



# Finance Act 2006

## 2006 CHAPTER 25

### PART 4

#### REAL ESTATE INVESTMENT TRUSTS

##### *Introduction*

#### **103 Real Estate Investment Trusts**

- (1) This Part enables a company which carries on property rental business (within the meaning of section 104) and which satisfies the requirements of sections 106 to 108 to opt to—
  - (a) benefit from exemptions from corporation tax on profits and gains in accordance with sections 119 and 124, and
  - (b) have liabilities to tax imposed on the company and the recipients of distributions made by the company in accordance with sections 112, 121 and 122.
- (2) This Part makes similar provision in relation to groups of companies (sections 134 to 136 and Schedule 17).
- (3) A company or group to which this Part applies may be referred to as a Real Estate Investment Trust.

#### **104 Property rental business**

- (1) In this Part “property rental business” means business that is or forms part of—
  - (a) a Schedule A business (within the meaning of section 832(1) of ICTA), or
  - (b) an overseas property business (within the meaning of section 70A(4) of ICTA).
- (2) But—
  - (a) business of a kind listed in Part 1 of Schedule 16 is not property rental business, and

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- (b) business is not property rental business if or in so far as it gives rise to income or profits of a kind listed in Part 2 of that Schedule.

### **105 Other key concepts**

- (1) In this Part “entry” means the time when this Part begins to apply to a company.
- (2) In this Part “cessation” means the time when this Part ceases to apply to a company.
- (3) In this Part, in relation to a company—
- (a) “C (pre-entry)” means the company before this Part begins to apply to it,
  - (b) “C (tax-exempt)” means the company in so far as it carries on tax-exempt business (within the meaning of section 107(2)) while this Part applies to it,
  - (c) “C (residual)” means the company in so far as it carries on non-tax-exempt business while this Part applies to it, and
  - (d) “C (post-cessation)” means the company after this Part has ceased to apply to it.

### **106 Conditions for company**

- (1) A company may give notice for this Part to apply to it in accordance with section 109 only if it satisfies Conditions 1 to 3 below.
- (2) In order for this Part to apply to a company in respect of an accounting period, Conditions 1 to 6 below must be satisfied in relation to the company throughout the accounting period.
- (3) Condition 1 is that the company—
- (a) is resident in the United Kingdom, and
  - (b) is not resident in another place in accordance with the law of that place relating to taxation.
- (4) Condition 2 is that section 236 of the Financial Services and Markets Act 2000 Financial Services and Markets Act 2000 (c. 8) (open-ended investment companies) does not apply to the company.
- (5) Condition 3 is that the shares forming the company’s ordinary share capital are listed on a recognised stock exchange.
- (6) Condition 4 is that the company—
- (a) is not a close company (within the meaning of section 414 of ICTA), or
  - (b) is a close company only by virtue of having as a participator (within the meaning of section 417 of ICTA) a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000;
- and for the purposes of paragraph (a) a company shall be treated as a close company if it is prevented from being a close company only by section 414(5) or 415(4)(a) of ICTA.
- (7) Condition 5 is that—
- (a) each share issued by the company either—
    - (i) forms part of the company’s ordinary share capital, or

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- (ii) is a non-voting fixed-rate preference share (within the meaning of paragraph 2 of Schedule 25 to ICTA (acceptable distribution policy)), and
  - (b) there is no more than one class of ordinary share issued by the company.
- (8) Condition 6 is that in the case of any loan to which the company is party—
  - (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.

## **107 Conditions for tax-exempt business**

- (1) In order to be a company to which this Part applies in respect of an accounting period—
  - (a) the company must throughout the accounting period have a property rental business in respect of which Conditions 1 to 3 below are satisfied (whether or not it also has other business), and
  - (b) Condition 4 below must be satisfied in relation to that property rental business in respect of that accounting period.
- (2) Property rental business of a company is “tax-exempt business” for the purposes of this Part in respect of an accounting period if—
  - (a) Conditions 1 to 3 are satisfied throughout the accounting period in relation to the business, and
  - (b) Condition 4 is satisfied in respect of the accounting period in relation to the business.
- (3) Condition 1 is that the property rental business involves at least three properties.
- (4) Condition 2 is that no one property represents more than 40% of the total value of the properties involved in the property rental business.
- (5) Condition 3 is that the property rental business must not involve property that would fall in accordance with generally accepted accounting practice to be described as owner-occupied.
- (6) For the purposes of Conditions 1 to 3—
  - (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 (within the meaning of section 50(2) of FA 2004),
  - (d) where international accounting standards offer a choice of valuation between cost basis and fair value, fair value must be used, and

