Taxation of REITs and InvITs

A comprehensive guide to tax treatment at both Trust Level and Unit Holder Level — covering interest income, dividend income, rental income, capital gains, distributions, and DTAA implications for residents and non-residents.

Trust Level

Unit Holder Level

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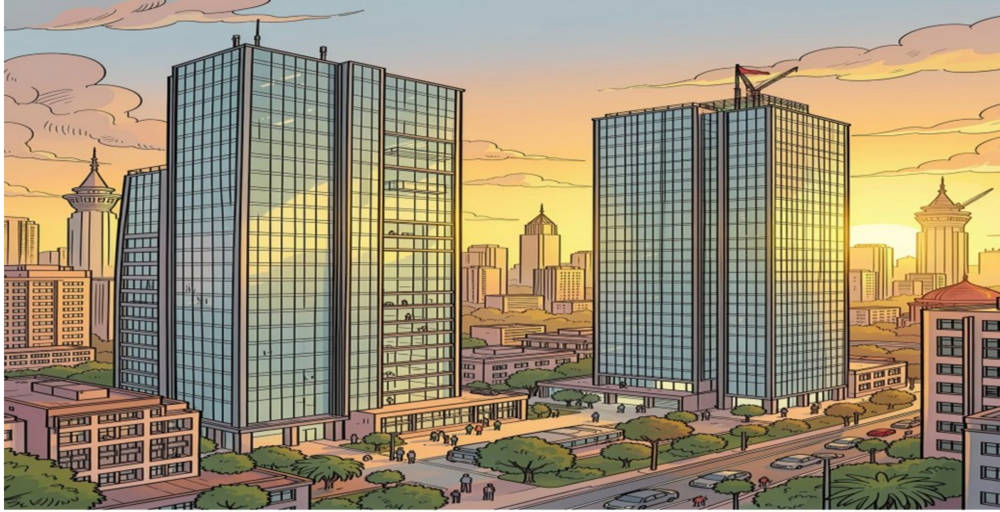
What Are REITs

Pooled investment vehicles investing in **income-producing real estate** — office buildings, malls, hotels, warehouses. Must distribute **at least 90% of income** to investors as dividends.



REITs operate under a **tripartite model** — Sponsor, Investment Manager, and Trustee — all regulated by SEBI (REIT) Regulations, 2014.

Sponsor

Sets up the REIT, transfers assets to SPV, appoints Trustee.

Investment Manager

Manages the real estate portfolio. Must be a separate entity (Company or LLP).

Trustee

Sets the strategic direction of the REIT and decides on the acquisition, divestment or enhancement of assets.

