



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 12

#### REAL ESTATE INVESTMENT TRUSTS

### CHAPTER 11

#### PART 12: SUPPLEMENTARY

#### *Miscellaneous*

#### **599 Calculation of profits**

- (1) This section is about the calculation of profits for the purposes of any provision of this Part which provides that profits are to be calculated in accordance with this section.
- (2) Profits are to be calculated in the same way as profits of a UK property business are calculated for the purposes of the charge to tax under Chapter 3 of Part 4 of CTA 2009 (as to which see, in particular, section 210 of that Act).
- (3) Section 211(1) of CTA 2009 (property businesses: disregard of credits and debits from loan relationships and derivative contracts) does not apply in respect of—
  - (a) a loan relationship so far as it relates to property rental business,
  - (b) a hedging derivative contract so far as it relates to property rental business, or
  - (c) embedded derivatives so far as the host contract is entered into for the purposes of property rental business.
- (4) For the purposes of subsection (3)—
  - (a) a derivative contract is hedging in relation to a company so far as—
    - (i) it is acquired as a hedge of risk in relation to an asset by the exploitation of which property rental business is conducted, or
    - (ii) it is acquired as a hedge of risk in relation to a liability incurred in connection with property rental business,

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- (b) a designation of a contract as wholly or partly hedging for the purposes of a company's accounts is conclusive,
  - (c) “embedded derivatives” is to be read in accordance with section 584 or 586 (as the case may be) of CTA 2009, and
  - (d) “the host contract” means—
    - (i) the contract mentioned in section 584(1)(a) of CTA 2009, or
    - (ii) the contract mentioned in section 586(1)(a) of that Act, as the case may be.
- (5) In subsection (4)(a)(i) the reference to an asset includes a reference to—
- (a) the value of an asset, and
  - (b) profits attributable to it.
- (6) Profits are to be calculated without regard to items giving rise to credits or debits which would be within Part 7 of CTA 2009 (derivative contracts) but for section 589(2)(b) and (c) of that Act (exclusion of share-based and unit trust-based contracts).
- (7) Income and expenditure relating partly to property rental business and partly to residual business are to be apportioned on a just and reasonable basis.
- (8) Section 3(1) of CAA 2001 (claims for capital allowances) does not apply; and any allowance which could be claimed under that provision is to be made automatically and reflected in the calculation of profits.
- [<sup>F1</sup>(9) No account is to be taken of Part 7ZA of this Act (restrictions on obtaining certain deductions in respect of carried-forward losses).]

**Textual Amendments**

- F1** S. 599(9) inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 168](#)

**[<sup>F2</sup>599A Amount of distribution consisting of share capital issued in lieu of cash dividend**

- (1) For the purposes of this Part, the amount of a distribution, so far as it consists of share capital issued in lieu of a cash dividend, is the cash equivalent of the share capital.
- (2) Section 412(1), (2), (4) and (5) of ITTOIA 2005 (meaning of “cash equivalent of share capital”) applies for the purposes of this section as it applies in relation to share capital issued as mentioned in section 410(1)(a) of that Act. ]

**Textual Amendments**

- F2** S. 599A inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 4 para. 10](#)

**Modifications etc. (not altering text)**

- C1** S. 599A applied by 2007 c. 3, s. 973(3B) (as inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 4 para. 2](#))

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## **600 Power to make regulations about cases involving related persons**

- (1) If they consider it expedient in the public interest the Treasury may make regulations about the application of this Part to activities or situations which involve, or arise in connection with, a relationship between a REIT company and another person.
- (2) In subsection (1) “REIT company” means—
  - (a) a company UK REIT, or
  - (b) a company which is a member of a group UK REIT.
- (3) The regulations may, in particular—
  - (a) treat a specified person, or a person in specified circumstances, as forming part of a group UK REIT for specified purposes;
  - (b) provide for a specified provision which applies in respect of a members of a group UK REIT also to apply, with or without modifications, in respect of a specified person or a person in specified circumstances.
- (4) Regulations under this section may make provision in relation to accounting periods ending on or after the date on which the regulations are made.
- (5) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the House of Commons.

