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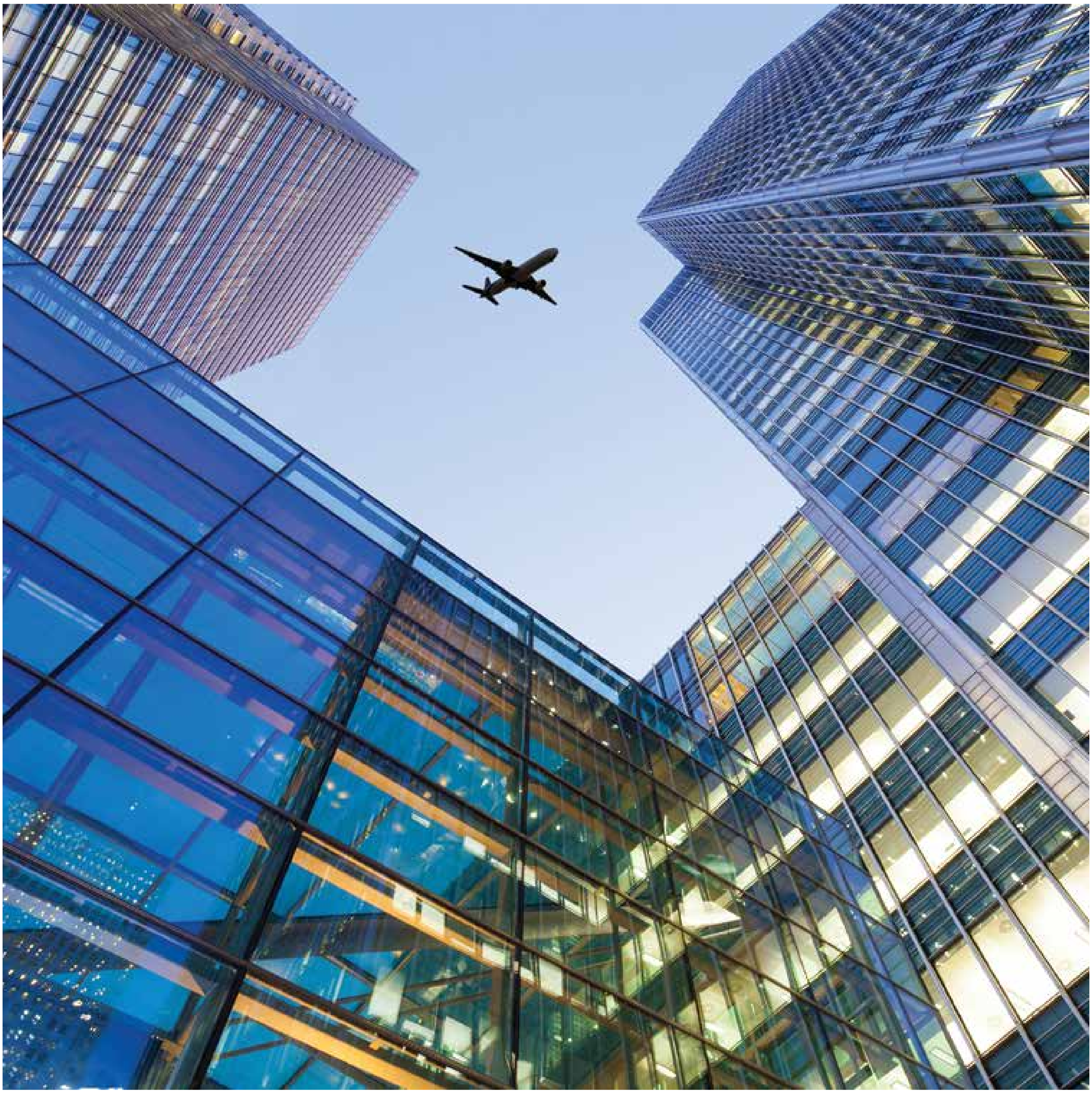
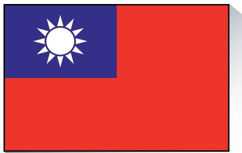
Taiwan Property Investment Guide

2016





Property tenure/ownership

Property ownership in Taiwan, also known as the Republic of China, is mainly freehold. Long-term leaseholds are becoming more common, particularly in Taipei City and for government build-operate-transfer infrastructure projects, where superficies are granted to superficiaries.