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- (e) no account shall be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).
- (7) For the purpose of Condition 3—
- (a) no account shall be taken of the fact that a property may fall to be described as owner-occupied by reason only of the provision by the company of services to an occupant who is in exclusive occupation of the property and is not connected with the company (within the meaning given by section 839 of ICTA),
  - (b) if the shares of one company are stapled to the shares of another, the two shall be treated as a single company, and
  - (c) for this purpose shares of one company are stapled to shares of another if in consequence of the nature of the rights attaching to the shares of the one company (including any terms or conditions attaching to the right to transfer the shares) it is necessary or advantageous for a person who has, disposes of or acquires shares of that company also to have, to dispose of or to acquire a holding of shares of the other company.
- (8) Condition 4 is that at least 90% of the profits of the property rental business arising in the accounting 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).
- (9) But—
- (a) Condition 4 shall be disregarded if and in so far as compliance with it would be unlawful by virtue of—
    - (i) an enactment (including Northern Ireland legislation and an Act of the Scottish Parliament), or
    - (ii) an enactment of a jurisdiction outside the United Kingdom where 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, and
  - (b) a distribution that is withheld in order to prevent or reduce a charge to tax arising under regulations under section 114 shall be treated for the purposes of Condition 4 as having been made.

## **108 Conditions for balance of business**

- (1) In order to be a company to which this Part applies in respect of an accounting period Conditions 1 and 2 below must be satisfied in respect of the company.
- (2) Condition 1 is that in the accounting period the profits arising from tax-exempt business are at least 75% of the company's total profits; and for that purpose—
  - (a) "total profits" means profits arising from tax-exempt business plus profits arising from non-tax-exempt business, and
  - (b) "profits" means profits before deduction of tax and excluding realised and unrealised gains and losses on the disposal of property, calculated in accordance with international accounting standards.

- (3) Condition 2 is that at the beginning of the accounting period the value of the assets involved in tax-exempt business is at least 75% of the total value of assets held by the company; and for that purpose—
- (a) an asset is involved in tax-exempt business if it is property involved in the relevant property rental business within the meaning given by section 107(6)(a),
  - (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 shall be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).

### *Entering Real Estate Investment Trust Regime*

#### **109 Notice**

- (1) If a company (which satisfies the requirement in section 106(1)) gives a notice under this section specifying an accounting period from the beginning of which this Part is to apply to the company, this Part shall apply to the company from the beginning of that accounting period.
- (2) A notice—
- (a) must be given in writing to the Commissioners for Her Majesty's Revenue and Customs,
  - (b) must be given before the beginning of the specified accounting period,
  - (c) must be accompanied by a statement by the company that Conditions 1 to 6 in section 106 are reasonably expected to be satisfied in respect of the company throughout the specified accounting period, 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.

#### **110 Duration**

Once this Part has begun to apply to a company, it shall continue to apply unless and until it ceases to apply in accordance with any of sections 128 to 130.

#### **111 Effects of entry**

- (1) Property rental business of C (pre-entry) shall be treated for the purposes of corporation tax as ceasing at entry.
- (2) Assets which immediately before entry are involved in property rental business of C (pre-entry) shall be treated for the purposes of corporation tax as being sold by C (pre-entry) immediately before entry and re-acquired by C (tax-exempt) immediately after entry.
- (3) The sale and re-acquisition deemed under subsection (2) shall be treated as being for a consideration equal to the market value of the assets.
- (4) For the purposes of CAA 2001—

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- (a) the sale and re-acquisition deemed under subsection (2)—
    - (i) shall not give rise to allowances or charges, and
    - (ii) shall not make it possible to make an election under section 198 or 199 of that Act (apportionment),
  - (b) subsection (3) above shall not apply, and
  - (c) anything done by or to C (pre-entry) before entry in relation to an asset which is deemed under subsection (2) to be sold and re-acquired shall be treated after entry as having been done by or to C (tax-exempt).
- (5) For the purposes of corporation tax, on entry one accounting period of the company shall end and another shall begin.
- (6) For the purposes of subsection (2) an asset is involved in property rental business if it is property involved in the business within the meaning given by section 107(6)(a).
- (7) A gain accruing by reason of this section shall not be a chargeable gain.

## 112 Entry charge

- (1) A company to which this Part applies shall be chargeable to corporation tax under Case VI of Schedule D on an amount of notional income calculated in accordance with subsection (3).
- (2) The notional income shall be treated as arising to C (residual) on entry.
- (3) The notional income is—
- $$\frac{\text{Market Value}}{\text{Tax Rate}} \times 2\%$$
- where—
- (a) Market Value means the aggregate market value of assets treated as sold and re-acquired under section 111(2) (ignoring any asset of negative market value), and
  - (b) Tax Rate means the percentage rate at which C (residual) is chargeable to tax on profits.
- (4) No loss, deficit, expense or allowance may be set off against notional income or tax arising under this section.
- (5) The company may elect to have the notional income treated as arising in four instalments, the first on the date of entry and the other three on the first three anniversaries of that date; and for this purpose subsection (3) shall apply as if the percentage referred to were—
- (a) 0.50% for the first instalment,
  - (b) 0.53% for the second instalment,
  - (c) 0.56% for the third instalment, and
  - (d) 0.60% for the fourth instalment.
- (6) If a company makes an election under subsection (5)—
- (a) notice of the election must be given to the Commissioners for Her Majesty's Revenue and Customs with the notice under section 109,
  - (b) the election is irrevocable, and
  - (c) if this Part ceases to apply to a company before the third anniversary of entry, any remaining instalments shall become chargeable immediately.

- (7) The Treasury may by regulations amend a percentage specified in subsection (5) in order to reflect a change in interest rates; but regulations under this subsection shall not have effect in relation to elections made before the regulations come into force.

*Assets etc*

### **113 Ring-fencing of tax-exempt business**

- (1) For the purposes of corporation tax, the business of C (tax-exempt) shall be treated as a separate business (distinct from—
- (a) any business carried on by C (pre-entry),
  - (b) any business carried on by C (residual), and
  - (c) any business carried on by C (post-cessation)).
- (2) For the purposes of corporation tax C (tax-exempt) shall be treated as a separate company (distinct from—
- (a) C (pre-entry),
  - (b) C (residual), and
  - (c) C (post-cessation)).
- (3) In particular—
- (a) a loss incurred by C (tax-exempt) may not be set off against profits of C (residual),
  - (b) a loss incurred in respect of C (residual) may not be set off against profits of C (tax-exempt),
  - (c) a loss incurred in respect of C (pre-entry) may not be set off against profits of C (tax-exempt) (but this section does not prevent a loss of that kind from being set off against profits of C (residual)),
  - (d) a loss incurred by C (tax-exempt) may not be set off against profits arising to C (post-cessation) (in respect of business of any kind), and
  - (e) receipts accruing after entry but relating to business of C (pre-entry) shall not be treated as receipts of C (tax-exempt).
- (4) In subsection (3) a reference to a loss includes a reference to a deficit, expense, charge or allowance.
- (5) Section 392B of ICTA (ring-fencing of losses from overseas property business) shall not apply to business of C (tax-exempt).
- (6) Paragraphs 5B and 5C of Schedule 28AA to ICTA (transfer pricing: exemption for small and medium enterprises) shall not apply to a company to which this Part applies (whether to C (tax-exempt) or to C (residual)).

### **114 Maximum shareholding**

- (1) The Treasury may make regulations that apply to a company to which this Part applies if it makes a distribution to or in respect of a person who—
- (a) is beneficially entitled (directly or indirectly) to 10% or more of the dividends paid by the company,
  - (b) is beneficially entitled (directly or indirectly) to 10% or more of the company's share capital, or

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- (c) controls (directly or indirectly) 10% or more of the voting rights in the company.
- (2) The regulations may, in particular—
  - (a) cause a sum to be charged to tax, in accordance with the regulations, (whether by reference to a person’s interest, to a rate of tax or otherwise);
  - (b) provide that a charge does not arise, or is reduced, if the company takes or does not take action of a specified kind.

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

- (1) The Treasury may make regulations that apply to a company to which this Part applies where the result of the sum specified in subsection (2) is less than 1.25 in respect of an accounting period.

- (2) That sum is—

$$\frac{\textit{Profits + Financing Costs}}{\textit{Financing Costs}}$$

where—

- (a) Profits means the amount of the profits of C (tax-exempt) arising in the accounting period (before the offset of capital allowances), and
- (b) Financing Costs means the amount of the financing costs incurred in that period in respect of the business of C (tax-exempt).
- (3) The regulations may cause a sum to be charged to tax, in accordance with the regulations, by reference to that part of the financing costs as a result of which the result of the sum specified in subsection (2) is less than 1.25.
- (4) In subsections (2)(b) and (3) “financing costs” means the cost of debt finance; and in calculating the costs of debt finance in respect of an accounting period the matters to be taken into account include—
  - (a) costs giving rise to debits in respect of debtor relationships of the company under Chapter 2 of Part 4 of FA 1996 (loan relationships), other than debits in respect of exchange losses from such relationships (within the meaning of section 103(1A) and (1B) of that Act),
  - (b) any exchange gain or loss from a debtor relationship within the meaning of that Chapter in relation to debt finance,
  - (c) any credit or debit falling to be brought into account under Schedule 26 to FA 2002 (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.

