



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 12

#### REAL ESTATE INVESTMENT TRUSTS

### CHAPTER 1

#### INTRODUCTION

##### *Introductory*

#### **518 Introduction to Part**

- (1) This Part—
  - (a) enables a group of companies which carries on property rental business and which meets requirements specified in Chapter 2 to opt to benefit from exemptions from corporation tax on profits and gains in accordance with Chapter 3, and
  - (b) imposes liabilities to tax on members of the group and the recipients of distributions made by the principal company of the group.
- (2) This Part makes corresponding provision in relation to a company which carries on property rental business and which meets requirements specified in Chapter 2.
- (3) In addition—
  - (a) Chapter 4 deals with some of the consequences of becoming, or becoming a member of, a UK REIT,
  - (b) Chapters 5, 6 and 7 contain provision relating to (respectively) assets of, distributions made by, and gains arising to a UK REIT,
  - (c) Chapter 8 contains provision about failure to meet requirements specified in Chapter 2,

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- (d) Chapter 9 contains provision about ceasing to be, or to be a member of, a UK REIT,
  - (e) Chapter 10 provides for the application of this Part in relation to property rental business carried on by way of a joint venture, and
  - (f) Chapter 11 contains miscellaneous provision and definitions.
- (4) In this Part “UK REIT” means—
- (a) a group UK REIT (see section 523(5)), or
  - (b) a company UK REIT (see section 524(5)).

### *Key concepts*

## **519 “Property rental business”**

- (1) In this Part “property rental business” means—
- (a) UK property business (within the meaning given by section 205 of CTA 2009), and
  - (b) overseas property business (within the meaning given by section 206 of that Act).
- (2) For the purposes of subsection (1) ignore the effect of section 42(2) of CTA 2009 (which provides for receipts and expenses in connection with tied premises to be treated as part of a trade and not as part of a property business).
- (3) The definition of “property rental business” is subject to—
- (a) section 598(3) (which provides that certain lettings of property by a joint venture company or a member of a joint venture group are not property rental business),
  - (b) section 604 (which provides that business of a specified class is not property rental business), and
  - (c) section 605 (which provides that business giving rise to income of a specified class is not property rental business).
- (4) Business carried on by a non-UK company which is a member of a group is property rental business for the purposes of this Part if the business would be property rental business if carried on by a UK company.

## **520 “UK property rental business” of non-UK companies**

- (1) In this Part references to “UK property rental business”, in relation to a non-UK company, are to the company’s property rental business in the United Kingdom.
- (2) Subsection (3) applies if—
- (a) a non-UK company which is a member of a group UK REIT has UK property rental business, and
  - (b) the profits of that business would be chargeable to income tax under Chapter 3 of Part 3 of ITTOIA 2005.
- (3) Profits of the UK property rental business—
- (a) are to be treated for the purposes of this Part as if they were (subject to the application of this Part) chargeable to corporation tax, and
  - (b) are not to be charged to income tax.

## **521 “UK company” and “non-UK company”**

- (1) In this Part “UK company” means a company which is—
  - (a) UK resident, and
  - (b) not resident in another place in accordance with the law of that place relating to taxation.
- (2) References in this Part to a “non-UK company”, in the case of a group of companies, are to be read in accordance with subsection (1) (and references in such a case to a company which is a “UK member” or “non-UK member” of the group are to be read accordingly).

## **522 “Residual business”**

In this Part “residual business” means business which is not property rental business.

# **CHAPTER 2**

## **REQUIREMENTS FOR BEING A UK REIT**

### *Becoming a UK REIT*

## **523 Notice for a group of companies to become a UK REIT**

- (1) A group of companies becomes a group UK REIT if the principal company of the group gives a notice under this section.
- (2) A notice under this section is a notice specifying a date from which the group is to be a UK REIT.
- (3) The principal company of a group may only give a notice under this section if—
  - (a) it is a UK company, and
  - (b) section 236 of FISMA 2000 (open-ended investment companies) does not apply to it.
- (4) If the principal company of a group gives a notice under this section, the group is a UK REIT from the date specified in the notice.
- (5) In this Part “group UK REIT” means a group of companies the principal company of which has given a notice under this section.
- (6) This section is subject to section 527(2) (requirements to be a group UK REIT).

## **524 Notice for a company to become a UK REIT**

- (1) A company becomes a company UK REIT if it gives a notice under this section.
- (2) A notice under this section is a notice specifying a date from which the company is to be a UK REIT.
- (3) A company may only give a notice under this section if—
  - (a) it is a UK company, and

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- (b) section 236 of FISMA 2000 (open-ended investment companies) does not apply to it.
- (4) If a company gives a notice under this section, the company is a UK REIT from the date specified in the notice.
- (5) In this Part “company UK REIT” means a company which has given a notice under this section.
- (6) This section is subject to section 527(3) (requirements to be a company UK REIT).

## **525 Notice under section 523 or 524: supplementary**

- (1) A notice under section 523 or 524—
  - (a) must be given in writing to an officer of Revenue and Customs,
  - (b) must be given before the date specified in the notice,
  - (c) must be accompanied by a statement by the company giving the notice that each of the conditions in section 528 (conditions for company) is reasonably expected to be met in relation to the company throughout accounting period 1, and
  - (d) must contain such other information, and be accompanied by such other documents, as may be prescribed by regulations made by the Commissioners for Her Majesty’s Revenue and Customs.
- (2) Subsection (3) applies if the company giving the notice—
  - (a) does not expect to meet condition C in section 528 on the first day of accounting period 1, but
  - (b) reasonably expects to meet that condition throughout the rest of accounting period 1.
- (3) If this subsection applies—
  - (a) subsection (1)(c) does not apply, but
  - (b) the notice must be accompanied by a statement by the company containing the assertions specified in subsection (4).
- (4) Those assertions are—
  - (a) that conditions A, B, D, E and F in section 528 are reasonably expected to be met in relation to the company throughout accounting period 1, and
  - (b) that condition C in that section is reasonably expected to be met in relation to the company for at least a part of the first day of accounting period 1, and throughout the remainder of the period.
- (5) Subsection (6) applies if the company giving the notice—
  - (a) does not expect to meet condition D in section 528 on the first day of accounting period 1, but
  - (b) reasonably expects to meet that condition throughout the rest of accounting period 1 in reliance on section 446(1)(b).
- (6) If this subsection applies—
  - (a) subsection (1)(c) does not apply, but
  - (b) the notice must be accompanied by a statement by the company containing the assertions specified in subsection (7).

- (7) Those assertions are—
- (a) that conditions A, B, C, E and F in section 528 are reasonably expected to be met in relation to the company throughout accounting period 1, and
  - (b) that condition D in that section is reasonably expected to be met in relation to the company throughout all of accounting period 1 apart from the first day.
- (8) A company may take advantage both of subsections (2) to (4) and of subsections (5) to (7) (in which case the assertion under subsection (4)(a) should omit the reference to condition D and the assertion under subsection (7)(a) should omit the reference to Condition C).
- (9) For the meaning of “accounting period 1”, see section 609.

## **526 Duration of status as UK REIT**

Once a group or a company becomes a UK REIT, the group or company continues to be a UK REIT until it ceases to be a UK REIT in accordance with section 571, 572 or 578.

*Being a UK REIT in relation to an accounting period*

## **527 Being a UK REIT in relation to an accounting period**

- (1) This section sets out the requirements that must be met if a group or company is to be a UK REIT in relation to an accounting period.
- (2) In order for a group of companies in respect of which a notice has been given under section 523 to be a group UK REIT in relation to an accounting period—
- (a) each of the conditions in section 528 (conditions for company) must be met in relation to the principal company throughout the accounting period,
  - (b) the group must throughout the period have property rental business in relation to which conditions A and B in section 529 are met (whether or not the group also has other business),
  - (c) the condition in section 530 (distribution of profits) must be met in relation to the period,
  - (d) conditions A and B in section 531 (balance of business) must be met in relation to the period, and
  - (e) the principal company must prepare for the period, and submit to an officer of Revenue and Customs, financial statements under section 532.
- (3) In order for a company which has given a notice under section 524 to be a company UK REIT in relation to an accounting period—
- (a) each of the conditions in section 528 (conditions for company) must be met in relation to the company throughout the accounting period,
  - (b) the company must throughout the period have property rental business in relation to which conditions A and B in section 529 are met (whether or not the company also has other business),
  - (c) the condition in section 530 (distribution of profits) must be met in relation to the period, and
  - (d) conditions A and B in section 531 (balance of business) must be met in relation to the period.

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- (4) Subsections (2) and (3) are subject to any relaxation of any condition in section 525, 558 or 559 or Chapter 8.

## **528 Conditions for company**

- (1) Condition A is that the company is a UK company.
- (2) Condition B is that section 236 of FISMA 2000 (open-ended investment companies) does not apply to the company.
- (3) Condition C is that the shares forming the company's ordinary share capital are listed on a recognised stock exchange.
- (4) Condition D is that the company—
  - (a) is not a close company, or
  - (b) is a close company only because it has as a participator (within the meaning given by section 454) a limited partnership which is a collective investment scheme within the meaning given by section 235 of FISMA 2000.
- (5) For the purposes of subsection (4)(a) a company is to be treated as a close company if it is prevented from being a close company only by section 444 or 447(1)(a).
- (6) Condition E is that—
  - (a) each share issued by the company either—
    - (i) forms part of the company's ordinary share capital, or
    - (ii) is a non-voting restricted preference share, and
  - (b) there is no more than one class of ordinary share issued by the company.
- (7) For the purposes of condition E—
  - (a) "restricted preference share" means a share which is a restricted preference share (within the meaning of section 160) or would be but for the fact that it carries a right of conversion into shares or securities in the company, and
  - (b) a share is "non-voting" if it carries no right to vote at a general meeting of the company or if it carries a right to vote which is contingent on the non-payment of a dividend and which has not become exercisable.
- (8) Condition F is that in the case of a loan in respect of which the company is a debtor—
  - (a) the loan creditor is not entitled to an amount by way of interest which depends to any extent on the results of all or part of the company's business or on the value of any of the company's assets,
  - (b) the loan creditor is not entitled to an amount by way of interest which exceeds a reasonable commercial return on the consideration lent, and
  - (c) the loan creditor is entitled on repayment to an amount which either does not exceed the consideration lent or is reasonably comparable with the amount generally repayable (in respect of an equal amount of consideration) under the terms of issue of securities listed on a recognised stock exchange.
- (9) For the purposes of condition F a loan is not dependent on the results of the company's business merely because the terms of the loan provide—
  - (a) for the interest to be reduced in the event of the results improving, or
  - (b) for the interest to be increased in the event of the results deteriorating.

## **529 Conditions as to property rental business**

- (1) Condition A is that the property rental business involves at least 3 properties.
- (2) Condition B is that no single property represents more than 40% of the total value of the properties involved in the property rental business.
- (3) For the purposes of conditions A and B the property rental businesses of the members of a group are to be treated as a single business.
- (4) For the purposes of conditions A and B—
  - (a) a reference to a property “involved” in a business is a reference to an estate, interest, or right by the exploitation of which the business is conducted,
  - (b) a property is a single property if it is designed, fitted or equipped for the purpose of being rented, and it is rented or available for rent, as a commercial or residential unit (separate from any other commercial or residential unit),
  - (c) assets must be valued in accordance with international accounting standards,
  - (d) where international accounting standards offer a choice of valuation between cost basis and fair value, fair value must be used, and
  - (e) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).
- (5) If a percentage of the profits of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of the member’s property rental business is to be ignored for the purposes of subsection (2).

## **530 Condition as to distribution of profits**

- (1) In the case of a group UK REIT, the condition in this section is met in relation to an accounting period if at least 90% of the group’s UK profits arising in the period are distributed—
  - (a) by the principal company of the group,
  - (b) by way of dividend, and
  - (c) on or before the filing date for the principal company’s tax return for the period (see paragraph 14 of Schedule 18 to FA 1998).
- (2) In subsection (1) “UK profits” means the sum of the profits of members of the group as shown in the financial statement under section 532(2)(b) (group’s property rental business in UK).
- (3) Subsection (1) is to be ignored so far as—
  - (a) the condition applies to profits of the property rental business attributable to a member of the group, and
  - (b) compliance with the condition by the member would (if the condition applied to it) be unlawful as a result of a relevant enactment.
- (4) In the case of a company UK REIT, the condition in this section is met in relation to an accounting period if at least 90% of the profits of the company’s property rental business arising in the period are distributed—
  - (a) by way of dividend, and
  - (b) on or before the filing date for the company’s tax return for the accounting period (see paragraph 14 of Schedule 18 to FA 1998).