Generally, leasehold titles (other than leases of land for the construction of buildings) cannot be longer than 20 years. However, superficies can have 35-year to 50-year terms, and some can have 70-year terms. Renewal options are dependent on specific contract terms.

Strata ownership in large urban properties is common. The Regulations on Management of Apartment Buildings were promulgated in June 1995 and are being used to standardise building management and maintenance. Property titles outline specific ownership of areas in the buildings, including ownership of the percentage of land and common areas.

The market for leasing commercial, retail and residential properties is active. Lease terms are generally for three to five years for commercial and retail properties, and one year or more for residential properties.

To make transaction prices of real estate more transparent and accessible to the public, effective on August 1, 2012, the Ministry of the Interior (MOI) established a registration system under which the purchaser, land administration agent (i.e. scrivener) or broker of a given real property transaction must register the actual transaction price of real estate within 30 days of the completion of the title transfer.

Restrictions on foreign ownership

Foreign individuals and companies (except for nationals and companies of the People's Republic of China (PRC) that are subject to certain restrictions) are allowed to buy real estate in Taiwan, subject to government approval. Approval is conditional on a reciprocal arrangement, whereby Taiwanese individuals and companies are allowed to buy real property in the home country of the foreign individual or the country where the foreign company maintains its head office. A person/entity of a country named on the List of Non-Reciprocal Countries is not allowed to acquire any rights in real property in Taiwan.

Since 2002, PRC nationals and companies may also invest in real property in Taiwan if they meet certain conditions. To be eligible, PRC investors must apply to the Investment Commission of the Ministry of Economic Affairs (MOEA) and/or the MOI. On November 26, 2013, the MOI promulgated certain control measures aimed at controlling the total volume of PRC individuals' investments in real estate, which took effect from 2014. Subject to the relevant laws and regulations (such as the Regulations on Permission of the Acquisition, Creation or Transfer of Property Rights of Real Estate in Taiwan by PRC People), PRC individuals may purchase real estate in Taiwan, either individually or collectively, provided that the purchase(s) shall not exceed a total area of 13 hectares and a total of 400 units in buildings per year, and also provided that the overall purchases of real estate in Taiwan made by such PRC individuals shall not, at any given time, exceed a total land area of 1,300 hectares and a total of 20,000 units in buildings. Furthermore, to prevent PRC individuals from driving up real property prices in particular areas, the MOI introduced a new control measure on July 1, 2015 under which no more than 10% of the total number of units in the same building or community may be owned by PRC individuals; if the total number of units in the same building or community is less than 10, PRC individuals may not own more than one unit.

Companies established in Taiwan by foreign investors, also referred to as foreign investment approval (FIA) companies, may purchase or lease real property for their operations in Taiwan.

Major property legislation

- Land Act
- Land Tax Act
- Deeds Tax Act
- House Tax Act
- Urban Planning Act
- Regulations on Urban Renewal
- Building Act
- Regulations on Management of Apartment Buildings
- Management Rules for Hillside Buildings
- Management Rules for Interior Fixtures of Buildings
- Regulations on Permit for PRC Citizens to Acquire, Create or Transfer Real Property Rights in Taiwan
- Rules on Superficies on State-owned Non-public Land
- Statute for Investment by Foreign Nationals
- Statute for Investment by Overseas Chinese
- List of Negative Investments by Overseas Chinese and Foreign Nationals
- Act for Promotion of Private Participation in Infrastructure Projects
- Civil Code

Forms of foreign corporations

A foreign company may establish a presence in Taiwan in any of the following forms:

- Subsidiary (a limited company or a company limited by shares)
- Branch office
- Representative office (for conducting nonprofit-generating activities only)

Different forms of companies have different tax and legal implications, particularly when remitting funds out of Taiwan.

Registration/licencing requirements

Before commencing operations, foreign firms are required to register with the following agencies:

- Department of Commerce, MOEA
- local city or county government where the business is to be located
- Bureau of Foreign Trade (if it is an importer/exporter)
- Local tax office

Foreign employment limitations

Foreign nationals have to meet certain academic and/or work experience criteria to be eligible for a work permit to engage in office work in Taiwan. To obtain a work permit, a foreign national must:

- Have a master's degree in a related field
- Have a bachelor's degree and at least two years of experience in a related field
- have passed one of the exams conducted by the Taiwan government in accordance with the Act for Conducting Examinations for Professional Occupations or Technicians
- Have worked for a multinational enterprise for at least one year and be assigned by such enterprise to Taiwan
- Have been trained or studied by himself/herself, and have at least five years of experience in a related field with proven track records.

