

**HM REVENUE AND CUSTOMS  
RESOLUTION 49**

**FINANCE BILL 2006  
COMMITTEE  
CLAUSES 116 and 130  
SCHEDULE 17**

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**Amendment 144**

Clause **116**, page **103**, line **28 [Vol I]**, after 'section', insert '106(5) or (6)'.

**Amendment 145**

Clause **116**, page **103**, line **32 [Vol I]**, after 'section', insert 106(5) or (6)'.

**Amendment 146**

Clause **116**, page **103**, line **34 [Vol I]**, at end insert -

- (a) provide for this Part to cease to apply to a company at a time specified by or determined in accordance with the regulations (which may be before the breach of a requirement);
- (b) provide for this Part to continue to apply to a company with specified modifications'.

**Amendment 152**

Clause **130**, page **111**, line **35 [Vol I]**, leave out 'a requirement' and insert 'Condition 1,2,5 or 6'

**Amendment 153**

Clause **130**, page **111**, line **40 [Vol I]**, Leave out 'a requirement' and insert 'Condition 1,2,5 or 6'

**Amendment 162**

Schedule **17**, page **93**, line **39 [Vol II]**, at end insert -

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*'Takeovers*

- 33 (1) This paragraph applies if a company to which Part 4 applies, or a member of a group to which Part 4 applies, becomes a member of a group (or of another group) to which Part 4 applies.
- (2) Where this paragraph applies, the following provisions of Part 4 shall not have effect -
- (a) section 111 (as modified by paragraphs 9 and 10 above),
  - (b) section 112 (as modified by paragraph 11 above), and
  - (c) section 131 (or section 131 as modified by paragraphs 25 and 26 above),'

**SUMMARY**

1. This group of amendments makes changes to the provisions dealing with the effect of a breach of two of the company conditions set out in clause 106.

**DETAILS**

2. Amendments 144 and 145 make changes to clause 116 dealing with the regulation making power in relation to a minor or inadvertent breach of one of the conditions of the regime. The effect of the amendment is that the a breach of the conditions set out in clause 106(5) and (6), which are the close company test and

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the listing condition, may also be dealt with as a minor breach in certain circumstances.

3. Amendment 146 adds to the list in clause 116 of the consequences of a breach of a regime condition that may be imposed by the regulations. These are that they can provide for the regime to continue to apply to a company notwithstanding the breach and/or that where the regime is deemed to cease to apply, the timing of this cessation can be determined through the regulations.
4. Amendments 152 and 153 make minor alterations to clause 130 dealing with automatic exit from the regime on breach of a regime condition as a consequence of amendments 1 and 2 described above. The amendments ensure that a breach of the close company condition or listing condition would not result in automatic expulsion from the regime if it is appropriate for this breach to be dealt with through the minor breach provisions of clause 116 instead.
5. Amendment 162 deals with the situation when one UK-REIT is taken over by another UK-REIT. The amendment means that, in these circumstances, the normal provisions that would apply when a company joins or leaves a UK-REIT group do not apply when that company is itself a UK-REIT. This also means that an entry charge will not be collected.

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**Amendment 147**

Clause **121**, page **106**, line **26** [Vol I], after 'company', insert 'within the charge to corporation tax'.

**Amendment 148**

Clause **121**, page **106**, line **28** [Vol I], leave out 'not a company' and insert 'a person other than a company within the charge to corporation tax'.

**Amendment 149**

Clause **121**, page **107**, line **7** [Vol I], leave out 'Section 231 of ICTA' and insert 'Sections 231 of ICTA and 397 of ITTOIA 2005'.

**Amendment 150**

Clause **125**, page **110**, line **5** [Vol I], leave out 'earlier' and insert 'later'.

**Amendment 151**

Clause **129**, page **111**, line **23** [Vol I], leave out 'Commissioners' and insert 'Treasury'.

**Amendment 157**

Schedule **17**, page **88**, line **38** [Vol II], leave out 'UK property' and insert 'property rental'.

**Amendment 158**

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SC 150	110	5
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Schedule 17, page 88, line 42 [Vol I], Leave out 'property'

**Amendment 159**

Schedule 17, page 88, line 44 [Vol II], after 'another', insert, 'as set out in the financial statement under paragraph 31(2)(a).'