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For the purposes of this subsection profits are to be calculated in accordance with section 599.

- (5) Subsection (4) is to be ignored so far as compliance with the condition would be unlawful as a result of a relevant enactment.
- (6) A distribution that is withheld in order to prevent or reduce a charge to tax arising under section 551 (distribution to holder of excessive rights) is to be treated for the purposes of this section as having been made.
- (7) In this section “relevant enactment” means—
  - (a) an enactment (including Northern Ireland legislation and an Act of the Scottish Parliament), or
  - (b) an enactment of a jurisdiction outside the United Kingdom if the enactment is prescribed, or is of a kind prescribed, for the purposes of this paragraph in regulations made by the Commissioners for Her Majesty’s Revenue and Customs.

### **531 Conditions as to balance of business**

- (1) Condition A is that in the accounting period profits of property rental business are at least 75% of the aggregate profits of the group or company (as the case may be).
- (2) “Aggregate profits”, in the case of a group, means the sum of—
  - (a) the profits of property rental business of members of the group (as shown in the financial statement under section 532(2)(a)), and
  - (b) the profits of residual business of members of the group (as shown in the financial statement under section 532(2)(c)).
- (3) “Aggregate profits”, in the case of a company, means the sum of—
  - (a) profits of property rental business of the company, and
  - (b) profits of residual business of the company.
- (4) In the case of a company, references in subsections (1) and (3) to profits are to profits before deduction of tax, calculated in accordance with international accounting standards, and excluding—
  - (a) realised and unrealised gains and losses on the disposal of property,
  - (b) changes in the fair value of hedging derivative contracts (within the meaning given by section 599(4)), and
  - (c) items which are outside the ordinary course of the group’s or, as the case may be, the company’s business (irrespective of their treatment in the group’s or company’s accounts), having regard to that group’s or company’s past transactions.
- (5) Condition B is that at the beginning of the accounting period the value of the assets relating to property rental business is at least 75% of the total value of assets held by the group or company (as the case may be).
- (6) For the purposes of condition B as it applies in the case of a group—
  - (a) the amount shown in the financial statement under section 532(2)(a) as the amount of the assets of members of the group is to be treated as the amount of the assets relating to property rental business, and



- (b) the amount shown in the financial statement under section 532(2)(c) as the amount of the assets of members of the group is to be treated as the amount of the assets relating to residual business.
- (7) For the purposes of condition B as it applies in the case of a company—
  - (a) an asset relates to property rental business if it would be shown as an asset if separate accounts were prepared for the property rental business,
  - (b) assets must be valued in accordance with international accounting standards,
  - (c) where international accounting standards offer a choice of valuation between cost basis and fair value, fair value must be used, and
  - (d) no account is to be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).

### **532 Financial statements for group UK REITs**

- (1) This section and section 533 set out the requirements referred to in section 527(2)(e) for financial statements in relation to a group UK REIT for an accounting period.
- (2) The principal company must prepare—
  - (a) a financial statement for the group's property rental business for the accounting period,
  - (b) a financial statement for the group's property rental business in the United Kingdom for the period, and
  - (c) a financial statement for the group's residual business for the period.
- (3) The reference in subsection (2)(b) to the group's property rental business in the United Kingdom is a reference to—
  - (a) property rental business of UK members of the group, and
  - (b) UK property rental business of other members.

### **533 Financial statements: supplementary**

- (1) A financial statement under section 532(2)(a) or (c) must specify, in relation to each member of the group—
  - (a) profits (calculated in accordance with international accounting standards),
  - (b) expenses (calculated in accordance with international accounting standards),
  - (c) profits before tax excluding gains or losses on property (whether realised or not) calculated in accordance with international accounting standards, and
  - (d) assets valued—
    - (i) at the beginning of the accounting period,
    - (ii) in accordance with international accounting standards,
    - (iii) using fair value where there is a choice, and
    - (iv) ignoring liabilities secured against or otherwise relating to the assets.
- (2) A financial statement under section 532(2)(b) must specify profits (calculated in accordance with section 599) for each member of the group.
- (3) If a non-member of the group holds a percentage of the beneficial interest in a member of the group (other than the principal company), the financial statements under section 532(2) must exclude that percentage of profits, expenses, gains, losses, assets and liabilities of the member.

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- (4) Percentages of beneficial interest for the purposes of subsection (3) are to be determined by reference to beneficial entitlement to profits available for distribution to equity holders.
- (5) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
  - (a) make further provision relating to the content of a financial statement under section 532,
  - (b) prescribe the form of a financial statement, and
  - (c) specify a time before which a financial statement must be submitted to an officer of Revenue and Customs.
- (6) Regulations under subsection (5)(a) may in particular—
  - (a) permit or require apportionment or otherwise prescribe or refer to accounting practice;
  - (b) provide for the inclusion or exclusion of specified profits, expenses, gains, losses, assets and liabilities;
  - (c) make provision about the treatment of an interest in a business held by a member.

### CHAPTER 3

#### TAX TREATMENT OF PROFITS AND GAINS OF UK REITS

#### 534 Profits

- (1) Profits of property rental business of a UK company which is, or is a member of, a UK REIT are not charged to corporation tax.
- (2) Profits of UK property rental business of a non-UK member of a group UK REIT are not charged to corporation tax.
- (3) Profits which—
  - (a) arise from residual business of a UK company which is, or is a member of, a UK REIT, and
  - (b) are charged to corporation tax,
 are to be so charged at a rate determined without reference to sections 18 to 23 (small profits rate and marginal relief).
- (4) If a percentage of the profits of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those profits is to be treated for corporation tax purposes as profits of residual business of the member.
- (5) For the purposes of subsections (1) and (2) profits are to be calculated in accordance with section 599.

#### 535 Gains

- (1) A gain on the disposal of an asset is not a chargeable gain if—
  - (a) the gain accrues to a company which is, or is a member of, a UK REIT, and
  - (b) condition A or B is met in relation to the asset.

- (2) Condition A is that the asset was used wholly and exclusively for the purposes of property rental business of the company.
- (3) Condition B is that the asset was used during one or more periods of (in total) less than a year—
  - (a) partly for the purposes of property rental business of the company, and
  - (b) partly for the purposes of residual business of the company,but was otherwise used as mentioned in subsection (2).
- (4) Subsection (5) applies if a gain accrues to a company which is, or is a member of, a UK REIT on the disposal of an asset which for one or more periods of (in total) at least a year has been used—
  - (a) partly for the purposes of property rental business of the company, and
  - (b) partly for the purposes of residual business of the company.
- (5) Such part of the gain as may reasonably be attributed to property rental business of the company, having regard to—
  - (a) the extent to which the asset was used for the different purposes, and
  - (b) the length of the periods during which it was used for those purposes,is not a chargeable gain.
- (6) Gains which—
  - (a) accrue to residual business of a company which is, or is a member of, a UK REIT, and
  - (b) are charged to corporation tax,are to be so charged at a rate determined without reference to sections 18 to 23 (small profits rate and marginal relief).
- (7) If a percentage of the gains of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those gains is to be treated for corporation tax purposes as gains of the member's residual business.
- (8) This section has effect in relation to a non-UK member of a group UK REIT as if references to property rental business of the member were to its UK property rental business.
- (9) This section is to be read as if it were contained in TCGA 1992.

## CHAPTER 4

### ENTERING THE UK REIT REGIME

#### **536 Effects of entry: corporation tax**

- (1) Property rental business carried on before entry by a company which becomes, or becomes a member of, a UK REIT (an “incoming company”) is to be treated for corporation tax purposes as ceasing at entry.
- (2) Assets which immediately before entry are involved in property rental business of an incoming company are to be treated for corporation tax purposes as being—

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- (a) sold by the pre-entry company immediately before entry, and
  - (b) reacquired immediately after entry by the company so far as it carries on property rental business.
- (3) The sale and reacquisition deemed under subsection (2) is to be treated as being for a consideration equal to the market value of the assets.
- (4) A gain accruing as a result of subsection (2) is not a chargeable gain.
- (5) For corporation tax purposes, one accounting period of an incoming company ends on entry and a new one begins.
- (6) In the case of a group UK REIT—
  - (a) if a percentage of the assets of a member of the group is excluded from a financial statement in accordance with section 533(3), that percentage of those assets is to be ignored in the application of subsection (2) to the member, and
  - (b) this section has effect in relation to a non-UK member of the group as if references to property rental business were references to UK property rental business of the member.
- (7) This section does not apply if—
  - (a) a company which was a member of one group UK REIT becomes a member of a different group UK REIT, or
  - (b) a company which was a company UK REIT becomes a member of a group UK REIT.
- (8) This section and section 537 are subject to section 559 (demergers: company leaving group UK REIT).
- (9) For the meaning of “entry”, see section 607(1).

### **537 Effects of entry: CAA 2001**

- (1) Subsections (2) to (4) apply for the purposes of CAA 2001.
- (2) The sale and reacquisition deemed under section 536(2)—
  - (a) does not give rise to allowances or charges, and
  - (b) does not enable an election to be made under section 198 or 199 of CAA 2001 (apportionment).
- (3) Section 536(3) (deemed consideration for sale and reacquisition) does not apply.
- (4) Anything done by or to a company which becomes, or becomes a member of, a UK REIT in relation to an asset which is deemed under section 536(2) to be sold and reacquired is to be treated after entry as having been done by or to the company so far as it carries on property rental business.

### **538 Entry charge**

- (1) An amount of notional income calculated in accordance with section 539 (“the notional amount”) is treated as arising to a company at entry.
- (2) The notional amount is treated as arising to the company’s residual business.

- (3) If the company is a UK company, it is chargeable to corporation tax under the charge to corporation tax on income on the notional amount (which is accordingly charged at the rate mentioned in section 534(3)).
- (4) If the company is a non-UK company, it is chargeable to income tax on the notional amount (which is accordingly charged at the basic rate in accordance with section 11 of ITA 2007).
- (5) No loss, deficit, expense or allowance may be set off against the notional amount or against tax arising under this section.
- (6) This section does not apply if a company—
  - (a) which was a member of one group UK REIT becomes a member of another group UK REIT, or
  - (b) which was a company UK REIT becomes a member of a group UK REIT.
- (7) This section is subject to section 559 (demergers: company leaving group UK REIT).

### **539 Calculation of the notional amount**

- (1) This section provides for the calculation of the amount of notional income mentioned in section 538(1).
- (2) The calculation is—
$$\frac{MV}{TR} \times 2\%$$
- (3) “MV” means the total market value of assets which immediately before entry are involved in—
  - (a) property rental business of the company (in the case of a UK company), or
  - (b) UK property rental business of the company (in the case of a non-UK member of a group UK REIT),ignoring any asset of negative market value.
- (4) If a percentage of the assets of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those assets is to be ignored for the purposes of subsection (3).
- (5) “TR” means—
  - (a) in the case of a UK company, the rate of corporation tax mentioned in section 534(3), and
  - (b) in the case of a non-UK company, the rate of income tax mentioned in section 538(4).

### **540 Election to treat notional income as arising in instalments**

- (1) A company may elect to have the amount of notional income mentioned in section 538(1) treated as arising in 4 instalments, the first on the date of entry and the other 3 on the first three anniversaries of that date.
- (2) For this purpose section 539(2) has effect as if the percentage referred to were—
  - (a) 0.50% for the first instalment,

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- (b) 0.53% for the second instalment,
  - (c) 0.56% for the third instalment, and
  - (d) 0.60% for the fourth instalment.
- (3) If a company makes an election under subsection (1)—
  - (a) notice of the election must be given to an officer of Revenue and Customs with the notice under section 523 or 524 (as the case may be), and
  - (b) the election cannot be revoked.
- (4) Subsection (5) applies if—
  - (a) a company makes an election under subsection (1), and
  - (b) before the third anniversary of entry, the company ceases to be, or to be a member of, a UK REIT.
- (5) Any remaining instalments become chargeable immediately.
- (6) The Treasury may by regulations amend a percentage specified in subsection (2) in order to reflect a change in interest rates; but any such regulations are not to have effect in relation to elections made before the regulations come into force.