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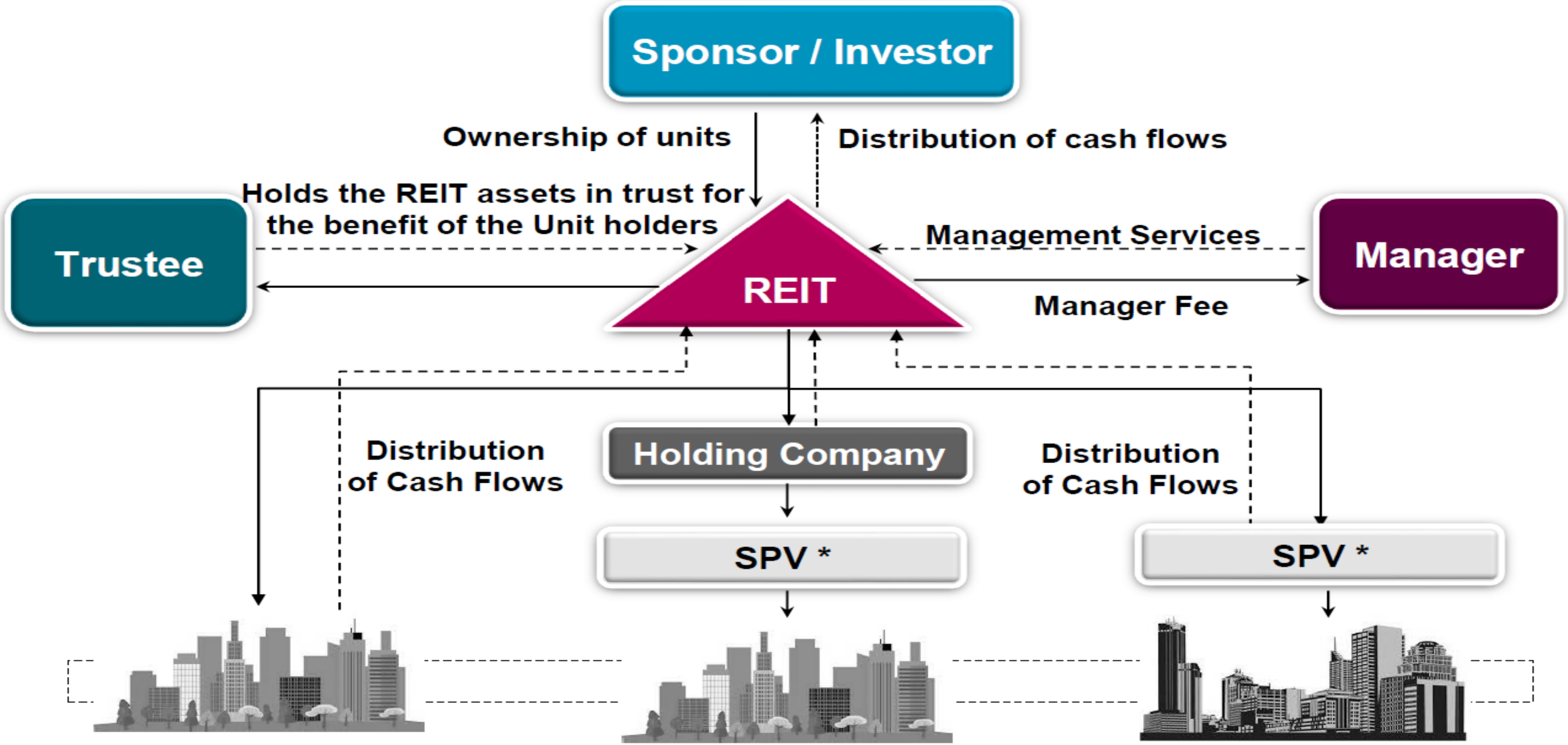
Structure of REIT



* *REITs to hold assets either through Special Purpose Vehicles (SPVs) or directly*

Source: SEBI

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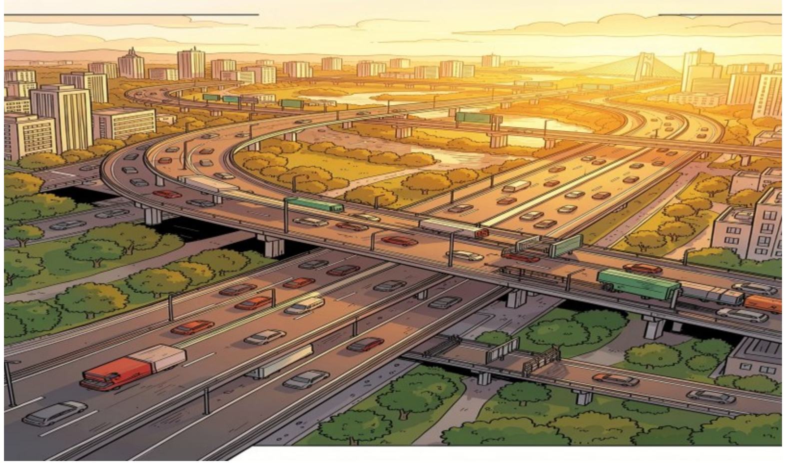
What Are InvITs?

Core Concept

InvITs work like REITs but invest in **revenue-generating infrastructure assets** — highways, power transmission lines, pipelines, renewable energy projects, and warehouses.

Key Objective: Give retail investors access to infrastructure investments previously available only to large institutional investors.



