

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 12: Real Estate Investment Trusts

Chapter 5: Assets etc

Section 541: Ring-fencing of property rental business

1698. This section provides that, for corporation tax purposes, property rental business (or UK property rental business in the case of non-UK companies) is treated as a separate business from any other business carried on by a group UK REIT or by a company UK REIT. Also, to the extent that the UK REIT carries on such a business, it is treated as a separate group or company from the rest of the group or company. This section is based on sections 113(1) to(4) and 134(1) of, and paragraphs 12 and 32(3) of Schedule 17 to, FA 2006.
1699. *Subsections (1) and (8)* provide that this section applies to a group UK REIT, each member of the group (including a non-UK company) and a company UK REIT. See *Change 41* in Annex 1.
1700. This section ring-fences the property rental business, rather than the “tax-exempt business”. This avoids the problem of how the section applies in a case where the company or group breaches the property rental business conditions in section 529. Such a breach apparently leads to the company or group no longer having “tax-exempt business” for the purpose of section 113 of FA 2006.
1701. This section applies to joint venture companies (including non-UK joint venture companies which are subject to corporation tax).
1702. *Subsection (7)* provides that if a percentage of the profits of property rental business are excluded from the financial statements because they are attributable to a non-member, that percentage is treated as profits of residual business.

Section 542: Disapplication of certain provisions

1703. This section applies to UK companies and allows losses from overseas property rental business to be used against other property rental business income and disapplies the exemption from the transfer pricing rules for small and medium sized enterprises. It is based on sections 113(5) and (6) and 134(1) of, and paragraph 12(2) of Schedule 17 to, FA 2006.
1704. *Subsection (1)* provides that section 66 of this Act (ring-fencing of losses from overseas property business) does not apply to property rental business of a UK company (including a UK joint venture company). The rule applies only to UK companies because non-UK resident companies are not subject to United Kingdom tax on the profits of an overseas property business.

1705. *Subsection (2)* provides that sections 166 to 171 of TIOPA (transfer pricing: exemption for small and medium sized enterprises) do not apply to a UK company. This means that all UK companies regardless of size, which are subject to this Part, are subject to the transfer pricing rules.

Section 543: Profit: financing-cost ratio

1706. This section provides that if the result of the sum specified in subsection (2) is less than 1.25, “the excess” calculated in accordance with subsection (3) is charged to corporation tax. It is based on sections 115(1) to (3) and 134(1) of, and paragraph 4 of Schedule 17 to, FA 2006.
1707. This section enacts regulations 12 and 13 of [SI 2006/2864](#). See *Change 43* in Annex 1.
1708. *Subsection (2)* sets out the formula to calculate the ratio used to arrive at the “excess” in subsection (3). The definitions of “PP” and “PFC” refer to “property profits” and “property financing costs” and are defined further in section 544.
1709. This section applies to the relevant proportion of a joint venture company’s property profits and property financing costs in the same way as for any other member of a group UK REIT. See *Change 43* in Annex 1.
1710. *Subsection (3)* provides that the difference between the actual property financing costs of the UK REIT and the amount that would cause the sum specified in subsection (2) to be 1.25 (“the excess”), is charged to corporation tax. *Subsections (4) and (5)* provide that the excess amount is treated as if it were profits of residual business of the principal company of a group UK REIT or a company UK REIT. This means that the rate of tax is the main rate of corporation tax as mentioned in section 534(3).

Section 544: Meaning of “property profits” and “property financing costs”

1711. This section defines “property profits” and “property financing costs” for the purposes of section 543. It is based on sections 115(2) and (4), 120(1) and 134(1) of, and paragraphs 3 and 14 of Schedule 17 to, FA 2006.
1712. *Subsections (1) and (3)* define “property profits” and “property financing costs” respectively for the purposes of section 543.

Section 545: Cancellation of tax advantage

1713. This section provides that an officer of Revenue and Customs may counteract a tax advantage obtained by a company which is, or is a member of, a UK REIT (including a joint venture company) if the officer thinks that the company has tried to obtain a tax advantage. It is based on sections 117(1) to (5) and 134(1) of, and paragraph 15(1) of Schedule 17 to, FA 2006.
1714. *Subsections (1), (4) and (6)* refer to “an officer of Revenue and Customs” rather than to “the Commissioners for Her Majesty’s Revenue and Customs”. See *Change 5* in Annex 1.
1715. *Subsection (3)* sets out how a tax advantage may be counteracted. Subsection (3)(a) provides that an assessment may be made on the company. For non-UK companies, such an assessment may be to income tax or corporation tax.
1716. *Subsection (4)* provides that an officer of Revenue and Customs may assess (in addition to the assessment mentioned in subsection (3)(a)) a UK REIT to an amount of tax to cancel out the tax advantage.

Section 546: Appeal against notice under section 545

1717. This section provides that a company which is, or is a member of, a UK REIT (including a joint venture company) may appeal against a notice given under section 545. It is

*These notes refer to the Corporation Tax Act 2010
(c.4) which received Royal Assent on 3 March 2010*

based on section 117(6) to (8) and 134(1) of, and paragraph 15(2) of Schedule 17 to, FA 2006.

1718. *Subsection (2)* refers to “an officer of Revenue and Customs” rather than to “the Commissioners for Her Majesty’s Revenue and Customs”. See *Change 5* in Annex 1.

Section 547: Funds awaiting reinvestment

1719. This section determines how cash proceeds from the sale of assets used for property rental business are treated. It is based on sections 118 and 134(1) of, and paragraph 16 of Schedule 17 to, FA 2006.

1720. *Subsection (1)* provides that the section applies if a company which is, or is a member of, a UK REIT disposes of an asset used wholly and exclusively for the purposes of property rental business and holds the proceeds in cash.

1721. Section 118 of FA 2006 applies to a company that disposes of an asset and holds cash. Section 134 of FA 2006 applies the rule to a group as it applies to a company. A group cannot dispose of an asset but it may hold cash. There is no justification in section 134 of FA 2006 for saying that the cash has to be held in a particular place in the group.

1722. So this section refers to a member of a group disposing of an asset but makes clear that the proceeds may be held within the group by a company different from that which disposed of the asset.

1723. *Subsection (5)* deals with assets that have had mixed use. The “wholly and exclusively” rule in subsection (1)(a) is relaxed for periods of mixed use that are of at least one year. The section applies the one year test to the aggregate of the periods of mixed use.

1724. This section also applies to:

- the worldwide property rental business of non-UK companies; and
- joint venture companies (including non-UK joint venture companies).