HM Revenue & Customs

Real Estate Investment Trusts: including REITs as institutional investors

Who is likely to be affected?

UK and foreign Real Estate Investment Trusts (REITs).

General description of the measure

Classes of institutional investor that are specifically listed within the REITs rules can invest in REITs without causing the REIT to violate the non-close company rule. The measure will include UK REITs and their foreign equivalents as 'institutional investors'.

Policy objective

The measure is aimed at providing three benefits to the REIT sector: facilitating joint venture REITs; enabling specialism by REIT investors; and promoting transfer of international expertise. By attracting more international and institutional capital into the UK the measure is expected to result in a more competitive and efficient UK real estate and REIT sector.

Background to the measure

REITs are a tax advantaged vehicle introduced to encourage investment in the property sector.

The Government announced at Budget 2013 that it was to undertake an informal consultation on reforms to the REIT regime to assess the potential appetite for including REITs as 'institutional investors' and the potential tax risk of such a measure (*Including Real Estate Investment Trusts (REITs) as 'institutional investors'*). The consultation on the measure took place between 20 March 2013 and 14 June 2013.

Allowing REITs to be treated as 'institutional investors' will further facilitate joint ventures and other co-investment arrangements between REITs and other investors, and therefore give UK REITs access to more financing opportunities.

Detailed proposal

Operative date

This measure will have effect on and after 1 April 2014.

Current law

The legislation is within part 12 Corporation Tax Act 2010 (CTA 2010).

Section 528(4)(a) states that a UK REIT cannot be a close company.

However, under section 528(4A) CTA 2010 a close company that is only close because it has a participator which is an 'institutional investor' will not violate the non-close company rule.

REITs are not included in the list of institutional investors within section 528(4A) and thus their shareholding in a REIT can cause that REIT to violate the rule.

Proposed revisions

Secondary legislation will be introduced to make the following changes:

REITs will be included in the list of institutional investors within section 528(4A) CTA 2010.

Both UK and foreign equivalent REITs will be included in the list.

Summary of impacts

<table>
<tr><td rowspan="3">Exchequer impact (£m)</td><td>2013-14</td><td>2014-15</td><td>2015-16</td><td>2016-17</td><td>2017-18</td><td>2018-19</td></tr>
<tr><td>-</td><td>negligible</td><td>negligible</td><td>negligible</td><td>negligible</td><td>negligible</td></tr>
<tr><td colspan="6">This measure is expected to have a negligible impact on the Exchequer.</td></tr>
<tr><td>Economic impact</td><td colspan="6">The measure is not expected to have any significant economic impacts.</td></tr>
<tr><td>Impact on individuals and households</td><td colspan="6">The measure will have no impact on individuals and households.</td></tr>
<tr><td>Equalities impacts</td><td colspan="6">The measure does not have a direct equalities impact as it focuses on institutions rather than protected groups. It is not expected that the measure will have an indirect impact on any protected equality group.</td></tr>
<tr><td>Impact on business including civil society organisations</td><td colspan="6">This measure is expected to have a negligible impact on businesses or civil society organisations. The measure will allow REITs to hold majority shareholdings in other REITs without violating the non-close company rule. It will also attract further international and institutional capital into the UK real estate sector and give UK REITs access to more financing opportunities.</td></tr>
<tr><td>Operational impact (£m) (HMRC or other)</td><td colspan="6">This measure is expected to have a negligible operational impact.</td></tr>
<tr><td>Other impacts</td><td colspan="6">Other impacts have been considered and none have been identified.</td></tr>
</table>

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Allana Sheil on 03000 586059 (email: allana.sheil@hmrc.gsi.gov.uk).

STATUTORY INSTRUMENTS

2014 No.

CORPORATION TAX

The Real Estate Investment Trust (Amendment of Section 528 of the Corporation Tax Act 2010) Regulations 2014

Made - - - -	***
Laid before the House of Commons	***
Coming into force - -	***

The Treasury make the following Regulations in exercise of the powers conferred by section 528(4B) of the Corporation Tax Act 2010(**a**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Real Estate Investment Trust (Amendment of Section 528 of the Corporation Tax Act 2010) Regulations 2014 and come into force on ***2014.

(2) These Regulations have effect in relation to groups of companies or companies which give notices under section 523 or 524 of the Corporation Tax Act 2010 specifying a date on or after **** 2014.