## CHAPTER 5

### ASSETS ETC

#### *Ring-fencing of property rental business*

#### **541 Ring-fencing of property rental business**

- (1) This section applies—
  - (a) in the case of a group UK REIT, to the group and to each company which is a member of the group, and
  - (b) to a company UK REIT.
- (2) For corporation tax purposes property rental business of the group or company is treated as a separate business, distinct from—
  - (a) business of the pre-entry group or pre-entry company,
  - (b) residual business of the group or company, and
  - (c) business of the post-cessation group or post-cessation company.
- (3) For corporation tax purposes the group or company is treated as a separate group or company so far as it carries on property rental business, distinct from—
  - (a) the pre-entry group or pre-entry company,
  - (b) the group or company so far as it carries on residual business, and
  - (c) the post-cessation group or post-cessation company.
- (4) In particular—
  - (a) a loss made in property rental business may not be set off against profits of residual business,
  - (b) a loss made in residual business may not be set off against profits of property rental business,

- (c) a loss made in business carried on before entry may not be set off against profits of property rental business,
  - (d) a loss made in property rental business may not be set off against profits of business carried on after cessation (in respect of business of any kind), and
  - (e) receipts accruing after entry but relating to business carried on before entry are not treated as receipts of property rental business.
- (5) Nothing in this section prevents a loss made in business carried on before entry from being set off against profits of residual business.
- (6) In subsections (4) and (5) references to a loss include references to a deficit, expense, charge or allowance.
- (7) If a percentage of the profits of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those profits is to be treated for the purposes of this section as profits of the member's residual business.
- (8) This section has effect in relation to a non-UK member of a group, as if references to property rental business were references to UK property rental business.
- (9) For the meaning of “cessation”, see section 607(2).

#### **542 Disapplication of certain provisions**

- (1) Section 66 (ring-fencing of losses from overseas property business) does not apply to property rental business of a UK company which is, or is a member of, a UK REIT.
- (2) Sections 166 to 171 of TIOPA 2010 (transfer pricing: exemption for small and medium enterprises) do not apply to a UK company which is, or is a member of, a UK REIT (whether to property rental business or residual business of the company).

#### *Profits: financing-cost ratio*

#### **543 Profit: financing-cost ratio**

- (1) This section applies to a UK REIT if the result of the calculation in subsection (2) is less than 1.25 for an accounting period.
- (2) The calculation is—

$$\frac{PP}{PFC}$$

where—

PP is the UK REIT's property profits for the accounting period (see section 544(1)), and

PFC is the UK REIT's property financing costs for the accounting period (see section 544(3)).

- (3) The amount (“the excess”) given by subtracting—
  - (a) the property financing costs which would cause the calculation in subsection (2) to equal 1.25 for the accounting period, from
  - (b) the UK REIT's actual property financing costs for the period,



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is charged to corporation tax in relation to the period under the charge to corporation tax on income.

- (4) The excess is treated as profits of residual business—
  - (a) in the case of a group UK REIT, of the principal company of the group, and
  - (b) in the case of a company UK REIT, of the company.
- (5) Accordingly it is charged to corporation tax at the rate mentioned in section 534(3) (rate at which profits of residual business are charged).
- (6) No loss, deficit, expense or allowance may be set off against the excess.
- (7) The Commissioners for Her Majesty's Revenue and Customs may waive a charge to corporation tax under this section in respect of an accounting period if they think that—
  - (a) the company was in severe financial difficulties at a time in the accounting period,
  - (b) the result of the calculation in subsection (2) is less than 1.25 in respect of the accounting period because of circumstances that arose unexpectedly, and
  - (c) in those circumstances the company could not reasonably have taken action to avoid the result being less than 1.25.
- (8) The Treasury may make regulations which specify criteria to be applied by the Commissioners in determining whether to waive a charge under subsection (7).

#### **544 Meaning of “property profits” and “property financing costs”**

- (1) For the purposes of section 543 “property profits” for an accounting period means—
  - (a) in the case of a group UK REIT, the sum of the profits of property rental business of members of the group that arise in the period, as shown in the financial statement under section 532(2)(b), and
  - (b) in the case of a company UK REIT, the amount of the profits of the company's property rental business (calculated in accordance with section 599) that arise in the period.
- (2) References in subsection (1) to a company's profits are to its profits before the offset of—
  - (a) capital allowances,
  - (b) losses from a previous accounting period, and
  - (c) amounts taken into account as a result of section 599(3).
- (3) For the purposes of section 543 “property financing costs” for an accounting period means—
  - (a) in the case of a group UK REIT, the amount of the financing costs incurred in respect of property rental business of members of the group, excluding financing costs owed by one member of the group to another, as shown in the financial statement under section 532(2)(a), and
  - (b) in the case of a company UK REIT, the amount of the financing costs incurred in the period in respect of the company's property rental business.
- (4) In subsection (3) “financing costs” means the cost of debt finance.
- (5) In calculating the costs of debt finance in relation to an accounting period the matters to be taken into account include—



- (a) costs giving rise to debits in respect of debtor relationships of the group or company under Part 5 of CTA 2009 (loan relationships), other than debits in respect of exchange losses from such relationships (within the meaning given by section 475 of that Act),
- (b) any exchange gain or loss from a debtor relationship within the meaning of that Part in relation to debt finance,
- (c) any credit or debit falling to be brought into account in accordance with Part 7 of CTA 2009 (derivative contracts) in relation to debt finance,
- (d) the financing cost implicit in a payment under a finance lease, and
- (e) any other costs arising from what would be considered, in accordance with generally accepted accounting practice, to be a financing transaction.

#### *Cancellation of tax advantage*

### **545 Cancellation of tax advantage**

- (1) If an officer of Revenue and Customs thinks that a company which is, or is a member of, a UK REIT has tried to obtain a tax advantage for itself or another person, the officer may give a notice to the company specifying the tax advantage.
- (2) Subsections (3) and (4) apply if a notice is given under subsection (1).
- (3) The tax advantage is to be counteracted, in accordance with the notice, by an adjustment by way of—
  - (a) an assessment;
  - (b) the cancellation of a right of repayment;
  - (c) a requirement to return a repayment already made;
  - (d) the calculation or recalculation of profits or gains, or liability to tax, on a basis specified in the notice.
- (4) An officer of Revenue and Customs may (in addition to the adjustment under subsection (3)) assess the company to such amount of corporation tax or income tax (as the case may be) as the officer thinks is equivalent to the value of the tax advantage.
- (5) For the purposes of this section “tax advantage” has the meaning given by section 1139 (and includes, in particular, entering into arrangements the sole or main purpose of which is to avoid or reduce a charge to tax under section 538).
- (6) But a company does not obtain a tax advantage merely because it is, or is a member of, a UK REIT unless the company does anything (whether before or while it is, or is a member of, the UK REIT) which in the opinion of an officer of Revenue and Customs is wholly or principally designed—
  - (a) to create or inflate or apply a loss, deduction or expense (whether or not made or incurred by the company), or
  - (b) to have another effect of a kind specified for the purposes of this subsection by regulations made by the Treasury.

### **546 Appeal against notice under section 545**

- (1) A company which receives a notice under section 545(1) may appeal.

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- (2) An appeal must be made by notice given in writing to an officer of Revenue and Customs during the period of 30 days beginning with the date on which the notice under section 545(1) is given.
- (3) On an appeal under subsection (2) that is notified to the tribunal, the tribunal may—
  - (a) quash the notice under section 545(1),
  - (b) affirm the notice, or
  - (c) vary the notice.

### *Funds awaiting reinvestment*

## **547 Funds awaiting reinvestment**

- (1) This section applies if a—
  - (a) company UK REIT or a member of a group UK REIT disposes of an asset used wholly and exclusively for the purposes of property rental business, and
  - (b) the company UK REIT or any member of the group UK REIT holds the proceeds in cash.
- (2) Profits or losses arising from a loan relationship entered into in connection with the proceeds—
  - (a) are to be ignored for the purposes of section 599 (calculation of profits), and
  - (b) are to be treated for all tax purposes as arising from a loan relationship entered into in connection with residual business.
- (3) For the purposes of section 531 (conditions as to balance of business)—
  - (a) during the period of 24 months beginning with the date of the disposal, the proceeds are to be treated for the purposes of condition B in that section as assets involved in property rental business, but
  - (b) any income derived from the proceeds is to be treated as profits of residual business.
- (4) For the purposes of this section proceeds are held in cash if—
  - (a) held on deposit (whether or not in sterling),
  - (b) invested in stocks or bonds of any of the descriptions included in Part 1 of Schedule 11 to FA 1942 (gilts), or
  - (c) held or invested in such other form as the Commissioners for Her Majesty's Revenue and Customs may specify for the purposes of this section in regulations.
- (5) In the case of the disposal of an asset which, for one or more periods of (in total) at least a year, has been used—
  - (a) partly for the purposes of property rental business of the company, and
  - (b) partly for the purposes of residual business of the company,
 this section applies to such part of the proceeds as may reasonably be attributed to the property rental business (having regard to the extent to which, and the length of the periods during which, the asset was used for the different purposes).

## CHAPTER 6

### DISTRIBUTIONS

#### *Recipients of distributions*

#### **548 Distributions: liability to tax**

- (1) This section applies if a shareholder of the principal company of a group UK REIT receives a distribution of amounts shown in the financial statement under section 532(2)(a) (statement of group's property rental business) as—
  - (a) profits or gains (or both) of UK members of the group, or
  - (b) profits or gains (or both) of UK property rental business of non-UK members of the group.
- (2) In subsection (1) the reference to the principal company includes a reference to the principal company of the post-cessation group.
- (3) This section also applies if a shareholder of a company UK REIT receives a distribution in respect of profits or gains (or both) of property rental business of the company.
- (4) In subsection (3) the reference to a company UK REIT includes a reference to the post-cessation company.
- (5) If the shareholder is within the charge to corporation tax, the distribution is to be treated as profits of a UK property business (within the meaning given by section 205 of CTA 2009).
- (6) If the shareholder is not within the charge to corporation tax, the distribution is to be treated as profits of a UK property business (within the meaning given by section 264 of ITTOIA 2005).
- (7) In the case of a non-UK resident shareholder, the distribution is not non-resident landlord income for the purposes of regulations under section 971 of ITA 2007 (income tax due in respect of income of non-resident landlords).
- (8) See sections 973 and 974 of ITA 2007 (income tax due in respect of distributions) for provision about the deduction of sums representing income tax in relation to distributions of a kind mentioned in this section.

#### **549 Distributions: supplementary**

- (1) Section 548 does not apply in relation to a shareholder so far as the shareholder—
  - (a) is a person who is charged to tax under Part 3 of CTA 2009 (trading income) in respect of distributions made by companies that are received in the course of a trade not consisting of insurance business,
  - (b) is a dealer in securities who is charged to income tax under Part 2 of ITTOIA 2005 (trading income) in respect of distributions made by companies,
  - (c) is an individual member of Lloyd's (within the meaning given by section 184(1) of FA 1993) and the distribution is made in respect of assets forming part of—

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- (i) a premium trust fund of the member (within the meaning given by section 174 of FA 1993), or
  - (ii) an ancillary trust fund of the member (within the meaning given by section 176 of that Act), or
- (d) is a corporate member of Lloyd's (within the meaning given by section 230(1) of FA 1994) and the distribution is made in respect of assets forming part of—
  - (i) a premium trust fund belonging to the member (within the meaning given by section 222 of FA 1994), or
  - (ii) an ancillary trust fund belonging to the member (within the meaning given by section 223 of that Act).
- (2) Section 1109 of this Act and section 397 of ITTOIA 2005 (tax credits in respect of qualifying distributions) do not apply to relevant distributions received by a shareholder.
- (3) “Relevant distribution” means—
  - (a) in the case of a group UK REIT, a distribution from the principal company of the group of amounts shown in the financial statement under section 532(2) (statement of group's property rental business) as—
    - (i) profits or gains (or both) of UK members of the group, or
    - (ii) profits or gains (or both) of UK property rental business of non-UK members of the group, and
  - (b) in the case of a company UK REIT, a distribution from the company in respect of profits or gains (or both) of its property rental business.
- (4) Relevant distributions received by a shareholder are to be treated for the purposes of section 548(5) and (6) as the profits of a single business (irrespective of whether the shareholder receives different distributions in different capacities).
- (5) That single business is separate from—
  - (a) any other UK property business (within the meaning given by section 205 of CTA 2009) carried on by the shareholder,
  - (b) any other UK property business (within the meaning given by section 264 of ITTOIA 2005) carried on by the shareholder,
  - (c) any overseas property business (within the meaning given by section 206 of CTA 2009) carried on by the shareholder, and
  - (d) any overseas property business (within the meaning given by section 265 of ITTOIA 2005) carried on by the shareholder.
- (6) If a shareholder is a partnership, subsection (4) applies to receipts by a partner of a share of any distribution as it applies to receipts by a shareholder.