Investment incentives

The Act for Promotion of Private Participation in Infrastructure Projects provides preferential tax treatment and financing treatment for investors of infrastructure projects. Also, under this legislation, the Taiwan government will assist investors in acquiring land necessary for infrastructure projects.

Restrictions on foreign property ownership

Foreigners are prohibited from owning any of the following land:

- Forestry land
- Fisheries
- Hunting grounds
- Salt fields
- Land with mineral deposits
- Sources of water
- Land within fortified and military areas
- Land adjacent to national frontiers

Foreign exchange controls

Each company in Taiwan may remit into and out of Taiwan USD 50 million per year. If the aggregate amount of remittances exceeds USD 50 million, approval must be obtained from the Central Bank of the Republic of China (Taiwan).

There are no foreign exchange limits for investment, trade or insurance premium payments by foreign companies in Taiwan, provided that their investments in Taiwan have been approved by the relevant authorities.

Taxes on possession and operation of real estate

House tax

House tax is an annual tax assessed on all buildings and houses. It ranges from 1.2 percent to 5 percent of the current assessed value of the house, depending on the type of use.

		Statutory rate (%)		Actual rates enforced (%)* - Taipei as an example
Purposes		**Min. rate**	**Max. rate**	**Rate**
For residential purposes	Used by the owner himself/herself, his/her spouse or relatives of a direct second lineage of the household or leased for public welfare purposes	1.2		1.2
	Not occupied by the owner, his/her spouse or relatives of a direct lineage of the household	1.5	3.6	Holding no more than 2 units – 2.4 per unit; Holding 3 units or more - 3.6 per unit
For non-residential purposes	Used for business purposes Used as a private hospital or clinic, or as a professional office	3	5	3
	Used as the premises for the operation of a non-profit civic organisation	1.5	2.5	2

* Actual rates enforced are fixed within the minimum and maximum rates above by the government of each special municipality (i.e., Taipei City, New Taipei City, Taichung City, Tainan City and Kaohsiung City, collectively referred to as “special municipality”), county or city, approved by the local people’s assembly and submitted to the Ministry of Finance (MOI) for record purpose.

Land value tax

Land value tax is payable on an annual basis to the local county or special municipality. The tax ranges roughly from 1% to 5.5%, based on a comparison of the starting cumulative value (SCV) and the current government-assessed land value (LV), as follows:

Formula	Conditions	Applicable formula (land value tax)
1	LV ≤ SCV	LV x 1%
2	5 x SCV ≥ LV > SCV	(LV x 1.5%) – (SCV x 0.5%)
3	10 x SCV ≥ LV > 5 x SCV	(LV x 2.5%) – (SCV x 6.5%)
4	15 x SCV ≥ LV > 10 x SCV	(LV x 3.5%) – (SCV x 17.5%)
5	20 x SCV ≥ LV > 15 x SCV	(LV x 4.5%) – (SCV x 33.5%)
6	LV > 20 x SCV	(LV x 5.5%) – (SCV x 54.5%)

The SCV is a constant figure set by the government for each county or special municipality. The LV is assessed by the government every three years.

Taxes on acquisition and transfer of real estate

Stamp tax and legal costs

Stamp tax is charged on sales and transfers of deeds or real estate. The stamp tax is 0.1% of the contract price or the real estate value and is usually paid by the purchaser. It is usual practice for each party to bear its own legal costs in a property transfer transaction.

Deed tax

Deed tax is assessed on all immovable property located on land, including houses, buildings and other fixtures. Different rates apply for different forms of exchange:

Conditions	Rate (% of value of the deed)
On a purchase	6%
On a Dien	4%
On an exchange	2%
On a bestowal or a donation	6%
On a partition	2%
On a possession	6%

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Capital gains tax and land value increment tax

Capital gains from the sale of real property other than land are treated as regular income and taxed at a corresponding personal or corporate income tax rate. Gains from the sale of land are generally exempt from income tax, but are assessed under land value increment tax (LVIT).

