



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 12

#### REAL ESTATE INVESTMENT TRUSTS

### 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).

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## **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
  - (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

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- (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,

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- (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.
- (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

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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

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- (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).

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.

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- (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

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- (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.
- (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.