Amendment to the Corporation Tax Act 2010

2. In section 528(4A) of the Corporation Tax Act 2010 (conditions for company, meaning of "institutional investor")(**b**), at the end insert—

"(i) a UK REIT;

(j) a person who is resident in a territory outside the United Kingdom in accordance with the law of that territory relating to taxation and is, under the law of that territory, the equivalent of a UK REIT. "

Name
Name

Date — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 12 of the Corporation Tax Act 2010 sets out the Real Estate Investment Trusts legislation. Section 528 sets out conditions which must be met by a company to enter the regime. Condition D in section 528 is that a REIT cannot be a close company but the shareholding of an institutional investor will not, on its own, make a company close for these purposes, subsection (4A) defines

(**a**) 2010 c. 4, subsections (4A) and (4B) were inserted by paragraph 4 of Schedule 4 to the Finance Act 2012 (c. 14).
(**b**) Section 4A) was inserted by paragraph 4 of Schedule 4 to the Finance Act 2012 (c. 14).

what an institutional investor is for these purposes. These Regulations amend Section 528(4A) to include UK REITs and overseas entities which are equivalent to UK REITs in the list of institutional investors.

[TIIN]

EXPLANATORY MEMORANDUM TO

THE REAL ESTATE INVESTMENT TRUST (AMENDMENT OF SECTION 528 OF THE CORPORATION TAX ACT 2010) REGULATIONS

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 Classes of institutional investor that are listed within the Real Estate Investment Trust (REIT) rules can invest in REITs without causing the REIT to violate the non-close company rule. These Regulations amend that list to include UK REITs and their foreign equivalents as 'institutional investors'.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 These Regulations are made by the Treasury under section 528(4B) Corporation Tax Act 2010 (CTA 2010) and it is the first use of those powers.

4.2 One of the conditions for a company to qualify as a REIT is that it is not a close company or is a close company only because it has an institutional investor as a participator (section 528(4) CTA 2010).

4.3 Section 528(4A) lists persons who are "institutional investors".

4.4 Subsection (4B) provides that the treasury may by regulations amend the definition of "institutional investor" by inserting, omitting or amending the list in subsection (4A).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, David Gauke, will make a compatibility statement regarding Human Rights.

7. Policy background

7.1 REITs are a tax advantaged vehicles introduced to encourage investment in the real estate sector.

7.2 Finance Act 2012 made changes to the regime to encourage investment in REITs by institutional investors. Prior to this, investment by an institutional investor could cause a REIT to violate the requirement that a REIT was not a close company. The change was achieved by listing those institutional investors that would not cause the requirement to be breached. The primary legislation included a power for changes to be made by regulations to the list of institutional investors. REITs themselves were not included in the initial list of institutional investors.

7.3 The Government announced at Budget 2013 that it was to undertake an informal consultation on reforms to the REIT regime to assess the potential appetite for including REITs as 'institutional investors' and the potential tax risk of such a measure. The consultation on the measure took place in the Spring of 2013. The consultation attracted 13 responses.

7.4 Including a UK REIT and its non-UK equivalent in the list of institutional investors will provide three benefits to the REIT sector: facilitating joint venture REITs; enabling specialism by REIT investors; and promoting transfer of international expertise. By attracting more international and institutional capital into the UK the measure is expected to result in a more competitive and efficient UK real estate and REIT sector.

8. Consultation outcome

8.1 The informal consultation - *Including Real Estate Investment Trusts (REITs) as "institutional investors"* - was launched on 20 March 2013 and closed on 14 June 2013. The Government received a total of 13 written responses from Stakeholders representing existing UK and foreign REITs, tax advisors and UK and foreign property industry associations. The respondents broadly welcomed the proposed change.

8.1 Having analysed the responses to the consultation and assessed the potential implications for tax receipts and the wider impact on the REIT regime, the Government considers that the measure will provide benefit to the REIT sector in terms of facilitating joint ventures and providing UK REITs access to more financing opportunities and has therefore decided to include REITs within the definition of "institutional investor". By attracting more international and institutional capital into the UK the measure is expected to result in a more competitive and efficient UK real estate and REIT sector.

9. Guidance

9.1 The change to list of institutional investors will be included in HMRC’s manual on REITS – *Guidance on Real Estate Investment Trusts.*

10. Impact

10.1 The Instrument is expected to have negligible impact on business, charities and voluntary bodies.

10.2 The impact on the public sector is expected to be negligible.

10.3 A Tax Information and Impact Note covering this instrument was included in the *Overview of Legislation in Draft* document published on the GOV.UK website on 10 December 2013.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The change will be kept under review through communication with affected taxpayer groups.

13. Contact

Allana Sheil at the HMRC Tel: 03000 586059 or email: Allana.Sheil@hmrc.gsi.gov.uk can answer any queries regarding the instrument.