

# **Notes for Guidance - Taxes Consolidation Act 1997**

## **Finance Act 2020 edition**

### **Part 25A**

## **Real Estate Investment Trusts**

**December 2020**



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**PART 25A Real Estate Investment Trusts**

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## PART 25A

### REAL ESTATE INVESTMENT TRUSTS

#### Overview

This Part, in *sections 705A to 705Q*, provides for the introduction of a tax regime for Real Estate Investment Trust (REIT) companies.

REITs are listed companies, used as collective investment vehicles to invest in rental property assets. They are exempt from tax on qualifying rental income and gains within the REIT, subject to a requirement to distribute profits annually for taxation at the level of the investors. This distribution is subject to Dividend Withholding Tax (DWT) at the standard rate of income tax.

By removing this double layer of taxation, investors will get broadly the same after-tax return from a REIT investment as if they had invested directly in property.

#### 705A Interpretation and application

##### Summary

This section is an interpretation section for terms used in this Part. It sets out the application of *Part 25A*.

##### Details

##### *Main definitions*

“group Real Estate Investment Trust” and references to “group REIT”, means a group electing to be a group REIT by the principal company of the group giving a notice under *section 705E* and both the principal company and the group comply with the conditions in *section 705B*.

“property income” is the property profits of the REIT or group REIT, reduced by the property net gains or increased by the property net losses.

“property income dividend” is a dividend paid by a REIT or group REIT from its property income.

“property profits” of a REIT or group REIT is the portion of the aggregate profits which is referable to the property rental business only. The portion of the aggregate profits which is referable to the residual business (if any) is disregarded.

“property rental business” means the business of a REIT or group REIT whose only purpose is to generate rental income. All such businesses in a group REIT are treated as a single business.

“qualifying investor” is an investment undertaking as defined in *section 739B(1)*, a pension scheme, a company carrying on life business, a charity or the National Asset Management Agency.

“Real Estate Investment Trust” and references to “REIT”, means a company which elects to be a REIT by giving a notice to Revenue under *section 705E* and complies with the conditions in *section 705B*.

“residual business” is business carried on by a REIT or group REIT which is not property rental business.

“specified accounting period” is the accounting period in which the company or principal company gives a notice under *section 705E*.

“specified debt” means any debt which a REIT or group REIT incurs in relation to money borrowed by or advanced to the REIT or group REIT.

## **705B Conditions for notice under section 705E**

### **Summary**

This section sets out the conditions which must be met, throughout the accounting period in which the notice under *section 705E* is given, by a company or principal company on behalf of a group.

### **Details**

The company or principal company of a group must— **(1)(a)**

- (i) be resident in the State,
- (ii) be incorporated under the Companies Act,
- (iii) have its shares listed on the main market of a recognised stock exchange in a Member State,
- (iv) not be a close company.

The REIT or group REIT must expect at the end of the specified accounting period that— **(1)(b)**

- (i) 75% of its aggregate income is from its property rental business,
- (ii) its property rental business will consist of at least three properties and the market value of no one property will exceed 40 per cent of the total market value of the properties,
- (iii) a ratio of 1.25:1 will be maintained between the financing costs and the income of the property rental business,
- (iv) 75% of the market value of the assets will belong to the property rental business,
- (v) its borrowings will not exceed 50% of the market value of its assets,
- (vi) it will distribute at least 85% of its exempt rental income.

Conditions (iii) and (iv) in *subsection (1)(a)* will be regarded as having been met **(2)** throughout the specified accounting period if they are met within a period of three years from the date on which the company or group becomes a REIT or group REIT.

Condition (ii) in *subsection (1)(b)* will be regarded as having been met at the end of **(3)** the specified accounting period if it is met within a period of three years from the date on which the company or group becomes a REIT or group REIT.

Condition (iv) in *subsection (1)(a)* does not apply to a REIT or group REIT which is **(4)** controlled by institutional investors.

## **705C Conditions regarding shares**

### **Summary**

This section provides that a REIT must have a simple share structure and the conditions which must be met in relation to the issuing of shares.

### Details

Ordinary shares are shares other than preference shares. (1)

Preference shares are shares which have no voting rights and give no rights to a dividend other than a fixed dividend.

This section provides that each share issued by a REIT or a principal company of a group REIT must be an ordinary share or a preference share. (2)

A REIT or principal company of a group REIT may issue only one class of ordinary share. (3)

### 705D Conditions regarding an accounting period

Having met the conditions in *section 705B* (but subject to *subsections (2) and (3) of section 705B*), and given a notice under *section 705E*, a REIT or group REIT must continue to meet those conditions in each subsequent accounting period.

