

## SCHEDULES

### SCHEDULE 17

Section 52

#### REAL ESTATE INVESTMENT TRUSTS

- 1 Part 4 of FA 2006 (REITs) is amended as follows.
- 2 In section 106 (conditions for company)—
  - (a) in subsection (1), for “1 to 3” substitute “1 and 2”, and
  - (b) after subsection (8) insert—
    - “(9) For the purpose of Condition 6 a loan shall not be treated as dependent on the results of the company’s business by reason only that 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.”
- 3 In section 107 (conditions for tax-exempt business)—
  - (a) in subsections (1)(a) and (2)(a), for “1 to 3” substitute “1 and 2”,
  - (b) in subsections (1)(b) and (2)(b), for “Condition 4” substitute “Condition 3”,
  - (c) omit subsection (5),
  - (d) in subsection (6), for “1 to 3” substitute “1 and 2”,
  - (e) omit subsections (7) and (7A), and
  - (f) in subsections (8) and (9), for “Condition 4” substitute “Condition 3”.
- 4 In section 108(2) (profit condition), for paragraph (b) substitute—
  - “(b) “profits” means profits before deduction of tax, calculated in accordance with international accounting standards and excluding—
    - (i) realised and unrealised gains and losses on the disposal of property,
    - (ii) changes in the fair value of hedging derivative contracts (within the meaning of section 120(4)), and
    - (iii) items which are outside the ordinary course of the company’s business (irrespective of their treatment in the company’s accounts), having regard to that company’s past transactions.”
- 5 In section 109 (notice), after subsection (2) insert—
  - “(3) Subsection (4) applies where a company—
    - (a) does not expect to satisfy Condition 4 of section 106 on the first day of an accounting period, by reason only that its shares have not been listed and dealt with on a recognised stock exchange within the preceding 12 months, but

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- (b) reasonably expects to satisfy that Condition throughout the rest of the accounting period in reliance on section 415(1)(b) of ICTA.
- (4) Where this subsection applies—
  - (a) subsection (2)(c) does not apply, but
  - (b) the notice under subsection (1) must be accompanied by a statement by the company containing the assertions specified in subsection (5).
- (5) Those assertions are—
  - (a) that Conditions 1, 2, 5 and 6 of section 106 are reasonably expected to be satisfied in respect of the company throughout the specified accounting period,
  - (b) that Condition 3 of section 106 is reasonably expected to be satisfied in respect of the company for at least a part of the first day of the specified accounting period, and throughout the remainder of that period, and
  - (c) that Condition 4 of section 106 is reasonably expected to be satisfied in respect of the company throughout all of the specified accounting period apart from the first day.”
- 6 In section 115 (profit: financing cost ratio)—
  - (a) in the formula in subsection (2), omit “+ Financing Costs”, and
  - (b) in paragraph (a) of that subsection, after “allowances” insert “, of losses from a previous accounting period and of amounts taken into account under section 120(3)”.
- 7 In section 116 (minor or inadvertent breach)—
  - (a) in subsection (3), after paragraph (c) insert—
    - “(ca) make provision under paragraph (c) either by specifying a sum that arises in relation to a company or by providing for a sum to be treated as arising in relation to a company;” and
  - (b) after that subsection insert—
    - “(3A) The regulations may make provision about, or by reference to, anything done by or in relation to a company or any sum arising or treated as arising—
      - (a) after the commencement of the regulations, or
      - (b) in the calendar year during which the regulations are made.”
- 8 In section 117 (cancellation of tax advantage), insert at the end—
  - “(8) On an appeal under subsection (7) the Special Commissioners may—
    - (a) quash the notice,
    - (b) affirm the notice, or
    - (c) vary the notice.”
- 9 In section 120 (calculation of profits)—
  - (a) in paragraph (a) of subsection (4), for “an asset,” substitute “an asset by the exploitation of which tax-exempt business is conducted,”
  - (b) after that paragraph insert—

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- “(aa) 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 a liability incurred in connection with tax-exempt business,”  
and
- (c) after that subsection insert—
- “(4A) In subsection (4)(a) the reference to an asset includes a reference to—
- (a) the value of an asset, and
- (b) profits attributable to it.”
- 10 In section 123(a) (attribution of distributions), for “Condition 4” substitute “Condition 3”.
- 11 After section 126 (movement of assets into ring fence) insert—