The Structure

Sponsor

Sets up the InvIT; transfers assets/SPVs; appoints Trustee

Manager

Strategic direction, acquisitions, distributions, disclosures

Trustee

Holds assets for unitholders; ensures regulatory compliance

Project Manager

Day-to-day operations and maintenance of assets

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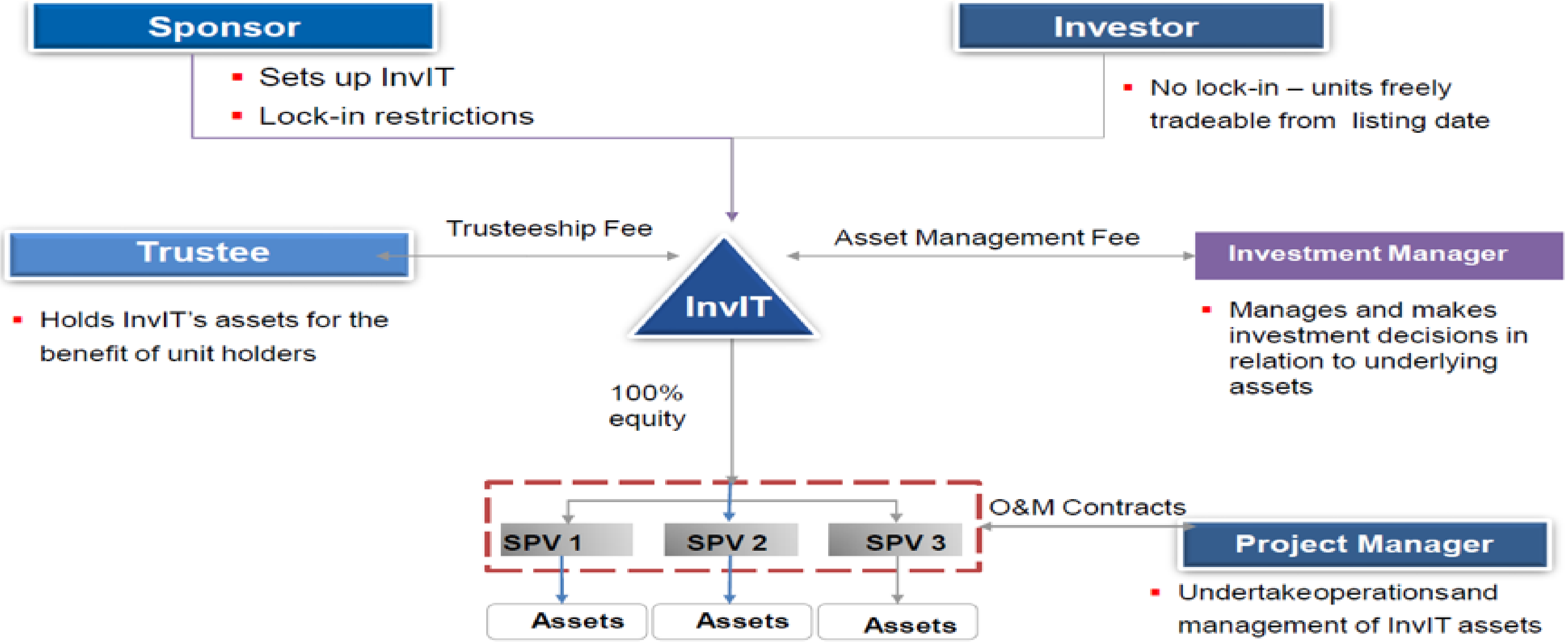
Structure of InvITs



SPV: Special Purpose Vehicles

Source: SEBI

COVERAGE

Income Arising at Trust Level & Unit Holder Level

Taxation a Trust Level

Taxation in the hands of Unit Holder

Comparative Position Analysis of Different Countries

Incomes Arising at Trust Level and Unit Holder Level

Both Business Trusts and their Unit Holders may encounter distinct categories of income.
The table below maps each income type to the level at which it arises.