### *Attribution of distributions*

## **550 Attribution of distributions**

- (1) Subsection (2) applies to—
  - (a) distributions made by the principal company of a group UK REIT, and
  - (b) distributions made by a company UK REIT.
- (2) The distributions are to be attributed—

- (a) first, to payments in satisfaction of the condition in section 530 (distribution of profits),
  - (b) second, so far as the company determines, to distribution of amounts which derive from activities of a kind in respect of which corporation tax is chargeable in relation to income,
  - (c) third, to distribution of profits of property rental business (calculated in accordance with section 599),
  - (d) fourth, to distribution of relevant non-chargeable gains, and
  - (e) fifth, to other distributions.
- (3) In subsection (2)(d) “relevant non-chargeable gains” means—
- (a) in the case of a group, gains accruing to property rental business of a member of the group, and
  - (b) in the case of a company, gains accruing to property rental business of the company,
- which as a result of section 535 are not chargeable gains.

*Distributions to certain shareholders*

**551 Tax consequences of distribution to holder of excessive rights**

- (1) Subsection (3) applies if—
- (a) a distribution is made to or in respect of a holder of excessive rights (as defined by section 553), and
  - (b) the distributor has not taken reasonable steps to prevent a distribution to or in respect of such a person from being made.
- (2) “The distributor” means—
- (a) in the case of a group UK REIT, the principal company of the group, and
  - (b) in the case of a company UK REIT, the company.
- (3) The distributor is treated as receiving an amount of income calculated in accordance with section 552 (“the section 552 amount”).
- (4) The section 552 amount is chargeable to corporation tax under the charge to corporation tax on income.
- (5) It is treated—
- (a) as arising in the accounting period in which the distribution was made, and
  - (b) as profits of residual business of the distributor.
- (6) Accordingly it is charged to corporation tax at the rate mentioned in section 534(3) (rate at which profits of residual business are charged).
- (7) No loss, deficit, expense or allowance may be set off against the section 552 amount.

**552 “The section 552 amount”**

- (1) For the purposes of section 551, the section 552 amount is calculated by taking 3 steps.
- (2) *Step 1*: find the amount given by—

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$$DO \times SO \times \frac{BRT}{MCT}$$

where—

DO is—

- (a) in the case of a group UK REIT, the amount of the group's UK profits (as defined by section 530(2)) distributed in respect of ordinary shares in the principal company, and
- (b) in the case of a company UK REIT, the amount of profits of property rental business of the company distributed in respect of ordinary shares in the company,

SO is—

- (a) the percentage of rights in respect of those shares held by the holder of excessive rights, or
- (b) if less, the percentage of rights held by the recipient of the distribution, in respect of which the distribution is made,

BRT is the basic rate of income tax in force at the time the distribution is made, and

MCT is the rate of corporation tax mentioned in section 534(3) (rate determined without reference to sections 18 to 23).

(3) *Step 2*: find the amount given by—

$$DP \times SP \times \frac{BRT}{MCT}$$

where—

DP is—

- (a) in the case of a group UK REIT, the amount of the group's UK profits (as defined by section 530(2)) distributed in respect of preference shares in the principal company, and
- (b) in the case of a company UK REIT, the amount of profits of property rental business of the company distributed in respect of preference shares in the company,

SP is—

- (a) the percentage of rights in respect of those shares held by the holder of excessive rights, or
- (b) if less, the percentage of rights held by the recipient of the distribution, in respect of which the distribution is made, and

BRT and MCT have the same meaning as they have in subsection (2).

(4) *Step 3*: add together the amounts given by steps 1 and 2.

That amount is the section 552 amount.

### **553 Meaning of “holder of excessive rights”**

(1) For the purposes of section 551 “holder of excessive rights” means a person who meets—

- (a) condition A, and
- (b) either condition B or C.

- (2) Condition A is that the person—
- (a) is beneficially entitled (directly or indirectly) to at least 10% of the dividends paid by the distributor,
  - (b) is beneficially entitled (directly or indirectly) to at least 10% of the distributor's share capital, or
  - (c) controls (directly or indirectly) at least 10% of the voting rights in the distributor.
- (3) Condition B is that the person is a company.
- (4) Condition C is that—
- (a) the person is treated as a body corporate for tax purposes—
    - (i) in accordance with the law of a territory outside the United Kingdom with which arrangements have been entered into to provide relief from double taxation, or
    - (ii) in accordance with an international agreement containing such arrangements, and
  - (b) those arrangements have effect by virtue of an Order in Council under section 2 of TIOPA 2010.
- (5) In subsection (2) “the distributor” has the meaning given by section 551(2).

#### **554 Regulations: distributions to holders of excessive rights**

- (1) The Treasury may by regulations make provision of the kind mentioned in subsection (2) for cases where—
- (a) the principal company of a group UK REIT, or
  - (b) a company UK REIT,
- makes a distribution to or in respect of a holder of excessive rights (as defined by section 553).
- (2) The provision referred to in subsection (1) is—
- (a) provision that a charge does not arise, or is reduced, if the company takes or does not take action of a specified kind;
  - (b) a requirement for the company to provide the Commissioners for Her Majesty's Revenue and Customs with specified information relating to the distribution and the persons to or in respect of whom it is made.

## **CHAPTER 7**

### **GAINS ETC**

#### *Movement of assets*

#### **555 Assets: change of use**

- (1) Subsection (2) applies if—
- (a) an asset has been used wholly and exclusively for the purposes of property rental business of a company which is, or is a member of, a UK REIT, and



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- (b) the asset begins to be used (otherwise than by being disposed of in the course of trade) wholly and exclusively for the purposes of residual business of the company.
- (2) The asset is treated as having been at that time—
  - (a) disposed of by the company so far as it carries on property rental business, and
  - (b) immediately reacquired by the company so far as it carries on residual business.
- (3) The sale and reacquisition deemed under subsection (2) is to be treated as being for a consideration equal to the market value of the asset.
- (4) For the purposes of CAA 2001—
  - (a) a sale and reacquisition deemed under subsection (2)—
    - (i) does not give rise to allowances or charges, and
    - (ii) does not make it possible to make an election under section 198 or 199 of that Act (apportionment),
  - (b) subsection (3) does not apply, and
  - (c) anything done by or to the company so far as it carries on property rental business before the deemed sale and reacquisition is to be treated after the deemed sale and reacquisition as having been done by or to the company so far as it carries on residual business.
- (5) If a percentage of the gains of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those gains is to be treated for corporation tax purposes as gains of the member's residual business.
- (6) This section has effect in relation to a non-UK member of a group UK REIT as if references to property rental business were references to UK property rental business.
- (7) Section 535 is relevant to the tax treatment of any gain arising to a company under this section.

## **556 Disposal of assets**

- (1) Subsection (2) applies if—
  - (a) an asset has been used wholly and exclusively for the purposes of property rental business of a company which is, or is a member of, a UK REIT, and
  - (b) the asset is disposed of in the course of trade for the purposes of residual business of the company.
- (2) If this subsection applies—
  - (a) the deemed sale and reacquisition under section 536(2) is to be ignored, and
  - (b) the asset is to be treated as having been disposed of in the course of the company's residual business.
- (3) Subsection (2) is to be taken to apply in particular if—
  - (a) a property acquired by a company which is, or is a member of, a UK REIT has been developed since acquisition,
  - (b) the cost of the development exceeds 30% of the fair value of the property (determined in accordance with international accounting standards) at entry or at acquisition, whichever is later, and



- (c) the company disposes of the property within the period of 3 years beginning with the completion of the development.
- (4) If subsection (2) applies in relation to an asset held at entry, the company may make a claim for repayment of a proportion of the tax paid under section 538 (entry charge) calculated as follows—

$$\frac{\text{AMV}}{\text{MV}} \times \text{TP}$$

where—

AMV means market value of the asset at entry,  
MV has the same meaning as in section 539(3), and  
TP means tax paid under section 538.

- (5) If a percentage of the gains of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those gains is to be treated for corporation tax purposes as gains of the member's residual business.
- (6) This section has effect in relation to a non-UK member of a group UK REIT as if references to property rental business were references to UK property rental business.
- (7) Section 535 is relevant to the tax treatment of any gain arising to a company under this section.

## **557 Movement of assets into ring fence**

- (1) Subsection (2) applies if—
  - (a) an asset has been used wholly and exclusively for the purposes of residual business of a company which is, or is a member of, a UK REIT, and
  - (b) the asset begins to be used wholly and exclusively for the purposes of the company so far as it carries on property rental business.
- (2) The asset is to be treated as having been at that time—
  - (a) disposed of by the company so far as it carries on residual business, and
  - (b) immediately reacquired by the company so far as it carries on property rental business.
- (3) The sale and reacquisition deemed under subsection (2) is to be treated as being for a consideration equal to the market value of the asset.
- (4) For the purposes of CAA 2001—
  - (a) a sale and reacquisition deemed under subsection (2)—
    - (i) does not give rise to allowances or charges, and
    - (ii) does not make it possible to make an election under section 198 or 199 of that Act (apportionment),
  - (b) subsection (3) does not apply, and
  - (c) anything done by or to the company so far as it carries on residual business before the deemed sale and reacquisition is to be treated after the deemed sale and reacquisition as having been done by or to the company so far as it carries on property rental business.

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- (5) If a percentage of the gains of property rental business of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those gains is to be treated for corporation tax purposes as gains of the member's residual business.
- (6) This section has effect in relation to a non-UK member of a group UK REIT as if references to property rental business were references to UK property rental business.
- (7) Section 535 is relevant to the tax treatment of any gain arising to a company under this section.

### *Demergers*

#### **558 Demergers: disposal of asset**

- (1) This section applies in the case of a company UK REIT if—
  - (a) the company (“C”) disposes of an asset involved in its property rental business to a 75% subsidiary (“S”) of C,
  - (b) C (so far as it carries on residual business) disposes of its interest in S to another company (“P”),
  - (c) on the date when P acquires the interest in S, P gives a notice under section 523 specifying a date that falls within the post-disposal period, and
  - (d) the group of which S is a member becomes a group UK REIT from the specified date.
- (2) “The post-disposal period” means the period of 6 months beginning with the date of the disposal of the asset by C.
- (3) P may give a notice under section 523 in accordance with subsection (1)(c) even if it does not expect to meet conditions C to F in section 528 throughout accounting period 1.
- (4) Sections 536 and 537 (effects of entry) and section 538 (entry charge) do not apply to the group of which S is a member—
  - (a) in relation to the asset disposed of by C, or
  - (b) in relation to business conducted by the exploitation of that asset.
- (5) Sections 555 and 556 (movement of assets out of ring fence) do not apply to the disposal of the asset by C.
- (6) But if, at the end of the post-disposal period, conditions C to F in section 528 are not met in relation to P, subsections (4) and (5) are to be treated as not having had effect.

