

2006 No. 2867

CORPORATION TAX

The Real Estate Investment Trusts (Assessment and Recovery of Tax) 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 Treasury make the following Regulations in exercise of the powers conferred by section 122 and paragraphs 4 and 19 of Schedule 17 to the Finance Act 2006(a).

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Real Estate Investment Trusts (Assessment and Recovery of Tax) Regulations 2006 and shall come into force on 1st January 2007.

(2) In these Regulations—

- (a) “ICTA” means the Income and Corporation Taxes Act 1988(b)
- (b) “FA 2006” means the Finance Act 2006;
- (c) “TMA” means the Taxes Management Act 1970(c)
- (d) “TCGA” means the Taxation of Chargeable Gains Act 1992(d);
- (e) a reference to a numbered section or Schedule (without more) is a reference to a section of, or Schedule to, FA 2006 bearing that number;

(3) In these Regulations—

- “C (residual)” has the meaning given by section 105(3)(c);
- “C (post-cessation)” has the meaning given by section 105(3)(d);
- “C (tax-exempt)” has the meaning given by section 105(3)(b);
- “G (post-cessation)” has the meaning given by paragraph 2(d) of Schedule 17;
- “G (property rental business)” has the meaning given by paragraph 3(2)(b) of that Schedule;
- “profits” means income and gains; and

(a) 2006. c. 25.
(b) 1988 c. 1.
(c) 1970 c. 9.
(d) 1992 c. 12.

“UK profits” shall be construed in accordance with paragraph 3(2) of Schedule 17.

Introduction

- 2.—(1) These Regulations provide for the deduction of sums representing tax—
- (a) where a company to which Part 4 of FA 2006 applies makes a distribution of profits of C (tax-exempt) or,
 - (b) in a case where Part 4 of FA 2006 applies to a group by virtue of section 134(1), where the principal company makes a distribution out of the UK profits of G (property rental business).
- (2) Part 2 of these Regulations applies in the case of a company to which Part 4 of FA 2006 applies but which is not part of a group to which that Part applies.
- (3) Part 3 of these Regulations modifies Part 2 of these Regulations in the case of—
- (a) C (post-cessation) where the company to which Part 4 of FA 2006 applied was not part of a group to which that Part applied;
 - (b) a group to which Part 4 of FA 2006 applies; and
 - (c) each UK resident company which is a member of G (post-cessation).

PART 2

Companies to which Part 4 of FA 2006 applies, but which are not part of a group

Deduction of tax

- 3.—(1) This regulation applies if a company to which Part 4 of FA 2006 applies, and which is not part of a group to which that Part applies, makes a distribution of profits of C (tax-exempt) (“a relevant distribution”).
- (2) The company must, on making a relevant distribution, deduct from it a sum representing tax at the basic rate in force for the year in which it is made, unless (or to the extent that) regulation 7 authorises the distribution to be made without deduction of tax.

Payments in an accounting period

- 4.—(1) This regulation applies if the company makes a relevant distribution in an accounting period of the company.
- (2) The company must deliver a return to an officer of Revenue and Customs for each return period in which the company makes a relevant distribution and which falls within the accounting period.
- (3) The return periods are—
- (a) the quarters ending upon 31st March, 30th June, 30th September and 31st December (“the quarter days”); and
 - (b) any shorter period which—
 - (i) starts on the first day of an accounting period and ends with the first or only quarter day in that accounting period;
 - (ii) begins immediately after the last or only quarter day in that accounting period and ends on the last day of that accounting period; or
 - (iii) is an accounting period which starts and ends within a quarter.
- (4) The company must deliver the return within 14 days after the end of the return period.
- (5) The return must show the amount of—
- (a) any relevant distributions made by the company in the return period, and

(b) the tax (if any) payable by the company in respect of those payments.

(6) The company must deliver, with the return for the return period which ends on the last day of an accounting period, a reconciliation statement showing, in relation to any distribution made during the accounting period, the amounts (if any) which are attributable to each of paragraphs (a) to (e) of section 123.

Collection and payment of tax

5.—(1) Tax in respect of a relevant distribution is due, from the company making it, at the time by which the return on which the distribution must be included is required to be delivered.

(2) The tax due is equal to the sum which the company is required to deduct from the relevant distribution under regulation 3(2).

(3) The tax is payable without an officer of Revenue and Customs making any assessment.

Certificates of deduction of tax

6.—(1) A company making a relevant distribution which is subject to deduction of tax by virtue of section 122 must furnish the recipient with a statement in writing showing—

- (a) the gross amount of the payment,
- (b) the amount of tax deducted, and
- (c) the actual amount paid.

(2) The duty imposed by paragraph (1) is enforceable at the suit or instance of the recipient.

