

2006 No. 2866

CORPORATION TAX

**The Real Estate Investment Trusts (Joint Ventures) 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, in exercise of the powers conferred by section 138 of the Finance Act 2006^(a), make the following Regulations:

PART 1

Introduction

Citation, commencement and interpretation

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

(2) In these Regulations references to a numbered provision (without more) is a reference to the provision of the Finance Act 2006 bearing that number.

(3) In these Regulations—

“equity holder” means a person who—

- (a) holds ordinary shares in the joint venture company, or
- (b) is a loan creditor of the joint venture company in respect of a loan which is not a normal commercial loan,

and any references in these Regulations to profits or assets available for distribution to a joint venture company’s equity holders does not include a reference to any profits or assets available for distribution to an equity holder other than as an equity holder;

“joint venture company” means—

- (a) a company carrying on a joint venture between a company to which Part 4 applies and another person; or
- (b) a company in which a member of a group to which Part 4 applies has an interest;

“joint venture look through notice” means—

- (a) in the case of a company to which Part 4 applies, a notice given under regulation 2; and
- (b) in the case of a group to which Part 4 applies, a notice given under regulation 9;

(a) 2006 c.25.

“venturing company” has the meaning given in regulation 2(1);
“venturing group” has the meaning given in regulation 9(1); and
other expressions defined for the purposes of Part 4 have the same meaning as they have there.

PART 2

Single Company Real Estate Investment Trusts

Notice

2.—(1) A company to which Part 4 applies may give a joint venture look through notice if the conditions in regulation 3(1) are satisfied.

The company which gives the notice is referred to in these Regulations as the venturing company.

(2) The notice must specify the accounting period of the venturing company from the beginning of which, and the joint venture company to which, these Regulations are to apply.

(3) The notice must be given in writing to the Commissioners for Her Majesty’s Revenue and Customs before the beginning of the specified accounting period.

(4) The notice must be signed by the company secretary or a director of the joint venture company to which these Regulations are to apply.

(5) A venturing company may give a joint venture look-through notice at the same time it gives notice under section 109 (notice to enter the Real Estate Investment Trust regime) or at any later time when Part 4 applies to it.

Conditions

3.—(1) The conditions are as follows.

Condition 1

The venturing company is carrying on a joint venture with another person.

Condition 2

The joint venture takes the form of a company.

Condition 3

The joint venture company is carrying on a property rental business as defined in section 104.

Condition 4

The venturing company is beneficially entitled to 40% or more of the profits available for distribution to equity holders in the joint venture company.

Condition 5

The venturing company is beneficially entitled to 40% or more of the assets of the joint venture company available to equity holders in the event of a winding up.

Condition 6

The property rental business carried on by the joint venture company does not involve property that would fall in accordance with generally accepted accounting practice to be described as owner-occupied.

Condition 7

The joint venture company would satisfy Conditions 1 and 2 in section 108 (conditions for balance of business) if references in that section to—

- (a) the “tax-exempt business” were references to the joint venture company’s property rental business, and
- (b) the “company” were references to the joint venture company.

(2) For the purposes of Conditions 6 and 7, owner-occupied property includes property held by the joint venture company and occupied by the venturing company.

Duration

4. Once these Regulations have begun to apply to a joint venture company, they shall continue to apply to it unless and until the venturing company ceases to satisfy condition 4 or condition 5 in regulation 3.

Financial statements

5.—(1) A venturing company shall prepare a financial statement, in accordance with the Real Estate Investment Trusts (Financial Statements of Group Real Estate Investment Trusts) Regulations 2006(a) for each of its accounting periods in respect of any joint venture company in respect of which it has made an election that these Regulations should apply.

(2) Paragraph 31 of Schedule 17 shall apply to the financial statement required under paragraph (1) as if—

- (a) references in sub-paragraphs (2) to (4) to the principal company were references to the venturing company;
- (b) references in sub-paragraphs (2) to (4) to G (property rental business) were references to the sum of C (tax-exempt) and the property rental business of the joint venture company;
- (c) references in sub-paragraphs (2) to (4) to G (residual) were references to the sum of C (residual) and so much of the business of the joint venture company as is not property rental business;
- (d) references to a member of a group were references to the venturing company or the joint venture company; and
- (e) for sub-paragraphs (5) and (6) there were substituted—

“(5) The financial statements for G (property rental business) and G (residual) shall exclude that percentage of income, expenses, gains, losses, assets and liabilities of any joint venture company or companies equalling the percentage of beneficial interest in the joint venture company that is not held by the venturing company.