#### **559 Demergers: company leaving group UK REIT**

- (1) This section applies in relation to a company if each of conditions A to D is met.
- (2) Condition A is that the company (“the exiting company”) ceases to be a member of a group UK REIT (“Group 1”).
- (3) Condition B is that at the time immediately after it ceases to be a member of Group 1—
  - (a) the exiting company is a member of another group (“Group 2”) and—

- (i) the principal company of Group 2 meets conditions A and B in section 528,
    - (ii) Group 2 has property rental business in relation to which conditions A and B in section 529 are met,
    - (iii) the condition in section 530 is met in relation to the principal company of Group 2, and
    - (iv) Group 2 meets conditions A and B in section 531, or
  - (b) the exiting company—
    - (i) meets conditions A and B in section 528,
    - (ii) has property rental business in relation to which conditions A and B in section 529 are met, and
    - (iii) meets the condition in section 530 and conditions A and B in section 531.
- (4) Condition C is that—
- (a) in a case within subsection (3)(a), the principal company of Group 2 gives a notice under section 523 no later than the date on which the exiting company ceases to be a member of Group 1, and
  - (b) in a case within subsection (3)(b), the exiting company gives a notice under section 524 no later than the date on which it ceases to be a member of Group 1.
- (5) Condition D is that the date specified in the notice under section 523 or 524 (as the case may be) is the same as that on which the exiting company ceases to be a member of Group 1.
- (6) A company may give a notice under section 523 or 524 in accordance with subsection (4) even if it does not expect to meet conditions C to F in section 528 throughout accounting period 1.
- (7) If this section applies, the exiting company is to be treated as a member of a group UK REIT (or as a company UK REIT) during the period of 6 months beginning with the time when it ceases to be a member of Group 1.
- (8) If this section applies, the following provisions do not have effect—
- sections 536 and 537 (effects of entry),
  - section 538 (entry charge), and
  - sections 579 and 580 (effects of cessation).
- (9) But if, at the end of the period of 6 months mentioned in subsection (7) conditions C to F in section 528 are not met in relation to the principal company of Group 2 or the exiting company (as the case may be)—
- (a) this section does not apply, and
  - (b) the exiting company is to be treated as having ceased to be a member of a group UK REIT (or a company UK REIT) on the date on which it ceased to be a member of Group 1.

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### *Interpretation*

#### **560 Interpretation of Chapter**

This Chapter (other than section 559) is to be read as if it were contained in TCGA 1992.

### **CHAPTER 8**

#### **BREACH OF CONDITIONS IN CHAPTER 2**

#### **561 Notice of breach of relevant Chapter 2 condition**

- (1) The principal company of a group UK REIT must notify an officer of Revenue and Customs as soon as reasonably practicable if a relevant Chapter 2 condition ceases to be met in relation to the principal company or (as the case may be) the group.
- (2) A company UK REIT must notify an officer of Revenue and Customs as soon as is reasonably practicable if a relevant Chapter 2 condition ceases to be met in relation to the company.
- (3) Each of the following is a “relevant Chapter 2 condition”—
  - conditions C and D in section 528 (conditions for company),
  - conditions A and B in section 529 (property rental business),
  - the condition in section 530 (distribution of profits), and
  - conditions A and B in section 531 (balance of business).
- (4) A notification under subsection (1) or (2) must include—
  - (a) the date on which the condition first ceased to be met and the date (if any) on which it was met again,
  - (b) a description of the breach, and
  - (c) details of the steps (if any) taken by the company to prevent a recurrence of the breach.

#### **562 Breach of conditions C and D in section 528 (conditions for company)**

- (1) This section makes provision about cases relating to breaches of condition C or D in section 528 (or of both those conditions) in relation to—
  - (a) the principal company of a group UK REIT, or
  - (b) a company UK REIT.
- (2) If both conditions C and D are not met—
  - (a) as a result of the principal company of a group UK REIT becoming a member of another group UK REIT, or
  - (b) as a result of a company UK REIT becoming a member of a group UK REIT,
 the breaches are to be ignored.
- (3) If—
  - (a) condition D is not met as a result of anything done (or not done) by a person other than the company in question, and

- (b) the company remedies the breach not later than the end of the accounting period after that in which the breach began,  
the breach is to be ignored.
- (4) But if, in a case within subsection (3), the breach of condition D is not remedied by the time mentioned in that subsection, the group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of the accounting period in which the breach began.
- (5) If—
  - (a) either condition C or D is not met in relation to an accounting period, and
  - (b) the case is not one within subsection (2) or (3),the group or company (as the case may be) is to be treated as having ceased to be a UK REIT at the end of the previous accounting period.

### **563 Breach of conditions as to property rental business**

- (1) Subsection (2) applies if condition A or B in section 529 (property rental business) is not met in the case of a UK REIT throughout an accounting period of—
  - (a) in the case of a group UK REIT, the principal company of the group, and
  - (b) in the case of a company UK REIT, the company.
- (2) The breach is to be ignored.

### **564 Breach of condition as to distribution of profits**

- (1) Subsection (2) applies if the condition in section 530 (distribution of profits) is not met in relation to an accounting period.
- (2) The breach is to be ignored; but the amount given by section 565 (“the section 565 amount”) is charged to corporation tax under the charge to corporation tax on income.
- (3) The section 565 amount is to be treated as profits of residual business—
  - (a) of the principal company of the group UK REIT, or
  - (b) of the company UK REIT,as the case may be.
- (4) Accordingly it is charged to corporation tax at the rate mentioned in section 534(3) (rate at which profits of residual business are charged).
- (5) No charge to corporation tax arises under subsection (2) if—
  - (a) a distribution by way of dividend is made by the principal company or (as the case may be) by the company,
  - (b) the distribution is made within the relevant period, and
  - (c) as a result of the distribution the condition in section 530 is met in relation to the accounting period.
- (6) In subsection (5)(b) the “relevant period” is the period of 3 months beginning with the date on which—
  - (a) in the case of a group UK REIT, the group’s UK profits (as defined by section 530(2)),

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- (b) in the case of a company UK REIT, the company's profits from property rental business,  
can no longer be altered.
- (7) A distribution made as mentioned in subsection (5) is to be ignored in determining whether the condition in section 530 has been met in relation to another accounting period.
- (8) Profits relating to a different accounting period are not to be taken into account in determining whether that condition has been met.
- (9) No loss, deficit, expense or allowance may be set off against the section 565 amount.

### **565 “The section 565 amount”**

- (1) For the purposes of section 564 “the section 565 amount” is found by subtracting D from P.
- (2) In the case of a group UK REIT—
  - P is 90% of the group's UK profits (as defined by section 530(2)) arising in the accounting period, and
  - D is the gross amount of those profits distributed in respect of the period on or before—
    - (a) the filing date referred to in section 530(1), or
    - (b) any later date specified by an officer of Revenue and Customs.
- (3) In the case of a company UK REIT—
  - P is 90% of the company's profits from property rental business arising in the accounting period, and
  - D is the gross amount of those profits distributed in respect of the accounting period on or before—
    - (a) the filing date referred to in section 530(4), or
    - (b) any later date specified by an officer of Revenue of Customs.

### **566 Breach of condition B in section 531 in accounting period 1**

- (1) Subsection (2) applies if condition B in section 531 (balance of business: assets involved in property rental business)—
  - (a) is not met in relation to accounting period 1, but
  - (b) is met at the beginning of the next accounting period.
- (2) The breach is to be ignored; but an amount of income calculated in accordance with section 567 (“the notional amount”) is charged to corporation tax under the charge to corporation tax on income.
- (3) The notional amount is to be treated as profits of residual business—
  - (a) in the case of a group UK REIT, of the principal company of the group, and
  - (b) in the case of a company UK REIT, of the company.
- (4) It is treated as arising at the end of accounting period 1.
- (5) Accordingly it is charged to corporation tax at the rate mentioned in section 534(3) (rate at which profits of residual business are charged).

- (6) No loss, deficit, expense or allowance may be set off against the notional amount or against tax charged under this section.

## **567 Meaning of “the notional amount”**

- (1) For the purposes of section 566 “the notional amount” is found by taking two steps.

- (2) *Step 1*: find the amount obtained by the calculation—

$$\frac{\text{TMV}}{\text{TR}} \times 2\%$$

- (3) TMV is—

- (a) in the case of a group UK REIT, the total market value of assets involved in—
  - (i) property rental business of UK members of the group, and
  - (ii) UK property rental business of non-UK members of the group, and
- (b) in the case of a company UK REIT, the total market value of assets involved in property rental business of the company.

- (4) For the purposes of subsection (3)—

- (a) the market value of assets is to be determined as at the end of accounting period 1,
- (b) any asset of negative market value is to be ignored, and
- (c) if a percentage of the assets of a member of a group UK REIT is excluded from a financial statement in accordance with section 533(3), that percentage of those assets is to be ignored in determining the market value of assets involved in property rental business (or, as the case may be, UK property rental business) of the member.

- (5) TR is the percentage rate at which the principal company of the group or (as the case may be) the company is chargeable to corporation tax on profits in respect of residual business (see section 534(3)).

- (6) *Step 2*: subtract the entry charge notional income from the amount obtained by step 1.

- (7) In step 2 “entry charge notional income” means—

- (a) in the case of a group UK REIT, the sum of the amounts of notional income treated as arising under section 538 to members of the group, and
- (b) in the case of a company UK REIT, the amount of notional income treated as arising to the company under section 538.

- (8) But the entry charge notional income is reduced in accordance with the calculation in subsection (9) if—

- (a) in the case of a group UK REIT, an asset held at the beginning of accounting period 1 by a company which is a member of the group, and
- (b) in the case of a company UK REIT, an asset held by the company at the beginning of accounting period 1,

is disposed of by the company during that period.

- (9) The calculation referred to in subsection (8) is—

$$\frac{\text{AMV}}{\text{MV}} \times \text{NI}$$

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where—

AMV is the market value of the asset at entry,

MV has the same meaning as in section 539(3), and

NI is the amount of notional income treated as arising to the company under section 538.

## **568 Breach of balance of business conditions after accounting period 1**

(1) If—

- (a) condition A in section 531 (balance of business: profits) is not met in relation to an accounting period other than accounting period 1, but
- (b) the profits of property rental business of the UK REIT in question are at least 50% of its aggregate profits for the period,

the breach is to be ignored.

(2) If—

- (a) condition B in section 531 (balance of business: assets) is not met in relation to an accounting period other than accounting period 1, but
- (b) the value of the assets involved in property rental business of the UK REIT in question is at least 50% of the total value of assets held by the UK REIT,

the breach is to be ignored.

(3) Subsections (1) and (2) are to be read in accordance with section 531.

## **569 Chapter subject to section 572**

This Chapter is subject to section 572 (under which an officer of Revenue and Customs may terminate the UK REIT status of a group or company in certain circumstances).

# **CHAPTER 9**

## LEAVING THE UK REIT REGIME

### *Introduction*

## **570 Overview of Chapter**

- (1) This Chapter makes provision about how, and in what circumstances, a group or a company ceases to be a UK REIT.
- (2) The UK REIT status of a group or company may be terminated—
  - (a) by a notice given by the principal company of the group or (as the case may be) by the company (see section 571), or
  - (b) in the cases set out in sections 573 to 577, by a notice given by an officer of Revenue of Customs (see section 572).
- (3) In some circumstances a group or company ceases to be a UK REIT automatically (see section 578).



- (4) This Chapter also contains provision about the effects of ceasing to be a UK REIT (see sections 579 to 582).

*Notice to leave regime*

**571 Termination by notice: group or company**

- (1) Subsection (2) applies if—
- (a) the principal company of a group UK REIT, or
  - (b) a company UK REIT,
- gives a notice specifying a date at the end of which the group or company is to cease to be a UK REIT.
- (2) The group or company ceases to be a UK REIT at the end of that date.
- (3) A notice under subsection (1) must be given in writing to an officer of Revenue and Customs.
- (4) The date specified in a notice under subsection (1) must be after the date on which the officer receives the notice.

**572 Termination by notice: officer of Revenue and Customs**

- (1) If an officer of Revenue and Customs gives a notice in writing—
- (a) to the principal company of a group UK REIT, or
  - (b) to a company UK REIT,
- the group or company ceases to be a UK REIT.
- (2) An officer of Revenue and Customs may give a notice under subsection (1) only in a case within section 573, 574, 575, 576 or 577.
- (3) A notice under subsection (1) must state the reason for it.
- (4) If a notice is given under subsection (1)—
- (a) the group or company (as the case may be) is to be taken to have ceased to be a UK REIT at the end of the accounting period before the accounting period during which the event occurs (or the last event occurs) which caused the officer to give the notice, and
  - (b) the company to which the notice is given may appeal.
- (5) An appeal under subsection (4)(b) must be made by notice given in writing to an officer of Revenue and Customs during the period of 30 days beginning with the date on which the notice under subsection (1) is given.
- (6) Section 574(3) modifies subsection (4)(a) for the case described in section 574(2) (breach of condition B in section 531 in accounting period 1).

