



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 12

#### REAL ESTATE INVESTMENT TRUSTS

### CHAPTER 9

#### LEAVING THE UK REIT REGIME

##### *Introduction*

#### **570 Overview of Chapter**

- (1) This Chapter makes provision about how, and in what circumstances, a group or a company ceases to be a UK REIT.
- (2) The UK REIT status of a group or company may be terminated—
  - (a) by a notice given by the principal company of the group or (as the case may be) by the company (see section 571), or
  - (b) in the cases set out in sections 573 to 577, by a notice given by an officer of Revenue of Customs (see section 572).
- (3) In some circumstances a group or company ceases to be a UK REIT automatically (see section 578).
- (4) This Chapter also contains provision about the effects of ceasing to be a UK REIT (see sections 579 to 582).

##### *Notice to leave regime*

#### **571 Termination by notice: group or company**

- (1) Subsection (2) applies if—

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(a) the principal company of a group UK REIT, or  
 (b) a company UK REIT,  
 gives a notice specifying a date at the end of which the group or company is to cease to be a UK REIT.

- (2) The group or company ceases to be a UK REIT at the end of that date.
- (3) A notice under subsection (1) must be given in writing to an officer of Revenue and Customs.
- (4) The date specified in a notice under subsection (1) must be after the date on which the officer receives the notice.

### **572 Termination by notice: officer of Revenue and Customs**

- (1) If an officer of Revenue and Customs gives a notice in writing—
- (a) to the principal company of a group UK REIT, or  
 (b) to a company UK REIT,  
 the group or company ceases to be a UK REIT.
- (2) An officer of Revenue and Customs may give a notice under subsection (1) only in a case within section 573, 574, 575, 576 or 577.
- (3) A notice under subsection (1) must state the reason for it.
- (4) If a notice is given under subsection (1)—
- (a) the group or company (as the case may be) is to be taken to have ceased to be a UK REIT at the end of the accounting period before the accounting period during which the event occurs (or the last event occurs) which caused the officer to give the notice, and  
 (b) the company to which the notice is given may appeal.
- (5) An appeal under subsection (4)(b) 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 subsection (1) is given.
- (6) Section 574(3) modifies subsection (4)(a) for the case described in section 574(2) (breach of condition B in section 531 in accounting period 1).

### **573 Notice under section 572: tax advantage**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if the condition in this section is met.
- (2) The condition is met in the case of a group UK REIT if, during the relevant 10-year period, two notices have been given under section 545 (cancellation of tax advantage) to members of the group.
- (3) The condition is met in the case of a company UK REIT if, during the relevant 10-year period, two notices have been given under section 545 to the company.
- (4) “The relevant 10-year period” is the period of 10 years beginning with the day on which the first notice was given under section 545.

#### **574 Notice under section 572: serious breach**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if the officer thinks that—
  - (a) a breach of a condition in section 529, 530 or 531, or
  - (b) an attempt by a member of the group or (as the case may be) by the company to obtain a tax advantage,is so serious that the group or company should cease to be a UK REIT.
- (2) Subsection (3) applies if—
  - (a) the case is one relating to a breach of condition B in section 531 (balance of business: assets) in relation to accounting period 1, and
  - (b) that condition is not met at the beginning of the next accounting period.
- (3) In that case, section 572(4) has effect as if for paragraph (a) there were substituted—
  - (a) the group or company (as the case may be) is to be taken to have ceased to be a UK REIT on the first day of accounting period 1, and”

#### **575 Notice under section 572: breach of conditions as to property rental business**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if, in 3 consecutive accounting periods, there is a breach of condition A or B in section 529 (property rental business).
- (2) An officer of Revenue and Customs may also give a notice under section 572(1) if, during the relevant 10-year period, section 563(2) has been relied on—
  - (a) more than twice in relation to condition A in section 529, or
  - (b) more than twice in relation to condition B in that section.
- (3) “The relevant 10-year period” is the period of 10 years beginning with the first day on which section 563(2) was relied on.
- (4) The following rules apply for the purposes of subsection (2)—

##### *Rule 1*

If a breach of condition B in section 529 is a necessary consequence of a breach of condition A in that section in the same accounting period, the breach of condition B is to be ignored (and accordingly the UK REIT is not to be treated as having relied on section 563(2) in relation to the breach of condition B).

