor and Holding in REIT:** Each sponsor shall hold or propose to hold not less than 5% of the number of units of the REIT on post-initial offer basis.
b) **Net Worth:** Sponsor(s), on a collective basis, have a net worth of not less than Rs. 100 Crores, with each Sponsor having net worth of at least Rs. 20 Crores.
c) **Experience**: Sponsor or its associate(s) has not less than 5 years' experience in development of real estate or fund management in the real estate industry and where the sponsor is a developer, at least 2 projects of the sponsor have been completed.

III. Trustee

a) **SEBI Registered:** It is registered with the Board under SEBI (Debenture Trustees) Regulations, 1993 and is not an associate of the sponsor(s) or manager.
b) **Infrastructure:** It has such wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of the Board and in accordance with circulars or guidelines as may be specified by the SEBI.

IV. Manager

a) **Net worth**: It has a net worth of not less than Rs. 10 Crores in case it is a body corporate or a company OR net tangible assets of value not less than Rs. 10 Crores in case it is a LLP;
b) **Experience:** Manager or its associate has not less than 5 years' experience in fund management or advisory services or property management in the real estate industry or in development of real estate ("**Real Estate Activities**");
c) **Key Personnel:** It has not less than 2 key personnel who each have not less than 5 years' experience in Real Estate Activities;
d) **Board**: It has not less than half, of its directors in the case of a company or of members of the governing Board in case of an LLP, as independent and not directors or members of the governing Board of another REIT;

e) **Investment Management Agreement:** It has entered into an investment management agreement with the trustee which provides for the responsibilities of the manager in accordance with Regulation 10 of REIT Regulations;

V. **Special Purpose Vehicle (SPV)**

SPVs means any company or a LLP –

(i) in which (either the REIT or the holdco) holds or proposes to hold controlling interest and not less than 50% of the equity share capital or interest;

(ii) which holds not less than 80% of its assets directly in properties and does not invest in other SPVs; and

(iii) which is not engaged in any activity other than holding and developing property and any other activity incidental to such holding or development.

B. BASIC CONDITIONS:

The basic eligibility conditions in respect of these entities are bifurcated into three categories

1. Issue and Listing of Units;
2. Investment Conditions;
3. Distribution of Income.

I. Issue and Listing of Units of REIT

a) The REIT shall make an initial offer of its units by way of public offer only;

b) the value of all the assets owned by REIT is not less than Rs. 500 Crores

{for this purpose, **value** shall mean the value of the specific portion of the holding of REIT in the underlying assets or SPVs};

c) the **minimum number of unit holders** other than sponsor(s), its related parties and its associates forming part of public shall be **not less than two hundred;**

d) the **Offer size** is not less than Rs. 250 Crores;

e) Fund Raising:

i) Initial Public Offering: For an REIT raising funds through an initial offer, the units proposed to be offered to the public through such initial offer:

Post Issue Capital	**Units proposed to be offered in IPO (Offer Size)**
Less than 1,600 Crore	Not less than 25% of total Outstanding units of the REIT and the units being offered.
More than 1,600 Crores but less than 4,000 Crores	At least 400 Crores

At least 4,000 Crores	Not less than 10% of total Outstanding units of the REIT and the units being offered.

Any units offered to sponsor or the manager or their related parties of their associates shall not be counted towards units offered to the public.

ii) <u>Follow-on Public Offer</u>: The REIT may invite for subscriptions and allot units to any person, whether resident or foreign. Provided that in case of foreign investors, such investment shall be subject to guidelines as may be specified by Reserve Bank of India and the government from time to time.

f) Under both the initial offer and follow-on public offer, the REIT shall not accept subscription of an amount less than Rs. 2 Lakhs from an applicant.

g) The REIT shall issue units only in dematerialized form to all the applicants.

h) Trading lot for the purpose of trading of units of the REIT shall be one lakh rupees.

i) The minimum public holding for the units of the listed REIT shall be 25% of the total number of outstanding units at all times, and the number of unit holders of the REIT forming part of the public shall be 200 at all times, failing which action may be taken as may be specified by the Board and by the designated stock exchange including delisting of units under regulation 17 of REIT Regulations:

j) Any person other than the sponsor(s) holding units of the REIT prior to initial offer shall hold the units for a period of not less than 1 year from the date of listing of the units subject to circulars or guidelines as may be specified by the SEBI.

