

---

S T A T U T O R Y   I N S T R U M E N T S

---

**2007 No. [wxyz]**

**CORPORATION TAX**

**The Real Estate Investment Trusts (Breach of Conditions)  
(Amendment) Regulations 2007**

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	***

The Treasury make the following Regulations in exercise of the powers conferred by [sections 114 to 116, 122, 129(2)(a) and (b), 134(1) and 144] of the Finance Act 2006(a).

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Real Estate Investment Trust (Breach of Conditions) (Amendment) Regulations 2007 and shall come into force on [day] [month] 2007.

(2) These Regulations have effect in relation to accounting periods beginning on or after 1st January 2007.

**Amendments to the Real Estate Investment Trust (Breach of Conditions) Regulations 2006**

2. The Real Estate Investment Trust (Breach of Conditions) Regulations 2006(b) are amended as follows.

**Amendment of regulation 1**

3.—(1) Regulation 1(citation, commencement and interpretation) is amended as follows.

(2) After paragraph (1) insert—

“(1A) In these Regulations—

- (a) a reference to Part 4 is a reference to Part 4 of the Finance Act 2006,
- (b) a reference to a section (without more) is a reference to that section of the Finance Act 2006, and
- (c) a reference to a paragraph of Schedule 17 is a reference to that paragraph of Schedule 17 to the Finance Act 2006.”.

(3) In paragraph (2)—

(a) after the definition of “the Commissioners” insert—

““day 1 breach” means the breach of Condition 2 in section 108 mentioned in regulation 7(1)(b);”;

---

(a) 2006 c. 25; section 116 was amended by paragraph 7 of Schedule [X] to the Finance Act 2007 (c. [y]).  
(b) S.I. 2006/2864.

- (b) in the definition of “MCT” omit “and” at the end of paragraph (b);
- (c) omit “a reference (without more) to a numbered provision of the Finance Act 2006, is a reference to the provision bearing that number”; and
- (d) insert the following definition at the end—
  - ““specified accounting period” means the accounting period mentioned in regulation 7(1)(a)”.

**Substitution of regulation 7**

4. For regulation 7 (breach of balance of business conditions) substitute—

**“Initial breach of Condition 2 in section 108**

7.—(1) This regulation applies to a company if—

- (a) the company gives a notice under section 109 specifying an accounting period from the beginning of which Part 4 is to apply to the company (the “specified accounting period”), and
- (b) at the beginning of the specified accounting period the company is in breach of Condition 2 in section 108 (“the day 1 breach”).

(2) If at the beginning of the following accounting period the company satisfies the requirements of Condition 2 in section 108, Part 4 applies to the company from the beginning of the specified accounting period.

(3) If at the beginning of the following accounting period the company does not satisfy the requirements of Condition 2 in section 108, the company shall be treated as if Part 4 had never applied to it [and all necessary adjustments shall be made].

**Tax charge for specified accounting period**

7A.—(1) A company to which regulation 7 applies shall be chargeable to corporation tax under Case VI of Schedule D on an amount of notional income calculated in accordance with this regulation.

(2) The notional income shall be treated as arising at [the beginning][the end] of the specified accounting period—

- (a) to C (residual), or
- (b) if the company is a member of a group to which Part 4 applies, to the company as a member of G (residual).

(3) The notional income is—

$$\left( \frac{\text{Market Value of Assets}}{\text{Tax Rate}} \right) \times 2\% - \text{Entry Charge Notional Income}$$

(4) In paragraph (3)—

“Market Value of Assets” means—

- (a) the aggregate market value of assets involved in the property rental business of C (tax exempt) at the end of the specified accounting period (ignoring any asset of negative market value), or
- (b) if the company is a member of a group to which Part 4 applies, the aggregate market value of assets involved in the UK property rental business of the group (tax exempt) at the end of the specified accounting period (ignoring any asset of negative market value);

“Tax Rate” means—

- (a) the percentage rate at which C (residual) is chargeable to tax on profits, or

- (b) if the company is a member of a group to which Part 4 applies, the percentage rate at which the company, as a member of G (residual), is chargeable to tax on profits;

“Entry Charge Notional Income” means—

- (a) the notional income calculated in accordance with section 112(3) which is chargeable on the company, or
- (b) if the company is a member of a group to which Part 4 applies, the notional income calculated in accordance with section 112(3) which is chargeable on the members of the group.

