

Status: Point in time view as at 19/07/2007.

Changes to legislation: Finance Act 2007, SCHEDULE 17 is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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

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- been listed and dealt with on a recognised stock exchange within the preceding 12 months, but
- (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, ”

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- (b) after that paragraph insert—
- “(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.”

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- 14 In section 138 (joint ventures), after subsection (3) insert—
- “(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 sub-paragraph (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) ”.

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