(6) For this purpose, the percentage of beneficial interest shall be determined by reference to beneficial entitlement to profits available for distribution to equity holders.”.

Requirements for venturing companies

6.—(1) A venturing company must include the proportion of the profits of the joint venture company to which it is beneficially entitled within the amount of the profits of its property rental business for the purposes of determining whether Condition 4 in section 107(8) is satisfied.

(2) A venturing company must include the proportion of profits of the joint venture company to which it is beneficially entitled within the amount of profits arising from tax-exempt business for the purposes of determining whether the venturing company has satisfied Condition 1 in section 108(2).

(3) A venturing company must include the percentage of assets to which it is beneficially entitled within the valuation of the assets involved in tax-exempt business for the purposes of calculating whether the venturing company has satisfied Condition 2 in section 108(3).

(4) Section 115 and the regulations made under it shall apply as if for subsection (2) there were substituted—

“(2) That sum is—

(a) S.I. 2006/ 2865

Profits + Financing Costs (JV)
Financing Costs (external)

where—

- (a) Profits means the aggregate of—
 - (i) the profits of the tax-exempt business of the company before the off-set of capital allowances;
 - (ii) the financing costs of the company’s property rental business as claimed for tax purposes;
- (b) Financing Costs (JV) means the aggregate of—
 - (i) the company’s share of the profits of the property rental business of the joint venture company before the set-off of capital allowances, and
 - (ii) the company’s share of the financing costs of the joint venture company’s property rental business as claimed for tax purposes;
- (c) Financing Costs (external) means the sum of the financing costs of C (tax-exempt) and the venturing company’s proportion of the financing costs of the UK property rental business of the joint venture company but disregarding in both cases financing costs owed by the venturing company to the joint venture company and vice versa.”.

Tax charges and exemptions

7.—(1) This regulation specifies charges to, and exemptions from, tax which apply in the case of a venturing company and a joint venture company to which these Regulations apply.

(2) Section 111 (effects of entry) and section 131 (effects of cessation) shall apply to the proportion of assets and business of the joint venture company in which the venturing company has an interest.

For this purpose references in those sections to—

- (a) C (pre-entry) shall be read as references to the venturing company’s interest in the joint venture company before the date on which a joint venture look through notice becomes effective;
- (b) C (tax-exempt) shall be read as references to the venturing company’s share of the property rental business of the joint venture company from the date on which a joint venture look through notice becomes effective.

(3) Section 112 (entry charge) shall have effect in relation to a venturing company and a joint venture company with the following modifications—

- (a) a reference to a company to which Part 4 applies shall be treated as a reference to a UK resident joint venture company to which these Regulations apply, and
- (b) the reference in subsection (3)(a) to the aggregate market value of assets shall be treated as including the proportion of the venturing group member’s interest in the aggregate market value of the assets of the property rental business of the joint venture company.

(4) Section 117 (cancellation of tax advantage) shall apply to the joint venture company.

For this purpose references to a “company” shall be read as including a reference to a joint venture company to which these Regulations apply.

(5) Sections 119(1) (exemption from corporation tax) and 120 (calculation of profits) shall apply in relation to the venturing company’s share of the profits deriving from the property rental business of the joint venture company.

(6) Sections 124(1) and (2), 125 and 126 (corporation tax provisions) shall apply in relation to the venturing company’s share of a gain accruing to the joint venture company in respect of assets involved in the property rental business.

For this purpose references to—

- (a) C (tax-exempt) shall be read as references to the venturing company and the UK property rental business of the joint venture company; and
- (b) C (residual) shall be read as references—
 - (i) to the venturing company insofar as it carries out business which is not tax exempt; and
 - (ii) to the joint venture company insofar as it carries on other business which is not property rental business.

(7) For the purposes of this regulation a reference to the “UK property rental business of the joint venture company” is a reference to—

- (a) the property rental business of the joint venture company if that company is UK resident, and
- (b) the property rental business in the UK of the joint venture company if that company is not resident in the UK.

Non-resident joint venture companies and single company UK real estate investment trusts

8.—(1) This regulation applies to a company and a non-UK resident joint venture company to which these Regulations apply.