**573 Notice under section 572: tax advantage**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if the condition in this section is met.

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- (2) The condition is met in the case of a group UK REIT if, during the relevant 10-year period, two notices have been given under section 545 (cancellation of tax advantage) to members of the group.
- (3) The condition is met in the case of a company UK REIT if, during the relevant 10-year period, two notices have been given under section 545 to the company.
- (4) “The relevant 10-year period” is the period of 10 years beginning with the day on which the first notice was given under section 545.

#### **574 Notice under section 572: serious breach**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if the officer thinks that—
  - (a) a breach of a condition in section 529, 530 or 531, or
  - (b) an attempt by a member of the group or (as the case may be) by the company to obtain a tax advantage,
 is so serious that the group or company should cease to be a UK REIT.
- (2) Subsection (3) applies if—
  - (a) the case is one relating to a breach of condition B in section 531 (balance of business: assets) in relation to accounting period 1, and
  - (b) that condition is not met at the beginning of the next accounting period.
- (3) In that case, section 572(4) has effect as if for paragraph (a) there were substituted—
  - “(a) the group or company (as the case may be) is to be taken to have ceased to be a UK REIT on the first day of accounting period 1, and”

#### **575 Notice under section 572: breach of conditions as to property rental business**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if, in 3 consecutive accounting periods, there is a breach of condition A or B in section 529 (property rental business).
- (2) An officer of Revenue and Customs may also give a notice under section 572(1) if, during the relevant 10-year period, section 563(2) has been relied on—
  - (a) more than twice in relation to condition A in section 529, or
  - (b) more than twice in relation to condition B in that section.
- (3) “The relevant 10-year period” is the period of 10 years beginning with the first day on which section 563(2) was relied on.
- (4) The following rules apply for the purposes of subsection (2)—

##### *Rule 1*

If a breach of condition B in section 529 is a necessary consequence of a breach of condition A in that section in the same accounting period, the breach of condition B is to be ignored (and accordingly the UK REIT is not to be treated as having relied on section 563(2) in relation to the breach of condition B).

##### *Rule 2*

If a breach of condition A or B in section 529 lasts for—

- (a) more than one accounting period, but
- (b) not more than two accounting periods,

the UK REIT is to be treated as having relied on section 563(2) only once.

**576 Notice under section 572: breach of conditions as to balance of business**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if there is a breach of condition A or B in section 531 (balance of business) in 3 consecutive accounting periods.
- (2) An officer of Revenue and Customs may also give a notice under section 572(1) if, during the relevant 10-year period, either subsection (1) or (2) of section 568 has been relied on more than twice.
- (3) “The relevant 10-year period” is the period of 10 years beginning with the first day on which subsection (1) or (as the case may be) subsection (2) of section 568 was relied on.
- (4) In the case of a breach of condition A in section 531, section 568(1) is to be treated for the purposes of subsection (3) as having first been relied on on the last day of the accounting period in which profits are assessed for the purposes of that condition.
- (5) If a breach of condition A or B in section 531 lasts for—
  - (a) more than one accounting period, but
  - (b) not more than two accounting periods,the UK REIT is to be treated for the purposes of subsection (2) as having relied on section 568(1) or (2) (as the case may be) only once.
- (6) References in this section to an accounting period do not include a reference to accounting period 1.

**577 Notice under section 572: multiple breaches of conditions in Chapter 2**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if conditions A, B and C are met.
- (2) Condition A is that at least two of the conditions in sections 528 to 531 have been breached during the relevant 10-year period.
- (3) Condition B is that the breached conditions are not both (or all) contained in the same section; and for this purpose the condition in section 530 (distribution of profits) is to be treated as contained in section 529.
- (4) Condition C is that the UK REIT has relied on some or all of the provisions mentioned in subsection (5)(a) more than 4 times (in total) during the relevant 10-year period.
- (5) For the purposes of this section—
  - (a) the provisions referred to in subsection (4) are—
    - section 562(2) and (3),
    - section 563(2), and
    - section 568(1) and (2), and
  - (b) “the relevant 10-year period” is the period of 10 years beginning with the day on which the first of the conditions to be breached was first breached.
- (6) If the first of the conditions to be breached is condition A in section 531 (balance of business: profits), that condition is to be treated for the purposes of subsection (5)(b)

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as breached from the last day of the accounting period in which profits are assessed for the purposes of the condition.

- (7) For the purposes of this section the following breaches are to be ignored—
- (a) a breach of condition C or D in section 528 (conditions for company) occurring as a result of—
    - (i) a member of a group UK REIT becoming a member of another group UK REIT, or
    - (ii) a company UK REIT becoming a member of a group UK REIT,
  - (b) a breach of condition C or D in section 528 in respect of which section 525(2) to (4) or (5) to (7) applies,
  - (c) a breach of any of conditions C to F in section 528 in respect of which section 558(3) or 559(6) applies,
  - (d) a breach of condition A in section 531 in accounting period 1, and
  - (e) a breach of condition B in section 531 at the beginning of that period.

#### *Automatic termination*

### **578 Automatic termination for breach of certain conditions in section 528**

- (1) Subsection (2) applies if condition A, B, E or F in section 528 (conditions for company) is not met in relation to an accounting period.
- (2) The group or (as the case may be) the company is to be taken to have ceased to be a UK REIT at the end of the previous accounting period.
- (3) The company which gave a notice under section 523 or 524 must notify an officer of Revenue and Customs as soon as is reasonably practicable if condition A, B, E or F in section 528 ceases to be met in relation to the company.

#### *Effects of cessation*

### **579 Effects of cessation: corporation tax**

- (1) Subsections (3) to (7) apply if—
  - (a) a group or company ceases to be a UK REIT, or
  - (b) a company ceases to be a member of a group UK REIT.
- (2) For the purposes of those subsections references to an “exiting company” are to each member of the group UK REIT or (as the case may be) to the company UK REIT.
- (3) Property rental business of an exiting company is to be treated for corporation tax purposes as ceasing immediately before cessation.
- (4) Assets which immediately before cessation are involved in property rental business of an exiting company are to be treated for corporation tax purposes as being—
  - (a) sold immediately before cessation by the company so far as it carries on property rental business, and
  - (b) reacquired immediately after cessation by the post-cessation company.
- (5) The sale and reacquisition deemed under subsection (4) is to be treated as being for a consideration equal to the market value of the assets.

- (6) If a percentage of the assets of an exiting company is excluded from a financial statement in accordance with section 533(3), that percentage of those assets is to be ignored for the purposes of subsection (4).
- (7) For corporation tax purposes—
  - (a) an accounting period of the company so far as it carries on residual business ends on cessation, and
  - (b) a new accounting period of the company begins.
- (8) In relation to a non-UK member of a group UK REIT, subsections (3) to (7) have effect as if references to property rental business were references to UK property rental business.
- (9) Subsections (3) to (7) do not apply if—
  - (a) a member of a group UK REIT becomes a member of another group UK REIT, or
  - (b) a company UK REIT becomes a member of a group UK REIT.
- (10) This section is subject to section 559 (demergers: company leaving group UK REIT).

## **580 Effects of cessation: CAA 2001**

- (1) Subsections (3) to (5) apply for the purposes of CAA 2001 if a group or a company ceases to be a UK REIT.
- (2) Subsections (3) to (5) also apply for those purposes if a company ceases to be a member of a group UK REIT.
- (3) The sale and reacquisition deemed under section 579(4)—
  - (a) does not give rise to allowances or charges, and
  - (b) does not enable an election to be made under section 198 or 199 of CAA 2001 (apportionment).
- (4) Section 579(5) (deemed consideration for sale and reacquisition) does not apply.
- (5) Anything done before cessation by or to a company so far as it carries on property rental business in relation to an asset which is deemed under section 579(4) to be sold and reacquired is to be treated after cessation as having been done by or to the post-cessation company.
- (6) This section is subject to section 559 (demergers: company leaving group UK REIT).

### *Early exit*

## **581 Early exit by notice**

- (1) Subsection (6) applies if conditions A, B and C are met.
- (2) Condition A is that a group or company ceases to be a UK REIT as a result of a notice under section 571.
- (3) Condition B is that the group or company had been a UK REIT for a continuous period immediately before cessation of less than 10 years.

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- (4) Condition C is that, during the post-cessation period, a relevant company, that is to say—
  - (a) in the case of a group, a member of the group, or
  - (b) otherwise, the company,
 disposes of an asset that was involved in property rental business of the relevant company.
- (5) “The post-cessation period” means the period of two years beginning with the date of cessation.
- (6) The relevant company’s liability to corporation tax is to be determined without regard to—
  - (a) any deemed disposal under section 536(2) that resulted in a gain,
  - (b) any deemed disposal under section 555(2), or
  - (c) any deemed disposal under section 579(4).
- (7) Subsection (6) also applies if—
  - (a) a company ceases to be a member of a group UK REIT,
  - (b) either—
    - (i) the group has been a group UK REIT for a continuous period of less than 10 years, or
    - (ii) the company has been a member of the group for a continuous period of less than 10 years, and
  - (c) during the post-cessation period the company disposes of an asset that was involved in its property rental business.
- (8) This section has effect in relation to a non-UK member of a group as if references to property rental business were references to UK property rental business.

## **582 Early exit**

- (1) This section applies if—
  - (a) a group or a company ceases to be a UK REIT as a result of section 572 or 578, and
  - (b) the group or company has been a UK REIT for a continuous period immediately before cessation of less than 10 years.
- (2) An officer of Revenue and Customs may direct—
  - (a) that a provision of this Part applies in relation to the group or company with a specified modification, or
  - (b) that a provision of an enactment relating to corporation tax applies, does not apply or applies with modifications in relation to the group or company.
- (3) A direction under subsection (2)(a) may in particular—
  - (a) alter the time at which the group or company is to be taken to cease to be a UK REIT in accordance with section 572 or 578;
  - (b) disapply or alter the effect of section 534(1) or (2) or 535(1).
- (4) A direction under subsection (2)(b) may in particular prevent all or a specified part of a loss, deficit or expense from being set off or otherwise used at all or in a specified manner.

- (5) In the case of a group, a direction under subsection (2) may relate to the group as a whole or to one or more members.
- (6) An appeal may be made—
  - (a) in the case of a group in relation to which a direction is given, by the principal company of the group,
  - (b) in the case of a company in relation to which a direction is given, by the company.
- (7) On an appeal under subsection (6) that is notified to the tribunal, the tribunal may—
  - (a) quash the direction,
  - (b) affirm the direction, or
  - (c) vary the direction.

## CHAPTER 10

### JOINT VENTURES

#### *Introduction*

#### **583 Overview of Chapter**

- (1) This Chapter makes provision about how this Part applies in relation to property rental business carried on—
  - (a) by a joint venture company (as defined by section 584), or
  - (b) by one or more members of a joint venture group (as defined by that section).
- (2) Sections 586 and 587 are about the notice required for this Part to apply in relation to the property rental business; it is the giving of the notice that makes a group UK REIT or company UK REIT a venturing group or venturing company (see section 585).
- (3) Sections 588 to 590 contain provision about the effect of the notice and its duration.
- (4) The remainder of the Chapter contains—
  - (a) specific modifications and other provision relevant to the application of this Part (see sections 591 to 594),
  - (b) provision that in certain circumstances a joint venture company or a member of a joint venture group is (or is not) liable to a further charge to tax under section 538 (see sections 595 to 597), and
  - (c) provision about the interpretation of this Chapter (see section 598).

#### **584 Meaning of “joint venture company” and “joint venture group”**

- (1) In this Chapter “joint venture company” means a company carrying on property rental business (“the joint venture”) in circumstances where the condition in subsection (3) is met.
- (2) In this Chapter “joint venture group” means a group of companies one or more of which is or are carrying on property rental business (“the joint venture”) in circumstances where the condition in subsection (3) is met.



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- (3) The condition is that an interest in the joint venture is held—
- (a) by one or more members of a group UK REIT, or
  - (b) by a company UK REIT.