(5) If the company holds an asset at the beginning of the specified accounting period but disposes of that asset during that accounting period, the Entry Charge Notional Income shall be reduced by an amount calculated as follows—

$$\left( \frac{\text{Asset Market Value}}{\text{Aggregate Market Value}} \right) \times \text{Entry Charge Notional Income}$$

(6) In paragraph (5)—

“Asset Market Value” means the market value of the asset at the beginning of the specified accounting period;

“Aggregate Market Value” means the aggregate market value of assets treated as sold and reacquired under section 111(2) (ignoring any asset of negative market value);

“Entry Charge Notional Income” has the same meaning as in paragraph (4).

(7) No loss, deficit, expense or allowance may be set off against notional income or tax arising under this regulation.

#### **Modifications of regulation 7A for joint ventures and joint venture groups**

**7B.**—(1) This regulation applies if a company to which regulation 7 applies has given a joint venture look through notice—

- (a) under the Real Estate Investment Trusts (Joint Ventures) Regulations 2006(a), or
- (b) under the Real Estate Investment Trusts (Joint Venture Groups) Regulations 2007(b).

(2) Regulation 7A applies with the following modifications.

(3) In paragraph (4) of regulation 7A, the definition of “Market Value of Assets” also includes—

- (a) in a case where paragraph (1)(a) applies, the aggregate market value of assets involved in the property rental business of the joint venture company (tax exempt) at the end of the specified accounting period (ignoring any asset of negative market value), or
- (b) in a case where paragraph (1)(b) applies, the aggregate market value of assets involved in the property rental business of the joint venture group (tax exempt) at the end of the specified accounting period (ignoring any asset of negative market value).

(3) In paragraph (4) of regulation 7A, the definition of “Entry Charge Notional Income” also includes—

- (a) in a case where paragraph (1)(a) applies, the notional income calculated in accordance with section 112(3) which is chargeable on the joint venture company, or

---

(a) S.I. 2006/2866.  
(b) S.I. 2007/[pqrs].

- (b) in a case where paragraph (1)(b) applies, the notional income calculated in accordance with section 112(3) which is chargeable on the joint venture group.

### **Section 109 accounting period asset test breach**

**7C.**—(1) This regulation applies to a company if—

- (a) Part 4 applies to the company, and
- (b) the company does not satisfy the requirements of Condition 1 or 2 in section 108 in respect of an accounting period subsequent to the specified accounting period.

(2) If the company does not satisfy the requirements of Condition 1 in section 108, Part 4 shall continue to apply to the company if the profits arising from tax-exempt business referred to in section 108(2) are not less than 50% of the company's total profits for that accounting period.

(3) If the company does not satisfy the requirements of Condition 2 in section 108, Part 4 shall continue to apply to the company if the value of the assets involved in tax-exempt business referred to in section 108(3) have not fallen below 50% of the total value of assets held by the company.

(4) But if the company does not satisfy the requirements of Condition 1 or 2 in section 108 in any three consecutive accounting periods, the breach is not to be considered as minor and the company may not rely upon this regulation for the purposes of section 129(2)(a).

(5) The specified accounting period is not to be taken into account in reckoning the three consecutive accounting periods.

(6) For the purposes of section 129(2)(a), the specified number of occasions on which the company can rely on this regulation is—

- (a) two in respect of a breach of Condition 1, and
- (b) two in respect of a breach of Condition 2.

(7) For the purposes of section 129(2)(a), the specified period is the ten year period beginning on the day on which the company first failed to satisfy Condition 1 or 2 in section 108 and ending on the day immediately before the ten year anniversary of that period.

(8) The day 1 breach is not to be taken into account in determining the day on which the ten year period begins.”.

### **Amendment of regulation 8**

**5.** In regulation 8 (multiple breaches of separate conditions) for paragraph (2) substitute—

“(2) For the purposes of section 129(2)(a), the specified number of occasions on which the company can rely on regulation 2 ,3 ,5 or 7C of these Regulations is four.

(3) In reckoning the number of breaches of sections 106 to 108 the following are not to be taken into account—

- (a) breaches of Condition 3 or 4 in section 106 in consequence of a company to which Part 4 applies becoming part of a group (or of another group) to which Part 4 applies;
- (b) the day 1 breach.

(4) For the purposes of section 129(2)(a) the specified period is the ten year period beginning on the day on which the company first failed to satisfy the condition set out in section 106(5) or (6), 107 or 108 and ending on the day immediately before the ten year anniversary of that period.

(5) The day 1 breach is not to be taken into account in determining the day on which the ten year period begins.”.

[Day/Month] 2007

Two of the Lords Commissioners for Her Majesty's Treasury

[abc]

[def]

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Real Estate Investment Trusts (Breach of Conditions) Regulations 2006 (S.I. 2006/2864) (“the principal Regulations”).

These Regulations [to be continued].

[There may well have to be a paragraph dealing with retrospection matters.]

[And the final paragraph will need to deal with the matter of a regulatory impact assessment.]