### **116 Minor or inadvertent breach**

- (1) The Treasury may make regulations about the application of this Part to a company if a requirement in section 106(5) or (6), 107 or 108 is not satisfied (whether generally or in respect of an accounting period).
- (2) A company which gave a notice under section 109 shall notify the Commissioners for Her Majesty’s Revenue and Customs as soon as reasonably practicable if a



requirement in section 106(5) or (6), 107 or 108 ceases to be satisfied in relation to the company.

- (3) The regulations may, in particular—
- (a) provide for this Part to cease to apply to a company at a time specified by or determined in accordance with the regulations (which may be before the breach of a requirement);
  - (b) provide for this Part to continue to apply to a company with specified modifications;
  - (c) provide for sums to be charged to tax, or otherwise treated, in accordance with the regulations;
  - (d) make provision by reference to the extent of a failure to satisfy a requirement;
  - (e) make provision by reference to the number of requirements not satisfied;
  - (f) limit the number of occasions on which a provision of the regulations may be relied upon by a company in respect of a specified period;
  - (g) include other provision for preventing tax avoidance;
  - (h) confer a discretion on the Commissioners.
- (4) This section is subject to section 129.

## **117 Cancellation of tax advantage**

- (1) This section applies if the Commissioners for Her Majesty's Revenue and Customs think that a company to which this Part applies has tried to obtain a tax advantage for itself or another person.
- (2) The Commissioners may give a notice to the company specifying the tax advantage.
- (3) If the Commissioners give a notice to the company under subsection (2)—
- (a) a tax advantage obtained by the company shall be counteracted, in accordance with the notice, by an adjustment by way of—
    - (i) an assessment;
    - (ii) the cancellation of a right of repayment;
    - (iii) a requirement to return a repayment already made;
    - (iv) the computation or recomputation of profits or gains, or liability to tax, on a basis specified by the Commissioners in the notice, and
  - (b) the Commissioners may (in addition to the adjustment under paragraph (a)) assess the company to such additional amount of corporation tax under Case VI of Schedule D as they think is equivalent to the value of the tax advantage.
- (4) For the purposes of this section “tax advantage” has the meaning given by section 709 of ICTA (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 112).
- (5) But a company does not obtain a tax advantage by reason only of this Part applying to it, unless it does anything (whether before or during the application of this Part) which in the Commissioners' opinion is wholly or principally designed—
- (a) to create or inflate or apply a loss, deduction or expense (whether or not suffered 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.

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- (6) Where a notice is given to a company under subsection (2), the company may appeal to the Special Commissioners.
- (7) An appeal must be instituted by notice given in writing to the Commissioners for Her Majesty's Revenue and Customs during the period of 30 days beginning with the date on which the notice under subsection (2) is given to the company.

### **118 Funds awaiting re-investment**

- (1) This section applies where a company to which this Part applies—
  - (a) disposes of an asset used wholly and exclusively for the purposes of tax-exempt business, and
  - (b) holds the proceeds in cash.
- (2) Profits or losses arising from a loan relationship entered into in connection with the proceeds—
  - (a) shall be disregarded for the purposes of section 120, and
  - (b) shall be treated for all tax purposes as arising from a loan relationship entered into in connection with business of C (residual).
- (3) For the purposes of section 108—
  - (a) the proceeds shall, during the period of 24 months beginning with the date of the disposal, be treated for the purposes of Condition 2 as assets held in connection with the tax-exempt business, but
  - (b) any income derived from the proceeds is income from non-tax-exempt 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 at least a year has been used partly for the purposes of the business of C (tax-exempt) and partly for the purposes of C (residual), this section shall apply to such part of the proceeds as may reasonably be attributed to the tax-exempt business (having regard to the extent to which, and the length of the periods during which, the asset was used for the different purposes).

### *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)—
  - (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—

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- (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
    - (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

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- (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;
  - (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,

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- (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.