### “126A Demergers

- (1) This section applies if—
- (a) C (tax-exempt) disposes of an asset to a 75% subsidiary (“S”) of C (residual),
- (b) C (residual) disposes of its interest in S to another company (“P”),
- (c) on the date when it acquires the interest in S, P gives a notice under section 109 (as modified by paragraph 8 of Schedule 17) which specifies an accounting period which begins within the period of six months beginning with the date of the disposal of the asset, and
- (d) this Part begins to apply to the group of which S is a member from the beginning of the specified accounting period.
- (2) P may give a notice under section 109 (as modified by paragraph 8 of Schedule 17) in accordance with subsection (1)(c) even if it does not expect to satisfy Conditions 3 to 6 of section 106 throughout the accounting period specified in the notice.
- (3) Where this section applies—
- (a) sections 111 and 112 shall not apply to the group of which S is a member in relation to the asset disposed of by C (tax-exempt) or in relation to business conducted by the exploitation of that asset, and
- (b) section 125 shall not apply to the disposal of the asset by C (tax-exempt).
- (4) But if, at the end of the period of six months mentioned in subsection (1)(c), Conditions 3 to 6 of section 106 are not satisfied in relation to P, subsection (3) shall be treated as not having had effect.”
- 12 In section 127 (interpretation), for “126” substitute “126A”.
- 13 In section 133 (early exit), insert at the end—
- “(6) On an appeal under subsection (5) the Special Commissioners may—
- (a) quash the direction,
- (b) affirm the direction, or
- (c) vary the direction.”
- 14 In section 138 (joint ventures), after subsection (3) insert—

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“(4) Regulations may make provision having retrospective effect in respect of the calendar year in which they are made.”

- 15 In paragraph 3 of Schedule 16 (excluded income: owner-occupied property), after sub-paragraph (3) insert—

“(3A) For the purpose of Condition 2, 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—

- (a) is in exclusive occupation of the property, and
- (b) is not connected with a member of the group (within the meaning given by section 839 of ICTA).”

- 16 (1) Schedule 17 (modifications for groups) is amended as follows.
- (2) In paragraph 2(b), for “Conditions 1 to 3” substitute “Conditions 1 and 2”.
- (3) Omit paragraph 6(2) and (3).
- (4) In paragraph 6(4) and (5), for “Condition 4” substitute “Condition 3”.
- (5) In paragraph 14, in the substituted subsection (2)—
- (a) in the formula in the opening words, omit “+ Financing Costs (all)”,
  - (b) in paragraph (a), after “allowances” insert “, of losses from a previous accounting period and of amounts taken into account under section 120(3)”, and
  - (c) omit paragraph (b).
- (6) after paragraph 33 insert—

*“Demergers*

- 34 (1) This paragraph applies in relation to a company if—
- (a) the company ceases to be a member of a group (“Group 1”) to which Part 4 applies,
  - (b) at the time immediately after it ceases to be a member of Group 1, either—
    - (i) it satisfies Conditions 1 and 2 of section 106 and the conditions specified in sections 107 and 108, or
    - (ii) it is a member of another group (“Group 2”) which satisfies those conditions as modified by the provisions of paragraphs 5 to 7 above,
  - (c) the company (or the principal company of Group 2) gives a notice under section 109 (or that section as modified by paragraph 8 above) no later than the date on which it ceases to be a member of Group 1, and
  - (d) the notice specifies an accounting period which begins on the day on which the company ceases to be a member of Group 1.
- (2) A company may give a notice under section 109 (or that section as modified by paragraph 8 above) in accordance with sub-paragraph (1) (c) even if it does not expect to satisfy Conditions 3 to 6 of section 106 throughout the accounting period specified in the notice.

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- (3) Where this paragraph applies, the company shall be treated as a company to which Part 4 applies (or as a member of a group to which Part 4 applies) during the period of six months beginning with the time when it ceases to be a member of Group 1.
- (4) Where this paragraph applies, the following provisions of Part 4 shall not have effect—
- (a) section 111 (or that section as modified by paragraphs 9 and 10 above),
  - (b) section 112 (or that section as modified by paragraph 11 above), and
  - (c) section 131 (as modified by paragraphs 25 and 26 above).
- (5) But if, at the end of the period of six months mentioned in subparagraph (3), Conditions 3 to 6 of section 106 are not satisfied in relation to the company, this paragraph shall not have effect and the company shall be treated as having ceased to be a company to which Part 4 applies (or a member of a group to which Part 4 applies) on the date on which it ceased to be a member of Group 1.”
- 17 In section 505(1) of ICTA (charities: exemptions), after paragraph (a) insert—
- “(aa) exemption from tax under Schedules A and D, or under Parts 2 and 3 of ITTOIA 2005, in respect of distributions to which section 121 of the Finance Act 2006 (Real Estate Investment Trusts: distributions) applies to the extent that the distributions—
- (i) arise in respect of shares vested in a person for charitable purposes; and
  - (ii) are applied to charitable purposes only;”.
- 18 In section 531 of ITA 2007 (charities: exemptions)—
- (a) after subsection (2) insert—
- “(2A) Distributions to which section 121 of FA 2006 (Real Estate Investment Trusts: distributions) applies and which are chargeable to income tax under Part 2 or Part 3 of ITTOIA 2005 are not taken into account in calculating total income so far as they arise in respect of shares vested in a person in trust for a charitable trust or for charitable purposes.”, and
- (b) in subsection (3), for “and (2)” substitute “to (2A)”.