

2006 No. 2865

CORPORATION TAX

**The Real Estate Investment Trusts (Financial Statements of
Group Real Estate Investment Trusts) Regulations 2006**

<i>Made</i> - - - -	<i>1st November 2006</i>
<i>Laid before the House of Commons</i>	<i>1st November 2006</i>
<i>Coming into force</i> - -	<i>1st January 2007</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 144 of, and paragraph 31(7) of Schedule 17 to, the Finance Act 2006(a).

Preliminary

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Real Estate Investment Trusts (Financial Statements of Group Real Estate Investment Trusts) Regulations 2006, and shall come into force on 1st January 2007.

(2) These Regulations have effect in relation to accounting periods beginning on and after 1st January 2007.

Interpretation

2.—(1) In these Regulations—

- (a) a reference to Part 4 is a reference to Part 4 of the Finance Act 2006,
- (b) a reference to a section (without more) is a reference to that section of the Finance Act 2006,
- (c) a reference to Schedule 17 is a reference to Schedule 17 to the Finance Act 2006, and
- (d) a reference to paragraph 31 (however expressed) is a reference to paragraph 31 of Schedule 17.

(2) In these Regulations—

- “financing costs” has the meaning given by section 115(4);
- “G (property rental business)” has the meaning given by paragraph 2(b) of Schedule 17;
- “G (residual)” has the meaning given by paragraph 2(c) of Schedule 17;
- “the Joint Ventures Regulations” means the Real Estate Investment Trusts (Joint Ventures) Regulations 2006(b);

(a) 2006 c. 25.
(b) S.I. 2006/2866.

“open-ended investment company” has the meaning given by section 17(4)(e) of the Finance (No. 2) Act 2005(a);

“the principal company” is to be construed in accordance with section 134(2);

“significant influence” is to be construed in accordance with regulation 3(1);

“UK business” is to be construed in accordance with paragraph 3(3) of Schedule 17.

(3) In these Regulations—

“for accounting purposes” means for the purposes of accounts drawn up in accordance with generally accepted accounting practice;

“fair value accounting” means a basis of accounting under which assets or liabilities are shown in the company’s balance sheet at their fair value;

“generally accepted accounting practice” has the meaning given by section 50 of the Finance Act 2004(b);

“joint venture” and “venturer” have the same meaning as for accounting purposes.

Significant influence and profits available for distribution to equity holders

3.—(1) For the purposes of these Regulations a member of a group has significant influence over another entity if—

- (a) the member holds a percentage of the beneficial interest in the other entity, and
- (b) the members of the group hold more than 20% of the beneficial interest in that other entity.

(2) For the purposes of these Regulations percentages of beneficial interest in an entity must be determined by reference to entitlement to profits available for distribution to equity holders.

(3) Profits available for distribution to equity holders do not include any profits or assets available to equity holders otherwise than as equity holders.

(4) For the purpose of determining profits available for distribution to equity holders in relation to an entity other than a company these Regulations have effect as if—

- (a) the entity were a company resident in the United Kingdom, and
- (b) the rights of persons in the entity were shares in the company.

General

Scope of these Regulations

4.—(1) These Regulations apply in respect of a group to which Part 4 applies in relation to an accounting period of the principal company.

(2) In accordance with Schedule 17 the principal company must prepare—

- (a) a financial statement for G (property rental business) for the accounting period (see paragraph 31(2)(a)),
- (b) a financial statement for G (residual) for the accounting period (see paragraph 31(2)(c)), and
- (c) a financial statement for G (property rental business) in respect of its UK business (see paragraph 31(2)(b)).

(3) In these Regulations—

- (a) regulations 5 to 11 make further provision relating to the content of—
 - (i) a financial statement for G (property rental business) for an accounting period, and
 - (ii) a financial statement for G (residual) for an accounting period;

(a) 2005 c. 32.

(b) 2004 c. 12; section 50 was amended by paragraphs 49 and 50 of Schedule 4 to the Finance Act 2005 (c. 7).

- (b) regulation 12 makes further provision relating to the content of a financial statement for G (property rental business) in respect of its UK business; and
- (c) regulation 13 contains further provisions.

Financial statements for G (property rental business) and G (residual)

General

5.—(1) In accordance with paragraph 31(3), a financial statement for G (property rental business) for an accounting period and a financial statement for G (residual) for an accounting period must specify—

- (a) income (in the manner specified in paragraph 31(3)(a)),
- (b) expenses (in the manner specified in paragraph 31(3)(b)),
- (c) profits before tax (in the manner specified in paragraph 31(3)(c)), and
- (d) assets valued (in the manner specified in paragraph 31(3)(d)).