## **601 Availability of group reliefs**

- (1) In the application of a provision specified in subsection (2) to a group of companies, the group so far as it carries on property rental business while it is a UK REIT is to be treated as a separate group, distinct from—
  - (a) the pre-entry group,
  - (b) the group so far as it carries on residual business while it is a UK REIT, and
  - (c) the post-cessation group.
- (2) The provisions mentioned in subsection (1) are—
  - (a) section 171 of TCGA 1992 (transfer of assets within group),
  - (b) sections 171A to 171C of TCGA (reallocation of gain or loss within group),
  - (c) sections 179A and 179B of TCGA 1992 (degrouching: reallocation of gain or loss, or rollover of gain, within group),
  - (d) Chapters 4 and 6 to 8 of Part 5 of CTA 2009 (loan relationships),
  - (e) Part 7 of that Act (derivative contracts),
  - (f) Part 8 of that Act (intangible assets),<sup>F3</sup>...
  - (g) Part 5 of this Act (group relief)<sup>F4</sup>, and
  - (h) Part 5A of this Act (group relief for carried-forward losses)]

### **Textual Amendments**

- F3** Word in s. 601(2)(f) omitted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by virtue of [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 169\(a\)](#)
- F4** S. 601(2)(h) and word inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 169\(b\)](#)

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## **602 Effect of deemed disposal and reacquisition**

A deemed disposal and reacquisition of an asset under this Part is to be taken into account for the purposes of any subsequent disposal (whether actual or deemed).

## **603 Regulations**

Regulations under this Part—

- (a) may make provision which applies generally or only in specified cases or circumstances,
- (b) may make different provision for different cases or circumstances, and
- (c) may contain incidental, supplemental, consequential and transitional provision and savings.

### *Interpretation*

## **604 Property rental business: exclusion of listed business**

- (1) Business of a class listed in the table in subsection (2) is not property rental business.
- (2) This is the table—

<i>Class</i>	<i>Description</i>
Class 1	Incidental letting of property (whether in the United Kingdom or elsewhere) which is held in connection with a trade in property.
Class 2	Letting of property which is held for use for administrative purposes in carrying on property rental business but is temporarily surplus to requirements for those purposes, so long as— <ul style="list-style-type: none"> <li>(a) the space let is small compared to the space occupied for administrative purposes, and</li> <li>(b) the letting is for a term of not more than 3 years.</li> </ul>
Class 3	Letting of property if the property would fall in accordance with generally accepted accounting practice to be described as owner-occupied (but see subsection (3)).
Class 4	The provision of services in connection with property outside the United Kingdom where the services would not fall within Chapter 3 of Part 4 of CTA 2009 if provided in connection with property in the United Kingdom.
Class 5	Entering into arrangements which are such that a finance arrangement code (within the meaning given by section 770(2) of this Act or section 809BZM(2) of ITA 2007) applies (factoring of income etc: finance arrangements).

- (3) For the purposes of class 3, ignore the fact that a property may fall to be described as owner-occupied merely because of the provision by the company of services to an occupant who—
  - (a) is in exclusive occupation of the property, and
  - (b) is not connected with a member of the group.

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- (4) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
- (a) add a class to the table in subsection (2),
  - (b) amend a class (or provision made in relation to it) or make such provision in relation to a class as the Commissioners consider appropriate, or
  - (c) remove a class from the table (or provision made in relation to it).

## **605 Property rental business: exclusion of business producing listed income**

- (1) Business is not property rental business so far as it gives rise to income of a class listed in the table in subsection (2).

[<sup>F5</sup>(1A) But see section 549A which treats income falling within class 7 of the table as profits of property rental business.]

- (2) This is the table—

<i>Class</i>	<i>Description</i>
Class 1	All income in connection with the operation of a caravan site, if section 20(1) of ITTOIA 2005 (caravan sites) would apply in respect of any receipts in connection with the operation of the site.
Class 2	Rent in respect of an electric-line wayleave.
Class 3	Rent in respect of the siting of a pipeline for gas.
Class 4	Rent in respect of the siting of a pipeline for oil.
Class 5	Rent in respect of the siting of a mast or similar structure designed for use in a mobile telephone network or other system of electronic communication.
Class 6	Rent in respect of the siting of a wind turbine.
Class 7	Dividends from shares in— (a) the principal company of a group UK REIT, or (b) a company UK REIT.
Class 8	Income arising out of an interest in a limited liability partnership where section 1273(4) of CTA 2009 (winding up) applies.