Gross payment of distributions

7.—(1) A payment of a relevant distribution must be made without deduction of income tax if the company reasonably believes that—

- (a) the person beneficially entitled to the payment is a person or body to which one of paragraphs (2) and (3) applies;
- (b) the recipient is a person or body to which paragraph (4) applies, and the payment satisfies the condition in paragraph (5);
- (c) the recipient is a partnership to which paragraph (6) applies; or
- (d) the distribution arises in respect of shares held as investments of the Overseas Service Pension Fund established pursuant to section 7(1) of the Overseas Aid Act 1966.

This paragraph is subject to the qualifications in paragraphs (7) and (8).

(2) This paragraph applies to—

- (a) a company resident in the United Kingdom for corporation tax purposes; and
- (b) a company that—
 - (i) is not resident in the United Kingdom;
 - (ii) carries on a trade in the United Kingdom through a permanent establishment; and
 - (iii) is required to bring the relevant distribution into account in computing the chargeable profits (within the meaning of section 11(2) of ICTA).

(3) This paragraph applies to—

- (a) a local authority;
- (b) a health service body within the meaning of section 519A(2) of ICTA(a);

(a) Section 519A was inserted by section 61(1) of the National Health Service and Community Care Act 1990 (c. 19) and amended by paragraph 114 of Schedule 1 to the Health Authorities Act 1995 (c. 17), paragraph 73 of the Health Act 1999 (c. 8), paragraph 27 of Schedule 5 to the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 33(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 47), section 148 of the Finance Act

- (c) a public office or department of the Crown to which section 829(1) of that Act applies;
- (d) a charity within the meaning of section 506(1) of that Act;
- (e) a body for the time being mentioned in section 507(1) of that Act (bodies which are allowed the same exemption from tax as charities the whole income of which is applied to charitable purposes);
- (f) an Association of a description specified in section 508 of that Act (scientific research organisations); and
- (g) the European Investment Fund.

(4) This paragraph applies to a payment which is made to—

- (a) the trustees of a scheme entitled to exemption under section 613(4) of that Act (Parliamentary pension funds)(a);
- (b) the scheme administrator of a registered pension scheme;
- (c) the sub-scheme administrator of a sub-scheme which forms part of a split scheme pursuant to the Registered Pension Schemes (Splitting of Schemes) Regulations 2006(b);
- (d) the account provider for a child trust fund within the meaning of section 1(2) of the Child Trust Funds Act 2004(c) or the nominee of the account provider;
- (e) the account manager of an account within the meaning of regulation 4(1) of the Individual Savings Account Regulations 1998(d) or the nominee of the account manager;
- (f) the plan manager of a plan within the meaning of regulation 4(1) of the Personal Equity Plan Regulations 1989(e) or the nominee of the plan manager;

and satisfies the condition in paragraph (5).

(5) The condition is that the payment is to be applied for the purposes of the fund, scheme, account or plan mentioned in paragraph (4) in respect of which the recipient has duties.

(6) This paragraph applies to a partnership each member of which is a person or body mentioned in paragraph (2), (3), or (4), provided that, in the case of a person or body mentioned in paragraph (4) its share of the partnership profits are to be applied for the purposes of the fund, scheme, account or plan in respect of which that person or body has duties.

(7) If the owner of securities in a company that is a Real Estate Investment Trust has sold or transferred the right to receive a relevant distribution (whether before or after the sale or transfer), without selling or transferring those securities, the company must deduct tax at the basic rate.

(8) If the company reasonably believes, at the time that it makes a payment without deduction of tax, that paragraph (2), (3), (4) or (6) applies, but in fact none of those paragraphs applies, these Regulations shall apply to the payment as if it were never one which could be made without deduction of tax.

(9) Upon discovering that the payment mentioned in paragraph (8) is one from which tax should have been deducted, the company making it must deliver an amended return in accordance with regulation 11.

Assessments where relevant distribution included in return

8.—(1) This regulation applies if any tax in respect of a relevant distribution which is included in a return under these Regulations has not been paid at or before the time mentioned in regulation 5.

2004 (c. 12) article 6 of S.I. 1991/195 and regulation 4 of S.I. 2002/2469 and partly repealed by article 6 of S.I. 1991/195, and the relevant entries in Schedule 3 to S.I. 2005/2078 and in Schedule 2 to SSI 2005/465.

(a) Section 613 has been amended by paragraph 4 of Schedule 5 to the Finance Act 1999 (c. 16) and partly repealed by paragraph 83 of Schedule 6 to the Income Tax Earnings and Pensions Act 2003 (c. 1) (in connection with which repeal see also paragraph 63 of Schedule 10 to the Finance Act 2005 (c. 7)) and paragraph 26(b) of Schedule 35 to the Finance Act 2004.

(b) S.I. 2006/569.

(c) 2004 c. 6.

(d) S.I. 1998/1870. There are amendments, but none is relevant for present purposes.

(e) S.I. 1989/469. There are amendments, but none is relevant for present purposes.

