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Mr Chancellor of the Exchequer

Amendment 27

Page **98**, line **43** [Clause 107], at end insert—

‘(a) no account shall be taken of the fact that a property may fall to be described as owner-occupied by reason only of the provision by the company of services to an occupant who is in exclusive occupation of the property and is not connected with the company (within the meaning given by section 839 of ICTA).’

Amendment 28

Page **349**, line **5** [Vol II] [*Schedule 16*], leave out paragraph 1 and insert—

‘1 Incidental letting of property (whether in the United Kingdom or outside) which is held in connection with a trade in property.’

Amendment 29

Page **349**, line **15** [Vol II] [*Schedule 16*], at end insert—

‘2A (1) Letting of property if the following two conditions are satisfied.

(2) Condition 1 is that the property is let—

(a) by one member of a group to another, or

(b) by a member of a group to a company the shares in which are stapled to the shares of a member of the group.

(3) Condition 2 is that the property would fall in accordance with generally accepted accounting practice to be described as owner-occupied.

(4) For the purpose of sub-paragraph (2)(b), shares of one company are stapled to shares of another if in consequence of the

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nature of the rights attaching to the shares of the one company (including any terms or conditions attaching to the right to transfer the shares) it is necessary or advantageous for a person who has, disposes of or acquires shares of that company also to have, to dispose of or to acquire a holding of shares of the other company.’

Amendment 30

Page **351**, line **9** [**Vol II**] [*Schedule 17*], at end insert—

‘(1A) In section 107(7)(aa) a reference to the company shall be treated as a reference to a member of the group.’

SUMMARY

1. The first and fourth amendments ensure that exclusion from the tax-exempt ring fence of owner-occupied property is limited to properties that are occupied by tenants who are not connected with the UK-REIT. The second amendment excludes from the ring fence property that is held as trading stock. The third amendment ensures that rental from ‘owner-occupied’ properties is excluded from the tax-exempt ring fence.

DETAILS

2. The first amendment narrows the meaning of ‘owner-occupied’ for the purposes of Condition 3 of the ‘tax-exempt business’ test in clause 107. This condition excludes from the tax-exempt business property that would, under generally accepted accounting practice, be treated as ‘owner-occupied’.
3. Because of the way accounting practice deals with services provided to tenants, a property occupied exclusively by a third-party tenant may in some circumstances fall to be treated as ‘owner-occupied’ for accounting purposes.

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4. This amendment stops this type of ‘owner-occupied’ property from being excluded from the tax-exempt ring fence business. The fourth amendment, to paragraph 6, Schedule 17, ensures that the rule also applies where the UK-REIT is a group of companies.
5. The second amendment replaces the exclusion from the tax-exempt ring fence of rent incidental to property development trade with an exclusion for rent incidental to any kind of trade in property. This means that property held as trading stock does not become part of the tax-exempt ring fence business even though it may give rise to rental income.
6. The third amendment adds two types of business to those that are excluded from the definition of ‘property rental business’ for the purposes of clause 104. One type of business that is added is letting between members of a group where the property would be treated as owner-occupied for accounting purposes. In other words, intra-group rental from owner-occupied property is not part of the tax-exempt ring fence business. This ensures that owner-occupied property is not qualifying property for the ‘balance of business’ tests, does not attract an Entry Charge when a company or group becomes a UK-REIT and any intra-group rental is taxed and relieved in the normal way.
7. The other type of business added to the excluded list by the third amendment is letting between group members and a company whose shares are ‘stapled’ to a group member’s shares. The consequences are the same as for intra-group letting described above.

BACKGROUND NOTE

8. The International Accounting Standard (IAS) 40 definition of ‘owner-occupied’ property includes any property used in the supply of services. This means that where the terms of a tenancy require the landlord to provide more than the usual range of

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services, the building may be classed as ‘owner-occupied’ and thus excluded from the tax-exempt ring fence.

9. For tax purposes, the payments made by the tenant would be divided between an amount for occupation of the building and an amount for the additional services provided. The first amount is chargeable to tax under Schedule A, the second as trading profits under Case I Schedule D.
10. Where the tenant has exclusive rights to occupy the building, excluding this Schedule A rent from the ring fence in these circumstances is an unintended consequence of the application of IAS 40.