

**EXPLANATORY MEMORANDUM TO**  
**THE REAL ESTATE INVESTMENT TRUSTS (AMENDMENT OF SCHEDULE 16**  
**TO THE FINANCE ACT 2006) REGULATIONS 2009**

**2009 No. 1482**

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The regulations amend legislation governing Real Estate Investment Trusts (REITs). REITs do not pay Corporation Tax on their property rental profits. Proposals were made to HMRC that were designed to circumvent the exclusion of owner occupied property from the regime. The intention of the REIT regime was that owner occupied properties were not to be included in the tax exempt part of the REIT, this instrument reinforces the original intention of the regime

**3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

3.1 None

**4. Legislative Context**

4.1 Schedule 16 Part 3 to the Finance Act 2006 gives HM Revenue and Customs power to amend Schedule 16. (Schedule 16 details the types of business and income that are excluded from the REIT regime). The power in Schedule 16 has not been used before, (the Schedule was previously amended by Finance Act 2007 Section 52 and Schedule 17 paragraph 15).

4.2 The instrument is being made so that the regime excludes owner occupied properties as was intended by the original legislation

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Real Estate Investment Trust (Amendment of Schedule 16 to the Finance Act 2006) Regulations 2009 are compatible with the Convention rights.

## **7. Policy background**

7.1 The REIT regime allows qualifying property rental companies to be exempt from Corporation Tax on the profits from their property rental business. On joining the regime there are conditions relating to the types of company and the nature of their business. One of the conditions is that owner occupied property is not included as part of the REITs tax exempt business.

7.2 Owner occupied properties were excluded from the regime in Schedule 16(3). This schedule, in part, relied on members of a group of companies not being allowed to let properties to other members of a group.

7.3 Proposals were made by groups that circumvented the exclusion of owner occupied properties so that properties could be let by one member of a group to another member of the group and be within the REIT regime. These proposals involved artificial de-grouping of part of the business with the effect that owner occupied properties were able to be within the tax exempt regime. As announced at PBR 2008 the Government has decided it is appropriate to counter such proposals.

## **8. Consultation outcome**

8.1 The regulations have been informally shared with stakeholders and are available on the HMRC website, amendments have been made in the light of comments received.

8.2 The principal concern was in respect of intra group letting where the tenant was a third party. The regulations were amended to address this concern

## **9. Guidance**

9.1 The GREIT (Guidance on Real Estate Investment Trusts) manual will be amended and draft amendments shared with stakeholders.

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument as there is no impact on business, charities or voluntary bodies.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 None required.

## **13. Contact**

Tony Linehan at HM Revenue and Customs Tel: 020 7147 0527 or email: [tony.linehan@hmrc.gsi.gov.uk](mailto:tony.linehan@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.