



Finance Act 2006

2006 CHAPTER 25

PART 4

REAL ESTATE INVESTMENT TRUSTS

Profits

119 Corporation tax

- (1) Profits arising from the business of C (tax-exempt) shall not be charged to corporation tax.
- (2) Profits arising from the business of C (residual) which are charged to corporation tax shall be charged at a rate determined without reference to section 13 of ICTA (small companies rate).

Modifications etc. (not altering text)

- C1** S. 119 applied (with modifications) (1.1.2007) by [The Real Estate Investment Trusts \(Joint Ventures\) Regulations 2006 \(S.I. 2006/2866\)](#), **reg. 13(1)(2)** (subject to **reg. 14**)
- C2** S. 119(1) applied (1.1.2007) by [The Real Estate Investment Trusts \(Joint Ventures\) Regulations 2006 \(S.I. 2006/2866\)](#), **reg. 7(5)**
- C3** S. 119(1) applied (with modifications) (31.12.2007) by [The Real Estate Investment Trusts \(Joint Venture Groups\) Regulations 2007 \(S.I. 2007/3425\)](#), **reg. 13(5)**
S. 119(1) applied (with modifications) (31.12.2007) by [The Real Estate Investment Trusts \(Joint Venture Groups\) Regulations 2007 \(S.I. 2007/3425\)](#), **reg. 23(5)**

120 Calculation of profits

- (1) This section provides for the calculation of profits for the purposes of sections 107(8), 115(2), 119(1) and 123(c).

Status: Point in time view as at 19/07/2007.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2006, Cross Heading: Profits. (See end of Document for details)

- (2) Section 21A of ICTA (calculation of profits of Schedule A business) shall apply (to profits of any kind).
- (3) Paragraph 2(3) of section 15(1) ICTA (Schedule A: disregard of credits and debits from loan relationships and derivative contracts) shall not apply in respect of—
- (a) a loan relationship if or in so far as it relates to tax-exempt business,
 - (b) a hedging derivative contract if or in so far as it relates to tax-exempt business, or
 - (c) embedded derivatives if or in so far as the host contract is entered into for the purposes of tax-exempt business.
- (4) For the purposes of subsection (3)—
- (a) 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 [^{F1}an asset by the exploitation of which tax-exempt business is conducted,]
 - [^{F2}(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,]
 - (b) a designation of a contract as wholly or partly hedging for the purposes of a company's accounts shall be conclusive, and
 - (c) “embedded derivatives” and “host contract” have the meanings given by paragraph 2(3) of Schedule 26 to FA 2002 (derivative contracts).
- [^{F3}(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.]

(5) Profits shall be computed without regard to items giving rise to credits or debits which would be within Schedule 26 to FA 2002 (derivative contracts) but for paragraph 4(2) (b) (exclusion of share-based and unit-trust-based contracts).

(6) Income and expenditure relating partly to tax-exempt business and partly to non-tax-exempt business shall be apportioned reasonably.

(7) Section 3(1) of CAA 2001 (claims for capital allowances) shall not apply; and any allowance which the company could claim under that section shall be made automatically and reflected in the calculation of profits.

Textual Amendments

- F1** Words in s. 120(4)(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. 9\(a\)](#)
- F2** S. 120(4)(aa) inserted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 9\(b\)](#)
- F3** S. 120(4A) inserted (with effect as mentioned in s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 52, Sch. 17 para. 9\(c\)](#)

Modifications etc. (not altering text)

- C4** S. 120 applied (1.1.2007) by [The Real Estate Investment Trusts \(Joint Ventures\) Regulations 2006 \(S.I. 2006/2866\), reg. 7\(5\)](#)
S. 120 applied (with modifications) (1.1.2007) by [The Real Estate Investment Trusts \(Joint Ventures\) Regulations 2006 \(S.I. 2006/2866\), reg. 13\(1\)\(2\)](#) (subject to [reg. 14](#))

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- C5** S. 120 applied (31.12.2007) by [The Real Estate Investment Trusts \(Joint Venture Groups\) Regulations 2007 \(S.I. 2007/3425\), reg. 13\(6\)](#)
S. 120 applied (31.12.2007) by [The Real Estate Investment Trusts \(Joint Venture Groups\) Regulations 2007 \(S.I. 2007/3425\), reg. 23\(6\)](#)

