

SCHEDULES

SCHEDULE 17

Section 134

GROUP REAL ESTATE INVESTMENT TRUSTS: MODIFICATIONS

Introduction

- 1 This Schedule sets out the modifications of Part 4 in its application to groups.
- 2 In this Schedule, in relation to a group—
 - (a) “G (pre-entry)” means the group before Part 4 begins to apply to it,
 - (b) “G (property rental business)” means the group in so far as it carries on property rental business which satisfies Conditions 1 to 3 of section 107 (as modified by paragraph 6 below) while Part 4 applies to it,
 - (c) “G (residual)” means the group in so far as it carries on other business while Part 4 applies to it, and
 - (d) “G (post-cessation)” means the group after Part 4 has ceased to apply to it.
- 3 (1) A reference in this Schedule to a UK resident company is a reference to a company which—
 - (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.
- (2) A reference in this Schedule to UK profits of a group is a reference to—
 - (a) amounts shown in the financial statements of G (property rental business) as profits of UK resident members of the group, and
 - (b) amounts shown in the financial statements of G (property rental business) as profits of business in the United Kingdom of other members.
- (3) A reference to UK business of a group is a reference to—
 - (a) the business of UK resident members of the group, and
 - (b) business in the United Kingdom of other members.

General modification

- 4 Except where the context otherwise requires and subject to the provisions of this Schedule, a reference to a company shall be treated as a reference to a group.

Conditions

- 5 (1) In section 106 a reference to a company shall be treated as a reference to the principal company.
- (2) The requirement in section 106(2) shall be treated as including a requirement that the principal company prepare for the accounting period, and submit to the

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Commissioners for Her Majesty’s Revenue and Customs, financial statements in accordance with paragraph 31 (“the financial statements”).

- 6 (1) For the purposes of section 107(1) the property rental businesses of the members of the group shall be treated as a single business.
- (2) In section 107(7)(a) a reference to the company shall be treated as a reference to a member of the group.
- (3) For section 107(7)(b) substitute—
- “(b) the members of the group shall be treated as a single company, and
 - (ba) if the shares of a member of the group are stapled to the shares of another company, the stapled company and the members of the group shall be treated as a single company.”.
- (4) For section 107(8) substitute—
- “(8) Condition 4 is that at least 90% of the UK profits of the property rental business arising in the accounting period are distributed—
- (a) by the principal company,
 - (b) by way of dividend, and
 - (c) on or before the filing date for the principal company’s tax return for the accounting period (see paragraph 14 of Schedule 18 to FA 1998);
- and for the purposes of this Condition “UK profits” means amounts shown in the financial statements of G (property rental business) as profits of UK resident members of the group.”
- (5) In the application of section 107(9) compliance with Condition 4 shall be treated as unlawful in so far as—
- (a) the Condition applies to the profits of the property rental business attributable to a member, and
 - (b) compliance with the Condition by the member would (if the Condition applied to it) be unlawful as described in section 107(9)(a)(i) or (ii).
- 7 In the application of section 108—
- (a) the aggregate amount shown in the financial statement as profits of members of G (property rental business), calculated in accordance with international accounting standards, shall be treated as the amount of the income accruing from tax-exempt business,
 - (b) the aggregate amount shown in the financial statements as the amount of the profits of members of G (residual) shall be treated as the amount of the income accruing from non-tax-exempt business,
 - (c) the amount shown in the financial statements as the amount of the assets of G (property rental business) shall be treated as the amount of the assets involved in tax-exempt business, and
 - (d) the amount shown in the financial statements as the amount of the assets of G (residual) shall be treated as the amount of the assets involved in non-tax-exempt business.

Entering Real Estate Investment Trust Regime

- 8 (1) A notice under section 109 must be given by the principal company.