LVIT is levied on the sale of land. LVIT is based on the increase in the government-assessed value (GAV) of the land component of the property during the ownership period, adjusted by the consumer price index. LVIT rates range from 20% to 40%, depending on the amount of appreciation in GAV. The exact tax liability is established via the application of a complex formula, which takes into account the holding period (for increases in GAV of 100% or more only). The holding period discounts are available where the subject property has been held for more than 20 years, more than 30 years or more than 40 years.

Formula	Increase in GAV	LVIT rates
1	Less than 100%	20%
2	100% to less than 200%	30%
3	200% and above	40%

Despite the foregoing, it is worth noting that the Taiwan government has adopted a new tax system, which took effect on 1 January 2016 (New Tax System). Under the New Tax System, a seller's total capital gains from the sale of the following land and/or buildings will be subject to income tax: (1) buildings and/or land acquired on or after 1 January 2016; or (2) buildings and/or land acquired on or after 2 January 2014, and owned for no more than two years prior to sale. In addition, the tax rates that apply to non-Taiwan residents and foreign entities are different from those that apply to Taiwan residents (see Personal taxation below) and entities with headquarters in Taiwan (see Corporate taxation below). For non-Taiwan residents and foreign entities, the tax rates are (1) 45% for buildings and/or land owned for no more than one year prior to the sale; and (2) 35% for buildings and/or land owned for more than one year prior to the sale.

Value Added Tax/Goods and Services Tax

Taiwan has a 5 percent VAT on most goods and services.

Tax depreciation

Depreciation of fixed assets is calculated based on the depreciation periods prescribed in the Revised Table of Service Life of Fixed Assets (固定資產耐用年數表), as follows:

Description		Service life
Buildings for use as office, stores, residences, public places and others not otherwise classified.	1. Reinforced concrete construction, pre-fabricated concrete construction	50 years
	2. Reinforced brick construction	35 years
	3. Brick construction	25 years
	4. Metal construction (with cover treatment)	20 years
	5. Metal construction (without cover treatment)	15 years
	6. Wooden construction	10 years

Current tax regulations allow the straight-line method, fixed-percentage method, sum-of-years-digits method, production method, working-hour method, and other depreciation methods approved by the competent authorities. Businesses are required to report to the national tax administration before they adopt any method other than straight-line. If no report is submitted, the business will be assumed to have opted for the straight-line method.

Corporate taxation

Except for the gains from the sale of the land and/or buildings subject to the New Tax System, FIA companies are subject to tax at the same rates as Taiwan companies. FIA companies are subject to a withholding tax on their gross income.

Corporate tax is based on a progressive scale, as follows:

Taxable income	Tax rate
Less than TWD 120,000 (USD 4,000)[1]	Exempt from tax
More than TWD 120,000 (USD 4,000)	17% of total taxable income, but the tax payable shall not exceed 50% of the portion of taxable income above TWD 120,000 (USD 4,067)

Net losses can be carried forward for a maximum of ten years, and cannot be carried back.

[1] The USD amounts in this Chapter are calculated at USD 1 to TWD 30 and for reference only.

Personal taxation

Both residents and non-residents are taxed on Taiwan-sourced income only. Residency only determines how they will be taxed. After January 1, 2010, a Taiwan resident must include his/her non-Taiwan-sourced income in the calculation of his/her basic income, unless the sum of his/her non-Taiwan-sourced income received in a calendar year does not exceed TWD 1 million (USD 33.33 million).

Individuals who were in Taiwan for at least 183 days during a calendar year are treated as residents for income tax purposes and taxed at progressive marginal rates, as follows (for the taxable year of 2015):

Taxable income	Tax rate
TWD 0–520,000 (USD 0–17,333)	5%
TWD 520,001–1,170,000 (USD 17,333–39,000)	12%
TWD 1,170,001–2,350,000 (USD 39,000–78,333)	20%
TWD 2,350,001–4,400,000 (USD 78,333–146,667)	30%
TWD 4,400,001–10,000,000 (USD 146,667–333,333)	40%
TWD 10,000,001 (USD 333,333) and above	45%

The taxable income of residents includes salary, professional fees, royalties, rental income, gains from property transactions, dividends, company profits, interest, prizes and awards, and payments relating to retirement, severance and resignation. Some personal exemptions and deductions are allowed.

Individuals who are in Taiwan for less than 183 days during a calendar year (i.e. nonresidents for income tax purposes) are liable for a withholding tax on gross income at a flat rate of 20%, but if a nonresident who stays in Taiwan for 90 days or less in a taxable year receives remunerations for services provided from an offshore employer, such income will not be considered the nonresident's Taiwan-sourced income.

