

REIT regime now extended to new exchanges



Authors: Kelsey Biddulph and Tessmerica Moodley. The South African Real Estate Investment Trust (REIT) structure is a listed property investment vehicle, similar to internationally recognised REIT structures, where a tax dispensation ensures a flow through of net property income to

investors. A REIT is essentially a company that owns and operates income-producing immovable property.

One of the greatest advantages of a REIT is that it effectively operates on a tax neutral basis in terms of section 25BB of the Income Tax Act, No 58 of 1962 (Income Tax Act). Section 25BB of the Income Tax Act provides for the flow-through principle whereby investors are subject to tax on income received from the REIT and the REIT is taxed on the taxable income retained at the standard corporate rate.

Until recently, the position in terms of the Income Tax Act was that in order to qualify as a REIT for tax purposes, the entity must be a South African tax resident and securities in the entity must be a listed on the Johannesburg Stock Exchange (JSE) as securities in a REIT.

After operating as the only exchange in South Africa for a number of years and effectively enjoying a monopoly, the JSE now faces competition in that since 2016, four new exchanges have been licensed as stock exchanges in terms of the Financial Market Act, No 19 of 2012 (FMA), such as A2X Markets, 4 Africa Exchange (4AX), ZARX and Equity Express Securities Exchange (EESE).

The introduction of these new exchanges has necessitated a change in legislation to allow an entity to be granted REIT status on these exchanges (and to obtain the associated tax

benefits) and consequently, the definition of a REIT as set out in the Income Tax Act needed to be amended.

Section 1(u) of the Taxation Laws Amendment Act, No 23 of 2018 (TALA) enacted on 17 January 2019, provides for the amendment to subparagraph (ii) of the definition of REIT to now accommodate all current exchanges which wish to have REITS listed as well as any future exchanges, as follows:

REIT means a company:

a) that is a resident;

b) the shares of which are listed:

1. on an exchange (as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act); and
2. as shares in a REIT as defined in the listing requirements of an exchange approved in consultation with the Minister and published by the Prudential Authority, as defined in section 1 of the Financial Markets Act, in terms of section 11 of that Act.

Chapter three of the FMA deals with amongst other things, applications for exchange licenses, the requirements applicable to applicants for exchange licenses and licensed applications and the licensing of an exchange and grants the power to the Financial Sector Conduct Authority (FSCA) to grant an exchange license.

Whilst the FSCA still remains the authority which is legislated to provide exchange license, in respect of REITs, an additional obligation is placed on REITs in TALA which requires the listings requirements of an exchange relating to a REIT to be approved by the Minister and the Prudential Authority (which operates within the administration of the South African Reserve Bank).

The promulgation of TALA, whilst creating uncertainty in relation to the role of the Prudential Authority, can be seen as a positive step to companies wishing to list as a REIT but which were previously precluded from doing so as they did not meet the stringent JSE Listings Requirements.

Companies now have more exchanges to choose from for REIT listings as well as more flexibility in deciding which exchange best suits their needs and budgets. This will hopefully encourage more REITs to list on exchanges and consequently be able to enjoy the benefits of section 25BB of the Income Tax Act.

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