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- (2) For the purposes of the requirement under section 109(2)(c) a reference to the company shall be treated as a reference to the principal company.
- 9 (1) In section 111(1) a reference to C (pre-entry) shall be treated as a reference to a UK resident member of G (pre-entry).
- (2) Section 111(2) shall have effect in relation to each UK resident company which is a member of the group; and for that purpose—
- (a) a reference to C (pre-entry) (in subsection (2) or (4)) shall be treated as a reference to the company as a member of G (pre-entry), and
- (b) a reference to C (tax-exempt) (in subsection (2) or (4)) shall be treated as a reference to the company as a member of G (property rental business).
- (3) In section 111(5) the reference to the company shall be treated as a reference to each UK resident member.
- (4) Where a percentage of the assets of a member of G (property rental business) is excluded from a financial statement in accordance with paragraph 31(5), the excluded percentage shall be disregarded for the purposes of section 111.
- 10 (1) If a UK resident company becomes a member of a group to which Part 4 applies, section 111 shall apply to the company as if—
- (a) references to entry were references to becoming a member of the group,
- (b) references to C (pre-entry) were references to the company before becoming a member of the group, and
- (c) references to C (tax-exempt) were references to the company as a member of G (property rental business).
- (2) Where a percentage of the assets of the company would be excluded from a financial statement in accordance with paragraph 31(5), the percentage which would be excluded shall be disregarded in applying section 111 to the company.
- 11 (1) In the application of section 112—
- (a) a reference to a company to which Part 4 applies shall be treated as a reference to each member of a group to which Part 4 applies,
- (b) a reference to C (residual) shall be treated as a reference to the company as a member of G (residual),
- (c) in subsection (3) the reference to assets treated as sold and re-acquired under section 111(2) shall be construed in accordance with paragraph 9(4) or 10(2), and
- (d) the section shall apply to non-UK resident members—
- (i) as if section 111 applied to UK property rental business (within the meaning given by paragraph 32(1)) carried on by them,
- (ii) as if a reference to a charge to corporation tax under Case VI of Schedule D were a reference to a charge to income tax, and
- (iii) as if a reference to the rate at which the company pays tax on income were, where relevant, a reference to the rate at which the company would pay tax on the notional income if it were the highest part of the company's income.
- (2) Where a company joins a group to which Part 4 applies, section 112 shall apply to the company as if joining the group amounted to becoming a company to which Part

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- 4 applies (but with a reference to C (residual) being treated as a reference to the company as a member of G (residual)).
- 12 (1) Section 113(1) to (4) shall apply in relation to G (property rental business), G (pre-entry), G (residual) and G (post-cessation) as they apply in relation to C (tax-exempt), C (pre-entry), C (residual) and C (post-cessation).
- (2) Section 113(1) to (6) shall also apply in relation to each UK resident company which is a member of the group; for which purpose—
- (a) a reference to C (tax-exempt) is a reference to the company if or in so far as it is a member of G (property rental business),
 - (b) a reference to C (pre-entry) is a reference to the company as a member of G (pre-entry) (or, in the case of a company which joins a group to which Part 4 applies, a reference to the company before joining),
 - (c) a reference to C (residual) is a reference to the company if or in so far as it is a member of G (residual), and
 - (d) a reference to C (post-cessation) is a reference to the company as a member of G (post-cessation) (or, in the case of a company which leaves a group to which Part 4 applies, a reference to the company after leaving).
- (3) Where a percentage of the profits of a member of G (property rental business) is excluded from a financial statement in accordance with paragraph 31(5), the excluded percentage shall be treated for the purposes of section 113 as profits of G (residual).
- 13 Regulations under section 114 may make provision in relation to a group to which Part 4 applies as if references to the company were references to the principal company.
- 14 Section 115 shall apply as if for subsection (2) there were substituted—

“(2) That sum is—

$$\frac{\text{Profits} + \text{FinancingCosts}(\text{all})}{\text{FinancingCosts}(\text{external})}$$

where—

- (a) Profits means the aggregate of the UK profits of G (property rental business) arising in the accounting period as set out in the financial statement under paragraph 31(2)(b) (before the offset of capital allowances),
- (b) Financing Costs (all) means the amount of the financing costs incurred in respect of the property rental business of G (property rental business) as set out in the financial statement under paragraph 31(2)(b), and
- (c) Financing Costs (external) means the amount of the financing costs incurred in respect of the UK business of G (property rental business), excluding financing costs owed by one member of G (property rental business) to another, as set out in the financial statement under paragraph 31(2)(a).”

Assets, etc

- 15 (1) In section 117(1) the reference to the company shall be treated as a reference to a member of the group.
- (2) An appeal under section 117(6) may be made by the member of the group on which the assessment is made.
- 16 Section 118 shall apply as if—
- (a) a reference to C (residual) were a reference to G (residual), and
 - (b) a reference to C (tax-exempt) were a reference to G (property rental business).