Meanwhile, please note that with regard to the gains from the sale of land and/or buildings that are subject to the New Tax System, the tax rates applicable to Taiwan residents are as follows:

Holding Period Prior to Sale	Tax rate
less than one year	45%
more than one year but no more than two years	35%
more than two years but no more than ten years	20%
More than ten years	15%

[Note 1] When an heir or a legatee sells a building and/or land obtained through inheritance or legacy, the period for which said building and/or land were/was held by the deceased can be included when calculating the period of his/her holding such building and/or land.

[Note 2] With regard to (i) buildings and/or land owned for less than two years prior to the sale thereof owing to a job transfer, involuntary redundancy from employment, or any other involuntary cause of a seller, or (ii) a seller who uses his/her own land to enter into a joint construction and allocation project with a profit-seeking enterprise and subsequently sells his/her unit(s) in the building and/or land within two years of acquisition of land, the tax rate applicable to the gains from the sale of such buildings and/or land is 20%.

Tax Treaties: Avoidance of Double Taxation

Double taxation agreements as of January 21, 2016:

Australia	Malaysia
Austria	Netherlands
Belgium	New Zealand
Denmark	Paraguay
France	Senegal
Gambia	Singapore
Germany	Slovakia
Hungary	South Africa
India	Swaziland
Indonesia	Sweden
Israel	Switzerland
Kiribati	Thailand
Luxembourg	United Kingdom
Macedonia	Vietnam

International Transport Tax Treaties for Shipping or Air Transport* as of January 21, 2016:

For the purpose of this table, S=Shipping Transport and A= Air Transport

Canada (A)	Korea (S&A)	Sweden (S)
EU (S)	Luxembourg (A)	Thailand (A)
Germany (S)	Macau (A)	United States (S&A)
Israel (S)	Netherlands (S&A)	
Japan (S&A)	Norway (S)	

**Generally, International Transport Tax exemptions allow countries to import and export cargos to another country and allow them to avoid taxes on these products. Such treaties enhance the location as a shipping/transportation center.*

Real Estate Investment Trusts

Introduction

Taiwan passed the Real Estate Securitization Act (RESA) in 2003. The MOI has also issued administrative guidelines that support the legislation. The RESA provides for the creation of two categories of real estate securities—real estate asset trusts (REATs) and real estate investment trusts (REITs). The difference between a REAT and a REIT lies in how they are established.

A REIT is created by a trust enterprise that invites investors to participate in the trust, based on the trustees' REIT plan and prospectus. The trustee raises cash from the sale of certificates of beneficiary and then uses the funds raised to acquire real estate.

A REAT is created by the transfer of real estate from the owner (the sponsor/originator) to the trustee, who, in turn, launches a unit trust of certificates of beneficiary. These securities may then be traded, subject to certain rules and restrictions, in the same manner as REITs. Real estate contributed to a fund may be transferred back to the originator at the end of the REAT's term or sold in the open market, as stipulated by the trust agreement. To date, REATs have mainly been used in relation to commercial real estate deals.

The Fubon No. 1 REIT was the first REIT listed on the Taiwan Stock Exchange in March 2005. The Fubon No. 1 REIT raised TWD 5.83 billion (USD 194.3 million) to acquire two office buildings, an apartment building and a commercial building in Taipei City. As of January 21, 2016, there are five REITs listed on the Taiwan Stock Exchange.

REITs will be closed-end funds, unless prior approval is obtained from the Financial Supervisory Commission.

The following rules apply to both REITs and REATs, unless otherwise stated.

Restrictions

1. Originators/sponsors

- The owner of the property that will be acquired by a REIT may purchase the certificates of beneficiary. However, once the REIT is established, the originator/sponsor will be subject to a lock-in period of one year.

2. Establishment of the trustee

- To be eligible to act as a trustee of a REIT, an entity must have a paid-up capital of TWD 1 billion (USD 33.33 million).
- To be eligible to act as a trustee of a REAT, an entity must have a paid-up capital of TWD 300 million (USD 10 million).