II. Investment conditions

a) The Investment by a REIT shall only be **in Holdco and/or SPVs** or **properties** or **securities** or **TDR in India** in accordance with REIT regulations and in accordance with the investment strategy as detailed in the offer document as may be amended subsequently.

b) The REIT **shall not invest in vacant land or agricultural land or mortgages** other than mortgage backed securities.

c) **Not less than 80% of value of the REIT assets** shall be invested **in completed and rent generating properties.**

d) **Not more than 20% of value of the REIT assets** shall be invested in assets other than completed and rent generating properties and **such other investment shall only be in**,-
   1) properties which are:
      i) under-construction properties which shall be held by the REIT for not less than three years after completion;

ii) under-construction properties which are a part of the existing income generating properties owned by the REIT which shall be held by the REIT for not less than three years after completion;
iii) completed and not rent generating properties which shall be held by the REIT for not less than three years from date of purchase;

2) listed or unlisted debt of companies or body corporate in real estate sector provided that this shall not include any investment made in debt of the (holdco and/or SPVs);

3) equity shares of companies listed on a recognized stock exchange in India which derive not less than seventy-five per cent. of their operating income from real estate activity as per the audited accounts of the previous financial year;

e) Not less than **51% of the revenues of the REIT (holdco) and the SPV**, other than gains arising from disposal of properties, shall be, at all times, **from rental, leasing and letting real estate assets** or any other income incidental to the leasing of such assets.

f) Not less than 75% of value of the REIT assets proportionately on a consolidated basis shall be rent generating.

g) **A REIT shall hold at least 2 projects, directly or through (holdco and/or) SPV**, **with not more than 60% of the value of the assets, proportionately on a consolidated basis, in one project.**

h) A REIT **shall hold any completed and rent generating property,** whether directly or through (holdco or) SPV, **for a period of not less than 3 years** from the date of purchase of such property by the REIT or (holdco or) -SPV.

III. Distribution policy

With respect to distributions made by the REIT and the (holdco and/or) SPV,-

a) not less than 90% of net distributable cash flows of the SPV shall be distributed to the REIT (/holdco) in proportion of its holding in the SPV subject to applicable provisions in the Companies Act, 2013 or the Limited Liability Partnership Act, 2008;
(with regard to distribution of net distributable cash flows by the holdco to the REIT, subject to applicable provisions in the Companies Act, 2013 or the Limited Liability Partnership Act, 2008, the following shall be complied:
(i) with respect to the cash flows received by the holdco from underlying SPVs, 100% of such cash flows received by the holdco shall be distributed to the REIT; and
(ii) with respect to the cash flows generated by the holdco on its own, not less than 90% of such net distributable cash flows shall be distributed by the holdco to the REIT)

b) not less than 90% of net distributable cash flows of the REIT shall be distributed to the unit holders;