Profits

- 17 (1) Section 119 shall apply only in relation to each UK resident company which is a member of the group; for which purpose—
- (a) a reference to C (tax-exempt) is a reference to the company if or in so far as it is a member of G (property rental business), and
 - (b) a reference to C (residual) is a reference to the company if or in so far as it is a member of G (residual).
- (2) Where a percentage of the profits of a member of G (property rental business) is excluded from a financial statement in accordance with paragraph 31(5), the excluded percentage shall be treated for the purposes of corporation tax as profits of the member in so far as it is a member of G (residual).
- 18 (1) In the application of section 121(1)—
- (a) the reference to a company to which Part 4 applies shall be treated as a reference to the principal company of a group to which Part 4 applies, and
 - (b) the reference to the profits of C (tax-exempt) shall be treated as a reference to amounts shown in the financial statements of G (property rental business) as—
 - (i) the profits of the UK resident members of the group, and
 - (ii) gains accruing to UK resident members of the group.
- (2) In section 121(5) the reference to a company to which Part 4 applies shall be treated as a reference to the principal company of a group to which Part 4 applies.
- (3) In the application of section 121(8)—
- (a) for paragraph (a) substitute—
 - “(a) the reference to the principal company of a group to which this Part applies includes a reference to the principal company of G (post-cessation),” and
 - (b) disregard paragraph (b).
- 19 (1) In the application of section 122(1)(a)—
- (a) the reference to a company to which Part 4 applies shall be treated as a reference to the principal company of a group to which Part 4 applies, and
 - (b) the reference to profits of a company’s tax-exempt business shall be treated as a reference to amounts shown in the financial statements of G (property rental business) as—
 - (i) the profits of the UK resident members of the group, and
 - (ii) gains accruing to UK resident members of the group.

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- (2) In the application of section 122(2)(n), (o) and (p) a reference to a company shall be treated as a reference to the principal company.
 - (3) In the application of section 122 disregard subsection (5).
- 20 In the application of section 123—
- (a) the reference to a company to which Part 4 applies shall be treated as a reference to the principal company of a group to which Part 4 applies, and
 - (b) the reference to C (tax-exempt) shall be treated as a reference to a member of G (property rental business).

Capital gains

- 21 (1) Sections 124 to 126 shall apply only in relation to each UK resident company which is a member of the group; for which purpose—
- (a) a reference to C (tax-exempt) is a reference to the company if or in so far as it is a member of G (property rental business), and
 - (b) a reference to C (residual) is a reference to the company if or in so far as it is a member of G (residual).
- (2) Where a percentage of the gains of a member of G (property rental business) is excluded from a financial statement in accordance with paragraph 31(5), the excluded percentage shall be treated for the purposes of corporation tax as gains of the member in so far as it is a member of G (residual).
- 22 In the application of section 125(7) a reference to the company shall be treated as a reference to a member of the group.

Leaving Real Estate Investment Trust Regime

- 23 In sections 128 to 130 a reference to the giving of a notice by or to a company shall be treated as a reference to the giving of a notice by or to the principal company.
- 24 An appeal under section 129(6) may be made by the principal company.
- 25 (1) Section 131 shall apply in relation to each UK resident company which is a member of the group; for which purpose—
- (a) a reference to C (tax-exempt) is a reference to the company if or in so far as it is a member of G (property rental business),
 - (b) a reference to C (residual) is a reference to the company if or in so far as it is a member of G (residual), and
 - (c) a reference to C (post-cessation) is a reference to the company as a member of G (post-cessation).
- (2) Where a percentage of the assets of a member of G (property rental business) is excluded from a financial statement in accordance with paragraph 31(5), the excluded percentage shall be disregarded for the purposes of section 131.
- 26 (1) If a UK resident company ceases to be a member of a group to which Part 4 applies section 131 shall apply to the company as if—
- (a) references to C (tax-exempt) were references to the company as a member of G (property rental business),
 - (b) references to C (post-cessation) were references to the company after ceasing to be a member of the group, and

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(c) the reference to C (residual) were a reference to the company as a member of G (residual).

(2) Where a percentage of the assets of the company is excluded from a financial statement in accordance with paragraph 31(5), the excluded percentage shall be disregarded in applying section 131 to the company.

Anti-avoidance

27 In section 132—

- (a) the reference in subsection (2) to disposal by the company shall be treated as a reference to disposal by a member of the group, and
- (b) the reference in subsection (3)(a) to C (tax-exempt) shall be treated as a reference to G (property rental business).

28 (1) Section 132(2) and (3) shall apply where a UK resident company ceases to be a member of a group to which Part 4 applies if—

- (a) Part 4 had applied to the group for a continuous period of less than ten years, or
- (b) the company had been a member of the group for a continuous period of less than ten years.

(2) In the application of section 132(2) and (3) by virtue of sub-paragraph (1)—

- (a) a reference to C (tax-exempt) shall be treated as a reference to the company as a member of G (property rental business), and
- (b) a reference to the date of cessation shall be treated as a reference to the date on which the company ceases to be a member of the group.

29 (1) A direction under section 133(2)—

- (a) may relate to the group as a whole or to one or more members;
- (b) may, in particular, alter the effect of this Schedule.