### *Capital gains*

#### **124 Corporation tax**

- (1) A gain accruing to a company to which this Part applies on the disposal of an asset shall not be a chargeable gain if—
  - (a) the asset was used wholly and exclusively for the purposes of the business of C (tax-exempt), or
  - (b) the asset was used partly for the purposes of the business of C (tax-exempt) and partly for the purposes of the business of C (residual) during one or more periods of (in aggregate) less than a year, but was otherwise used wholly and exclusively for the purposes of the business of C (tax-exempt).
- (2) Where a gain accrues to a company to which this Part applies on the disposal of an asset which for one or more periods of (in aggregate) at least a year has been used partly for the purposes of the business of C (tax-exempt) and partly for the purposes of the business of C (residual), such part of the gain as may reasonably be attributed to the business of C (tax-exempt) (having regard to the extent to which, and the length of the periods during which, the asset was used for the different purposes) shall not be a chargeable gain.
- (3) Corporation tax shall be charged in respect of gains accruing to C (residual) at a rate determined without reference to section 13 of ICTA (small companies rate).

#### **125 Movement of assets out of ring-fence**

- (1) Subsection (2) applies when an asset which has been used wholly and exclusively for the purposes of the business of C (tax-exempt) begins to be used (otherwise than by being disposed of in the course of trade) wholly and exclusively for the purposes of the business of C (residual).
- (2) The asset shall be treated as having been at that time—
  - (a) disposed of by C (tax-exempt), and
  - (b) immediately re-acquired by C (residual).
- (3) The sale and re-acquisition deemed under subsection (2) shall be treated as being for a consideration equal to the market value of the asset.
- (4) For the purposes of CAA 2001—
  - (a) the sale and re-acquisition deemed under subsection (2)—
    - (i) shall not give rise to allowances or charges, and
    - (ii) shall not make it possible to make an election under section 198 or 199 of that Act (apportionment),
  - (b) subsection (3) above shall not apply, and
  - (c) anything done by or to C (tax-exempt) before the deemed sale and re-acquisition shall be treated after the deemed sale and re-acquisition as having been done by or to C (residual).

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- (5) Subsection (6) applies when an asset which has been used wholly and exclusively for the purposes of the business of C (tax-exempt) is disposed of in the course of trade for the purposes of the business of C (residual).
- (6) Where this subsection applies—
- (a) the deemed sale and re-acquisition under section 111(2) shall be disregarded, and
  - (b) the asset shall be treated as having been disposed of in the course of the business of C (residual).
- (7) Subsection (6) shall be taken to apply, in particular, where—
- (a) a property acquired by a company to which this Part applies 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 the later, and
  - (c) the company disposes of the property within the period of three years beginning with the completion of the development.
- (8) Where subsection (6) 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 112 calculated as follows—

$$\frac{\text{Asset Market Value}}{\text{Aggregate Market Value}} \times \text{Tax Paid}$$

where—

- (a) Asset Market Value means market value of the asset at entry,
- (b) Aggregate Market Value means the aggregate market value of assets treated as sold and re-acquired under section 111(2) (ignoring any asset of negative market value), and
- (c) Tax Paid means tax paid under section 112.

## **126 Movement of assets into ring-fence**

- (1) This section applies where an asset which has been used wholly and exclusively for the purposes of the business of C (residual) begins to be used wholly and exclusively for the purposes of the business of C (tax-exempt).
- (2) The asset shall be treated as having been—
- (a) disposed of by C (residual), and
  - (b) immediately re-acquired by C (tax-exempt).
- (3) The sale and re-acquisition deemed under subsection (2) shall be treated as being for a consideration equal to the market value of the asset.
- (4) For the purposes of CAA 2001—
- (a) the sale and re-acquisition deemed under subsection (2)—
    - (i) shall not give rise to allowances or charges, and
    - (ii) shall not make it possible to make an election under section 198 or 199 of that Act (apportionment),
  - (b) subsection (3) above shall not apply, and

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- (c) anything done by or to C (residual) before the deemed sale and re-acquisition shall be treated after the deemed sale and re-acquisition as having been done by or to C (tax-exempt).

## **127 Interpretation**

Sections 124 to 126 shall be construed as one with TCGA 1992.

### *Leaving Real Estate Investment Trust Regime*

## **128 Termination by notice: company**

- (1) If a company to which this Part applies gives a notice under this section specifying a date at the end of which this Part is to cease to apply to the company, this Part shall cease to apply to the company at the end of that date.
- (2) A notice must be given in writing to the Commissioners for Her Majesty's Revenue and Customs.
- (3) The date specified under subsection (1) must be after the date on which the Commissioners receive the notice.