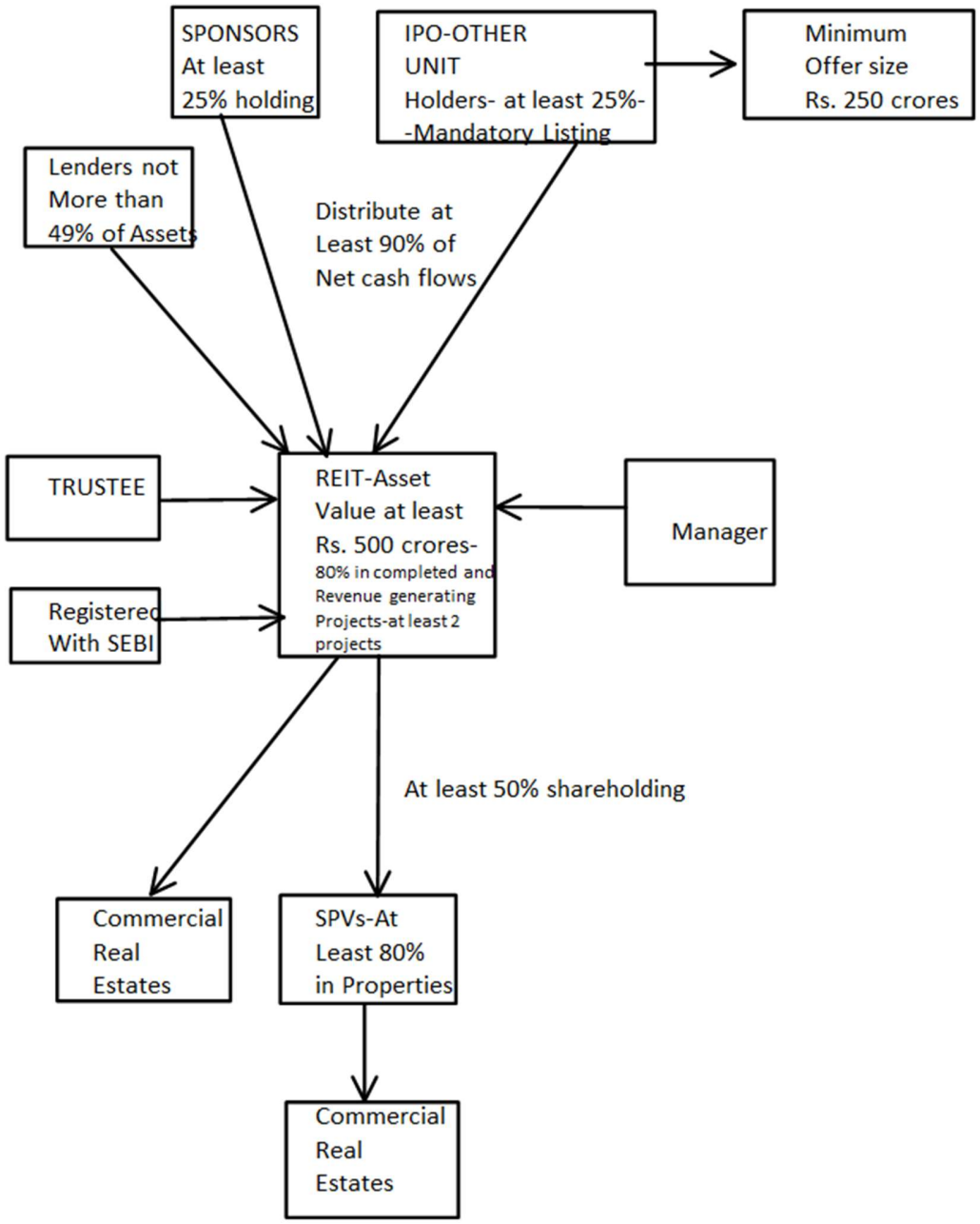
c) such distributions shall be declared and made not less than once every 6 months in every financial year and shall be made not later than 15 days from the date of such declaration;

d) if any property is sold by the REIT or holdco or SPV or if the equity shares or interest in the holdco/SPV are sold by the REIT, then,-

   (i) if the REIT proposes to reinvest sale proceeds, if any, into another property, it shall not be required to distribute any sale proceeds from such sale to the unit holders;

   (ii) if the REIT proposes not to invest the sales proceeds made into any other property, within a period of 1 year, it shall be required to distribute not less than 90% of the sales proceeds in accordance with clauses (a),(b), (c) and (d) above;

e) if the distributions are not made within 15 days of declaration, then the manager shall be liable to pay interest to the unit holders at the rate of 15% per annum till the distribution is made and such interest shall not be recovered in the form of fees or any other form payable to the manager by the REIT.


