



Corporation Tax Act 2010

2010 CHAPTER 4

PART 12

REAL ESTATE INVESTMENT TRUSTS

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—

Status: This is the original version (as it was originally enacted).

- (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,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.

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- (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.
- (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).