## **129 Termination by notice: Commissioners**

- (1) If the Commissioners for Her Majesty's Revenue and Customs give a company to which this Part applies a notice in writing under this subsection, this Part shall cease to apply to the company.
- (2) The Commissioners may give a company a notice only if—
  - (a) the company has relied on a provision of regulations under section 116 on a specified number of occasions in a specified period,
  - (b) the company has been given a specified number of notices under section 117 in a specified period, or
  - (c) the Commissioners think that a breach of a requirement in section 107 or 108, or an attempt by the company to obtain a tax advantage, is so serious that this Part should cease to apply to it.
- (3) In subsection (2) “specified” means specified in regulations made by the Treasury.
- (4) A notice under subsection (1) must state the reason for it.
- (5) Where a notice is given to a company, this Part shall be taken to have ceased to apply to the company at the end of the accounting period before the accounting period during which the event occurs (or the last event occurs) which caused the Commissioners to give the notice.
- (6) Where a notice is given to a company, the company may appeal to the Special Commissioners.
- (7) An appeal must be instituted by notice given in writing to the Commissioners for Her Majesty's Revenue and Customs during the period of 30 days beginning with the date on which the notice is given to the company.



### **130 Automatic termination for breach of requirement**

- (1) Where Condition 1, 2, 5 or 6 of section 106 is not satisfied in respect of an accounting period of a company to which this Part applies, this Part shall be taken to have ceased to apply to the company at the end of the previous accounting period.
- (2) A company which gave a notice under section 109 shall notify the Commissioners for Her Majesty's Revenue and Customs as soon as is reasonably practicable if Condition 1, 2, 5 or 6 of section 106 ceases to be satisfied in relation to the company.

### **131 Effects of cessation**

- (1) The business of C (tax-exempt) shall be treated for the purposes of corporation tax as ceasing immediately before cessation.
- (2) Assets which immediately before cessation are involved in the business of C (tax-exempt) shall be treated for the purposes of corporation tax as being sold by C (tax-exempt) immediately before cessation and re-acquired immediately after cessation by C (post-cessation).
- (3) The sale and re-acquisition deemed under subsection (2) shall be treated as being for a consideration equal to the market value of the asset.
- (4) For the purposes of CAA 2001—
  - (a) the sale and re-acquisition deemed under subsection (2)—
    - (i) shall not give rise to allowances or charges, and
    - (ii) shall not make it possible to make an election under section 198 or 199 of that Act (apportionment),
  - (b) subsection (3) above shall not apply, and
  - (c) anything done by or to C (tax-exempt) before cessation in relation to an asset which is deemed to be sold and re-acquired shall be treated after cessation as having been done by or to C (post-cessation).
- (5) For the purposes of corporation tax, on cessation an accounting period of C (residual) shall end and an accounting period of C (post-cessation) shall begin.
- (6) For the purposes of subsection (2) an asset is involved in the business of C (tax-exempt) if it is property involved in the business within the meaning given by section 107(6)(a).

### **132 Early exit by notice**

- (1) This section applies where this Part—
  - (a) ceases to apply to a company by reason of section 128, and
  - (b) had applied to the company for a continuous period immediately before cessation of less than ten years.
- (2) If the company disposes of a tax-exempt asset during the post-cessation period, liability to corporation tax shall be determined without regard to—
  - (a) any deemed disposal under section 111(2) that resulted in a gain,
  - (b) any deemed disposal under section 131(3), or
  - (c) any deemed disposal under section 125(2).
- (3) In subsection (2)—

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- (a) “tax-exempt asset” means an asset that was involved (within the meaning of section 107(6)(a)) in the business of C (tax-exempt), and
- (b) “the post-cessation period” means the period of two years beginning with the date of cessation.

### **133 Early exit**

- (1) This section applies where this Part—
  - (a) ceases to apply to a company by reason of section 129 or 130, and
  - (b) had applied to the company for a continuous period immediately before cessation of less than ten years.
- (2) The Commissioners for Her Majesty’s Revenue and Customs may direct—
  - (a) that a provision of this Part shall have effect in relation to the company with a specified modification, or
  - (b) that a provision of an enactment relating to corporation tax shall apply, not apply or apply with modifications in relation to the company.
- (3) A direction under subsection (2)(a) may, in particular—
  - (a) alter the time at which this Part is taken to cease to apply to the company in accordance with section 129 or 130;
  - (b) disapply or alter the effect of section 119(1) or 124(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) A company in respect of which a direction is given under this section may appeal to the Special Commissioners.