3. Fund restrictions

- There are no specific restrictions on the minimum fund size, only practical limitations concerning where and how such securities can be traded.
- REITs with assets of TWD 3 billion (USD 100 million) or more are eligible to be listed on the Taiwan Stock Exchange. REITs with assets of TWD 2 billion (USD 66.67 million) or more are eligible to be listed on the over-the-counter (OTC) market.
- REATs with assets of TWD 500 million (USD 16.67 million) or more are eligible to be listed on the Taiwan Stock Exchange or the OTC market.
- Any five beneficiaries, except for the independent institutional investors under the RESA, must not own more than 50% of the beneficial securities in a REIT or more than 50% of the preferred stock in a REAT.

4. Asset restrictions

- Over 75% of REIT's assets must be invested in real estate or other real estate-related rights under development or generating stable income, real estate securities, government bonds, or cash.
- Not more than 40% of REIT's assets or TWD 600 million (USD 20 million can be held in securities other than real estate securities.
- REITs and REATs cannot buy vacant land without a development plan. The RESA requires trusts to invest for the purpose of earning stable income.
- Idle funds can be invested in bank deposits, government securities, bonds issued by financial institutions, treasury notes, negotiable certificates of time deposit, commercial papers of companies with an acceptable credit rating or guaranteed by banks with an acceptable credit rating, or other financial products approved by the competent authorities only.
- The RESA does not prohibit a trust from investing outside Taiwan.

- A fund cannot own more than 10% of another fund.
- A fund cannot invest more than 10% of its assets in another fund.

5. Dividends

- The fund's net income should be distributed as dividends within six months of the end of the financial year.

6. Borrowing

- The RESA does not specify borrowing limits.

7. Private funds

- In addition to public offerings, the RESA provides for the creation of private funds.
- Private funds must have less than 35 members. Individual investors of private funds must:
  - Present proof of financial capacity, i.e. having at least TWD 30 million (USD 1 million), or a statement undertaking that his or her total assets exceed TWD 30 million (USD 1 million) if he/she invests in beneficiary securities worth more than TWD 3 million (USD 0.1 million), and his/her total assets at the trustee, including deposits and investments (including the said investment), is worth more than TWD 15 million (USD 500,000).
  - Have sufficient professional knowledge or experience in trading financial products. Corporations investing in private funds must have assets over TWD 50 million (USD1.67 million).
- Restrictions on borrowing, liquidity ratios, appraisal regulations, investment plans, control reports and execution records and other such restrictions on public funds do not apply to private funds.

Taxation

Taiwan residents and foreign companies with a business presence in Taiwan are subject to a withholding tax of 10% on their dividend income from the trust; this income is not consolidated in their annual taxable income. A 15% withholding tax rate is levied on distributions of dividends from the trust to non-Taiwan residents and foreign companies without a business presence in Taiwan, provided, however, that this rate may be reduced under the terms of a tax treaty.

The sale and purchase of REAT and REIT securities are exempt from the Securities Transaction Tax.

No capital gains tax is applied on the sale of the securities by investors or on the sale of real estate by the trusts.

The transfer of property from an originator to a REAT trustee will be exempt from LVIT, provided that the REAT is required to return the entrusted property to the originator upon termination of the trust.

Common Terms of Lease for Tenancy Agreements

Unit of measurement	
Unit of measurement	Ping (1 ping = 3.3 sqm = 35.58 sq ft)
Rental payments	
Rents	NTD/ping/month on the landlord's stated gross area
Typical lease term	2-5 years; longer terms of up to 10 years are sometimes available for large-space users (but not typical)
Frequency of rent payable (in advance)	Monthly
Typical rent deposit (expressed as x months rent)	3-6 months
Security of tenure	Only for the duration of the tenancy, no guarantee beyond the original lease term
Does tenant have statutory rights to renewal	No
Basis of rent increases or rent review	Consumer price index published by the government or a fixed rate agreed upon by the parties to the lease
Frequency of rent increases or rent review	At lease renewal or every 2-3 years
Service charges, operating costs, repairs and insurance	
Responsibility for utilities	Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges
Car parking	Held under a separate monthly lease for an additional rent
Responsibility for internal repairs	Tenant
Responsibility for repairs of common parts (reception, lifts, stairs, etc)	Landlord
Responsibility for external/structural repairs	Landlord
Responsibility for building insurance	Landlord
Disposal of leases	
Tenant subleasing & assignment rights	Case-by-case
Tenant early termination rights	Case-by-case
Tenant's building reinstatement responsibilities at lease end	Case-by-case

Source: JLL

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