

# Italian REIFs

*Milan – June 2009*

# REIF

## Organizational rules

### 1. Legal aspects

The incorporation of closed-end REIFs is the only allowed by law. In accordance to the Bank of Italy settlements, a REIF should have several investors, generally if the investor is only one the REIF is not accepted. By the way, it has to be taken into consideration that there is not any rule which sets a minimum number of investors.

REIFs are established and managed by a professional financial intermediary “SGR – locally known as Società di Gestione del Risparmio”.

The “SGR” is entered in a registry held by the Bank of Italy and has to respect several rules issued with the aim to limit and spread risks.

# REIF

## Organizational rules

### 2. Other aspects

**Income and asset rules:** income must derive from qualifying investments: at least 2/3 of REIF investment values have to be composed of real estates, real estate rights and real estate companies. A REIF can not own “business licences” (in this case, the REIF rents its real estates to the property company owning the business licences which in turn rents going concerns to tenants).

**Distribution rules:** depending on by-laws

**Leverage rules:** REIFs can be financed for an amount not higher than 60% of the GAV (so-called “Speculative” REIFs can reach approx. 95%).

# REIF

## Organizational rules

### 3. Conversion rules

The real estate can be transferred to the REIF through a sale vs. cash or, alternatively, a contribution. When the real estate is sold by an SGR related entity or the real estate is contributed, an appraisal is needed.

An independent expert appointed by the SGR prepares the appraisal.

The transfers or the contributions must be performed at the “fair market value” (also for tax purposes).

# REIF

## Tax rules - Taxation

### 1.1. Income taxes

REIFs are not subject to both: the corporate income tax – IRES – and the local income tax – IRAP.

### 1.2. VAT

From a VAT standpoint, REIFs are not VAT taxable entities but REIFs operations are regarded for VAT purposes as operations conducted by the SGR.

# REIF

## Tax rules - Taxation

### 1.3. Property tax

A REIF is liable to an yearly 1% tax on their NAV on condition that:

- the REIF is not floated and has a GAV of less than € 400 million; and
- the investors are less than 10, except cases where at least 50% of the units are owned by, among others, foreign entities (i) resident in a “white list” State (such as Luxembourg and The Netherlands) or (ii) which are institutional investors established in a “white list” State; or
- as far as “Reserved” REIFs or “Speculative” REIFs are concerned, at least 2/3 of the units are owned by an individual or a single family.

# REIF

## Tax rules - Taxation

### 2. Investors Taxation

Proceeds distributed by a REIF are subject to a 20% withholding tax applied by the SGR.

This tax represents an advance payment if the unit holders are Italian companies (in this case the dividend received is fully liable to taxation at the level of the shareholders). This tax is final for individuals resident in Italy and in any other case.

Foreign unit holders are tax exempt (for both: proceeds and capital gains) if the investor:

- i. is resident in a “white list” State (such as Luxembourg and The Netherlands) or
- ii. is an institutional investor established in a “white list” State.

# REIF

## Tax rules - Taxation

### 3. Conversion (income taxes)

The capital gain arising from the real estate transfer (carried on through a sale or a contribution) from the property company to the REIF is subject to both: the corporate tax – IRES – at 27,5% and the local income tax – IRAP – at 3,9% (if the real estate has been owned for more than three years, the capital gain could be included in the taxable income, at the seller option, in equal installments in a maximum of five tax years).

In case of contribution, the capital gain can be subject to a 20% exit tax; this tax has to be paid in a maximum of five tax years' period (including delayed interest at 5% per year)

# REIF

## Tax rules - Taxation

### 3. Conversion (other taxes)

The purchase of the real estate by the REIF is normally liable to VAT at the rate of 20% (by applying the so-called “reverse charge mechanism”).

Should the real estate be transferred to the REIF by way of a contribution, a different VAT regime apply. Contributions to REIFs of a plurality of real estates mainly rented at the time of contribution is out of the scope of the Italian VAT. As far our case is concerned, it is not clear if the MALLS can be considered rented according to the above-mentioned rule.

Both the purchase and the contribution, excluding the case of contribution of a plurality of real estate mainly rented at the time of the contribution, are liable to a 2% mortgage and cadastral taxes.