(2) The financial statement for G (property rental business) for an accounting period and the financial statement for G (residual) for an accounting period must exclude the following items—

- (a) transactions between one member of the group and another member of the group;
- (b) income and expenses payable between one member of the group and another member of the group;
- (c) the value of holdings of one member of the group in another member of the group; and
- (d) any balances held by one member of the group that relate to another member of the group.

(3) In accordance with paragraph 31(5), where a non-member of the group holds a percentage of the beneficial interest in a member (other than the principal company), the financial statement for G (property rental business) for an accounting period and the financial statement for G (residual) for an accounting period must exclude that percentage of income, expenses, gains, losses, assets and liabilities of the member.

(4) A reconciliation must be provided between—

- (a) the financial statement for G (property rental business) for an accounting period and the financial statement for G (residual) for that accounting period, and
- (b) the audited financial statements of the group for that accounting period (whether in the form of consolidated statements or of statements of individual members of the group).

(5) The expenses must show the following amounts separately—

- (a) financing costs, and
- (b) all other expenses.

(6) Financing costs—

- (a) in the case of the financial statement for G (property rental business) for an accounting period, must include Financing Costs (external) (see regulation 6), and
- (b) in the case of the financial statement for G (residual) for an accounting period, must include financing costs payable by a member of the group in respect of financing used in the business of G (residual).

Financing Costs (external)

6.—(1) In the case of the financial statement for G (property rental business) for an accounting period, the amount of Financing Costs (external) is determined as follows—

Step 1

Determine the amount of the financing costs incurred in respect of the property rental business of G (property rental business) owed by group entities to non-group entities (the “outside financing costs”).

Step 2

Determine the percentages of the outside financing costs incurred in respect of—

- (a) the UK business of G (property rental business), and
- (b) other matters.

The amount of Financing Costs (external) is the percentage of the outside financing costs incurred in respect of the UK business of G (property rental business).

(2) If the outside financing costs are owed by a group entity (other than the principal company) and a non-group entity holds a percentage of the beneficial interest in that group entity, the outside financing costs must exclude that percentage of those costs.

(3) For the purposes of paragraph (2), percentages of beneficial interest must be determined by reference to beneficial entitlement to profits available for distribution to equity holders.

(4) In this regulation—

“group entity” means—

- (a) a member of the group, or
- (b) an entity which, under these Regulations, is treated as a member of the group for accounting purposes and for the purposes of the financial statements specified in regulation 4(2) (see regulations 9 to 11); and

“non-group entity” means an entity which is not a group entity.

Treatment of certain exceptional items

7.—(1) This regulation applies to items which—

- (a) arise from events or transactions that are outside the ordinary transactions of the group, and
- (b) are not expected to recur regularly and frequently.

(2) The financial statement for G (property rental business) for an accounting period and the financial statement for G (residual) for an accounting period must show the items to which this regulation applies.

(3) For the purposes of paragraph 7 of Schedule 17 (which modifies section 108 (conditions for balance of business)), the items to which this regulation applies are excluded from—

- (a) the amount of the income, expenses and profits accruing from any business, and
- (b) the amount of the assets involved in any business.

Beneficial interests in entities other than group companies

8.—(1) This regulation applies if—

- (a) a member of a group holds a percentage of the beneficial interest in another entity, and
- (b) that other entity is not a member of the group.

(2) The member of the group must account for income received from that other entity—

- (a) on the basis that the beneficial interest is held as an investment, and
- (b) in accordance with generally accepted accounting practice.

(3) The financial statement for G (residual) must—

- (a) show the beneficial interest in that other entity as an asset of the member of the group, and
- (b) account for that beneficial interest in accordance with fair value accounting.

(4) The general rules in paragraphs (2) and (3) are subject to further provisions relating to—

- (a) a joint venture (see regulation 9),
- (b) an open-ended investment company (see regulation 10), and

- (c) certain other non-corporate entities (see regulation 11).

Joint ventures

9.—(1) This regulation applies if—

- (a) a member of a group is a venturer in a joint venture,
- (b) the joint venture is a company, and
- (c) notice has been given in accordance with the Joint Ventures Regulations for those Regulations to apply to the joint venture.

(2) For the purposes of the financial statements specified in regulation 4(2), the joint venture must be treated, for accounting purposes, as a member of the group.