## **585 Meaning of “venturing group” and “venturing company”**

- (1) In this Chapter “venturing group” means a group UK REIT the principal company of which has given a notice under section 586(1) or 587(1).
- (2) In this Chapter “venturing company” means a company UK REIT which has given a notice under section 586(2) or 587(2).

*Notice for Part to apply to joint venture*

## **586 Notice for Part to apply: joint venture company**

- (1) The principal company of a group UK REIT may give notice that this Part is to apply (in accordance with this Chapter) in relation to property rental business carried on by a joint venture company.
- (2) A company UK REIT may give notice that this Part is to apply (in accordance with this Chapter) in relation to property rental business carried on by a joint venture company.
- (3) A company may give a notice under subsection (1) or (2) only if the 40% tests are met in relation to the joint venture company.
- (4) The 40% tests are met in a case within subsection (1) if members of the group UK REIT are together beneficially entitled to—
- (a) at least 40% of the profits available for distribution to equity holders in the joint venture company, and
  - (b) at least 40% of the assets of the joint venture company available to equity holders in the event of a winding up.
- (5) The 40% tests are met in a case within subsection (2) if the company UK REIT is beneficially entitled to—
- (a) at least 40% of the profits available for distribution to equity holders in the joint venture company, and
  - (b) at least 40% of the assets of the joint venture company available to equity holders in the event of a winding up.
- (6) A notice under subsection (1) or (2)—
- (a) must specify the joint venture company concerned,
  - (b) may be given only with the consent of that joint venture company,
  - (c) must specify a date from which this Part is to apply in relation to the property rental business, and
  - (d) must be given in writing to an officer of Revenue and Customs before the date specified under paragraph (c).
- (7) A company giving a notice under subsection (1) or (2) may do so—
- (a) at the same time as giving a notice under section 523 or 524 (as the case may be), or



- (b) at any later time when the group or company (as the case may be) is a UK REIT.

(8) See section 588 for provision about the effect of a notice under this section.

### **587 Notice for Part to apply: joint venture group**

- (1) The principal company of a group UK REIT may give notice that this Part is to apply (in accordance with this Chapter) in relation to property rental business carried on by one or more members of a joint venture group.
- (2) A company UK REIT may give notice that this Part is to apply (in accordance with this Chapter) in relation to property rental business carried on by one or more members of a joint venture group.
- (3) A company may give a notice under subsection (1) or (2) only if the 40% tests are met in relation to the joint venture group.
- (4) The 40% tests are met in a case within subsection (1) if members of the group UK REIT are together beneficially entitled to—
  - (a) at least 40% of the profits available for distribution to equity holders in the principal company of the joint venture group, and
  - (b) at least 40% of the assets of the principal company of the joint venture group available to equity holders in the event of a winding up.
- (5) The 40% tests are met in a case within subsection (2) if the company UK REIT is beneficially entitled to—
  - (a) at least 40% of the profits available for distribution to equity holders in the principal company of the joint venture group, and
  - (b) at least 40% of the assets of the principal company of the joint venture group available to equity holders in the event of a winding up.
- (6) A notice under subsection (1) or (2)—
  - (a) must specify the principal company of the joint venture group concerned,
  - (b) may be given only with the consent of that principal company,
  - (c) must specify a date from which this Part is to apply in relation to the property rental business, and
  - (d) must be given in writing to an officer of Revenue and Customs before the date specified under paragraph (c).
- (7) A company giving a notice under subsection (1) or (2) may do so—
  - (a) at the same time as giving notice under section 523 or 524 (as the case may be), or
  - (b) at any later time when the group or company (as the case may be) is a UK REIT.
- (8) See section 589 for provision about the effect of a notice under this section.

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### *Effect and duration of notice*

#### **588 Effect of notice under section 586**

- (1) If a notice is given under section 586(1), this Part applies in relation to the property rental business carried on by the joint venture company as if the company were a member of the venturing group.
- (2) If a notice is given under section 586(2), this Part applies in relation to the property rental business carried on by the joint venture company as if the venturing company and the joint venture company were the members of a new group UK REIT (a “deemed UK REIT”).
- (3) For the purposes of subsections (1) and (2) references in this Part to a company which is a member of a group UK REIT include references to—
  - (a) the joint venture company, and
  - (b) in a case within subsection (2), the venturing company.
- (4) For the purposes of subsection (3)—
  - (a) references in this Part to a UK company which is a member of a group UK REIT include references to a joint venture company which—
    - (i) is UK resident, and
    - (ii) is not resident in another place in accordance with the law of that place relating to taxation, and
  - (b) references in this Part to a non-UK company which is a member of a group UK REIT include references to a joint venture company which is not within paragraph (a).
- (5) For the purposes of subsections (1) and (2) any reference in this Part to—
  - (a) entry, or
  - (b) a company becoming a member of a group UK REIT,
 is to be read in relation to the joint venture company as a reference to the date specified under section 586(6)(c).
- (6) For the purposes of subsection (2)—
  - (a) references in this Part to a UK REIT (or group UK REIT) include references to the deemed UK REIT, and
  - (b) references in this Part to the principal company of a group are to be read as references to the venturing company.

#### **589 Effect of notice under section 587**

- (1) If a notice is given under section 587(1), this Part applies in relation to the property rental business carried on by the member or members of the joint venture group as if each member of the group were a member of the venturing group.
- (2) If a notice is given under section 587(2), this Part applies in relation to the property rental business carried on by the member or members of the joint venture group as if the venturing company and each member of the group were the members of a new group UK REIT (a “deemed UK REIT”).
- (3) For the purposes of subsections (1) and (2) references in this Part to a company which is a member of a group UK REIT include references to—

- (a) each member of the joint venture group, and
  - (b) in a case within subsection (2), the venturing company.
- (4) For the purposes of subsection (3)—
  - (a) references in this Part to a UK company which is a member of a group UK REIT include references to a member of the joint venture group if the member is—
    - (i) UK resident, and
    - (ii) not resident in another place in accordance with the law of that place relating to taxation, and
  - (b) references in this Part to a non-UK company which is a member of a group UK REIT include references to any member of the joint venture group not within paragraph (a).
- (5) For the purposes of subsections (1) and (2) any reference in this Part to—
  - (a) entry, or
  - (b) a company becoming a member of a group UK REIT,is to be read in relation to a member of a joint venture group as a reference to the date specified under section 587(6)(c).
- (6) For the purposes of subsection (2)—
  - (a) references in this Part to a UK REIT (or group UK REIT) include references to the deemed UK REIT, and
  - (b) references in this Part to the principal company of a group are to be read as references to the venturing company.

## **590 Duration of notice under section 586 or 587**

- (1) A notice given under section 586(1) ceases to have effect if—
  - (a) the venturing group ceases to meet either of the 40% tests in relation to the joint venture company, or
  - (b) the venturing group ceases to be a UK REIT.
- (2) A notice given under section 586(2) ceases to have effect if—
  - (a) the venturing company ceases to meet either of the 40% tests in relation to the joint venture company, or
  - (b) the venturing company ceases to be a UK REIT.
- (3) A notice given under section 587(1) ceases to have effect if—
  - (a) the venturing group ceases to meet the 40% tests in relation to the joint venture group, or
  - (b) the venturing group ceases to be a UK REIT.
- (4) A notice given under section 587(2) ceases to have effect if—
  - (a) the venturing company ceases to meet the 40% tests in relation to the joint venture group, or
  - (b) the venturing company ceases to be a UK REIT.
- (5) If a notice under section 586 or 587 ceases to have effect, this Part ceases to apply as mentioned in section 588 or 589 (as the case may be) in relation to the joint venture company or joint venture group.

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- (6) But section 581 (early exit) continues to apply to a joint venture company or to the members of a joint venture group despite subsection (5).
- (7) For the meaning of “the 40% tests” see—
  - (a) section 586, in the case of a notice given under that section, and
  - (b) section 587, in the case of a notice given under that section.

### *Specific requirements and modifications*

## **591 Conditions as to balance of business**

- (1) This section applies if—
  - (a) a notice is given under section 586 in respect of a joint venture company, or
  - (b) a notice is given under section 587 in respect of a joint venture group.
- (2) Condition A in section 531 (balance of business: profits) must be met in respect of the company or group in relation to each accounting period in relation to which the notice has effect.
- (3) Condition B in section 531 (balance of business: assets) must be met in respect of the company or group at the beginning of each accounting period in relation to which the notice has effect.
- (4) For the purposes of this section, section 531 applies—
  - (a) in the case of a joint venture company, as if it were a company which had given a notice under section 524, and
  - (b) in the case of a joint venture group, as if it were a group in respect of which a notice had been given under section 523.

## **592 Joint venture groups: financial statements**

- (1) This section applies if a notice is given under section 587 in respect of a joint venture group.
- (2) The principal company of the joint venture group must prepare financial statements for the group for each accounting period in relation to which the notice has effect.
- (3) The reference in subsection (2) to financial statements is a reference to financial statements of a kind required under section 532(2).
- (4) Sections 532(3) and 533 apply to the financial statements under subsection (2) as they apply to financial statements under section 532(2).
- (5) Financial statements prepared under subsection (2) must be submitted to an officer of Revenue and Customs.
- (6) Financial statements under subsection (2) are in addition to the provision required in respect of the members of the joint venture group (as a result of the application of this Part to the group) in financial statements under section 532.

### **593 Financial statements under section 532: joint venture groups**

- (1) This section applies if a notice is given under section 587 in respect of a joint venture group.
- (2) The amount to be included in the financial statements under section 532(2) in relation to a member of a joint venture group is the relevant percentage of profits, expenses, gains, losses, assets and liabilities of the member.
- (3) “The relevant percentage” means—
  - (a) in a case where a notice was given under section 587(1), the percentage of the beneficial interest in the member that is held by members of the venturing group, and
  - (b) in a case where a notice was given under section 587(2), the percentage of the beneficial interest in the member that is held by the venturing company.
- (4) Section 533 accordingly has effect in relation to the member as if for subsection (3) there were substituted subsections (2) and (3) of this section.

### **594 Modifications of Chapter 3**

- (1) Section 534(4) (profits) has effect in relation to a joint venture company or a member of a joint venture group as if for the words from “is to be treated” to the end there were substituted “is to be ignored for the purposes of this section”.
- (2) Section 535(7) (gains) has effect in relation to a joint venture company or a member of a joint venture group as if for the words from “is to be treated” to the end there were substituted “is to be ignored for the purposes of this section”.

*Additional entry charge due in some cases*

### **595 Joint venture company liable for additional charge**

- (1) A joint venture company is chargeable to tax under section 538 (entry charge) if, after the giving of a notice under section 586(2) in respect of the company, condition A or B is met.
- (2) Condition A is met if—
  - (a) the company that gave the notice under section 586(2) becomes the principal company of a group UK REIT,
  - (b) it gives a notice under section 586(1) in respect of the joint venture company, and
  - (c) its shareholding in the joint venture company has increased (but not to 75% or more) between the giving of the two notices.
- (3) Condition B is met if the company that gave the notice under section 586(2)—
  - (a) increases its shareholding in the joint venture company to at least 75%, and
  - (b) gives a notice under section 523 (such that the joint venture company becomes a member of the new group UK REIT resulting from the notice).
- (4) A joint venture company is chargeable to tax under section 538 if, after the giving of a notice under section 586(1) in respect of the company, the venturer holding in the

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company increases to at least 75% (and accordingly the company becomes a member of the venturing group).

- (5) “The venturer holding” means the sum of the beneficial interests in the joint venture company held by members of the venturing group.
- (6) Tax is chargeable as a result of subsection (1) or (4) in respect of the reduced notional amount.
- (7) “The reduced notional amount” means—
  - (a) an amount of notional income calculated in accordance with section 539, less
  - (b) the amount of notional income already charged to tax under section 538 when the notice under 586(1) or (2) (as the case may be) was first given in relation to the joint venture company.