S. No.	Business Trust Level	Unit Holder Level
1	Interest Income on loan given to SPVs	Capital Gain on transfer of SPV shares to a Business Trust in exchange of units allotted
2	Dividend Income from SPVs	Capital Gain on transfer of units of Business Trust
3	Rental Income on leasable real estate assets directly owned by Trust (REITs only)	Distribution received from Business Trust comprising of: (i) Interest, (ii) Dividend, (iii) Rental Income, (iv) Repayment of Debt (Return of Capital), (v) Other Income directly earned by Trust
4	Capital Gains on transfer of assets (Sale of SPV)	Capital Gains on transfer of assets (Sale of SPV)
5	Any other Income directly earned by REIT/InvIT (FDR Interest / Mutual Fund Investment Income)	Any other Income directly earned by REIT/InvIT (FDR Interest / Mutual Fund Investment Income)

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Taxation at Trust Level

Under the **pass-through mechanism**, certain incomes are **exempt in the hands of the Business Trust** and are instead taxed in the hands of the Unit Holders. This applies to interest, dividend, and rental income as detailed below.

S. No.	Nature of Income	Tax Treatment	TDS Provision
1	Interest Income on loan given to SPVs	Pass-through — Exempt in the hands of Business Trust under **Section 10(23FC)(a)**	Not required to be deducted by SPV
2	Dividend Income from SPVs	Pass-through — Exempt in the hands of Business Trust under **Section 10(23FC)(b)**	Not required to be deducted by SPV
3	Rental Income on leasable real estate assets directly owned by Trust (REITs only)	Pass-through — Exempt in the hands of Business Trust under **Section 10(23FCA)**	Lessee (Tenant) must deduct TDS under **Section 194-I**. REIT may obtain nil/lower deduction certificate under **Section 197**

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Taxation at Trust Level

Not all income qualifies for pass-through treatment. **Capital gains** on transfer of assets and **other income** (such as FDR interest or mutual fund income) earned directly by the Trust are taxable at the Trust level.

S. No.	Nature of Income	Tax Treatment	TDS Provision
4	Capital Gains earned by REIT/InvIT on transfer of its assets (Sale of SPV)	Taxable at Trust level — **Normal provisions of capital gains** apply	As per applicable TDS provisions depending on nature of assets (e.g., **Section 194IA**)
5	Any other Income directly earned by REIT/InvIT (e.g., FDR Interest, Mutual Fund Investment Income)	Taxable at Business Trust level at the **maximum marginal rate**	As per applicable TDS provisions depending on nature of income

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Taxation of Capital Gains in the Hands of Unit Holder

Two distinct capital gain scenarios arise for Unit Holders — one on contribution of SPV shares to the Trust, and another on sale of REIT/InvIT units.

S. No.	Nature of Income	Tax Treatment	TDS Provision
1	Capital Gain on transfer of SPV shares to Business Trust in exchange of units allotted	**Not regarded as a transfer** under **Section 47(xvii)**. Under **Section 49(2AC)**, cost of acquisition of units received is deemed equal to cost of acquisition of shares transferred to the Trust.	Not Applicable
2	Capital Gain on transfer of units of Business Trust (REIT/InvIT)	Taxable under **Sections 111A, 112, and 112A** as applicable — same treatment as equity shares, depending on nature of transfer and holding period. Non-residents may claim relief under applicable **DTAA**, subject to treaty conditions.	**Section 195** applies where capital gains are chargeable in India. TDS deducted after considering applicable DTAA provisions where eligible.

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Taxation of Distributions — Interest and Dividend

Distributions from a Business Trust may comprise multiple components. Dividend components are taxed differently based on the SPV's tax election.

S N	Component	Tax Treatment	TDS Rate under Section 194LBA
3	**Interest**	Taxable as Interest Income. For **Non-Residents**, tax payable under **Section 115A(1)(a)(iiac)** at the rate prescribed in Section 194LBA — **5%** (plus applicable surcharge and health & education cess).	Resident: **10%** Non-Resident: **5%**
4	**Dividend**	**Taxable** — if SPV has exercised option under **Section 115BAA** **Exempt** — if SPV has not opted for concessional regime. For **Non-Residents**, taxable under **Section 115A(1)(a)(i)** at **20%** (plus surcharge and cess) or lower DTAA rate.	Resident: **10%** Non-Resident: **10%** No TDS if income is exempt

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Taxation of Distributions — Rental Income and Return of Capital

Rental income and repayment of debt (return of capital) are two additional components of Trust distributions, each carrying distinct tax consequences for Unit Holders.

