



CMS REITs

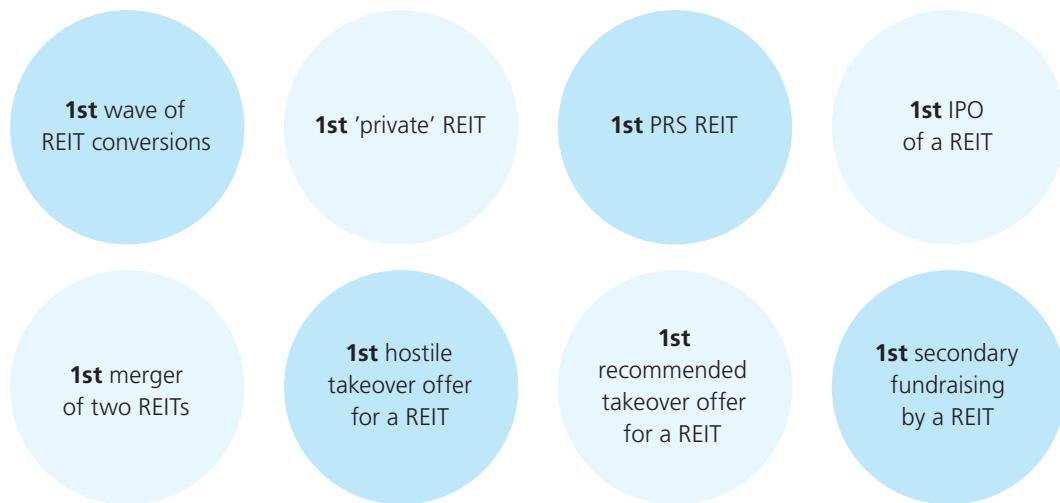
2023

UK REITs

We are the No.1 REITs firm. The CMS REITs team has been involved in the UK REIT regime since its beginning and includes specialists in Real Estate, Corporate Finance, Tax, Regulatory and Banking.

Changes in UK tax law and investor preference for 'onshore' structures have led to REITs becoming the property investment vehicle of choice and it is now also possible to have non-listed REITs where the relevant ownership requirements are met. There are now circa 100 UK REITs holding over GBP 100bn of property, with many more in the pipeline, including for funds and joint ventures.

CMS REIT specialists have advised on over 50 of the UK REITs and have designed most of the ground-breaking REIT structures. We advise almost half of the premium listed REITs and have led the sector since the introduction of the REIT regime, including:



Key features of a UK REIT

UK REITs are property investment vehicles that are:

Globally recognised brand	<i>US REITs are over 60 years old</i>
Government sponsored	<i>Introduced by the UK Government in 2007</i>
'Onshore'	<i>Use a UK tax resident top company</i>
Tax efficient	<i>Exempt investment property profits and gains</i>
Eliminate tax on latent gains	<i>Efficient for existing properties and acquisitions</i>
Flexible	<i>Business and structural flexibility</i>
Income-producing	<i>90% rental profit distribution requirement</i>
Capital raising	<i>Raise equity frequently</i>
Liquid	<i>Shares can be traded on a stock exchange</i>
Internally or externally managed	<i>Flexible for management</i>
Acceptable to a wide range of investors	<i>Investor governance</i>
Can invest in most real estate asset classes	<i>Can be multi or single sector asset classes</i>



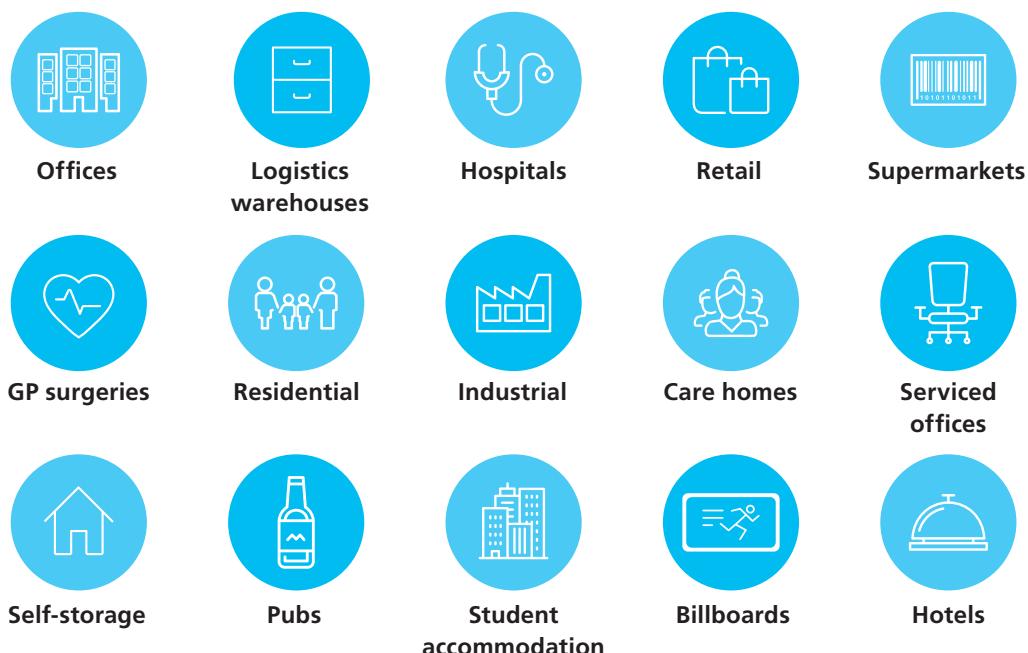
Investors and REIT structures

Whilst most REITs are widely held and traded by institutions and the public, many of them are 'joint venture REITs' held on a static basis by a small number of qualifying institutional investors, such as:

Private equity funds	<i>With carried interest arrangements</i>
Limited partnership fund vehicles	<i>Combines a REIT with an investment vehicle</i>
Sovereign wealth funds	<i>As overseas investors</i>
Pension funds and life assurance companies	<i>As UK and overseas investors</i>
REITs	<i>UK and overseas investors</i>

Asset classes

The asset classes REITs invest in include:



REITs explained

Broadly, a UK REIT is a normal UK resident company that simply elects into a special tax regime which exempts property investment profits and gains; together with some (or all) of the UK gains on disposals of shares in 'UK-property rich' companies. All other activities are taxable in the usual way.

In return for the tax exemption, a REIT needs to meet various conditions, which are summarised below in relation to a group UK REIT.

Company conditions

The principal company of a group UK REIT must satisfy the following:

- Tax resident only in the UK (although it can often be incorporated elsewhere)
- Not be an OEIC
- Share capital admitted to trading on a 'recognised stock exchange' (and shares either 'listed', or traded each accounting period) unless it qualifies as a non-listed REIT
- Not be a 'close company', or only be close because it has a shareholder that is a qualifying institutional investor
- One class of ordinary share capital (non-voting restricted preference shares also permitted)
- No 'non-commercial' loans (e.g. profit participating loans)

Non-listed REITs

The listing condition has been relaxed from 1 April 2022 where at least 70% of a REIT's share capital is owned by one or more institutional investors;

- there are tracing rules to cater for indirect ownership by institutional investors; and
- a limited partnership which is a collective investment scheme that meets a genuine diversity of ownership (GDO) condition, is automatically treated as an institutional investor for these purposes without the need to trace through the partnership

This is a significant improvement on the regime meaning that private institutionally owned REITs within the above requirements no longer need to list from 1 April 2022.



Distribution condition

The principal company of a group UK REIT must distribute:

- 90% of the group's property rental business profits (calculated on a tax basis)
- 100% of distributions received from other REITs
- Within 12 months of the end of each accounting period
- By way of cash dividend, or shares issued in lieu of cash
- Exempt capital gains on disposals of properties or shares do not need to be distributed

A key concept behind the REIT regime is to move the incidence of tax on profits and gains of a REIT's property rental business from the REIT itself to its shareholders. To facilitate this, withholding tax is deducted from distributions of a REIT's exempt profits (except, for example, to pension funds), but this withholding tax can usually be:

- Recovered in full by some investors (e.g. tax-exempt investors and sovereign wealth funds)
- Recovered in part (e.g. under a tax treaty) or
- Deducted in calculating a shareholder's tax liability

Property rental business conditions

The property rental business of a group UK REIT must:

- Involve at least 3 properties (broadly 3 lettable units)
- No single property (or unit) must represent more than 40% of the value of those properties

The above requirements are being relaxed where it owns at least one commercial property worth £20 million or more

The group's balance of business:

- Profits of property rental business (which excludes specified items) must be at least 75% of the aggregate profits of the group for each accounting period
- The fair value of assets of property rental business (which includes all cash and investments in other REITs) must be at least 75% of the fair value of the aggregate assets of the group at the beginning of each accounting period

Notes

- The REIT regime allows for 'minor breaches' of some of the above conditions
- A REIT must produce special REIT 'financial statements' each accounting period to help HMRC monitor compliance with the above conditions. These are submitted electronically using HMRC's REIT financial statement tool
- In some circumstances, gains on the disposal of a property within 3 years beginning with completion of development, may not be exempt (including by way of disposal of shares)
- A REIT may suffer a penalty tax charge if it makes a distribution to a company or body corporate which, very broadly, has a beneficial interest of at least 10% in the REIT. However, HMRC has approved several ways for such investors to hold their shares so that a REIT doesn't suffer a penalty in practice
- A REIT may also suffer a penalty tax charge to the extent its ratio of property rental profits to finance costs is less than 125% (capped in some circumstances)

Our experience

We have structured REITs across all assets classes for a wide range of investors including many of the UK listed REITs as well as UK and overseas investors..

We advise REITs on listing, secondary fund raises, joint ventures, financing and takeovers and mergers. We also advise on all types of underlying real estate activity for many of the largest buildings and projects with a REIT as a growing vehicle of choice for international investors and fund managers.

Our experience includes many REITs such as:

AEW Long Lease	Big Yellow Group	British Land
Capital & Regional	GPE	Hammerson
Landsec	LondonMetric Property	NewRiver Retail
Primary Health Properties	Secure Income REIT	SEGRO
Supermarket Income REIT	Triple Point Social Housing	Warehouse REIT

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