SPONSORS
At least
25% holding
IPO-OTHER
UNIT
Holders- at least 25%-
-Mandatory Listing
Minimum
Offer size
Rs. 250 crores
Lenders not
More than
49% of Assets
Distribute at
Least 90% of
Net cash flows
TRUSTEE
REIT-Asset
Value at least
Rs. 500 crores-
80% in completed and
Revenue generating
Projects-at least 2
projects
Manager
Registered
With SEBI
At least 50% shareholding
Commercial
Real
Estates
SPVs-At
Least 80%
in Properties
Commercial
Real
Estates

Special income tax treatment to transactions relating to REIT under the Income Tax Act, 1961 (as amended by Finance Bill, 2017)

Under the Income Tax Act, REIT has been defined as the "Business Trust" as follow:

Section 2(13A): "business trust" means a trust registered as,—

(i) an Infrastructure Investment Trust under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992; or

(ii) a Real Estate Investment Trust under the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992, and

the units of which are required to be listed on recognised stock exchange in accordance with the aforesaid regulations.

Income Tax implications to the primary parties involved in a REIT Structure are as follow:

A. Sponsor
B. SPV/Hold Co
C. REIT
D. Unit Holders

A. Sponsor

From the perspective of a Sponsor, income tax implications will arise mainly on following instances:

I. Transfer of shares in a SPV to REIT

1. <u>In exchange of REIT Units:</u>

   a. The exchange of shares of a SPV (being a capital asset) for units of REIT (being another capital asset) amounts to transfer under the Income Tax Act attracting capital gains. However, such transfer has been exempted u/s. 47(xvii). Thus, at the stage of exchange of units of the REIT for shares in a SPV, capital gains will not be attracted in the hands of the Sponsor.

   b. Subsequently when such REIT Units are offered for sale under the initial public offer of REIT Units, the short-term capital gains arising to the Sponsor will be subject to concessional tax rate of 15% u/s. 111A and long term capital gains will be exempt u/s. 10(38). However, the Sponsor is required to pay Securities Transaction Tax at 0.20% on the sale value of REIT units offered for sale.

      Further for the purpose of calculation of capital gains, the period of holding of shares of SPV shall be considered as per provisions of Section 2(42A)(hc) and **cost shall be the cost of acquisition of shares of SPV** as per provisions of Section 49(2AC).

2. For cash consideration:

   Given the structuring requirements of REIT under SEBI Regulations, it is less likely that the shares of SPV will be sold for cash consideration, however if such is the case then there won't be any special tax treatment available for such sale transaction and such sale of shares of SPV will be subject to normal provisions of the Income Tax Act.

II. Transfer/Sale of properties directly held by the Sponsor to REIT

In case of sale/transfer of properties directly held by the Sponsor to REIT, no special tax treatment is available whether such sale is for cash consideration or for exchange of REIT units. Thus, in case such property is held as business assets, taxation as business profits will be applicable and in case it is held as capital assets, capital gain tax treatment will be applicable.

Major Drawback: The major drawback in case of transfer/sale of properties directly owned by the Sponsor to REIT is applicability of stamp duty on which as of now there is a lack of clarity.

B. SPV/Hold Co

- A SPV/Hold Co is treated as a separate legal entity, thus all normal provisions of the Income Tax Act will apply to income earned by a SPV/Hold Co. Thus, SPV/Hold Co will pay income tax as applicable to it under the Income Tax Act.
- Further in case of SPV/Hold Co being a Company, the dividend distribution tax is payable on distribution of dividend to shareholders including REIT. This assumes significant importance as a SPV is required to distribute 90% of its net income and Hold Co is require distributing 100% of income earned from SPV and 90% of income earned by itself under REIT Regulations.
- However, if the equity share capital of SPV/Hold Co being a Company, is Wholly Owned by REIT, then no dividend distribution tax is payable by the SPV/Hold Co on distribution of current year income earned on or after acquisition by REIT. **(Section 115-O(7) - W.e.f. 01-06-2016)**
- However, only special provision applicable wherein a SPV is not required to deduct TDS on interest payment made to REIT as per exemption provided in Section 194A.

