



# Finance Act 2006

## 2006 CHAPTER 25

### PART 4

#### REAL ESTATE INVESTMENT TRUSTS

##### *Introduction*

#### **103 Real Estate Investment Trusts**

- (1) This Part enables a company which carries on property rental business (within the meaning of section 104) and which satisfies the requirements of sections 106 to 108 to opt to—
  - (a) benefit from exemptions from corporation tax on profits and gains in accordance with sections 119 and 124, and
  - (b) have liabilities to tax imposed on the company and the recipients of distributions made by the company in accordance with sections 112 <sup>[F1]</sup> and 121 and regulations made under section 973 of ITA 2007].
- (2) This Part makes similar provision in relation to groups of companies (sections 134 to 136 and Schedule 17).
- (3) A company or group to which this Part applies may be referred to as a Real Estate Investment Trust.

#### **Textual Amendments**

- F1** Words in s. 103(1)(b) substituted (6.4.2007 with effect as mentioned in [s. 1034\(1\)](#) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), s. 1027, [Sch. 1 para. 616](#) (with transitional provisions and savings in [Sch. 2](#))

#### **104 Property rental business**

- (1) In this Part “property rental business” means business that is or forms part of—

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- (a) a [<sup>F2</sup>UK property business] (within the meaning of [<sup>F3</sup>section 205 of CTA 2009]), or
  - (b) an overseas property business (within the meaning of [<sup>F4</sup>section 206 of that Act]).
- (2) But—
- (a) business of a kind listed in Part 1 of Schedule 16 is not property rental business, and
  - (b) business is not property rental business if or in so far as it gives rise to income or profits of a kind listed in Part 2 of that Schedule.

#### Textual Amendments

- F2** Words in s. 104(1)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 684\(a\)\(i\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F3** Words in s. 104(1)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 684\(a\)\(ii\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F4** Words in s. 104(1)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 684\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

## 105 Other key concepts

- (1) In this Part “entry” means the time when this Part begins to apply to a company.
- (2) In this Part “cessation” means the time when this Part ceases to apply to a company.
- (3) In this Part, in relation to a company—
  - (a) “C (pre-entry)” means the company before this Part begins to apply to it,
  - (b) “C (tax-exempt)” means the company in so far as it carries on tax-exempt business (within the meaning of section 107(2)) while this Part applies to it,
  - (c) “C (residual)” means the company in so far as it carries on non-tax-exempt business while this Part applies to it, and
  - (d) “C (post-cessation)” means the company after this Part has ceased to apply to it.

## 106 Conditions for company

- (1) A company may give notice for this Part to apply to it in accordance with section 109 only if it satisfies Conditions [<sup>F5</sup>1 and 2] below.
- (2) In order for this Part to apply to a company in respect of an accounting period, Conditions 1 to 6 below must be satisfied in relation to the company throughout the accounting period.
- (3) Condition 1 is that the company—
  - (a) is resident in the United Kingdom, and
  - (b) is not resident in another place in accordance with the law of that place relating to taxation.
- (4) Condition 2 is that section 236 of the Financial Services and Markets Act 2000 Financial Services and Markets Act 2000 (c. 8) (open-ended investment companies) does not apply to the company.

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- (5) Condition 3 is that the shares forming the company's ordinary share capital are listed on a recognised stock exchange.
- (6) Condition 4 is that the company—
- (a) is not a close company (within the meaning of section 414 of ICTA), or
  - (b) is a close company only by virtue of having as a participator (within the meaning of section 417 of ICTA) a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000;
- and for the purposes of paragraph (a) a company shall be treated as a close company if it is prevented from being a close company only by section 414(5) or 415(4)(a) of ICTA.
- (7) Condition 5 is that—
- (a) each share issued by the company either—
    - (i) forms part of the company's ordinary share capital, or
    - (ii) is a non-voting fixed-rate preference share (within the meaning of paragraph 2 of Schedule 25 to ICTA (acceptable distribution policy)), and
  - (b) there is no more than one class of ordinary share issued by the company.
- (8) Condition 6 is that in the case of any loan to which the company is party—
- (a) the loan creditor is not entitled to an amount by way of interest which depends to any extent on the results of all or part of the company's business or on the value of any of the company's assets,
  - (b) the loan creditor is not entitled to an amount by way of interest which exceeds a reasonable commercial return on the consideration lent, and
  - (c) the loan creditor is entitled on repayment to an amount which either does not exceed the consideration lent or is reasonably comparable with the amount generally repayable (in respect of an equal amount of consideration) under the terms of issue of securities listed on a recognised stock exchange.
- [<sup>F6</sup>(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.]

