

*Draft Regulations laid before the House of Commons under section 136A(4) of the Finance Act 2006, for approval by resolution of the House of Commons.*

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DRAFT STATUTORY INSTRUMENTS

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**2009 No. 0000**

**CORPORATION TAX**

The Real Estate Investment Trusts  
(Prescribed Arrangements) Regulations 2009

Made - - - - [...]  
Coming into force - - [...]

The Treasury make the following Regulations in exercise of the powers conferred by sections 136A of the Finance Act 2006<sup>(1)</sup> and paragraph 8(2) of Schedule 34 to the Finance Act 2009<sup>(2)</sup>.

In accordance with section 136A(4) of that Act, a draft of this instrument was laid before the House of Commons and approved by a resolution of that House.

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Real Estate Investment Trusts (Prescribed Arrangements) Regulations 2009 and shall come into force forthwith.

(2) These Regulations shall have effect in relation to prescribed arrangements made on or after 7th May 2009 and during an accounting period which ends on or after [date when regulations are made].

**Interpretation**

2.—(1) In these Regulations—

- (a) a reference to Part 4 is a reference to Part 4 of the Finance Act 2006 (real estate investment trusts), and
- (b) a reference to a section (without more) is a reference to that section of the Finance Act 2006.

(2) For the purposes of these Regulations, “person” includes, but is not limited to—

- (a) a legal person,
- (b) a natural person,
- (c) a partnership,

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(1) 2006 c. 25. Section 136A was inserted by paragraph 8(1) of Schedule 34 to the Finance Act 2009 (c. 10).  
(2) 2009 c.10.

- (d) a limited partnership,
  - (e) a limited liability partnership,
  - (f) a trust, and
  - (g) any other body of persons.
- (3) For the purposes of these Regulations—
- “arrangements” include any agreement, understanding, scheme, share reorganisation, transaction or series of transactions (whether or not legally enforceable), and
- “prescribed arrangements” are arrangements (whether or not part of other arrangements) which have the purpose, or one of the main purposes, of allowing a REIT company to meet one or more of the conditions set out in sections 107 (conditions for tax exempt business) and 108 (conditions for balance of business) where, but for the arrangements, those conditions would not be satisfied.

### **Situations in which these Regulations apply**

- 3.—(1) These Regulations apply if conditions A and B are satisfied.
- (2) Condition A is that an amount (“the specified amount”)—
- (a) falls to be taken into account as part of a REIT company’s tax exempt or residual business, or
  - (b) ceases to be taken into account as part of such business.
- (3) For the purposes of condition A, the specified amount may be taken into account (or may cease to be taken into account) as a liability, an expense, an asset or income.
- (4) Condition B is that the specified amount arises directly or indirectly from, or in consequence of, or otherwise in connection with, prescribed arrangements.

### **Excluded arrangements**

- 4.—(1) For the purposes of these Regulations, arrangements are not prescribed arrangements if at least one of the following conditions is satisfied.
- (2) Condition 1 is that the arrangements have been effected solely for genuine commercial purposes.
- (3) Condition 2 is that the arrangements are made between persons dealing at arm’s length.

### **Persons to be treated as member of REIT group in certain situations**

- 5.—(1) Where a REIT company enters into prescribed arrangements with a person (“the person in question”), subject to paragraph (3), the entities listed in paragraph (2) shall be treated as members of the same REIT group for the purposes of the application of Part 4, from the beginning of the accounting period in which the arrangements are made.
- (2) The entities are—
- (a) the REIT company,
  - (b) the person in question, and
  - (c) any person in which either the person in question, or the REIT company, have a direct or indirect interest.
- (3) But a person within paragraph (2)(c) shall not be treated as a member of the REIT group where it can be shown that the person falls outside the scope of the prescribed arrangements.

**Effect of regulations for corporation tax purposes**

6.—(1) This regulation applies if—

- (a) a company enters into prescribed arrangements which take effect during the accounting period specified in a notice given under section 109 (notice), and
- (b) that Part ceases to apply to it by reason of section 129 (termination notice: Commissioners).

(2) Any corporation tax paid by the company pursuant to section 112 (entry charge) shall be fully taken into account for the purposes of assessing its liability to corporation tax.

Date

Two of the Commissioners to Her Majesty's  
Treasury

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Part 4 of the Finance Act 2006 (c. 25) (“Part 4”) sets out the Real Estate Investment Trusts legislation. It is an elective regime which removes taxation at corporate level for qualifying property rental business. That business is “ring-fenced” from non-qualifying business activities carried on by other parts of the company, or group of companies.

These Regulations aim to prevent artificially manipulated commercial arrangements entered into by a company or group of companies, where the arrangements have as their purpose, or main purpose, the meeting of various conditions set out in the legislation so as to enable a previously non-qualifying group to qualify for REIT status. Where such arrangements are entered into they are prescribed by the regulations.

The effect of the regulations is that they treat a person (and any person in which that person has a direct or indirect interest who falls within the scope of those arrangements) who has entered into prescribed arrangements with a REIT company as a member of the same REIT group from the beginning of the accounting period in which the arrangements are made. As such the provisions of Part 4 will apply to that person or those persons.

Regulation 1 deals with citation, commencement and effect. The regulations come into force on making, and by virtue of paragraph 8(2) of Schedule 34 to the Finance Act 2009 (c. 10), have effect in relation to prescribed arrangements made on or after 7<sup>th</sup> May 2009 where those arrangements fall within an accounting period which ends on or after the date on which the regulations are made.

Regulation 2 deals with interpretation, including the definition of a “person”, “arrangements”, and “prescribed arrangements” for the purposes of the regulations.

Regulation 3 sets out the conditions that need to be satisfied in order for the regulations to apply.

Regulation 4 excludes arrangements which have been entered into either for genuine commercial purposes, or have been entered into at arm’s length, from the definition of prescribed arrangements.

Regulation 5 sets out the consequences of a person entering into prescribed arrangements, namely that the person in question is to be treated as a member of a REIT group for the purposes of Part 4.

Regulation 6 sets out the effect for corporation tax purposes where a company, as a result of the application of the regulations, ceases to be a company to which Part 4 applies. Where the prescribed arrangements are entered into in the company’s first accounting period given in a notice under section 109 of the Finance Act 2006 (notice), any corporation tax paid by way of entry charge pursuant to section 112 (entry charge) of that Act shall be fully taken into account when assessing its overall liability to corporation tax.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.