[<sup>F6</sup>(2A) The reference in class 7 of the table in subsection (2) to dividends from shares includes share capital issued in lieu of a cash dividend (and the reference in subsection (1) to income is to be read accordingly).

(2B) Section 1051(2) to (4) (meaning of “share capital issued in lieu of a cash dividend”) applies for the purposes of subsection (2A) as it applies for the purposes of section 1049(1)(a).]

- (3) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
- (a) add a class to the table in subsection (2),
  - (b) amend a class (or provision made in relation to it) or make such provision in relation to a class as the Commissioners consider appropriate, or
  - (c) remove a class from the table (or provision made in relation to it).

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#### Textual Amendments

- F5** S. 605(1A) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 19 para. 11](#)
- F6** S. 605(2A)(2B) inserted (with effect in accordance with Sch. 4 para. 12 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 4 para. 11](#)

## 606 Groups

- (1) For the purposes of this Part a company (“the principal company”) and all its 75% subsidiaries form a group; and if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on.

This is subject to subsection (2).

- (2) A group does not include—
- (a) a company (other than the principal company) which is not an effective 51% subsidiary of the principal company,
  - (b) an insurance company,
  - (c) an insurance subsidiary, or
  - (d) an open-ended investment company.
- (3) A company cannot be a member of more than one group; and if a company would be a member of more than one group, section 170(6) of TCGA 1992 (capital gains tax: groups) applies to determine the group of which it is a member.
- (4) Subsection (3) does not apply for the purposes of Chapter 10.
- (5) In this section—

“effective 51% subsidiary” has the meaning given by section 170(7) of TCGA 1992 (groups of companies),

“75% subsidiary” has the meaning given by section 1154(3) (subsidiaries),

“insurance company” has the meaning given by [<sup>F7</sup>section 65 of FA 2012],

“insurance subsidiary” means a company in which at least 75% of the ordinary shares are held by one or more insurance companies, and

“open-ended investment company” has the meaning given by section 613.

#### Textual Amendments

- F7** Words in s. 606(5) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 16 para. 219](#)

## 607 Meaning of “entry” and “cessation” etc

- (1) In this Part “entry” means—
- (a) in the case of a group, the time when the group becomes a group UK REIT, and
  - (b) in the case of a company, the time when the company becomes, or becomes a member of, a UK REIT.
- (2) In this Part “cessation” means—
- (a) in the case of a group, the time when the group ceases to be a UK REIT, and

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- (b) in the case of a company, the time when the company ceases to be, or to be a member of, a UK REIT.
- (3) In this Part, in relation to a group or company—
- (a) references to the “pre-entry group” or “pre-entry company” are references to the group or company before entry, and
  - (b) references to the “post-cessation group” or “post-cessation company” are references to the group or company after cessation.

### **608 References to assets**

- (1) A reference in this Part to an asset includes a reference to—
- (a) part of an asset, and
  - (b) an interest in, or right in relation to, an asset.
- (2) A reference in this Part to assets used in business of a company includes a reference to assets—
- (a) which were acquired for the purpose of that business and which are not being used in another business,
  - (b) which are available for use in that business, or
  - (c) which are in any other way held in respect of, or associated or connected with, that business.
- (3) For the purposes of this Part an asset is “involved” in a business if it is property involved in the business as described in section 529(4)(a).

### **609 Definitions**

In this Part—

“accounting period 1”, in relation to a company that is, or is a member of, a UK REIT, means the accounting period that begins on entry (in accordance with section 536(5)),

“company” has the meaning given by section 170(9) of TCGA 1992, and

“market value” has the same meaning as in TCGA 1992 (see sections 272 and 273 of, and Schedule 11 to, that Act).

**Changes to legislation:**

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