(2) Paragraph 32 of Schedule 17 shall apply with the following modifications—

- (a) references to the company shall be read as references to the non-UK resident joint venture company to which these Regulations apply;
- (b) sub-paragraph (7) shall apply as if—
 - (i) the reference to a “UK resident member of a group to which Part 4 applies” was read as a reference to the UK resident company to which these Regulations apply, and
 - (ii) for “which represents (wholly or partly and directly or indirectly) profits of UK property rental business of a non-UK resident member of the group, such proportion of the dividend as represents those profits” there were substituted “such proportion of the dividend as represents profits of the UK property rental business shall”.

(3) Section 112 as modified by paragraph 11 of Schedule 17 shall apply to the non-UK resident joint venture company as if the reference in paragraph 11(1)(d) of Schedule 17 to a “non-UK resident member” was read as a reference to a non-UK resident joint venture company to which these Regulations apply.

PART 3

Group Real Estate Investment Trusts

Notice

9.—(1) A group of companies to which Part 4 applies (“the venturing group”) may give notice for these Regulations to apply if the conditions in regulation 10(1) are satisfied.

(2) The notice must specify the accounting period of the principal company of the venturing group from the beginning of which, and the joint venture company to which these Regulations are to apply.

(3) The notice must be given in writing by the principal company of the venturing group to the Commissioners for Her Majesty’s Revenue and Customs before the beginning of the specified accounting period.

(4) The notice must be signed by the company secretary or a director of the joint venture company to which these Regulations are to apply.

(5) The principal company of the venturing group may give a joint venture look through notice at the same time it gives notice under section 109 (as modified by paragraph 8 of Schedule 17) (notice to join the Group Real Investment Trust regime) or at any later time when Part 4 applies to it.

Conditions

10.—(1) The conditions are as follows.

Condition 1

The venturing group is carrying on a joint venture with another company or person.

Condition 2

The joint venture takes the form of a company.

Condition 3

The joint venture company is carrying on a property rental business as defined in section 104.

Condition 4

One or more members of the venturing group are beneficially entitled in the aggregate to 40% or more of the profits available for distribution to equity holders in the joint venture company.

Condition 5

One or more members of the venturing group are beneficially entitled to 40% or more of the assets of the joint venture company available to equity holders in the event of a winding up.

Condition 6

The property rental business carried on by the joint venture company does not involve property that would fall, in accordance with generally accepted accounting practice, to be described as owner-occupied.

Condition 7

The joint venture company would satisfy Conditions 1 and 2 in section 108 (conditions for balance of business) if references in that section to the “tax-exempt business” and the “company” were read as references to the property rental business of the joint venture company.

(2) For the purposes of Conditions 6 and 7 owner-occupied property includes property held by the joint venture company and occupied by a member of the venturing group.

(3) For the purposes of these Regulations the property rental businesses of the venturing group and the joint venture company shall be treated as a single business.

Duration

11. Once these Regulations have begun to apply to a venturing group and a joint venture company they shall continue to apply to the venturing group and the joint venture company unless and until the venturing group ceases to satisfy either condition 4 or 5 in regulation 10 in respect of that joint venture company.

Financial statements

12.—(1) The principal company of a venturing group shall include the information referred to in paragraph (2) in the financial statement submitted in accordance with the provisions of paragraphs 5(2) and 31 of Schedule 17.

In the application of those provisions for the purposes of this paragraph—

- (a) references to each member are to be read as references to each joint venture company in respect of which a joint venture look-through notice has been given; and
- (b) references to a non-member are references to a person or body which is neither a member of the venturing group nor a joint venture company in respect of which a joint venture look-through notice has been given.

(2) The information is the percentage of income, expenses, gains, losses, assets and liabilities of the joint venture company which represent interests of a member of the venturing group in the joint venture company.

The percentage shall be determined by reference to beneficial entitlement to profits available for distribution to equity holders.

Tax charges and exemptions

13.—(1) Section 119 and section 120, shall apply in relation to a venturing group and a joint venture company with the following further modifications.

(2) References to G (property rental business) shall be read as including the percentage of the venturing group’s interest in the property rental business of the joint venture company and references to G (residual) shall be read as including any non-property rental business of the joint venture company.

