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**Date:** January 22, 2008

**Re:** October 30, 2007 OECD Public Discussion Draft on tax treaty issues related to REITs

Dear Mr Owens,

We kindly request your attention for the following.

1. Introduction

Unibail-Rodamco at present is active in 15 countries with a total portfolio of approx. € 24 billion (published value end of June 2007). We have read the above mentioned Public Discussion Draft with great interest and were pleased with the accessibility of the report and the way in which a solution was found for some major issues already. We are pleased to be able to give some additional comments in this letter and look forward to being able, either via our presence in the Tax Committee of EPRA or directly, to attribute to solutions for the issues that currently are not solved completely.

Our main concern at present is related to the situation in which a REIT has made an important investment (>10%) in another REIT in a different country. But before commenting further on that specific situation, we would first step back to the overall question at hand.

## 2. Treatment of cross border investments by a REIT

### General view

Obviously, we have taken notice of the comments of REESA as sent in its note of January 2, 2008. We endorse the view as laid down in said letter, in overall terms.

### Cross border REIT investments

The Discussion Draft sets out alternative tax treaty provisions with respect to cross border investments in REITs. The report thereby distinguishes between smaller investors, for whom an investment in a REIT will generally be comparable to a portfolio investment in publicly traded securities, and larger investors, for whom an investment in a REIT may be a substitute for a direct investment in underlying real property held by the relevant REIT. Therefore, the Draft continues, there are arguments that distributions to smaller investors should be subject to tax in the source country not exceeding the portfolio dividend withholding tax rate whilst distributions to larger investors should not be eligible for a reduced withholding tax rate under a tax treaty and, hence, be subject to the (high) rate provided for under the domestic laws of the source country.

The Discussion Draft starts from a certain broad definition of a REIT: REITs are widely held companies that are effectively not subject to entity level tax in their home countries on real property income and gains that they generally must distribute to investors within a certain specified period following the close of the relevant financial year. Furthermore, the majority of the assets of a REIT typically consist of investments in income producing real property and a majority of a REIT's annual profit is typically resulting from income and gains from investments in real property.

The proposed alternative tax treatment of (large) foreign investors would seem to be based on the fact that a REIT is generally not subject to entity level tax in its home country and the implicit assumption that a REIT typically invests in real property investments located in the home country. The proposed tax treatment of large investors therefore does not (sufficiently) address the issues which may arise where a REIT makes cross border real property investments, which in a globalising market is a rule rather than the exception. After all, a REIT which invests in foreign real property projects, either directly or through a local company, will more often than not be subject to tax at regular tax rates in the countries where the real properties are located. In those circumstances, there seems little or no justification to allow distributions to large foreign investors in the REIT to be subject to tax at full domestic withholding rates.

We would therefore ask the Working Party to consider the possibility of a more concise definition of a REIT for purposes of the alternative tax treaty provisions. In this respect, we would like to draw your attention to the 4<sup>th</sup> paragraph of the Capital Gains article in the 2005 OECD Model Tax Convention which provides for a certain definition of a real property holding company for purposes of allocation of the right to tax capital gains on shares.

REITs making an investment in a REIT

According to the Discussion Draft, for participations >10% in principle no limitation of the tax rates for withholding taxes would be applicable. Therefore, the normal domestic rates of the country in which the respective REIT is situated would be applicable.

The above mentioned "Industry Comments" agree with this in principle. However, an explicit exception is made for situations in which a foreign REIT from one country invests in a domestic REIT in another country.

We agree that such exemption would be appropriate where the foreign REIT itself is widely held.

REITs increasingly make cross border real property investments, thus providing diversification benefits for the REIT as well as for its investors. For the investor, there should be a choice between either investing in a number of local REITs in the various countries, or investing in one local REIT, which in turn invests in REITs cross-border. For the investor, this choice should not be influenced by a different tax treatment.

As the common view is that a small investor should be able to benefit from the reduced tax treaty withholding tax percentages, the outcome for an intermediate REIT should be equal.

We therefore suggest that:

- a foreign REIT holding (an investment in) a domestic REIT should be regarded as a small investor with respect to distributions by the domestic REIT, if (or: to the extent) the foreign REIT itself has no large investors; and/or
- the foreign REIT holding a domestic REIT should be entitled to a refund/deduction in its home country for the tax withheld in the country where the relevant domestic REIT is located.

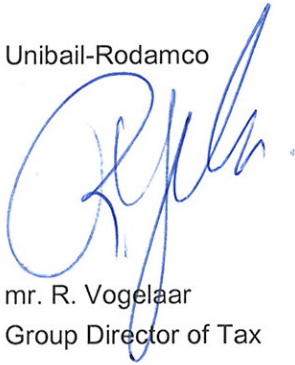
3. Way forward

Together with EPRA, we strongly encourage the OECD to continue to work with the industry, to further define solutions in this very interesting and challenging discussion.

Unibail-Rodamco considers the issues covered in the Discussion Draft to be very important. Therefore, we would much appreciate to be informed on and/or participate in any other discussions in future on this subject.

Yours sincerely,

Unibail-Rodamco



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