A company which has given a notice under *section 705E* must continue to meet all of the conditions in *section 705B(1)* in each accounting period until it ceases to be a REIT in accordance with *section 705O*. (a)

A principal company which has given a notice under *section 705E* in respect of a group must continue to meet all of the conditions in *section 705B(1)(a)* in each accounting period until it ceases to be a group REIT in accordance with *section 705O*. (b)

Where a principal company has given a notice under *section 705E*, the group must continue to meet all of the conditions in *section 705B(1)(b)* until it ceases to be a group REIT in accordance with *section 705O*. (c)

### 705E Notice to become a Real Estate Investment Trust

#### Summary

Besides meeting the conditions in *section 705B*, a company or group cannot become a REIT or group REIT unless it notifies Revenue of its intention to be a REIT or group REIT.

#### Details

In order to be regarded as a REIT or group REIT, a company, or a principal company in the case of a group, must submit a notice to Revenue. (1) & (2)

The notice must be in writing and specify a date, which cannot be earlier than 1 January 2013 or the date of the notice, from which the company or group will become a REIT or group REIT. In the case of a group REIT, the notice must include all the members of the group and specify which members are to be designated as REITs. (3)

On each occasion that a new member company is added to the group, the principal company of the group REIT must submit an amended notice to Revenue within 30 days of the date on which the company becomes a member of the group. The amended notice must be in writing and specify the date, which cannot be earlier than the date of the amended notice, from which the company is to be a member of the (3A)

group REIT and contain a statement that each of the conditions in section 705B(1)(b) is reasonably expected to be met at the end of the accounting period in which the amended notice is given.

The company or group will be regarded as being a REIT or group REIT from the date, on or after 1 January 2013 as specified in the notice given under *this section*, and from which date it meets or is regarded as having met the conditions in *section 705B*. (4)

### **705F Duration of Real Estate Investment Trust**

When a notice has been issued in accordance with *section 705O*, a company or group will cease to be a REIT or group REIT from the date specified in the notice.

### **705G Charge to tax**

#### **Summary**

The income and gains of a REIT or group REIT are exempt from tax in respect of its property rental business only. Income and gains from its residual business (i.e. activities other than property rental business) are taxable.

#### **Details**

A company which is a REIT or a company which is a member of a group REIT is not chargeable to tax in respect of income from, or chargeable gains accruing on the disposal of assets of, its property rental business. (1)

Where a REIT acquires an asset, develops the asset, the cost of development exceeds 30% of the market value of the asset at the date on which the development commences and the asset is disposed of within 3 years of completion of the development, then chargeable gains arising from such property development are chargeable to tax. (2)

Deposits of a REIT or a group REIT are exempt from deposit interest retention tax (DIRT). (3)

### **705H Profit: financing cost ratio**

#### **Summary**

The purpose of the ratio in this section is to ensure that the financing costs of a REIT are not excessive in relation to its income. If the ratio is breached then there are taxation consequences.

#### **Details**

Property financing costs are the costs of debt finance or finance leases which are taken into account in determining aggregate profits and include interest, discounts, premiums, net swap or hedging costs and fees or other expenses incurred in raising debt finance or arranging finance leases. (1)

Property financing costs ratio is the ratio of the property financing costs plus property income to the property financing costs.

A ratio of 1.25:1 is to be maintained between the income (before deducting (2)

financing costs) and the financing costs, of the property rental business.

The amount, by which the property financing costs would have to be reduced to ensure the ratio is equal 1.25:1, will be chargeable to tax. (3)(a)

Such amount is restricted to 20% of the property income of the REIT. (3)(b)

In calculating the amount in *subsection (3)(a)*, no account may be taken of any loss, deficit, expense or allowance. (4)

### **705HA Profit: calculating profits available for distribution**

#### **Summary**

The purpose of this section is to ensure that any amounts deducted by a REIT in arriving at the profits available for distribution are amounts which have been incurred wholly and exclusively for the purposes of the property rental business. If any amounts do not meet this criteria then there are taxation consequences.