##### *Rule 2*

If a breach of condition A or B in section 529 lasts for—

- (a) more than one accounting period, but
- (b) not more than two accounting periods,

the UK REIT is to be treated as having relied on section 563(2) only once.

#### **576 Notice under section 572: breach of conditions as to balance of business**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if there is a breach of condition A or B in section 531 (balance of business) in 3 consecutive accounting periods.

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- (2) An officer of Revenue and Customs may also give a notice under section 572(1) if, during the relevant 10-year period, either subsection (1) or (2) of section 568 has been relied on more than twice.
- (3) “The relevant 10-year period” is the period of 10 years beginning with the first day on which subsection (1) or (as the case may be) subsection (2) of section 568 was relied on.
- (4) In the case of a breach of condition A in section 531, section 568(1) is to be treated for the purposes of subsection (3) as having first been relied on on the last day of the accounting period in which profits are assessed for the purposes of that condition.
- (5) If a breach of condition A or B in section 531 lasts for—
  - (a) more than one accounting period, but
  - (b) not more than two accounting periods,
 the UK REIT is to be treated for the purposes of subsection (2) as having relied on section 568(1) or (2) (as the case may be) only once.
- (6) References in this section to an accounting period do not include a reference to accounting period 1.

#### **577 Notice under section 572: multiple breaches of conditions in Chapter 2**

- (1) An officer of Revenue and Customs may give a notice under section 572(1) if conditions A, B and C are met.
- (2) Condition A is that at least two of the conditions in sections 528 to 531 have been breached during the relevant 10-year period.
- (3) Condition B is that the breached conditions are not both (or all) contained in the same section; and for this purpose the condition in section 530 (distribution of profits) is to be treated as contained in section 529.
- (4) Condition C is that the UK REIT has relied on some or all of the provisions mentioned in subsection (5)(a) more than 4 times (in total) during the relevant 10-year period.
- (5) For the purposes of this section—
  - (a) the provisions referred to in subsection (4) are—
    - section 562(2) and (3),
    - section 563(2), and
    - section 568(1) and (2), and
  - (b) “the relevant 10-year period” is the period of 10 years beginning with the day on which the first of the conditions to be breached was first breached.
- (6) If the first of the conditions to be breached is condition A in section 531 (balance of business: profits), that condition is to be treated for the purposes of subsection (5)(b) as breached from the last day of the accounting period in which profits are assessed for the purposes of the condition.
- (7) For the purposes of this section the following breaches are to be ignored—
  - (a) a breach of condition C or D in section 528 (conditions for company) occurring as a result of—
    - (i) a member of a group UK REIT becoming a member of another group UK REIT, or

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- (ii) a company UK REIT becoming a member of a group UK REIT,
- (b) a breach of condition C or D in section 528 in respect of which section 525(2) to (4) or (5) to (7) applies,
- (c) a breach of any of conditions C to F in section 528 in respect of which section 558(3) or 559(6) applies,
- (d) a breach of condition A in section 531 in accounting period 1, and
- (e) a breach of condition B in section 531 at the beginning of that period.

#### *Automatic termination*

### **578 Automatic termination for breach of certain conditions in section 528**

- (1) Subsection (2) applies if condition A, B, E or F in section 528 (conditions for company) is not met in relation to an accounting period.
- (2) The group or (as the case may be) the company is to be taken to have ceased to be a UK REIT at the end of the previous accounting period.
- (3) The company which gave a notice under section 523 or 524 must notify an officer of Revenue and Customs as soon as is reasonably practicable if condition A, B, E or F in section 528 ceases to be met in relation to the company.

#### *Effects of cessation*

### **579 Effects of cessation: corporation tax**

- (1) Subsections (3) to (7) apply if—
  - (a) a group or company ceases to be a UK REIT, or
  - (b) a company ceases to be a member of a group UK REIT.
- (2) For the purposes of those subsections references to an “exiting company” are to each member of the group UK REIT or (as the case may be) to the company UK REIT.
- (3) Property rental business of an exiting company is to be treated for corporation tax purposes as ceasing immediately before cessation.
- (4) Assets which immediately before cessation are involved in property rental business of an exiting company are to be treated for corporation tax purposes as being—
  - (a) sold immediately before cessation by the company so far as it carries on property rental business, and
  - (b) reacquired immediately after cessation by the post-cessation company.
- (5) The sale and reacquisition deemed under subsection (4) is to be treated as being for a consideration equal to the market value of the assets.
- (6) If a percentage of the assets of an exiting company is excluded from a financial statement in accordance with section 533(3), that percentage of those assets is to be ignored for the purposes of subsection (4).
- (7) For corporation tax purposes—
  - (a) an accounting period of the company so far as it carries on residual business ends on cessation, and