C. REIT

A REIT will primarily have following sources of income for which special tax treatments are provided:

I. Interest income from funds lent to a SPV

- Interest income received from a SPV on funds lent to SPV is exempt in the hands of REIT u/s. 10(23FC).
- It is to be noted here that SPV is not required to deduct TDS on such interest payment to REIT u/s. 194A as stated above.

II. Receipt of dividend in case of a Company SPV and share of profit in case of a LLP SPV

- As per normal provisions of the Income Tax Act, dividend income received from a Company is exempt u/s. 10(34) which equally apply to dividend income received by a REIT from a SPV.

- Further in case of a LLP SPV, share of profit is exempt u/s. 10(2A) in the hands of a partner, here, being a REIT.

III. Rental / Leasing income from directly owned properties

- Rental or leasing income earned by a REIT from properties directly owned by it and let out is exempt in the hands of REIT u/s. 10(23FCA).
- In this regard, an exemption from deduction of TDS is provided u/s. 194-I wherein TDS is not required to be deducted on rental/leasing income payable to a REIT.

IV. Other income earned by REIT which includes income from disposal of properties

- All other income including income from disposal of properties are taxable at maximum marginal rate [viz. highest rate of income-tax (including surcharge, if any) applicable in relation to the highest slab of income in the case of an individual subject to capital gain provisions of Section 111A and Section 112, wherever applicable [Section 115UA(2)].

➔ **Concessional income tax on interest income earned by non-residents on investments made in long-term bonds issued by a REIT**

As per Section 194LC, a REIT is required to deduct TDS at concessional rate of 5% on interest payable on long term bonds issued to non-residents subject to fulfillment of certain conditions including money is borrowed in foreign currency and rate of interest on such bonds does not exceed the rate approved by the Central Government.

D. Unit Holders

➔ Section 115UA(1) provides that notwithstanding anything contained in any other provisions of the Income Tax Act, any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by, or accrued to, the business trust.

An REIT Unit Holders will primarily have following sources of income for which special tax treatments are provided:

I. Interest income received by Unit Holders in the form of distribution of interest income received from SPV by REIT

- Interest income received by Unit Holders as distribution of interest received from a SPV by a REIT is taxable in the hands of Unit Holders as per Section 115UA(3) -
  - in the case of residents: as per normal provisions of the Income Tax Act; and
  - in the case of non-residents: at a concessional income tax rate of 5% as per provisions of Section 115A(1)(iiac).
- In this regard, REIT is required to deduct TDS on distribution of interest income at the rate of 10% in case of to residents and at the rate of 5% in case of non-residents (Section 194LBA).

II. Rental / leasing income received by Unit Holders on distribution of such income earned by REIT from properties directly owned by it

- Such distributed rental / leasing income is taxable in the hands of Unit Holders as per Section 115UA(3) as per normal provisions of the Income Tax Act, there being no special tax treatment available.
- In this regard, REIT is required to deduct TDS on distribution of such rental / leasing income at the rate of 10% in case of to residents and at the rates in force in case of non-residents (Section 194LBA).

III. Other income distributed by REIT

- All other income (other than interest and rental / leasing income referred above) distributed by REIT to the Unit Holders is exempt in the hands of the Unit Holders as per provisions of Section 10(23FD).
- This is a logical corollary of the fact that such income is taxable in the hands of REIT at a maximum marginal rate of tax u/s. 115UA(2) as stated above *(other than dividend or share of profit received from a SPV which is taxable at SPV level)*.

IV. Capital gains on sale / transfer of REIT Units

- The concessional capital gain tax treatment applicable to listed equity shares are made applicable to REIT Units.
- Thus STCG arising on transfer of REIT Units is taxable at 15% u/s. 115A and LTCG on such transfer is exempt u/s. 10(38) of the Income Tax Act.