(2) In the application of section 133(5), an appeal may be brought by the principal company.

Manufactured dividends

30 Section 139 shall apply—

- (a) as if in subsection (1) the reference to a company to which Part 4 applies were a reference to the principal company of a group to which that Part applies, and
- (b) as if, in the amendment effected by subsection (2), in sub-paragraph (2E) the reference to “the company” were a reference to the principal company of the group.

Financial statements

31 (1) This paragraph sets out the requirements referred to in paragraph 5(2) for financial statements in respect of a group to which Part 4 applies in relation to an accounting period of the principal company.

(2) The principal company shall prepare—

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- (a) a financial statement for G (property rental business) for the accounting period,
 - (b) a financial statement for G (property rental business) in respect of its UK business, and
 - (c) a financial statement for G (residual) for the accounting period.
- (3) A financial statement under sub-paragraph (2)(a) or (c) shall specify, in relation to each member—
- (a) income (calculated in accordance with international accounting standards),
 - (b) expenses (calculated in accordance with international accounting standards),
 - (c) profits before tax excluding gains or losses on property (whether realised or not) calculated in accordance with international accounting standards, and
 - (d) assets valued—
 - (i) at the beginning of the accounting period,
 - (ii) in accordance with international accounting standards,
 - (iii) using fair value where there is a choice, and
 - (iv) disregarding liabilities secured against or otherwise relating to the assets.
- (4) A financial statement under sub-paragraph (2)(b) shall specify, in relation to each member, profits calculated in accordance with section 120.
- (5) Where a non-member of the group holds a percentage of the beneficial interest in a member (other than the principal company), the financial statements for G (property rental business) and G (residual) shall exclude that percentage of income, expenses, gains, losses, assets and liabilities of the member.
- (6) Percentages of beneficial interest for the purpose of sub-paragraph (5) shall be determined by reference to beneficial entitlement to profits available for distribution to equity holders.
- (7) The Commissioners for Her Majesty’s Revenue and Customs may by regulations—
- (a) make further provision relating to the content of a financial statement (which may, in particular—
 - (i) permit or require apportionment or otherwise prescribe or refer to accounting practice,
 - (ii) provide for the inclusion or exclusion of specified income, expenses, gains, losses, assets and liabilities,
 - (iii) make provision about the treatment of an interest in a business held by a member),
 - (b) prescribe the form of a financial statement, and
 - (c) specify a time before which a financial statement must be supplied to the Commissioners.

Non-UK resident members

- 32 (1) This paragraph applies to a non-UK resident company which is a member of a group to which Part 4 applies if—
- (a) the company has property rental business in the United Kingdom (“the UK property rental business”), and

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- (b) the profits of that business would be chargeable to tax under Chapter 3 of Part 3 of ITTOIA 2005 or as profits of a Schedule A business.
- (2) Business carried on by a non-UK resident company is property rental business for the purposes of this Part if the business would be property rental business within the meaning given by section 104 if it were carried on by a UK resident company.
- (3) The property rental business of the company in the United Kingdom shall be treated as if it were (subject to the application of this Part) chargeable to corporation tax.
- (4) Section 119(1) shall apply to the company as if the reference to the business of C (tax-exempt) were a reference to the UK property rental business.
- (5) Profits arising from the UK property rental business shall not be charged to income tax.
- (6) Sections 124 to 126 shall apply to the company as if—
 - (a) a reference to C (tax-exempt) were a reference to the company in so far as it carries on the UK property rental business,
 - (b) a reference to tax-exempt business were a reference to the UK property rental business, and
 - (c) a reference to C (residual) were a reference to the company in so far as it carries on other business in the United Kingdom.
- (7) If a UK resident member of a group to which Part 4 applies receives a dividend 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 shall be treated for the purposes of the Corporation Tax Acts as a dividend from a UK resident company.
- (8) Profits and gains of the UK property rental business shall be treated as profits and gains of a UK resident member of the group for the purposes of—
 - (a) section 107(8) (as modified by paragraph 6),
 - (b) section 121 (as modified by paragraph 18),
 - (c) section 122 (as modified by paragraph 19), and
 - (d) a financial statement for G (property rental business) under paragraph 31.

Takeovers

- 33
- (1) This paragraph applies if a company to which Part 4 applies, or a member of a group to which Part 4 applies, becomes a member of a group (or of another group) to which Part 4 applies.
 - (2) Where this paragraph applies, the following provisions of Part 4 shall not have effect—
 - (a) section 111 (as modified by paragraphs 9 and 10 above),
 - (b) section 112 (as modified by paragraph 11 above), and
 - (c) section 131 (or section 131 as modified by paragraphs 25 and 26 above).