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Finance Bill 2023-2024 Introduces Changes to REIT Rules

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Amendments to the UK real estate investment trust (REIT) rules were introduced in the new Finance Bill 2023-2024, which is expected to become law in the summer of 2024. Published on 29 November 2023, the amendments reaffirm a number of measures announced by the UK Government when the first draft of the legislation was published in July 2023, as well as containing a number of further changes to the REIT rules.

Key Changes

The key changes can be summarised as follows:

- Condition D of the REIT rules requires a REIT to be non-close or only close as a result of an institutional investor being a participator; this will be amended so as to confirm that this condition can be satisfied through indirect ownership by institutional investors.
- Unit trusts, OEICs and limited partnerships will only qualify as institutional investors if they meet the non-close condition (i.e. they are not a close company, or would not be close if they were a company).
- A company will not be considered close just because 50% or more of the voting power is possessed by a manager of a collective investment vehicle or a general partner of a limited partnership that is a collective investment scheme. Furthermore, non-UK residence will not prevent a company from qualifying as close.
- Disposals of UK property-rich co-ownership authorised contractual schemes will now also receive tax exemptions for gains.
- “Property financing costs” will mean costs referable to the UK property rental business for the purposes of the interest cover test, but will not include non-deductible expenses.
- The “Group” definition will now include insurance companies that hold interests of 75% or more in group UK REITs.
- Definition of “relevant time” in the context of determining if the property rental business condition is met by ownership of a single commercial property will be amended such that the condition will be met if the value of the property is, or was at any time from the relevant time (being the later of entry and acquisition of the property) at least £20 million.

Finance Bill 2023-2024 had its second reading in the House of Commons on 13 December 2023 and received its Committee debate on 16 January 2024. The Commons Report stage and third Commons reading is expected on 5 February 2023.

Following the 5th February reading, it is expected by investors and advisors that further changes to the REIT regime will be announced in 2024, most notably in relation to the relaxation of rules concerning genuine diversity of ownership, the rules concerning disposals of a property within three years of development, and the changes to withholding tax concerning distributions.

Final thoughts

The changes being proposed are valuable incentives to real estate investors and highly relevant to lenders. Lenders may well be asked to consent to changes within structures to accord with the legislative changes. We will continue to report on these changes and discuss how lenders should be liaising with their borrowers to ensure appropriate consents are given under finance documents in order that technical breaches and gaps to security packages are avoided.

The proposed changes to the UK's REIT regime are all the more welcome given the decision by the UK Government, at least at this stage, to decline to introduce draft legislation for a new tax transparent unauthorised vehicle, known as the reserved investor fund. While considerable discussions regarding the reserved investor fund have been ongoing between advisors and the UK Government following a public policy consultation in 2023, we will need to watch for developments in this area during 2024.