#### Textual Amendments

- F5** Words in s. 106(1) substituted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 2\(a\)](#)
- F6** S. 106(9) inserted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 2\(b\)](#)

### 107 Conditions for tax-exempt business

- (1) In order to be a company to which this Part applies in respect of an accounting period—
- (a) the company must throughout the accounting period have a property rental business in respect of which Conditions [<sup>F7</sup>1 and 2] below are satisfied (whether or not it also has other business), and

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- (b) [<sup>F8</sup>Condition 3] below must be satisfied in relation to that property rental business in respect of that accounting period.
- (2) Property rental business of a company is “tax-exempt business” for the purposes of this Part in respect of an accounting period if—
- (a) Conditions [<sup>F9</sup>1 and 2] are satisfied throughout the accounting period in relation to the business, and
  - (b) [<sup>F10</sup>Condition 3] is satisfied in respect of the accounting period in relation to the business.
- (3) Condition 1 is that the property rental business involves at least three properties.
- (4) Condition 2 is that no one property represents more than 40% of the total value of the properties involved in the property rental business.
- (5) <sup>F11</sup> .....
- (6) For the purposes of Conditions [<sup>F12</sup>1 and 2]—
- (a) a reference to a property involved in a business is a reference to an estate, interest or right by the exploitation of which the business is conducted,
  - (b) a property is a single property if it is designed, fitted or equipped for the purpose of being rented, and it is rented or available for rent, as a commercial or residential unit (separate from any other commercial or residential unit),
  - (c) assets must be valued in accordance with international accounting standards (within the meaning of section 50(2) of FA 2004),
  - (d) where international accounting standards offer a choice of valuation between cost basis and fair value, fair value must be used, and
  - (e) no account shall be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).
- (7) <sup>F13</sup> .....
- [<sup>F14</sup>(7A) <sup>F15</sup> .....
- (8) [<sup>F16</sup>Condition 3] is that at least 90% of the profits of the property rental business arising in the accounting period are distributed—
- (a) by way of dividend, and
  - (b) on or before the filing date for the company's tax return for the accounting period (see paragraph 14 of Schedule 18 to FA 1998).
- (9) But—
- (a) [<sup>F17</sup>Condition 3] shall be disregarded if and in so far as compliance with it would be unlawful by virtue of—
    - (i) an enactment (including Northern Ireland legislation and an Act of the Scottish Parliament), or
    - (ii) an enactment of a jurisdiction outside the United Kingdom where the enactment is prescribed, or is of a kind prescribed, for the purposes of this paragraph in regulations made by the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) a distribution that is withheld in order to prevent or reduce a charge to tax arising under regulations under section 114 shall be treated for the purposes of Condition 4 as having been made.

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### Textual Amendments

- F7** Words in s. 107(1)(a) substituted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 3\(a\)](#)
- F8** Words in s. 107(1)(b) substituted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 3\(b\)](#)
- F9** Words in s. 107(2)(a) substituted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 3\(a\)](#)
- F10** Words in s. 107(2)(b) substituted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 3\(b\)](#)
- F11** S. 107(5) repealed (with effect in accordance with s. 52 of the amending Act) by [Finance Act 2007 \(c. 11\), ss. 52, 114, Sch. 17 para. 3\(c\)](#), {Sch. 27 Pt. 2(17) Note}
- F12** Words in s. 107(6) substituted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 3\(d\)](#)
- F13** S. 107(7) repealed (with effect in accordance with s. 52 of the amending Act) by [Finance Act 2007 \(c. 11\), ss. 52, 114, Sch. 17 para. 3\(c\)](#), {Sch. 27 Pt. 2(17) Note}
- F14** S. 107(7A) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), ss. 1027, Sch. 1 para. 617\(b\)](#) (with transitional provisions and savings in Sch. 2)
- F15** S. 107(7A) repealed (with effect in accordance with s. 52 of the amending Act) by [Finance Act 2007 \(c. 11\), ss. 52, 114, Sch. 17 para. 3\(e\)](#), {Sch. 27 Pt. 2(17) Note}
- F16** Words in s. 107(8) substituted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 3\(f\)](#)
- F17** Words in s. 107(9) substituted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 3\(f\)](#)

## 108 Conditions for balance of business

- (1) In order to be a company to which this Part applies in respect of an accounting period Conditions 1 and 2 below must be satisfied in respect of the company.
- (2) Condition 1 is that in the accounting period the profits arising from tax-exempt business are at least 75% of the company's total profits; and for that purpose—
  - (a) “total profits” means profits arising from tax-exempt business plus profits arising from non-tax-exempt business, and
  - [<sup>F18</sup>(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.]
- (3) Condition 2 is that at the beginning of the accounting period the value of the assets involved in tax-exempt business is at least 75% of the total value of assets held by the company; and for that purpose—
  - (a) an asset is involved in tax-exempt business if it is property involved in the relevant property rental business within the meaning given by section 107(6) (a),
  - (b) assets must be valued in accordance with international accounting standards,

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- (c) where international accounting standards offer a choice of valuation between cost basis and fair value, fair value must be used, and
- (d) no account shall be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).

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**Textual Amendments**

**F18** S. 108(2)(b) substituted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 52, [Sch. 17 para. 4](#)

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**Modifications etc. (not altering text)**

**C1** S. 108 modified (31.12.2007) by [The Real Estate Investment Trusts \(Joint Venture Groups\) Regulations 2007 \(S.I. 2007/3425\)](#), [reg. 20\(4\)](#)

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