Open-ended investment companies

10.—(1) This regulation applies if a member of a group has significant influence over an open-ended investment company.

(2) For the purposes of the financial statements specified in regulation 4(2), the open-ended investment company must be treated, for accounting purposes, as a member of the group.

Other non-corporate entities

11.—(1) This regulation applies if a member of a group has significant influence over a non-corporate entity.

(2) For the purposes of the financial statements specified in regulation 4(2), that other entity must be treated, for accounting purposes, as a member of the group.

Financial statements for G (property rental business) in respect of its UK business

Contents of the financial statement

12.—(1) In accordance with paragraph 31(4), a financial statement for G (property rental business) in respect of its UK business must specify profits calculated in accordance with section 120 in relation to each member of the group.

(2) In accordance with paragraph 31(5), where a non-member of the group holds a percentage of the beneficial interest in a member (other than the principal company), the financial statement for G (property rental business) in respect of its UK business must exclude that percentage of income, expenses, gains, losses, assets and liabilities of the member.

(3) The financial statement must also show the following amounts separately—

- (a) capital allowances, and
- (b) financing costs.

Further provisions

Time by which financial statements must be supplied

13.—(1) The financial statements specified in regulation 4(2) must be supplied with the company tax return for the relevant accounting period.

(2) Accordingly, the filing date for those financial statements must be determined in accordance with paragraph 14 of Schedule 18 to the Finance Act 1998(a).

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Mike Hanson*

1st November 2006

Two of the Commissioners for Her Majesty's Revenue and Customs

(a) 1998 c. 36; sub-paragraph (2) of paragraph 14 was amended by Part 3(16) of Schedule 40 to the Finance Act 2002 (c. 23).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 4 of the Finance Act 2006 (c. 25) (“Part 4” of “the Act”) contains provisions relating to Real Estate Investment Trusts (“UK-REITs”). A UK-REIT is a company which carries on property rental business, and satisfies various requirements set out in the Act: the profits of a property rental business carried on by a UK-REIT are not charged to corporation tax. The Act also contains similar provisions relating to groups of companies (“Group REITs”). Many of those provisions are in Schedule 17 to the Act, which modifies Part 4 in its application to groups.

These Regulations exercise the powers conferred by paragraph 31(7) of Schedule 17 to make further provision relating to the contents of the financial statements of Group REITs.

Regulations 1 to 3 are of a preliminary nature. Regulation 1 provides for citation, commencement and effect; and regulation 2 for interpretation. Regulation 3 provides that a member of a group has significant influence over another entity if the group member holds more than 20% of the beneficial interest in that other entity, and that percentages of beneficial interest in an entity are to be determined by reference to profits available for distribution to equity holders.

Regulation 4 deals with the general scope of these Regulations. For each of its accounting periods, the principal company in the group must prepare a financial statement for the group in so far as it carries on property rental business while Part 4 applies to it (a financial statement for “G (property rental business)”) and a financial statement for the group in so far as it carries on other business while Part 4 applies to it (a financial statement for “G (residual)”). The principal company must also prepare a financial statement for G (property rental business) in respect of its UK business.

Regulations 5 to 11 then make further provision relating to the contents of the financial statement for G (property rental business) for an accounting period and to the contents of the financial statement for G (residual business) for that accounting period. Regulation 5 deals with general matters relating to the contents of these statements. Regulation 6 contains provisions for determining the amount of financing costs (external) to be shown in the financial statement for G (property rental business). Regulation 7 deals with the treatment of items which arise from events or transactions that are outside the ordinary transactions of the group, and which are not expected to recur regularly and frequently. Regulation 8 applies if a member of the group holds a percentage of the beneficial interest in another entity which is not a member of the group. The group member must account for income received on the basis that the beneficial interest is held as an investment, and must show that beneficial interest as an asset of the group member. But these rules are subject to further provisions: a joint venture company in which a group member is a joint venturer (and where the requisite notice has been given) (see regulation 9), an open-ended investment company over which the group member has significant influence (see regulation 10) and a non-corporate entity over which a group member has significant influence (see regulation 11) are all treated, for accounting purposes, as a member of the group.

Regulation 12 makes further provision relating to the content of the financial statement for G (property rental business) in respect of its UK business.

Regulation 13 makes further provision, and deals with the time by which the financial statements must be supplied.

A regulatory impact assessment for the introduction of the UK-REIT regime was published in March 2006 and may be found at www.hmrc.gov.uk/ria.

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