121 Distributions: liability to tax

- (1) A distribution received by a shareholder of a company to which this Part applies in respect of profits of C (tax-exempt) shall be treated—
 - (a) in the case of a shareholder within the charge to corporation tax, as profits of a Schedule A business, and
 - (b) in the case of a shareholder within the charge to income tax, as the profits of a UK property business (within the meaning of section 264 of ITTOIA 2005).
- (2) A distribution received by a shareholder who is not resident in the United Kingdom—
 - (a) if the shareholder is a company within the charge to corporation tax, shall be chargeable to tax as profits of a Schedule A business,
 - (b) if the shareholder is a person other than a company within the charge to corporation tax, shall be chargeable to tax as profits of a UK property business (within the meaning of section 264 of ITTOIA 2005), and
 - (c) in either case, shall not be [^{F4}non-resident landlord income for the purposes of regulations under section 971 of ITA 2007 (income tax due in respect of income of non-resident landlords)] .
- (3) Subsection (1) shall not apply in relation to a shareholder if and in so far as he—
 - (a) is a dealer in respect of distributions (within the meaning of section 95 of ICTA),
 - (b) is a dealer in securities who is charged to tax under Part 2 of ITTOIA 2005 (trading income) in respect of distributions made by companies,
 - (c) is an individual member of Lloyd's (within the meaning given by section 184(1) of FA 1993) and the distribution is made in respect of assets forming part of—
 - (i) a premium trust fund of his (within the meaning given by section 174 of FA 1993), or
 - (ii) an ancillary trust fund of his (within the meaning given by section 176 of FA 1993), or
 - (d) is a corporate member of Lloyd's (within the meaning given by section 230(1) of FA 1994) and the distribution is made in respect of assets forming part of—
 - (i) a premiums trust fund belonging to it (within the meaning given by section 222 of FA 1994), or
 - (ii) an ancillary trust fund belonging to it (within the meaning given by section 223 of FA 1994).
- (4) Section 114(1)(a) of ICTA (partnerships with companies as members) does not disapply subsection (1) above.
- (5) Sections 231 of ICTA and 397 of ITTOIA 2005 (tax credits in respect of qualifying distributions) shall not apply to distributions made by a company to which this Part applies in respect of profits of C (tax-exempt).
- (6) Distributions from companies to which this Part applies and distributions from principal companies of groups to which this Part applies shall be treated, for the

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purposes of subsection (1), as the profits of a single business (irrespective of whether the shareholder receives different distributions in different capacities) which is separate from—

- (a) any other Schedule A business carried on by the shareholder,
 - (b) any other UK property business (within the meaning of section 264 of ITTOIA 2005) carried on by the shareholder,
 - (c) any overseas property business (within the meaning of section 70A(4) of ICTA) carried on by the shareholder, and
 - (d) any overseas property business (within the meaning of section 265 of ITTOIA 2005) carried on by the shareholder.
- (7) In the case of a shareholder which is a partnership, subsection (6) applies to receipts by a partner of a share of any distribution as it applies to receipts by a shareholder.
- (8) In subsection (1)—
- (a) the reference to a company to which this Part applies includes a reference to C (post-cessation), and
 - (b) “profits” includes gains.

Textual Amendments

- F4** S. 121(2)(c) substituted (6.4.2007 with effect as mentioned in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, [Sch. 1 para. 619](#) (with transitional provisions and savings in [Sch. 2](#))

122 Distributions: deduction of tax

F5

Textual Amendments

- F5** S. 122 repealed (6.4.2007 with effect as mentioned in s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), ss. 1027, 1031, [Sch. 1 para. 620](#), [Sch. 3 Pt. 1](#) (with transitional provisions and savings in [Sch. 2](#))

123 Attribution of distributions

Distributions made by a company to which this Part applies shall be attributed—

- (a) first, to payments in satisfaction of [^{F6}Condition 3] of section 107,
- (b) secondly, if or in so far as the company determines, to distribution of amounts which derive from activities of a kind in respect of which corporation tax is chargeable in relation to income,
- (c) thirdly, to distribution of profits of the property rental business,
- (d) fourthly, to distribution of gains accruing to C (tax-exempt) which by virtue of section 124 are not chargeable gains, and
- (e) fifthly, to other distributions.

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Textual Amendments

- F6** Words in s. 123(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. 10](#)

Status:

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