(3) Sections 111 and 131 (joining and leaving group) shall apply in relation to a joint venture company as they apply to a group to which Part 4 applies.

For this purpose references to becoming a member of the group are to be read as references to the time at which a joint venture look-through notice becomes effective.

(4) Section 112 (entry charge) as modified by paragraph 11 of Schedule 17 shall have effect in relation to a venturing group and a joint venture company with the following further modifications—

- (a) a reference to a company to which Part 4 applies shall be treated as a reference to a UK resident joint venture company to which these Regulations apply, and
- (b) the reference in subsection (3)(a) to the aggregate market value of assets shall be treated as including the proportion of the venturing group member’s interest in the aggregate market value of the assets of the joint venture company

(5) Section 117 applies to a joint venture company as it applies to a company to which Part 4 applies.

(6) Section 124 as modified by paragraph 21 of Schedule 17 shall apply in relation to the UK joint venture company with the following further modifications—

- (a) references to C (tax-exempt) shall be read as a reference to the joint venture company in so far as it—
 - (i) carries on property rental business, and
 - (ii) is owned by a member of the venturing group.
- (b) references to C (residual) shall be read as a reference to the joint venture company in so far as it—
 - (i) carries out other non-tax exempt business; and
 - (ii) is owned by a member of the venturing group.

(7) Sections 125 and 126 as modified by paragraphs 21 and 22 of Schedule 17 shall apply to the joint venture company as if it were a member of the venturing group.

(8) This regulation is subject to regulation 14.

Joint ventures - entry charges

14.—(1) Where a venturing company to which Part 2 of these Regulations applies—

- (a) becomes the principal company of a group to which Part 4 applies, and
- (b) gives a new joint venture look through notice under regulation 9 (a “new notice”) in respect of that group and the joint venture company to which Part 2 previously applied, and
- (c) the venturing company’s shareholding in that joint venture company remains the same

sections 111, 112 and 131 shall not operate to impose a charge to corporation tax under section 112(1) in respect of the assets involved in the property rental business of the joint venture company.

- (2) Where a venturing company to which Part 2 of these Regulations applies—
- (a) becomes the principal company of a group to which Part 4 applies, and
 - (b) gives a new notice in respect of that group and the joint venture company to which Part 2 previously applied, and
 - (c) the venturing company's shareholding in the joint venture company had increased in the period between the date on which the venturing company first gave a joint venture look through notice under regulation 2 ("the first notice") and the date on which the new notice was given

the provisions of paragraph (3) shall apply.

(3) The notional income calculated under sections 111 and 112 (as modified by paragraphs 9 to 11 of Schedule 17 and further modified by regulation 13(3) and (4)), shall be reduced by the amount of notional income that was calculated under sections 111 and 112 (as modified by regulation 7(2) and (3)) in respect of the assets involved in the property rental business of the joint venture company at the time the first notice was given.

- (4) Where a venturing company to which Part 2 of these Regulations applies—
- (a) becomes the principal company of a group to which Part 4 applies, and
 - (b) gives a new notice in respect of that group and the joint venture company to which Part 2 previously applied, and
 - (c) increases its share holding in the joint venture company to 75% or more, and
 - (d) gives a notice under section 109 (as modified by paragraph 8 of Schedule 17) making the venturing company and the joint venture company members of a group to which Part 4 applies,

sections 111 and 112 (as modified by paragraphs 9 to 11 of Schedule 17) shall continue to apply with the modifications set out in paragraph (5).

(5) The notional income shall be reduced by the amount of notional income that was calculated as arising under sections 111 and 112 (as modified by regulation 7(2) and (3)) in respect of the assets involved in the property rental business of the joint venture company at the time the venturing company gave the first notice.

- (6) Where a venturing group to which Part 2 of these Regulations applies—
- (a) increases its share holding in the joint venture company to 75% or more, and
 - (b) the joint venture company becomes a member of the group to which Part 4 applies

sections 111 and 112 (as modified by paragraphs 9 to 11 of Schedule 17) shall continue to apply with the modifications set out in paragraph (7).

(7) The notional income shall be reduced by the amount of notional income that was calculated as arising under sections 111 and 112 (as modified by regulation 13(3) and (4)) in respect of the assets involved in the property rental business of the joint venture company at the time the venturing group gave the first notice under regulation 9 in respect of that company.