#### **Details**

Any amount which has been taken into account by a REIT or group REIT for the purposes of calculating the aggregate profits which are not amounts which have been laid out wholly and exclusively for the purposes of the property rental business are referred to as a ‘disallowed amount’. (1)

The REIT or principal company of a group REIT will be treated as receiving an amount of income equal to the disallowed amount. (2)

The deemed amount of income treated as being received by the REIT or principal company of a group REIT is chargeable to corporation tax under Schedule D Case IV in the period in which the disallowed amount was taken into account. No offset against the deemed amount of income is allowed. (3)

### **705I Funds awaiting reinvestment**

A REIT or group REIT may accumulate and hold cash from the sale of property of its property rental business or from the issue of shares. (1)

If the proceeds are invested other than in property for the property rental business, the profits arising from such investment will be regarded, for a period of 2 years, as being profits of the property rental business and therefore exempt from tax. The period of 2 years is calculated from the date of disposal where a property is sold or from the date shares are issued. However, once the period of 2 years has elapsed, the profits arising from such investment will be taxable. (2)(a)(i) & (ii)

Profits arising before and after the period of 2 years may be apportioned on a time basis. (2)(b)

If the proceeds are still held after the 2 year period, they are treated as being assets of the residual business. (3)

### **705IA Disposals and reinvestments**

This section applies where a REIT or group REIT disposes of a property of its property rental business after 8 October 2019. (1)

For the purposes of this section ‘net proceeds’ means the full proceeds received on disposal less any amounts used to repay any specified debt which had been employed in the acquisition, enhancement or development of the disposed property. (2)(a)

An amount equal to the net proceeds referred to in *paragraph (a)* is the amount which is taken into account for satisfying the condition laid out in *subsection (3)(ii)*. (2)(b)

Where the net proceeds on the disposal of a property of the property rental business are not – (3)

- (a) invested in the acquisition of a new property for use in the REIT or group REITs property rental business,
- (b) invested in the development or enhancement of a property currently held for the purposes of the property rental business, or
- (c) distributed to the shareholders of the REIT or the shareholders of the principal company of the group REIT

before –

- 1. the ending of the 24 month period following the disposal,
- 2. the date of cessation of the REIT or group REIT if earlier than 1. , or
- 3. for the purposes of meeting the conditions set out in paragraphs (a) and (b), the expiry of the 12 month period beginning prior to the date of disposal of the property

then any amount not reinvested or distributed will be treated as property income of the REIT or group REIT arising in the year in which the earlier of 1. or 2. falls. (4)

The non-resident dividend withholding tax exemption is disapplied for the purposes of this section.

### 705J Taxation of shareholders

This section provides for the taxation of shareholders where a REIT or group REIT pays a distribution in the form of a property income dividend. (1)

A corporate shareholder is chargeable to tax under Case IV of Schedule D in respect of a property income dividend. (2)

A property income dividend paid by a member of a group REIT to another member of the same group REIT is exempt from corporation tax. (3)

A *section 110* company is chargeable to corporation tax under Case III in respect of a property income dividend. (4)

The trading rate of corporation tax applies to a property income dividend paid to institutional investors. (5)

### 705K Taxation of certain shareholders

#### Summary

This section provides for the taxation of a shareholder who meets the definition of “holder of excessive rights”.

#### Details

A “holder of excessive rights” is a person who is entitled, directly or indirectly, to at least 10 per cent of the property income dividend distribution, or who is entitled to or controls directly or indirectly, at least 10 per cent of the share capital of or voting rights in the REIT or in the principal company of a group REIT. A qualifying investor (i.e. an investment undertaking within the meaning of *section 739B(1)*, a pension scheme, a life assurance company, a charity or NAMA) is not regarded as a holder of excessive rights. (1)

Where a person becomes a holder of excessive rights merely because the company converts to a REIT or converts to the principal company of a group REIT, then the (2) & (3)



provisions of **subsection (3)** will not apply for a period of three years from the date it becomes a REIT. This is to give the REIT time to dilute the shareholding to below 10%.

Where a REIT or group REIT makes a distribution to a holder of excessive rights, the distribution will be treated as an amount of income in the hands of the REIT or the principal company of a group REIT.

The distribution will be chargeable to corporation tax under Case IV of Schedule D (4) and regarded as income arising in the period in which the distribution is made without the set off of any loss, deficit, expense or allowance.

## 705L Transfer of assets

### Summary

This section provides for the capital gains tax treatment of assets transferred from a company or group when it elects to be a REIT or group REIT.

### Details

Where a company becomes a REIT, its assets are deemed to have been disposed of (1) by the company immediately before it becomes a REIT and reacquired by the REIT immediately on becoming a REIT, for a consideration equal to the market value of the assets on the date specified in the notice given under **section 705E(3)(a)**.

Where a group of companies becomes a group REIT, the assets of each member of (2) the group are deemed to have been disposed of by that member immediately before the group becomes a group REIT and reacquired by that member immediately on becoming a group REIT, for a consideration equal to the market value of the assets on the date specified in the notice given under **section 705E(3)(a)**.

Where a REIT or group REIT ceases to use an asset for the purposes of its property (3) rental business and begins to use it for the purposes of its residual business, the asset is deemed to have been disposed of by the REIT or relevant member of the group REIT for the property rental business and acquired by the REIT or relevant member of the group REIT for the residual business, on the date it ceases to be used for the property rental business.