(2) An officer of Revenue and Customs may make an assessment on the person who made the relevant distribution.

(3) Tax may be assessed under this regulation whether or not it has been paid when the assessment is made.

Assessments in other cases

9.—(1) This regulation applies if an officer of Revenue and Customs thinks—

- (a) that there is a relevant distribution which should have been included in a return under these Regulations and which has not been so included, or
- (b) that a return under these Regulations is otherwise incorrect.

(2) An officer of Revenue and Customs may make an assessment on the person who made the relevant distribution to the best of the officer's judgement.

Application of Income Tax Acts provisions about time limits for assessments

10.—(1) The provisions of the Income Tax Acts about the time within which an assessment may be made apply to assessments under these Regulations, so far as those provisions refer or relate to—

- (a) the tax year for which an assessment is made, or
- (b) the year to which an assessment relates.

(2) Paragraph (1) applies despite the fact that an assessment under these Regulations may relate to a return period which is not a tax year.

(3) The provisions of section 36 of TMA (fraudulent or negligent conduct) about the circumstances in which an assessment may be made out of time apply accordingly on the basis that any such assessment relates to the tax year in which the return period ends.

(4) Section 87 of TMA (late payments of tax on assessments made or payments due under Schedule 16 to ICTA) applies for the purposes of a payment due under regulation 4 or an assessment made under regulation 8 or 9.

Company's duty to deliver amended return

11.—(1) This regulation applies if a company which has made a relevant distribution becomes aware that—

- (a) anything which should have been included in a return delivered by the company under these Regulations has not been so included,
- (b) anything which should not have been included in a return delivered by the company under these Regulations has been so included, or
- (c) any other error has occurred in a return delivered by the company under these Regulations.

(2) The company must deliver an amended return correcting the error to an officer of Revenue and Customs without delay.

(3) If the company delivers an amended return such assessments, adjustments, setoffs or payments or repayments of tax as are necessary for achieving the objective mentioned in paragraph (4) must be made.

(4) The objective is that the resulting liabilities to income and corporation tax (including interest on unpaid or overpaid tax) of the company or any other person are the same as they would have been if a correct return had been delivered.

PART 3

Company to which Part 4 of FA 2006 formerly applied, and Groups

12.—(1) Part 2 of these Regulations applies—

- (a) to a group to which Part 4 of FA 2006 applies;
- (b) to a company to which Part 4 of FA 2006 formerly applied, but which was not part of a group to which that Part applied, and
- (c) to a group to which Part 4 of FA 2006 formerly applied

with the following modifications.

(2) In a case falling within paragraph (1)(a) the modifications are that—

- (a) references to the company shall be read as references to the principal company;
- (b) references to a relevant distribution shall be read as references to a distribution out of amounts shown in the financial statements of G (property rental business) as—
 - (i) the profits of the UK-resident members of the group; and
 - (ii) gains accruing to UK-resident members of the group.

(3) In a case falling within paragraph (1)(b) references to company shall be read as references to a company to which Part 4 formerly applied.

(4) In a case falling within paragraph (1)(c)—

- (a) references to company shall be read as references to the principal company of G (post-cessation); and
- (b) references to relevant distribution are to be read as references to a distribution out of amounts shown in the financial statements of G (property rental business) as—
 - (i) the profits of the UK-resident members of the group; and
 - (ii) gains accruing to UK-resident members of the group.

(5) In this regulation—

Dave Watts
Kevin Brennan

1st November 2006

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the assessment and recovery of tax arising on distributions made by Real Estate Investment Trusts.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 contains an introduction to the remainder of the instrument.

Part 2 (comprising regulations 3 to 11) sets out the rules for the assessment and recovery of tax in the case of a Real Estate Investment Trust which is a company not forming part of a group to which Part 4 of the Finance Act 2006 (c. 25) applies.

Regulation 3 sets out the basic rule that, on making a relevant distribution the company must deduct a sum representing tax at the basic rate in force for the year in which it is made. It is subject to the exceptions in regulation 7.

Regulation 4 imposes a duty to deliver returns and account for tax in respect of relevant distributions.

Regulation 5 sets out when tax is due.

Regulation 6 provides for the supply of certificates of deduction of tax to be given by the company.

Regulation 7 provides that the payments specified there shall not be subject to deduction of tax. It also provides that where a payment is made without deduction of tax, but from which tax should have been deducted, the Regulations apply as if the payment were never one which could be made without deduction of tax.

Regulations 8 and 9 provides for assessments by officers of Revenue and Customs.

Regulation 10 provides for the application of the Income Tax Acts in respect of payments and assessments of tax.

Regulation 11 imposes an obligation to deliver an amended return if a mistake has been made in one already delivered.

Part 3 (containing regulation 12) modifies the application of Part 2 in respect of groups to which Part 4 of the Finance Act 2006 applies and companies and groups to which that Part 4 formerly applied.

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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