



Finance Act 2006

2006 CHAPTER 25

PART 4

REAL ESTATE INVESTMENT TRUSTS

Profits

119 Corporation tax

- (1) Profits arising from the business of C (tax-exempt) shall not be charged to corporation tax.
- (2) Profits arising from the business of C (residual) which are charged to corporation tax shall be charged at a rate determined without reference to section 13 of ICTA (small companies rate).

120 Calculation of profits

- (1) This section provides for the calculation of profits for the purposes of sections 107(8), 115(2), 119(1) and 123(c).
- (2) Section 21A of ICTA (calculation of profits of Schedule A business) shall apply (to profits of any kind).
- (3) Paragraph 2(3) of section 15(1) ICTA (Schedule A: disregard of credits and debits from loan relationships and derivative contracts) shall not apply in respect of—
 - (a) a loan relationship if or in so far as it relates to tax-exempt business,
 - (b) a hedging derivative contract if or in so far as it relates to tax-exempt business, or
 - (c) embedded derivatives if or in so far as the host contract is entered into for the purposes of tax-exempt business.
- (4) For the purposes of subsection (3)—

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- (a) a derivative contract is hedging in relation to a company if or in so far as it is acquired as a hedge of risk in relation to an asset,
 - (b) a designation of a contract as wholly or partly hedging for the purposes of a company's accounts shall be conclusive, and
 - (c) "embedded derivatives" and "host contract" have the meanings given by paragraph 2(3) of Schedule 26 to FA 2002 (derivative contracts).
- (5) Profits shall be computed without regard to items giving rise to credits or debits which would be within Schedule 26 to FA 2002 (derivative contracts) but for paragraph 4(2)(b) (exclusion of share-based and unit-trust-based contracts).
- (6) Income and expenditure relating partly to tax-exempt business and partly to non-tax-exempt business shall be apportioned reasonably.
- (7) Section 3(1) of CAA 2001 (claims for capital allowances) shall not apply; and any allowance which the company could claim under that section shall be made automatically and reflected in the calculation of profits.

121 Distributions: liability to tax

- (1) A distribution received by a shareholder of a company to which this Part applies in respect of profits of C (tax-exempt) shall be treated—
- (a) in the case of a shareholder within the charge to corporation tax, as profits of a Schedule A business, and
 - (b) in the case of a shareholder within the charge to income tax, as the profits of a UK property business (within the meaning of section 264 of ITTOIA 2005).
- (2) A distribution received by a shareholder who is not resident in the United Kingdom—
- (a) if the shareholder is a company within the charge to corporation tax, shall be chargeable to tax as profits of a Schedule A business,
 - (b) if the shareholder is a person other than a company within the charge to corporation tax, shall be chargeable to tax as profits of a UK property business (within the meaning of section 264 of ITTOIA 2005), and
 - (c) in either case, shall not be chargeable to tax by virtue of section 42A of ICTA (non-resident landlords).
- (3) Subsection (1) shall not apply in relation to a shareholder if and in so far as he—
- (a) is a dealer in respect of distributions (within the meaning of section 95 of ICTA),
 - (b) is a dealer in securities who is charged to 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—
 - (i) a premium trust fund of his (within the meaning given by section 174 of FA 1993), or
 - (ii) an ancillary trust fund of his (within the meaning given by section 176 of FA 1993), 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 premiums trust fund belonging to it (within the meaning given by section 222 of FA 1994), or

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- (ii) an ancillary trust fund belonging to it (within the meaning given by section 223 of FA 1994).
- (4) Section 114(1)(a) of ICTA (partnerships with companies as members) does not disapply subsection (1) above.
- (5) Sections 231 of ICTA and 397 of ITTOIA 2005 (tax credits in respect of qualifying distributions) shall not apply to distributions made by a company to which this Part applies in respect of profits of C (tax-exempt).
- (6) Distributions from companies to which this Part applies and distributions from principal companies of groups to which this Part applies shall be treated, for the purposes of subsection (1), as the profits of a single business (irrespective of whether the shareholder receives different distributions in different capacities) which is separate from—
 - (a) any other Schedule A business carried on by the shareholder,
 - (b) any other UK property business (within the meaning of section 264 of ITTOIA 2005) carried on by the shareholder,
 - (c) any overseas property business (within the meaning of section 70A(4) of ICTA) carried on by the shareholder, and
 - (d) any overseas property business (within the meaning of section 265 of ITTOIA 2005) carried on by the shareholder.
- (7) In the case of a shareholder which is a partnership, subsection (6) applies to receipts by a partner of a share of any distribution as it applies to receipts by a shareholder.
- (8) In subsection (1)—
 - (a) the reference to a company to which this Part applies includes a reference to C (post-cessation), and
 - (b) “profits” includes gains.

122 Distributions: deduction of tax

- (1) The Treasury may make regulations providing for the assessment, collection and recovery of tax where—
 - (a) a company to which this Part applies makes a distribution of profits of C (tax-exempt), and
 - (b) tax is or may become chargeable in respect of the distribution (whether by virtue of section 121(1) or otherwise).
- (2) Regulations under this section may, in particular—
 - (a) require a company to deduct tax at the basic rate before payment of distributions;
 - (b) specify classes of shareholder to whom distributions may be made without deduction of tax;
 - (c) make provision about the calculation of payments of tax to be made by a company;
 - (d) require a company to account for tax deducted;
 - (e) apply an enactment (with or without modification) in respect of cases where tax is deducted or treated as deducted from income;
 - (f) specify the time at which a distribution is to be treated as made by a company;
 - (g) specify periods in respect of which payments of tax are to be made;

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- (h) specify times at which payments of tax are to be made;
 - (i) make provision about the making of claims and determinations in respect of over-payment or under-payment (which may include provision for appeals);
 - (j) include provision requiring the payment of interest in respect of late payments of tax (which may—
 - (i) provide for payment without deduction of tax;
 - (ii) allow interest paid as a deduction from profits of the company’s tax-exempt business);
 - (k) require a company to provide a shareholder with a certificate containing specified information;
 - (l) make provision about the repayment to a shareholder of sums deducted and paid to the Commissioners in respect of tax;
 - (m) make provision for the payment of interest in respect of repayments under paragraph (l);
 - (n) require notices to be given by or to a company;
 - (o) require a company to make returns;
 - (p) require a company to make records available to the Commissioners for inspection.
- (3) A reference in subsection (2) to a distribution in respect of profits of tax-exempt business includes a distribution made after this Part has ceased to apply to a company.
- (4) A distribution which is treated as having been made by virtue of section 107(9)(b) shall also be treated as having been made for the purposes of regulations under this section.
- (5) In this section “profits” includes gains.

123 Attribution of distributions

Distributions made by a company to which this Part applies shall be attributed—

- (a) first, to payments in satisfaction of Condition 4 of section 107,
- (b) secondly, if or in 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) thirdly, to distribution of profits of the property rental business,
- (d) fourthly, to distribution of gains accruing to C (tax-exempt) which by virtue of section 124 are not chargeable gains, and
- (e) fifthly, to other distributions.