Comparison with Singapore REITs (S-REIT)

Singapore as a jurisdiction has gained tremendous importance and significance in the REIT space, especially due to following:

Sr. No	Conditions	REIT in India (I-REIT)	REIT in Singapore (S-REIT)
1	**Introduction**	2014-2016	2002
2	**Listing**	Yes, Mandatory	Yes, but not mandatory
3	**Minimum Market Capitalization**	INR 500 Crore	S$ 300 Million
4	**Investment Criteria**	At least 80% should be in completed and revenue generating properties	At least 75% of the property fund's deposited property should be invested in income generating properties.
5	**Income Distribution**	If capital gains from sale of property by REIT is proposed to be re-invested in another property, then such gains need not be distributed. However, if such re-investment is not proposed, then 90% of such capital gains is required to be distributed to the unit holders.	Distribution of capital gains by S-REIT is not required to be done.
6	**Permissible Investments**	Real estate assets (freehold or leasehold) includes assets incidental to ownership and operation of such real estate assets **(Only Indian assets).** A REIT is not allowed to invest in units of another REIT.	**Real estate, whether freehold or leasehold, in or outside Singapore.** An investment in another property fund that is authorised will be considered as an investment in real estate;

Taxation

- any distributions made by S-REITs to foreign or local investors shall be exempt from tax, provided at least 90% of the taxable income is distributed
- individual investors, either local or foreign are not required to pay tax on dividends received on S-REIT investments,
- qualifying foreign corporate investors are taxed at 10%
- Singapore corporate investors are taxed at the prevailing corporate tax rate

Real Estate Investment Trusts (REIT) vs Investment Infrastructure Trusts (InvIT) – Comparison

Particulars	REIT	InvIT
Key Definitions	"Real estate" refers to land and any permanently attached improvements to it, whether on leasehold or freehold, and includes buildings, sheds, garages, fences, fittings, fixtures, warehouses, car parks, etc. and any other assets incidental to the ownership of real estate. **But the definition does not include mortgage and any asset falling under the purview of 'infrastructure' as defined vide Notification of Ministry of Finance dated October 07, 2013.**	Infrastructure as defined by Ministry of Finance vide its notification dated October 7, 2013 (Annexure A)
Key Investment conditions	At least 80% of the value of a REIT to be in completed and rent-generating real estate, with a lock-in period of three years from the purchase date A maximum of 20% of the total value of REITs can be from: - Under construction properties with a lock-in period of three years after completion (sub-cap of 10%) - The listed or unlisted debt of real estate companies - Mortgage-backed securities **- Equity of listed companies in India, generating at least 75% of their income from real estate activities** - Government securities	At least 80% of the value of the InvIT to be in completed and revenue-generating infrastructure projects A maximum of 20% of the total value of InvITs can be from: - Under construction investment projects - directly or through an SPV (with an investment cap of 10% of the value of the InvIT)* - Listed or unlisted debt of the companies in the infrastructure sector **- Equity or listed companies in India generating at least 80% of their income from the infrastructure sector**
Minimum Subscription Size	Rs. 2,00,000 per investor	Rs. 10,00,000 per investor
Conditions for Private Placement	Not Applicable as the REITs are not allowed to raise funds through Private placement.	- It shall do it through a placement memorandum; - from Qualified Institutional Buyers (QIBs) and body corporate only, whether Indian or foreign , - with **minimum investment** from any investor of **Rs. 1 crore**;
Taxation Structure	Rental or leasing income earned by a REIT from properties directly owned by	Rental or leasing income earned by a InvIT from properties directly owned by

	it and let out is **exempt** in the hands of REIT (Section 10(23FCA)).	it and let out is **taxable** in the hands of InvIT at the maximum marginal rate.

Future of REITs in India

The Indian real estate market is expected to touch US$ 180 billion by 2020. The housing sector alone contributes 5-6 per cent to the country's Gross Domestic Product (GDP)[3].In the period FY2008-2020, the market size of this sector is expected to increase at a Compound Annual Growth Rate (CAGR) of 11.2 per cent. Retail, hospitality and commercial real estate are also growing significantly, providing the much-needed infrastructure for India's growing needs. The private equity investments in real estate increased 26 per cent to a nine-year high of nearly Rs 40,000 crore (US$ 6.01 billion) in 2016.