### *Groups*

### **134 Group Real Estate Investment Trusts**

- (1) A group of companies may become a group to which this Part applies; and for that purpose the provisions of this Part apply to a group of companies in the same way as to a company, subject to the modifications set out in Schedule 17.
- (2) 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.
- (3) But a group does not include—
  - (a) a company (other than the principal company) which is not an effective 51% subsidiary of the principal company,
  - (b) an insurance company,
  - (c) an insurance subsidiary, or
  - (d) an open-ended investment company.
- (4) In this section—
  - (a) “effective 51% subsidiary” has the meaning given by section 170 of TCGA 1992 (groups of companies),

- (b) “75% subsidiary” has the meaning given by section 838 of ICTA (subsidiaries),
  - (c) “insurance company” has the meaning given by section 431(2) of ICTA, and
  - (d) “insurance subsidiary” means a company in which 75% or more of the ordinary shares are held by one or more insurance companies.
- (5) 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) shall apply to determine the group of which it is a member.
- (6) Subsection (5) is subject to section 138.

### **135 Transfer within group**

After section 171(2)(d) of TCGA 1992 (transfer within a group: exclusions) insert—

“; or

- (da) a disposal by or to a company to which Part 4 of the Finance Act 2006 applies (Real Estate Investment Trusts);”.

### **136 Availability of group reliefs**

- (1) In the application of a provision specified in subsection (2) to a group to which this Part applies G (property rental business) shall be treated as a separate group (distinct from—
- (a) G (pre-entry),
  - (b) G (residual), and
  - (c) G (post-cessation)).
- (2) The provisions mentioned in subsection (1) are—
- (a) sections 171 and 171A of TCGA 1992 (actual or notional transfer of assets within group),
  - (b) sections 179A and 179B of TCGA 1992 (reallocation or roll-over of gain within a group),
  - (c) Chapter 4 of Part X of ICTA (corporation tax: group relief),
  - (d) Schedule 9 to FA 1996 (loan relationships),
  - (e) Schedule 26 to FA 2002 (derivative contracts), and
  - (f) Schedule 29 to FA 2002 (intangible assets).

### *Miscellaneous*

### **137 Insurance companies**

In section 212(1) of TCGA 1992 (annual deemed disposal of holdings of certain assets) after paragraph (b) insert—

“; or

- (c) shares in a company to which Part 4 of the Finance Act 2006 applies (Real Estate Investment Trusts);”.

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### 138 Joint ventures

- (1) The Treasury may by regulations provide for this Part to apply in relation to property rental business (“the joint venture”) carried on—
  - (a) jointly by a company to which this Part applies and another person, or
  - (b) by a person in which a company to which this Part applies has an interest.
- (2) The regulations may, in particular, modify or disapply a provision of this Part in its application—
  - (a) by virtue of this section, or
  - (b) in relation to a company to which this Part applies where the company also carries on business in relation to which this Part applies by virtue of this section.
- (3) The regulations may, in particular, make application of this Part conditional on—
  - (a) a company to which this Part applies having a minimum percentage interest of a specified kind in the joint venture;
  - (b) an election by a company to which this Part applies.

### 139 Manufactured dividends

- (1) This section applies to a manufactured dividend if and to the extent that it is representative of a dividend paid by a company to which this Part applies in respect of profits of C (tax-exempt).
- (2) Schedule 23A to ICTA shall have effect with the substitution of the following for paragraph 2(2)—
  - “(2) Sub-paragraphs (2A) to (2C) apply if and to the extent that a manufactured dividend is representative of a dividend in respect of profits of the tax-exempt business of a company to which Part 4 of the Finance Act 2006 applies.
  - (2A) The Tax Acts shall have effect in relation to the recipient, and persons claiming title through or under him, as if the manufactured dividend were a dividend to which section 121 of that Act applied.
  - (2B) In relation to the dividend manufacturer—
    - (a) if the dividend manufacturer is a company and the manufactured dividend is paid in the course of a trade carried on in the United Kingdom, it shall be treated as an expense of the trade;
    - (b) if the manufactured dividend is paid in connection with investment business, it shall be treated for the purposes of section 75 of this Act as expenses of management;
    - (c) in the case of a company carrying on life assurance business, in so far as the manufactured dividend is referable to basic life assurance and general annuity business (or is or would be, if received by the company, be treated as referable to business of that kind by virtue of section 432A) it shall be treated for the purposes of section 76 as if it were an expense payable falling to be brought into account at Step 3 of section 76(7);
    - (d) regulations under section 122 of FA 2006 shall apply (with any necessary modifications) to the dividend manufacturer (whether or

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not a company) as if he were a company to which Part 4 of the Finance Act 2006 applied, unless—

- (i) the dividend manufacturer is not resident in the United Kingdom, and
- (ii) the manufactured dividend is paid otherwise than in the course of a trade carried on through a branch or agency in the United Kingdom.