## **596 Member of joint venture group liable for additional charge**

- (1) A member of a joint venture group (“MJVG”) is chargeable to tax under section 538 (entry charge) if, after the giving of a notice under section 587(2) in respect of the group, condition A or B is met.
- (2) Condition A is that—
  - (a) the company that gave the notice under section 587(2) becomes the principal company of a group UK REIT,
  - (b) it gives a notice under section 587(1) in respect of the joint venture group, and
  - (c) its shareholding in MJVG has increased (but not to 75% or more) between the giving of the two notices.
- (3) Condition B is that the company that gave the notice under section 587(2)—
  - (a) increases its shareholding in MJVG to at least 75%, and
  - (b) gives a notice under section 523 (such that MJVG becomes a member of the new group UK REIT resulting from the notice).
- (4) A member of a joint venture group (“MJVG”) is chargeable to tax under section 538 if a venturing group increases its shareholding in MJVG to at least 75% (and accordingly MJVG becomes a member of the venturing group).
- (5) Tax is chargeable as a result of subsection (1) or (4) in respect of the reduced notional amount.
- (6) “The reduced notional amount” means—
  - (a) the amount of notional income calculated in accordance with section 539, less
  - (b) the amount of notional income already charged to tax under section 538 when the notice under section 587(1) or (2) was given or (as the case may be) when MJVG became a member of the joint venture group.

## **597 Cases where no additional charge due**

- (1) A joint venture company is not chargeable to tax under section 538 (entry charge) in a case where—
  - (a) a company which has given a notice under section 586(2) (“notice A”) in respect of the joint venture company becomes the principal company of a group UK REIT,

- (b) the company gives a notice under section 586(1) (“notice B”) in respect of the joint venture company, and
  - (c) the company’s shareholding in the joint venture company has not changed between the giving of notice A and notice B.
- (2) A member of a joint venture group is not chargeable to tax under section 538 in a case where—
  - (a) a company which has given a notice under section 587(2) (“notice A”) in respect of the joint venture group becomes the principal company of a group UK REIT,
  - (b) the company gives a notice under section 587(1) (“notice B”) in respect of the joint venture group, and
  - (c) the company’s shareholding in the member of the joint venture group has not changed between the giving of notice A and notice B.

### *Supplementary*

## **598 Chapter 10: supplementary**

- (1) References in this Chapter to an “equity holder”, in relation to a company, are to a person who—
  - (a) holds ordinary shares in the company, or
  - (b) is a loan creditor of the company in relation to a loan other than a normal commercial loan (as defined by section 162).
- (2) Percentages of beneficial interest for the purposes of this Chapter are to be determined by reference to beneficial entitlement to profits available for distribution to equity holders.
- (3) References in this Part to property rental business, in relation to a joint venture company or a company which is a member of a joint venture group, do not include the letting of property by the company to (as the case may be)—
  - (a) the venturing company in respect of the company, or
  - (b) a member of the venturing group in respect of the company.

## **CHAPTER 11**

### **PART 12: SUPPLEMENTARY**

### *Miscellaneous*

## **599 Calculation of profits**

- (1) This section is about the calculation of profits for the purposes of any provision of this Part which provides that profits are to be calculated in accordance with this section.
- (2) Profits are to be calculated in the same way as profits of a UK property business are calculated for the purposes of the charge to tax under Chapter 3 of Part 4 of CTA 2009 (as to which see, in particular, section 210 of that Act).

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- (3) Section 211(1) of CTA 2009 (property businesses: disregard of credits and debits from loan relationships and derivative contracts) does not apply in respect of—
  - (a) a loan relationship so far as it relates to property rental business,
  - (b) a hedging derivative contract so far as it relates to property rental business, or
  - (c) embedded derivatives so far as the host contract is entered into for the purposes of property rental business.
- (4) For the purposes of subsection (3)—
  - (a) a derivative contract is hedging in relation to a company so far as—
    - (i) it is acquired as a hedge of risk in relation to an asset by the exploitation of which property rental business is conducted, or
    - (ii) it is acquired as a hedge of risk in relation to a liability incurred in connection with property rental business,
  - (b) a designation of a contract as wholly or partly hedging for the purposes of a company's accounts is conclusive,
  - (c) “embedded derivatives” is to be read in accordance with section 584 or 586 (as the case may be) of CTA 2009, and
  - (d) “the host contract” means—
    - (i) the contract mentioned in section 584(1)(a) of CTA 2009, or
    - (ii) the contract mentioned in section 586(1)(a) of that Act, as the case may be.
- (5) In subsection (4)(a)(i) the reference to an asset includes a reference to—
  - (a) the value of an asset, and
  - (b) profits attributable to it.
- (6) Profits are to be calculated without regard to items giving rise to credits or debits which would be within Part 7 of CTA 2009 (derivative contracts) but for section 589(2)(b) and (c) of that Act (exclusion of share-based and unit trust-based contracts).
- (7) Income and expenditure relating partly to property rental business and partly to residual business are to be apportioned on a just and reasonable basis.
- (8) Section 3(1) of CAA 2001 (claims for capital allowances) does not apply; and any allowance which could be claimed under that provision is to be made automatically and reflected in the calculation of profits.

## **600 Power to make regulations about cases involving related persons**

- (1) If they consider it expedient in the public interest the Treasury may make regulations about the application of this Part to activities or situations which involve, or arise in connection with, a relationship between a REIT company and another person.
- (2) In subsection (1) “REIT company” means—
  - (a) a company UK REIT, or
  - (b) a company which is a member of a group UK REIT.
- (3) The regulations may, in particular—
  - (a) treat a specified person, or a person in specified circumstances, as forming part of a group UK REIT for specified purposes;



- (b) provide for a specified provision which applies in respect of a members of a group UK REIT also to apply, with or without modifications, in respect of a specified person or a person in specified circumstances.
- (4) Regulations under this section may make provision in relation to accounting periods ending on or after the date on which the regulations are made.
- (5) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the House of Commons.

## **601 Availability of group reliefs**

- (1) In the application of a provision specified in subsection (2) to a group of companies, the group so far as it carries on property rental business while it is a UK REIT is to be treated as a separate group, distinct from—
  - (a) the pre-entry group,
  - (b) the group so far as it carries on residual business while it is a UK REIT, and
  - (c) the post-cessation group.
- (2) The provisions mentioned in subsection (1) are—
  - (a) section 171 of TCGA 1992 (transfer of assets within group),
  - (b) sections 171A to 171C of TCGA (reallocation of gain or loss within group),
  - (c) sections 179A and 179B of TCGA 1992 (degrouching: reallocation of gain or loss, or rollover of gain, within group),
  - (d) Chapters 4 and 6 to 8 of Part 5 of CTA 2009 (loan relationships),
  - (e) Part 7 of that Act (derivative contracts),
  - (f) Part 8 of that Act (intangible assets), and
  - (g) Part 5 of this Act (group relief).

## **602 Effect of deemed disposal and reacquisition**

A deemed disposal and reacquisition of an asset under this Part is to be taken into account for the purposes of any subsequent disposal (whether actual or deemed).

## **603 Regulations**

Regulations under this Part—

- (a) may make provision which applies generally or only in specified cases or circumstances,
- (b) may make different provision for different cases or circumstances, and
- (c) may contain incidental, supplemental, consequential and transitional provision and savings.

### *Interpretation*

## **604 Property rental business: exclusion of listed business**

- (1) Business of a class listed in the table in subsection (2) is not property rental business.
- (2) This is the table—

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<i>Class</i>	<i>Description</i>
Class 1	Incidental letting of property (whether in the United Kingdom or elsewhere) which is held in connection with a trade in property.
Class 2	Letting of property which is held for use for administrative purposes in carrying on property rental business but is temporarily surplus to requirements for those purposes, so long as— (a) the space let is small compared to the space occupied for administrative purposes, and (b) the letting is for a term of not more than 3 years.
Class 3	Letting of property if the property would fall in accordance with generally accepted accounting practice to be described as owner-occupied (but see subsection (3)).
Class 4	The provision of services in connection with property outside the United Kingdom where the services would not fall within Chapter 3 of Part 4 of CTA 2009 if provided in connection with property in the United Kingdom.
Class 5	Entering into arrangements which are such that a finance arrangement code (within the meaning given by section 770(2) of this Act or section 809BZM(2) of ITA 2007) applies (factoring of income etc: finance arrangements).

(3) For the purposes of class 3, ignore the fact that a property may fall to be described as owner-occupied merely because of the provision by the company of services to an occupant who—

- (a) is in exclusive occupation of the property, and
- (b) is not connected with a member of the group.

(4) The Commissioners for Her Majesty's Revenue and Customs may by regulations—

- (a) add a class to the table in subsection (2),
- (b) amend a class (or provision made in relation to it) or make such provision in relation to a class as the Commissioners consider appropriate, or
- (c) remove a class from the table (or provision made in relation to it).

## **605 Property rental business: exclusion of business producing listed income**

(1) Business is not property rental business so far as it gives rise to income of a class listed in the table in subsection (2).

(2) This is the table—

<i>Class</i>	<i>Description</i>
Class 1	All income in connection with the operation of a caravan site, if section 20(1) of ITTOIA 2005 (caravan sites) would apply in respect of any receipts in connection with the operation of the site.
Class 2	Rent in respect of an electric-line wayleave.
Class 3	Rent in respect of the siting of a pipeline for gas.
Class 4	Rent in respect of the siting of a pipeline for oil.

<i>Class</i>	<i>Description</i>
Class 5	Rent in respect of the siting of a mast or similar structure designed for use in a mobile telephone network or other system of electronic communication.
Class 6	Rent in respect of the siting of a wind turbine.
Class 7	Dividends from shares in— (a) the principal company of a group UK REIT, or (b) a company UK REIT.
Class 8	Income arising out of an interest in a limited liability partnership where section 1273(4) of CTA 2009 (winding up) applies.

- (3) The Commissioners for Her Majesty’s Revenue and Customs may by regulations—
- add a class to the table in subsection (2),
  - amend a class (or provision made in relation to it) or make such provision in relation to a class as the Commissioners consider appropriate, or
  - remove a class from the table (or provision made in relation to it).

## 606 Groups

- (1) For the purposes of this Part a company (“the principal company”) and all its 75% subsidiaries form a group; and if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on.

This is subject to subsection (2).

- (2) A group does not include—
- a company (other than the principal company) which is not an effective 51% subsidiary of the principal company,
  - an insurance company,
  - an insurance subsidiary, or
  - an open-ended investment company.
- (3) A company cannot be a member of more than one group; and if a company would be a member of more than one group, section 170(6) of TCGA 1992 (capital gains tax: groups) applies to determine the group of which it is a member.

- (4) Subsection (3) does not apply for the purposes of Chapter 10.

- (5) In this section—

“effective 51% subsidiary” has the meaning given by section 170(7) of TCGA 1992 (groups of companies),

“75% subsidiary” has the meaning given by section 1154(3) (subsidiaries),

“insurance company” has the meaning given by section 431(2) of ICTA,

“insurance subsidiary” means a company in which at least 75% of the ordinary shares are held by one or more insurance companies, and

“open-ended investment company” has the meaning given by section 613.

## 607 Meaning of “entry” and “cessation” etc

- (1) In this Part “entry” means—

- in the case of a group, the time when the group becomes a group UK REIT, and

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- (b) in the case of a company, the time when the company becomes, or becomes a member of, a UK REIT.
- (2) In this Part “cessation” means—
  - (a) in the case of a group, the time when the group ceases to be a UK REIT, and
  - (b) in the case of a company, the time when the company ceases to be, or to be a member of, a UK REIT.
- (3) In this Part, in relation to a group or company—
  - (a) references to the “pre-entry group” or “pre-entry company” are references to the group or company before entry, and
  - (b) references to the “post-cessation group” or “post-cessation company” are references to the group or company after cessation.

## **608 References to assets**

- (1) A reference in this Part to an asset includes a reference to—
  - (a) part of an asset, and
  - (b) an interest in, or right in relation to, an asset.
- (2) A reference in this Part to assets used in business of a company includes a reference to assets—
  - (a) which were acquired for the purpose of that business and which are not being used in another business,
  - (b) which are available for use in that business, or
  - (c) which are in any other way held in respect of, or associated or connected with, that business.
- (3) For the purposes of this Part an asset is “involved” in a business if it is property involved in the business as described in section 529(4)(a).

## **609 Definitions**

In this Part—

“accounting period 1”, in relation to a company that is, or is a member of, a UK REIT, means the accounting period that begins on entry (in accordance with section 536(5)),

“company” has the meaning given by section 170(9) of TCGA 1992, and

“market value” has the same meaning as in TCGA 1992 (see sections 272 and 273 of, and Schedule 11 to, that Act).