
REAL ESTATE INVESTMENT TRUSTS: ARTIFICIAL RESTRUCTURING

Who is likely to be affected?

1. Companies or groups of companies considering joining the Real Estate Investment Trust (REIT) regime.

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 providing a power to make regulations that will prevent restructuring within groups from enabling companies to meet the REIT conditions and tests when, without the restructuring, they would not.
3. The measure will also exclude owner occupied properties from the regime.
4. The measure will also remove an obstacle in tax legislation that would stop potential REITs with 'tied premises' from entering the regime.

Operative date

5. The measure will have effect on and after 22 April 2009.

Current law and proposed revisions

6. The rules for the REIT regime are contained in Part 4 of the Finance Act (FA) 2006, in Schedules 16 and 17 to FA 2006 and in Regulations.
7. Property rental companies or groups can elect to join the REIT regime if they meet the entry requirements in the legislation and, on an ongoing basis, the conditions for staying in the regime. The requirements include conditions relating to the company itself; to the properties it rents; and to the nature of its business and assets.

8. A number of groups have proposed ways of restructuring their activities that would allow properties to be let by one member of a group to another without the properties leaving the group, while still meeting the REIT conditions. It was not the intention of the REIT legislation that this should be allowed. As a result, previously non-qualifying groups could become groups to which the legislation applies.
9. Primary legislation will be amended to introduce a power for HM Treasury to make regulations concerning the use of artificial structures to circumvent the existing REIT legislation.
10. Legislation will also be amended so that owner occupied properties are excluded from the tax exempt business of the REIT.
11. Finally, the REIT legislation will be amended so that the 'tied premises' legislation in the Income and Corporation Taxes Act 1988 is disapplied for companies or groups of companies seeking to join the REIT regime.

Further advice

12. If you have any questions about this change, please contact Tony Linehan on 020 7147 0527 (email: tony.linehan@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk