



Corporation Tax Act 2010

2010 CHAPTER 4

PART 12

REAL ESTATE INVESTMENT TRUSTS

CHAPTER 6

DISTRIBUTIONS

Recipients of distributions

548 Distributions: liability to tax

- (1) This section applies if a shareholder of the principal company of a group UK REIT receives a distribution of amounts shown in the financial statement under section 532(2)(a) (statement of group's property rental business) as—
 - (a) profits or gains (or both) of UK members of the group, or
 - (b) profits or gains (or both) of UK property rental business of non-UK members of the group.
- (2) In subsection (1) the reference to the principal company includes a reference to the principal company of the post-cessation group.
- (3) This section also applies if a shareholder of a company UK REIT receives a distribution in respect of profits or gains (or both) of property rental business of the company.
- (4) In subsection (3) the reference to a company UK REIT includes a reference to the post-cessation company.
- (5) If the shareholder is within the charge to corporation tax, the distribution is to be treated as profits of a UK property business (within the meaning given by section 205 of CTA 2009).

Status: Point in time view as at 01/04/2010.

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- (6) If the shareholder is not within the charge to corporation tax, the distribution is to be treated as profits of a UK property business (within the meaning given by section 264 of ITTOIA 2005).
- (7) In the case of a non-UK resident shareholder, the distribution is not 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).
- (8) See sections 973 and 974 of ITA 2007 (income tax due in respect of distributions) for provision about the deduction of sums representing income tax in relation to distributions of a kind mentioned in this section.

549 Distributions: supplementary

- (1) Section 548 does not apply in relation to a shareholder so far as the shareholder—
 - (a) is a person who is charged to tax under Part 3 of CTA 2009 (trading income) in respect of distributions made by companies that are received in the course of a trade not consisting of insurance business,
 - (b) is a dealer in securities who is charged to income 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 the member (within the meaning given by section 174 of FA 1993), or
 - (ii) an ancillary trust fund of the member (within the meaning given by section 176 of that Act), 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 premium trust fund belonging to the member (within the meaning given by section 222 of FA 1994), or
 - (ii) an ancillary trust fund belonging to the member (within the meaning given by section 223 of that Act).
- (2) Section 1109 of this Act and section 397 of ITTOIA 2005 (tax credits in respect of qualifying distributions) do not apply to relevant distributions received by a shareholder.
- (3) “Relevant distribution” means—
 - (a) in the case of a group UK REIT, a distribution from the principal company of the group of amounts shown in the financial statement under section 532(2) (statement of group's property rental business) as—
 - (i) profits or gains (or both) of UK members of the group, or
 - (ii) profits or gains (or both) of UK property rental business of non-UK members of the group, and
 - (b) in the case of a company UK REIT, a distribution from the company in respect of profits or gains (or both) of its property rental business.
- (4) Relevant distributions received by a shareholder are to be treated for the purposes of section 548(5) and (6) as the profits of a single business (irrespective of whether the shareholder receives different distributions in different capacities).

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- (5) That single business is separate from—
- (a) any other UK property business (within the meaning given by section 205 of CTA 2009) carried on by the shareholder,
 - (b) any other UK property business (within the meaning given by section 264 of ITTOIA 2005) carried on by the shareholder,
 - (c) any overseas property business (within the meaning given by section 206 of CTA 2009) carried on by the shareholder, and
 - (d) any overseas property business (within the meaning given by section 265 of ITTOIA 2005) carried on by the shareholder.
- (6) If a shareholder is a partnership, subsection (4) applies to receipts by a partner of a share of any distribution as it applies to receipts by a shareholder.

Attribution of distributions

550 Attribution of distributions

- (1) Subsection (2) applies to—
- (a) distributions made by the principal company of a group UK REIT, and
 - (b) distributions made by a company UK REIT.
- (2) The distributions are to be attributed—
- (a) first, to payments in satisfaction of the condition in section 530 (distribution of profits),
 - (b) second, 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) third, to distribution of profits of property rental business (calculated in accordance with section 599),
 - (d) fourth, to distribution of relevant non-chargeable gains, and
 - (e) fifth, to other distributions.
- (3) In subsection (2)(d) “relevant non-chargeable gains” means—
- (a) in the case of a group, gains accruing to property rental business of a member of the group, and
 - (b) in the case of a company, gains accruing to property rental business of the company,
- which as a result of section 535 are not chargeable gains.