S N	Component	Tax Treatment	TDS Provision
5	**Rental Income**	Taxable in the hands of the Unit Holder in accordance with provisions of **Income from House Property**.	As applicable under **Section 194LBA** Resident: **10%** Non-Resident: TDS at rates in force
6	**Repayment of Debt (Return of Capital)** The SPV repays the loan availed from the business trust, and the business trust distribute the amount received to its unit holder.	• Taxable under **Section 56(2)(xii)**. • Amount received is first adjusted against the **cost of acquisition** of units. • Any excess over adjusted cost is taxable under **"Income from Other Sources."** • Cost of acquisition is correspondingly reduced, resulting in **higher capital gains** when units are eventually sold.	No specific TDS under Section 194LBA. General provisions may apply depending on • residential status and • nature of payment.

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Taxation of Other Income Distributed by Trust

Other income earned directly by the Trust — such as interest on fixed deposits and income from sale of mutual funds — is taxed at the Trust level and is exempt in the hands of Unit Holders.

S. No.	Nature of Income	Tax Treatment	TDS Provision
7	Other Income directly earned by Trust and distributed to Unit Holders (FDR Interest / Mutual Fund Income)	Trust has is liable to pay taxes on such income. Such income is **exempt in the hands of Unit Holders under Section 10(23FD)**.	Not Applicable

Key Point: Since the Trust has already paid tax on this income at the Trust level, the same income is not taxed again in the hands of Unit Holders — avoiding double taxation under Section 10(23FD).

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DTAA Treatment of Capital Gains on Sale of REIT/InvIT Units by Non-Residents

- The availability of DTAA benefits depends on the wording of **Article 13 (Capital Gains)** in the relevant treaty.
- The key question: Are REIT/InvIT units treated as "shares" or "other property"?
- Unlike equity shares, units represent beneficial interests in a trust — in several treaties, gains may fall under the **residuary clause**, allocating taxing rights exclusively to the country of residence.
- This reasoning has support from recent ITAT decisions on mutual fund units.

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Country	Relevant DTAA Article	Can India Tax Sale of REIT/InvIT Units?	Remarks
Singapore	Article 13(5)	**No**	Treaty taxes shares but not units — units may fall under residual clause, taxable only in Singapore. Strong ITAT support on units vs. shares distinction.
Mauritius	Article 13(4) (Residual)	**No**	Units arguably not "shares." Recent ITAT decisions on mutual fund units accept this distinction. Position for REIT/InvIT units not yet conclusively settled by higher courts.
UAE	Article 13(5)	**No**	Similar treaty structure to Singapore. If units are not regarded as shares or immovable property, taxing rights may rest with UAE.
Netherlands	Article 13	**Depends**	Treaty contains specific rules for shares and certain participations. Treatment depends on exact facts and treaty interpretation.
Luxembourg	Article 13	**Generally, India may tax where domestic law applies**	Treaty does not provide the same broad residual protection as Mauritius/Singapore. Treaty analysis is fact-specific.

DTAA Treatment of Capital Gains on Sale of REIT/InvIT Units by Non-Residents

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Key Takeaways — Taxation of REITs and InvITs

A consolidated view of the tax framework across Trust level and Unit Holder level.

Topic	Key Points
Pass-Through Mechanism at Trust Level	Interest, dividend, and rental income are **exempt at Trust level** (Sections 10(23FC) and 10(23FCA)).
Capital Gains on Unit Transfer	Taxable under **Sections 111A, 112, 112A**. • Non-residents may claim DTAA relief. • Contribution of SPV shares to the Trust in exchange for units is not regarded as a transfer under Section 47(xvii).
Distribution Components	Interest (5% for non-residents), Dividend (taxable/exempt based on SPV's Section 115BAA election), Rental Income, Return of Capital (Section 56(2)(xii) — reduces cost, excess taxable), Other Income (exempt under Section 10(23)FD).
DTAA Position for Non-Residents	REIT/InvIT units may qualify as **"other property"** (not shares) under treaties with Singapore, Mauritius, and UAE — potentially shielding gains from Indian taxation. Position varies by treaty; fact-specific analysis required.

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THANK **YOU**

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