Sectors such as IT and ITeS, retail, consulting and e-commerce have registered high demand for office space in recent times. The office space absorption in 2016 across the top eight cities amounted to 34 million square feet (msf) with Bengaluru recording the highest net absorption during the year. Information Technology and Business Process Management sector led the total leasing table with 52 per cent of total space uptake in 2016. Mumbai is the best city in India for commercial real estate investment, with returns of 12-19 per cent likely in the next five years, followed by Bengaluru and Delhi-National Capital Region (NCR).

"Currently, the market for REITs and InvITs is relatively nascent in the country. However, with various enabling factors such as the growth of the economy and the middle class, and a concomitant need for housing and infrastructure, the demand for these investment vehicles will see an upswing over the next few years," **PwC Partner-Tax Abhishek Goenka** said in a statement.

Following these developments, many companies have expressed interest in setting up these structures. On the real estate front, DLF Limited is pushing ahead with its plans in a big way and has signed non-disclosure agreements with 25 global investors. Embassy Office Parks (a JV between Blackstone and Embassy Developers) is also readying plans to float REIT structures. Other players contemplating similar moves include K Raheja Corporation and a JV of RMZ and Qatar Investment Authority.

At the end of the day, REITs are investment instruments and not a means to acquire actual property – which is always high on every Indian's wish-list. A budget that clearly favours purchase decisions for first- time home buyers and is a step closer to the Prime Minister's mission to provide Housing for all by 2022 is in place. 2017 is certainly the year to make home ownership a reality.

At a time when realty and infrastructure sectors are struggling to tap into alternative funding sources, these structures will act as a key enabler for capital markets in India. However, their success will depend on the credibility of the sponsor or investment manager and on the commercial income of the underlying assets. In addition, challenges such as imposition of stamp duty on transfer of assets, conversion charges, taxation of interest income at the marginal tax rate for the unit holder, thereby making it more attractive for non-resident investors vis-à-vis domestic investors, etc. need to be carefully examined.

[3] https://www.ibef.org/industry/real-estate-india.aspx

Annexure A: Infrastructure as defined by Ministry of Finance vide Notification dated October 7, 2013

Sr. No	Category	Sub-Sectors
1	Transport	• Roads and bridges • Ports[1] • Inland waterways • Airports • Railway tracks, tunnels, viaducts and bridges[2] • Urban public transport (except rolling stock in the case of urban road transport)
2	Energy	• Electricity generation • Electricity transmission • Electricity distribution • Oil pipelines • Oil, gas and liquefied natural gas (LNG) storage facility[3] • Gas pipelines[4]
3	Water and sanitation	• Solid waste management • Water supply pipelines • Water treatment plants • Sewage collection, treatment and disposal system • Irrigation (dams, channels, embankments, etc.) • Storm water drainage system • Slurry pipelines
4	Communication	• Telecommunications (fixed network) [5] • Telecommunications towers • Telecommunications and telecom services
5	Social and commercial infrastructure	• Education institutions (capital stock) • Hospitals (capital stock) [6] • Three-star or higher category classified hotels located outside cities with a population of more than 1 million • Common infrastructure for industrial parks, special economic zones, tourism facilities and agriculture markets • Fertiliser (capital investment) • Post-harvest storage infrastructure for agricultural and horticultural produce, including cold storage • Terminal markets • Soil-testing laboratories • Cold chain[7] • Hotels with project cost[8] of more than 200 crore INR (for each) in any place in India and with any star rating • Convention centres with project cost[8] of more than 300 crore INR on each

[1]Includes Capital Dredging.

[2]Includes supporting terminal infrastructure such as loading/unloading terminals, stations and buildings.

[3]Includes strategic storage of crude oil.

[4]Includes city gas distribution network.

[5]Includes optic fibre/ wire/cable networks which provide broadband/internet.

[6]Includes Medical Colleges, Para Medical Training Institutes and Diagnostic Centres.

[7]Includes cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat.

[8]Applicable with prospective effect from the date of notification and available for eligible prospects for three years from the date of notification; Eligible costs exclude cost of land and lease charges but include interest during construction.