Distributions to certain shareholders

551 Tax consequences of distribution to holder of excessive rights

- (1) Subsection (3) applies if—
- (a) a distribution is made to or in respect of a holder of excessive rights (as defined by section 553), and
 - (b) the distributor has not taken reasonable steps to prevent a distribution to or in respect of such a person from being made.

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- (2) “The distributor” means—
- (a) in the case of a group UK REIT, the principal company of the group, and
 - (b) in the case of a company UK REIT, the company.
- (3) The distributor is treated as receiving an amount of income calculated in accordance with section 552 (“the section 552 amount”).
- (4) The section 552 amount is chargeable to corporation tax under the charge to corporation tax on income.
- (5) It is treated—
- (a) as arising in the accounting period in which the distribution was made, and
 - (b) as profits of residual business of the distributor.
- (6) Accordingly it is charged to corporation tax at the rate mentioned in section 534(3) (rate at which profits of residual business are charged).
- (7) No loss, deficit, expense or allowance may be set off against the section 552 amount.

552 “The section 552 amount”

- (1) For the purposes of section 551, the section 552 amount is calculated by taking 3 steps.
- (2) *Step 1*: find the amount given by—

$$DO \times SO \times \frac{BRT}{MCT}$$

where—

DO is—

- (a) in the case of a group UK REIT, the amount of the group's UK profits (as defined by section 530(2)) distributed in respect of ordinary shares in the principal company, and
- (b) in the case of a company UK REIT, the amount of profits of property rental business of the company distributed in respect of ordinary shares in the company,

SO is—

- (a) the percentage of rights in respect of those shares held by the holder of excessive rights, or
- (b) if less, the percentage of rights held by the recipient of the distribution, in respect of which the distribution is made,

BRT is the basic rate of income tax in force at the time the distribution is made, and MCT is the rate of corporation tax mentioned in section 534(3) (rate determined without reference to sections 18 to 23).

- (3) *Step 2*: find the amount given by—

$$DP \times SP \times \frac{BRT}{MCT}$$

where—

DP is—

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- (a) in the case of a group UK REIT, the amount of the group's UK profits (as defined by section 530(2)) distributed in respect of preference shares in the principal company, and
 - (b) in the case of a company UK REIT, the amount of profits of property rental business of the company distributed in respect of preference shares in the company,
- SP is—
- (a) the percentage of rights in respect of those shares held by the holder of excessive rights, or
 - (b) if less, the percentage of rights held by the recipient of the distribution, in respect of which the distribution is made, and
- BRT and MCT have the same meaning as they have in subsection (2).
- (4) *Step 3*: add together the amounts given by steps 1 and 2.
- That amount is the section 552 amount.

553 Meaning of “holder of excessive rights”

- (1) For the purposes of section 551 “holder of excessive rights” means a person who meets—
- (a) condition A, and
 - (b) either condition B or C.
- (2) Condition A is that the person—
- (a) is beneficially entitled (directly or indirectly) to at least 10% of the dividends paid by the distributor,
 - (b) is beneficially entitled (directly or indirectly) to at least 10% of the distributor's share capital, or
 - (c) controls (directly or indirectly) at least 10% of the voting rights in the distributor.
- (3) Condition B is that the person is a company.
- (4) Condition C is that—
- (a) the person is treated as a body corporate for tax purposes—
 - (i) in accordance with the law of a territory outside the United Kingdom with which arrangements have been entered into to provide relief from double taxation, or
 - (ii) in accordance with an international agreement containing such arrangements, and
 - (b) those arrangements have effect by virtue of an Order in Council under section 2 of TIOPA 2010.
- (5) In subsection (2) “the distributor” has the meaning given by section 551(2).

554 Regulations: distributions to holders of excessive rights

- (1) The Treasury may by regulations make provision of the kind mentioned in subsection (2) for cases where—
- (a) the principal company of a group UK REIT, or
 - (b) a company UK REIT,

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makes a distribution to or in respect of a holder of excessive rights (as defined by section 553).

- (2) The provision referred to in subsection (1) is—
- (a) provision that a charge does not arise, or is reduced, if the company takes or does not take action of a specified kind;
 - (b) a requirement for the company to provide the Commissioners for Her Majesty's Revenue and Customs with specified information relating to the distribution and the persons to or in respect of whom it is made.

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