



December 2025

## Draft Notice on definition of Unlisted REITs

On 11 December 2025, National Treasury and the South African Revenue Service (**SARS**) issued a request for public comment in respect of a draft notice published by the Minister of Finance (**the Draft Notice**), setting out the requirements for certain unlisted companies to qualify as a Real Estate Investment Trust (**REIT**) in terms of paragraph (b) of the definition of a REIT in section 1 of the Income Tax Act No 58 of 1962 (**the ITA**). Such public comments must be forwarded to SARS or National Treasury before close of business on 31 January 2026.

### Background – Taxation of REITs

Simplistically, REITs are investment vehicles which directly or indirectly own immovable property across various sectors (including property in foreign countries) and earns income from the property (**rental income**). REITs mainly raise finance through issuing shares to investors, affording the investors indirect exposure to the underlying immovable property and income through distributions of the rental income (**qualifying distributions**).

Section 1 of the ITA currently defines a REIT as a South African tax resident company, the equity shares of which are listed:

- on an exchange (as defined in section 1 of the Financial Markets Act and licensed under section 9 of that Act); and
- as shares in a REIT as defined in the (National Treasury and relevant authority approved) listing requirements of that exchange (**listed REIT requirements**).

REITs, as currently defined, can therefore only include specific listed companies.

A company which qualifies as a REIT is entitled to *inter alia* a specific tax dispensation that allows a tax deduction for its distributions, effectively treating it as a conduit from a tax perspective in terms of section 25BB of the ITA. Accordingly, REITs are left in a tax neutral position with respect to its rental income (REITs may have minor tax liability on additional non-rental income it earns from other activities). In this regard section 25BB of the ITA allows a REIT a deduction of its qualifying distributions, provided that 75% of the REITs gross income is derived from rental income.

### Unlisted REITs

The REIT definition was expanded in the Taxation Law Amendment Act No 42 of 2024 to also include any South African tax resident company which meets the requirements as set out by the Minister of Finance by notice in a published Government Gazette. The purpose of the amendment, per the Explanatory Memorandum accompanying

the corresponding amendment Bill, was expressly to cater for non-listed South African companies which should otherwise qualify as a REIT.

The Draft Notice publishes such additional requirements to be met by unlisted companies wishing to qualify as a REIT. Many of these mirror the Listed REIT requirements (Particularly, those contained in the listed requirements of the Johannesburg Stock Exchange / **JSE REIT requirements**) are mirrored in the Draft Notice, including:

- At least 75% of the revenue reflected in the company's statement of comprehensive income is derived from rental *revenue* (**revenue requirement**);
- The company's total or consolidated liabilities is no more than 60% of the consolidated assets as reflected in the company's audited or reviewed annual financial statements (**AFS**) prepared in terms of International Financial Reporting Standards (**IFRS**),
- The company's audited or reviewed AFS reflect gross assets of at least R300 million; and
- The company qualifies for a deduction of distributions under section 25BB of the ITA, *on a continuous basis*.

The Draft Notice does have some unique requirements for unlisted REITs however, including:

- The company must be a "wholly-owned subsidiary" (which is defined as a company, all the equity shares of which are controlled alone or in combination by an insurer, retirement fund, or short-term insurer); and
- At least 80% of the company's assets, as reflected in the previous year's IFRS prepared AFS is directly or indirectly attributable to immovable property or an interest in a "property company"; and

### Comments on the Draft Notice

We note the following regarding the Draft Notice:

- It appears that the intention is that the requirements and conditions in the Draft Notice should mirror the existing JSE REIT requirements.
- A unique requirement is introduced in that the unlisted REIT must be a wholly owned subsidiary company of an insurer, retirement fund, or short-term insurer. This effectively means that the qualification is limited and not all unlisted South African companies, which should otherwise qualify as a REIT, will qualify as an unlisted REIT.
- The public workshop to occur regarding comments received on the Draft Notice is intended to occur after the 2026 Budget in February 2026. Barring any reference of Unlisted REITs in the Chapter 4 or Annexure C submissions for the 2026 legislative cycle, the Draft Notice requirements would therefore only be introduced into law during the 2027 legislative cycle.
- The adoption of the wording of the JSE REIT requirements does result in possible issues or uncertainty for example:
  - The term "rental revenue" is a defined term **in the JSE REIT requirements**, which broadly aligns with the definition of **rental income** in the ITA. As the Draft Notice provides requirements to be read in the ITA, however, it would be preferable for the Draft Notice to either refer to rental income (as defined in section 25BB of the ITA) or otherwise to specifically define the term "rental revenue".
  - The Draft Notice requires that the company must qualify for a deduction of distributions under section 25BB of the ITA, **on a continuous basis**. It would be preferable that the reference to continuous basis be clarified possibly in line with the JSE REIT requirements which refer to "(t)he company qualifies for a deduction in terms of section 25BB of the ITA for the current or future financial year end".

**For more information and assistance, please contact:**



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