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- (b) a new accounting period of the company begins.
- (8) In relation to a non-UK member of a group UK REIT, subsections (3) to (7) have effect as if references to property rental business were references to UK property rental business.
- (9) Subsections (3) to (7) do not apply if—
  - (a) a member of a group UK REIT becomes a member of another group UK REIT, or
  - (b) a company UK REIT becomes a member of a group UK REIT.
- (10) This section is subject to section 559 (demergers: company leaving group UK REIT).

### **580 Effects of cessation: CAA 2001**

- (1) Subsections (3) to (5) apply for the purposes of CAA 2001 if a group or a company ceases to be a UK REIT.
- (2) Subsections (3) to (5) also apply for those purposes if a company ceases to be a member of a group UK REIT.
- (3) The sale and reacquisition deemed under section 579(4)—
  - (a) does not give rise to allowances or charges, and
  - (b) does not enable an election to be made under section 198 or 199 of CAA 2001 (apportionment).
- (4) Section 579(5) (deemed consideration for sale and reacquisition) does not apply.
- (5) Anything done before cessation by or to a company so far as it carries on property rental business in relation to an asset which is deemed under section 579(4) to be sold and reacquired is to be treated after cessation as having been done by or to the post-cessation company.
- (6) This section is subject to section 559 (demergers: company leaving group UK REIT).

### *Early exit*

### **581 Early exit by notice**

- (1) Subsection (6) applies if conditions A, B and C are met.
- (2) Condition A is that a group or company ceases to be a UK REIT as a result of a notice under section 571.
- (3) Condition B is that the group or company had been a UK REIT for a continuous period immediately before cessation of less than 10 years.
- (4) Condition C is that, during the post-cessation period, a relevant company, that is to say—
  - (a) in the case of a group, a member of the group, or
  - (b) otherwise, the company,
 disposes of an asset that was involved in property rental business of the relevant company.

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- (5) “The post-cessation period” means the period of two years beginning with the date of cessation.
- (6) The relevant company’s liability to corporation tax is to be determined without regard to—
  - (a) any deemed disposal under section 536(2) that resulted in a gain,
  - (b) any deemed disposal under section 555(2), or
  - (c) any deemed disposal under section 579(4).
- (7) Subsection (6) also applies if—
  - (a) a company ceases to be a member of a group UK REIT,
  - (b) either—
    - (i) the group has been a group UK REIT for a continuous period of less than 10 years, or
    - (ii) the company has been a member of the group for a continuous period of less than 10 years, and
  - (c) during the post-cessation period the company disposes of an asset that was involved in its property rental 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.

## **582 Early exit**

- (1) This section applies if—
  - (a) a group or a company ceases to be a UK REIT as a result of section 572 or 578, and
  - (b) the group or company has been a UK REIT for a continuous period immediately before cessation of less than 10 years.
- (2) An officer of Revenue and Customs may direct—
  - (a) that a provision of this Part applies in relation to the group or company with a specified modification, or
  - (b) that a provision of an enactment relating to corporation tax applies, does not apply or applies with modifications in relation to the group or company.
- (3) A direction under subsection (2)(a) may in particular—
  - (a) alter the time at which the group or company is to be taken to cease to be a UK REIT in accordance with section 572 or 578;
  - (b) disapply or alter the effect of section 534(1) or (2) or 535(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) In the case of a group, a direction under subsection (2) may relate to the group as a whole or to one or more members.
- (6) An appeal may be made—
  - (a) in the case of a group in relation to which a direction is given, by the principal company of the group,

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- (b) in the case of a company in relation to which a direction is given, by the company.
- (7) On an appeal under subsection (6) that is notified to the tribunal, the tribunal may—
- (a) quash the direction,
  - (b) affirm the direction, or
  - (c) vary the direction.