**SUMMARY**

1. This group of amendments effects the correction of various minor drafting errors.

**DETAILS**

2. Amendments 147 and 148 make minor changes to the drafting in clause 121 which deals with the liability to tax for a shareholder which receives a distribution from the tax-exempt profits of a UK-REIT. The amendment makes clear that the Schedule A treatment of this receipt applies only in circumstances where the shareholder is within the charge to corporation tax. Otherwise, the receipt is subject to income tax as income from a UK property business.
3. Amendment 149 amends a minor drafting error to ensure that the tax credit that would normally attach to a dividend from a UK company does not attach to a distribution from the tax-exempt profits of a UK-REIT paid to an individual. The current drafting only applies to distributions paid to a company.
4. Amendment 150 amends a minor drafting error in clause 125 to ensure that the policy intention is reflected accurately. Clause 125(7) determines the date at which the fair value of a property is

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measured for the purpose of the development test applied in the UK-REIT regime. The amendment ensures that this date is the later of the date when a company owning the property joins the regime or the acquisition of the property by a UK-REIT rather than the earlier of these dates as currently drafted.

5. Amendment 151 makes a minor change to clause 129 to replace the Commissioners for Her Majesty's Revenue and Customs with the Treasury as the regulation making body for the purpose of setting out details of when a company may be issued with a notice requiring removal from the regime. The amendment is to ensure that regulation-making powers in this clause interact properly with powers to make regulations in connection with minor and inadvertent breaches.
6. Amendments 157 and 158 make minor drafting changes to the references for the financial statements so that the definitions that are used to identify the UK business of a UK-REIT are those that are defined elsewhere in the legislation.
7. Amendment 159 identifies the precise financial statement that should be used to derive the amount of financing costs relevant to the interest cover ratio for a group UK-REIT.

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**Amendment 154**

Schedule 17, page 87, line 39 [Vol II], at end insert -

'(i) as if section 111 applied to UK property rental business (within the meaning given by paragraph 32(1)) carried on by them,'.

**Amendment 155**

Schedule 17, page 87, line 40 [Vol I], after 'tax', insert 'under Case VI of Schedule D'.

**Amendment 156**

Schedule 17, page 87, line 41 [Vol II], Leave out 'under Chapter 9 of Part 6 of ITTOIA (other income)'.

**Amendment 161**

Schedule 17, page 93, line 30 [Vol II], leave out from first 'dividend' to 'shall' in line 31 and insert 'which represents (wholly or partly and directly or indirectly) profits of UK property rental business of a non-UK resident member of the group, such proportion of the dividend as represents those profits'.

**SUMMARY**

1. This group of amendments make changes to the parts of clauses which apply to a non resident member of a group UK-REIT which holds UK property.

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### **DETAILS**

2. Amendment 154 makes an addition to the provisions dealing with the imposition of the entry charge in respect of non-resident members of a group UK-REIT. This clarifies that UK property owned by these companies will be subject to the entry charge.
3. Amendments 155 and 156 clarify the drafting relating to the imposition of the entry charge relating to non-resident members of a group UK-REIT. The amended drafting makes clear that, in that circumstance, the entry charge, which is normally a charge to corporation tax under Case VI of Schedule D, should be treated as though it were a charge to income tax. It also ensures that the charge should be a free standing income tax charge rather than a charge under Chapter 9 of Part 6 of ITTOIA as currently drafted.
4. Amendment 161 ensures that dividends which are paid out of profits deriving from UK property owned by a non resident member of a group UK-REIT are treated in same way whether they are paid directly from that company or via an intermediate overseas holding company.

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**Amendment 160**

Schedule 17, page 93, line 10 [Vol II], leave out sub-paragraph (2) and insert -

'(2) Business carried on by a non-UK resident company is property rental business for the purposes of this Part if the business would be property rental business within the meaning given by section 104 if it were carried on by a UK resident company.'

**SUMMARY**

1. This amendment clarifies the meaning of property rental business for a non-UK resident member of a group UK-REIT.

**DETAILS**

2. Amendment 160 clarifies how the definition of property rental business that has been used for the purposes of the single company regime should apply in relation to a non resident member of a group UK-REIT. The definition uses terms that are relevant to a company subject to UK corporation tax and the amendment ensures that it should also apply to a non resident company as if it were UK resident.