The deemed sale and acquisition is treated as being for a consideration equal to the (4) market value at the date referred to in **subsection (3)**. Notwithstanding **section 705G**, any gain accruing to the property rental business will be a chargeable gain for the purposes of the Capital Gains Tax Acts.

Where a REIT or group REIT ceases to use an asset for the purposes of its residual (5) business and begins to use it for the purposes of its property rental business, the asset is deemed to have been disposed of by the REIT or relevant member or members of the group REIT for the residual business and acquired by the REIT or relevant member or members of the group REIT for the property rental business, at the date on which it ceases to be used for the residual business and for a consideration equal to the market value of the asset.

## 705M Annual statement to Revenue

### Summary

This section provides for the timing and manner of the making of an annual return.

### Details

Each REIT or principal company on behalf of a group REIT is required to make an annual statement to Revenue by 28 February in the year following the year in which the accounting period ends. The statement must confirm that the conditions in **section 705D** have been met throughout the accounting period to which the return relates. (1)

Where a REIT or principal company on behalf of a group REIT cannot make the statement referred to in **subsection (1)**, it must notify the authorised officer of the Revenue Commissioners accordingly and provide the following information - the date(s) on which the condition(s) first ceased to be met and the date(s) on which the condition(s) was or were met again; a description regarding how the condition(s) was or were breached; and the steps taken to prevent the breach(es) occurring again. (2)

Where a REIT or principal company on behalf of a group REIT fails, within a reasonable time to be determined by the authorised officer, to ensure that a condition in **subsection (2)** is met, or fails to make the statement as required under **subsection (1)**, then the Revenue Commissioners may treat the REIT or group REIT as having ceased to be a REIT or group REIT from the end of the accounting period immediately before the accounting period in which the breach of condition(s) or failure to make the statement began and may apply the provisions of **section 705O**. (3)

If a REIT or principal company on behalf of a group REIT fails to make a statement or makes an incorrect or incomplete statement under **subsection (1)**, the REIT or principal company on behalf of a group REIT will be liable to a penalty of €3,000. (4)

### 705N Breach of conditions regarding distributions

If a REIT or group REIT does not distribute 85% of its property income, then it is chargeable to corporation tax under Case IV of Schedule D on the amount which is the difference between 85% of the property income and the amount of property income actually distributed. This does not apply if the REIT or group REIT is restricted from making a distribution by any provision of the Companies Acts.

### 705O Cessation notice

#### Summary

This section provides for the various ways in which a REIT or group REIT may cease to be so designated.

#### Details

A REIT or group REIT must give a notice in writing to Revenue if it wishes to cease being a REIT or a group REIT. (1)

A REIT or group REIT will cease to be so designated with effect from the date specified in the notice given under **subsection (1)**. (2)

The date specified in the notice must be on or after the date of the notice – i.e. it cannot be backdated. (3)

The authorised officer may determine that a REIT or group REIT is to be no longer designated as such and issue a notice to that effect. (4)

The effective date will be the date specified in the notice under **subsection (4)**. (5)

Where a notice has been issued to a REIT or group REIT under **subsection (4)**, the (6)

REIT or group REIT may appeal by way of notice in writing to the Appeal Commissioners within 30 days after the date of the notice.

### **705P Effect of cessation**

#### **Summary**

This section provides for the consequences of the cessation designation as a REIT or group REIT.

#### **Details**

Where a REIT or group REIT ceases to be designated as such, whether of its own choice by giving a notice to Revenue or by the authorised officer so determining and issuing a notice accordingly, it is to be treated for corporation tax purposes as having ceased to be a REIT or group REIT at the date specified in the notice. (1)

The assets of the REIT or group REIT will be deemed to have been disposed of immediately before the cessation date and reacquired by the post-cessation company or members of the group immediately after the cessation date, at the market value on the cessation date. From 8 October 2019 this subsection shall only apply where at the time of the REIT or group REIT giving notice of cessation that REIT or group REIT has been operating as such for at least 15 years. (2)

### **705Q Anti-avoidance provision**

*Part 25A* will not apply to any transaction entered into by or on behalf of a REIT or group REIT or to which it is directly or indirectly a party, unless the transaction is for bona fide commercial reasons and is not for the purpose of avoiding liability to tax. (1)

The reference to REIT or group REIT in *subsection (1)* includes a reference to a company or a group before it has become or after it has ceased to be a REIT or group REIT and in the case of a group REIT, to a company before it has become or after it has ceased to be a member of the group REIT. (2)