(2C) The Treasury may by regulations provide, in a case where sub-paragraph (2B)(d)(i) and (ii) above apply, for a United Kingdom recipient of the manufactured dividend (within the meaning of paragraph 4(3A) below) to be liable to account for tax which the dividend manufacturer would have been required to deduct in accordance with regulations under section 122 of the Finance Act 2006.

(2D) Sub-paragraph (2E) shall apply for the purposes of—

- (a) this paragraph, and
- (b) regulations under section 122 of the Finance Act 2006.

(2E) The gross amount of a manufactured dividend to which sub-paragraphs (2A) and (2B) apply shall be taken to be equal to the gross amount of the dividend of which it is representative and which is paid by the company to which Part 4 of the Finance Act 2006 applies.”

(3) For the purposes of sections 736B of ICTA (deemed manufactured payments: stock lending), regulations under section 122 shall be treated, in so far as they apply to a dividend manufacturer, as if they were regulations made under Schedule 23A.

(4) For the purposes of section 737A of ICTA (deemed manufactured payments: sale and repurchase of securities) regulations under section 122 shall be treated, in so far as they apply to a dividend manufacturer, as dividend manufacturing regulations (within the meaning of section 737A(6)).

(5) After section 737C(3) of ICTA (amount of deemed manufactured dividend) insert—

“(3A) But if and to the extent that the dividend mentioned in section 737A(2)(a) or (2A)(a) is a dividend paid by a company to which Part 4 of the Finance Act 2006 applies in respect of profits of its tax-exempt business—

- (a) the amount of the deemed manufactured dividend shall be taken to be an amount equal to the gross amount of the dividend mentioned in section 737A(2)(a) or (2A)(a);
- (b) any deduction which, by virtue of paragraph 2 of Schedule 23A (as amended by section 139 of the Finance Act 2006), is required to be made out of the gross amount of the manufactured dividend shall be deemed to have been made;
- (c) the repurchase price of the securities shall be treated, for the purposes of section 730A, as increased by the gross amount of the deemed manufactured dividend.”

(6) In section 737D(2) of ICTA (manufactured payments: relief) after “any” insert “manufactured dividend,”.

(7) In this section “dividend manufacturer” and “manufactured dividend” have the meaning given by Schedule 23A to ICTA.

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#### **140 Penalties for failure to give notice, etc**

At the end of the second column of the Table in section 98(5) of TMA 1970 (penalties) add—

“Section 106 of FA 2006 as modified by Schedule 17 to that Act.  
Section 116 of FA 2006.  
Regulations under section 116 of FA 2006.  
Regulations under section 122 of FA 2006.  
Section 130 of FA 2006.”

#### **141 Effect of deemed disposal and re-acquisition**

A deemed disposal and re-acquisition of an asset under this Part shall have effect for the purposes of any subsequent disposal of the asset (whether actual or deemed).

#### **142 Interpretation**

In this Part—

- (a) a reference to an asset includes a reference to—
  - (i) part of an asset, and
  - (ii) an interest in, or right in relation to, an asset,
- (b) a reference to assets used in business of a company includes a reference to assets—
  - (i) which were acquired for the purpose of that business and which are not being used in another business,
  - (ii) which are available for use in that business, or
  - (iii) which are in any other way held in respect of, or associated or connected with, that business,
- (c) “company” has the meaning given by section 170(9) of TCGA 1992,
- (d) “international accounting standards” has the meaning given by section 50(2) of FA 2004,
- (e) “market value” has the same meaning as in TCGA 1992 (see sections 272 and 273 and Schedule 11), and
- (f) “profits” means income (except where the context otherwise requires).

#### **143 Housing investment trusts: repeal**

Section 160 of, and Schedule 30 to, FA 1996 (housing investment trusts) shall cease to have effect (and accordingly—

- (a) sections 508A and 508B of ICTA shall cease to have effect,
- (b) the amendments of section 842(1)(a) and (e) of ICTA effected by paragraph 2(2) of Schedule 30 shall cease to have effect, and
- (c) section 842(1AA) of ICTA shall cease to have effect).

#### *General*

#### **144 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 include incidental, consequential or transitional provision.

#### **145 Commencement**

- (1) A notice under section 109 may be given in respect of an accounting period beginning on or after 1st January 2007.
- (2) Section 143 shall have effect in relation to accounting periods beginning on or after the day on which this Act is passed.