Non-resident joint venture companies and group Real Estate Investment Trusts

15.—(1) This regulation applies to a venturing group and a non-UK resident joint venture company to which these Regulations apply.

- (2) Paragraph 32 of Schedule 17 shall apply with the following further modifications—
- (a) in sub-paragraph (1) the reference to a member of a group to which Part 4 applies shall be read as a reference to the joint venture company to which these Regulations apply;
 - (b) references to the company shall be read as references to the joint venture company to which these Regulations apply;

(c) in sub-paragraph (7) the reference to a UK resident member of a group to which Part 4 applies shall be read as a reference to a UK resident member of a venturing group to which these Regulations apply.

(3) Section 112 as modified by paragraph 11 of Schedule 17 shall apply to the non-UK resident joint venture company as if the reference in paragraph 11(1)(d) of Schedule 17 to a non-UK resident member were a reference to a non-UK resident joint venture company to which these Regulations apply.

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 Order)

These Regulations provide the details as to how the Real Estate Investments Trusts regime (“the UK-REIT regime”) which was introduced by Part 4 of the Finance Act 2006 (c.25) (“the Act”) shall apply to joint ventures. Joint ventures (which are not group REITs) may elect for the UK-REIT regime to apply in accordance with these Regulations.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 to 8 cover the situation where a single company which is a member of the UK-REIT regime carries on a joint venture with another person.

Regulation 2 provides for details of the notice to be given by the single company (“the venturing company”) who is carrying on a joint venture with another person or company and wishes for the UK-REIT regime to apply to that joint venture (“the joint venture company”).

Regulation 3 sets out the conditions that must be met by the venturing company and the joint venture company to join the UK-REIT regime.

Regulation 4 sets out the length of time that the Regulations will apply.

Regulation 5 provides for the financial statements that the venturing company must prepare in respect of the joint venture company. Paragraph 31 of Schedule 17 of the Act (which provides details of the financial statements that must be prepared by Group Real Estate Investment Trusts) will apply with the modifications set out in the regulation.

Regulation 6 sets out certain requirements with which the venturing company must comply. The venturing company must include the proportion of profits of the joint venture company to which it is beneficially entitled within the amount of profits of its property rental business and tax-exempt business for the purposes of determining whether conditions set out in section 107(8) and 108(2) are met. The venturing company must also include the percentage of assets in the joint venture company to which it is beneficially entitled within the valuation that must be made to see if the venturing company meets balance of business condition 2 set out in section 108(3). Regulation 6(4) provides that section 115 of the Act (which sets out the profit: financing-cost ratio) and the regulations made under it shall apply with the modifications set out.

Regulation 7 provides for the modification of certain tax charges and exemptions in respect of the venturing company and the joint venture company.

Regulation 8 provides for the modification of paragraph 32 of Schedule 17 (modifications to the UK-REIT regime for non-UK resident companies which are members of a group to which Part 4 of the Act applies) in respect of non-resident joint venture companies and single company UK-REITs.

Regulations 9 to 15 deal with groups to which Part 4 of the Act applies (“venturing groups”) who carry out joint ventures with another company or person.

Regulation 9 sets out details of the notice that must be given by the principal company of the venturing group.

Regulation 10 sets out the conditions that must be met by the venturing group and joint venture company.

Regulation 11 sets out the length of time that the Regulations will apply for.

Regulation 12 provides for the financial statements that the principal company of the venturing company must prepare in respect of the joint venture company. Paragraphs 5(2) and 31 of Schedule 17 of the Act will apply with the modifications set out in the regulation.

Regulation 13 provides for the application and modification of certain tax charges and exemptions in respect of the group venturing company and the joint venture company.

Regulation 14 deals with the situation where—

- (a) a single company UK-REIT to which these Regulations apply joins a group REIT, or makes a fresh election under section 109 as modified by paragraph 8 of Schedule 17 to be a group REIT;
- (b) a joint venturing company to which these Regulations apply becomes a member of a group REIT.

The regulation prevents the entry charge legislation (section 112) operating to impose a double tax charge.

Regulation 15 provides for the modification of paragraph 32 of Schedule 17 and section 112 (entry charges) in respect of non-resident joint venture companies and venturing groups.

A regulatory impact assessment for the introduction of the UK-REIT regime was published in March 2006 and can be found at www.hmrc.gov.uk/ria.

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2006**

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