CHARTER TAX

Helpsheet
Non Resident Landlord Companies – Changes from 6 April 2020

Introduction

Non-UK resident company landlords have historically been taxed on their UK rental profits under the Income Tax regime. However, as more and more anti-avoidance legislation has been introduced at corporate level, it was no real surprise when the UK Government announced changes to align the treatment of Non-UK resident landlord companies so that both non-resident and UK resident companies come under a Corporate Tax regime.

Change from income tax to corporation tax

From 6 April 2020, non-UK resident companies that carry on a UK property business or have other UK property income will be chargeable to corporation tax rather than being subject to tax under the income tax regime. This change will aim to equalise the tax treatment for UK and non-UK resident companies in receipt of similar income. Of course some non-UK resident companies with property development businesses will anyway already be used to being in the UK corporation tax net but these new rules focussed on non-resident landlords will essentially seek to catch also any remaining property related businesses into the corporation tax net.

What does this mean?

From 6 April 2020 non-UK resident company landlords will fall within the UK corporation tax regime. This means that they will need to complete and submit an annual corporation tax return to HMRC, based on the financial statements prepared for each accounting period.

Corporation tax will be charged on the taxable profits, currently at a rate of 19%. Although this rate was due to fall to 17% from 1 April 2020, the UK government have since announced that the rate will remain at 19%.

Registration under Corporation Tax

HMRC will automatically register existing non-resident landlords (already registered under the income tax regime) for corporation tax and issue a Corporation Tax unique taxpayer reference (UTR).

Companies should contact HMRC if they have not received a UTR by 30 June 2020

Non-resident companies starting a UK property business after 6 April 2020 will need to notify HMRC, and register for corporation tax accordingly.

Administration of Corporation Tax returns, tax payments, deadlines and submissions

The Corporation Tax return must be submitted online to HMRC within twelve months of the company's accounting period end date. This return needs to be submitted using specialist software, as currently HMRC offer no option to file the return electronically via the online government gateway.

The Corporation Tax return will be based on the financial statements prepared for each accounting period.

As well as the electronic submission of the Corporation Tax return to HMRC, this must be accompanied by accounts for the corresponding accounting period that have been "tagged" into iXBRL format.

Corporation Tax is usually due for payment nine months and one day after the accounting year end date, unless quarterly instalment payments are required due to being considered a "large" company for instalment purposes.

A company may be considered as large if annual profits exceed £1.5 million, however, we would recommend reviewing this on a company-by-company basis.

What if the accounting period is not aligned with the tax year (i.e. 5 April 2020)?

Under the transitional rules, if the company's annual accounts are not prepared to 5 April, the accounting periods will be prepared as follows:

First year under transition:

- Accounting year will start on 6 April 2020 and end on the company's usual year end date

Second year:

- The accounting period will begin and end as normal.

Please note that if you prepare the company accounts to a date that is different to 5 April, you will need to inform HMRC in writing the date the company accounts are prepared to.

Calculating profits and deductions available

For corporation tax purposes, the non-resident company will be allowed to deduct certain expenses against its rental income before corporation tax is calculated.

In order for an expense to be deductible against rental income, the expenses must be incurred wholly and exclusively for the rental business.

This will include general administration expenses such as professional and accountancy fees as well as cost of sales expenses such as property management and letting agent fees.

Finance Costs

Another key deductible expense is interest and other finance charges. However, this can be a more complex area with the inclusion of a number of anti-avoidance rules.

A company will need to consider these rules when structuring a property acquisition and when preparing the corporation tax return, in order to determine whether the finance costs are tax deductible for UK Corporation Tax purposes.

A list of the most relevant anti-avoidance provisions is included below - please see our separate helpsheet on these anti-avoidance provisions for an overview of these rules. However, every company should seek advice specific to its own situation:

- Transfer Pricing
- Profit Fragmentation
- Unallowable Purpose
- Corporate Interest Restriction (CIR)
- Anti-Hybrid rules
- GAAR
- Withholding Tax (WHT)

Transitional rules

There are three transitional rules you need to consider when preparing the company's corporation tax return (also see losses section):

No balancing charge or balancing allowance at 5 April 2020

If the company has previously claimed capital allowances under Income Tax rules, the written down value of pools as at 5 April 2020 will transfer to Corporation Tax. This transfer will not give rise to either a balancing allowance or charge.

Apportionment of written down allowances

If your accounting year is not aligned with the tax year i.e. to 5 April, there will be a transitional first year calculation to apportion written down allowances. As part of this calculation, the company will need to apportion its capital allowances between both Income Tax and Corporation Tax.

This apportionment would be calculated on the same basis used for the company's profits.

Losses

Transitional rules losses - Pre-6 April 2020 Income Tax Losses:

If the company's property business has an aggregated loss brought forward under Income Tax, this loss will be carried forward under the change to Corporation Tax.

The company can offset this loss against future profits from the same UK property business or against non-trade loan relationship profits relating to the UK property business.

The brought forward income tax losses cannot, however, be relieved against Corporation Tax arising on a chargeable gain arising on a future disposal of a rental property within the company.

The brought forward loss must be used in priority to any other losses made on or after 6 April 2020 under Corporation Tax.

Restriction of losses

If the non-UK resident company incurs a loss after 6 April 2020, the company can offset this loss against other gains or profits of the business during the same accounting period.

If the company is unable to utilise the loss in full during the same accounting period, it will be eligible to carry the unused loss forward to offset against future total profits – for example future property business profits, interest received, chargeable gains of the company. Unfortunately, property income losses cannot be carried back against previous accounting periods.

For Corporation Tax losses incurred post 6 April 2020 carried forward, the offset of these in a later accounting period are restricted to an overall group allowance of £5 million plus an additional 50% of remaining profits (after the deduction of the £5 million group allowance). These rules can be complex and we recommend seeking advice where group corporation tax losses exceed £5 million.

Disposal of a Property

A disposal of a property will crystallise a chargeable gain which will be subject to Corporation Tax and reported on the Corporation Tax Return for the accounts period in which the disposal was made. As the rules surrounding the taxation of chargeable gains have been subject to so many changes in recent years, there are a number of rebasing provisions available to non-resident companies disposing of UK properties, and the acquisition cost of the property can be replaced by the April 2015 value for UK Residential property, and April 2019 for UK commercial property, where this is beneficial.

The taxation of chargeable gains on the disposal of UK property is a complex area which has seen many changes, and we recommend that you refer to our help sheet entitled "Non-UK Residents and UK Land & Property Disposals" for further details. . .

In particular, non-resident individual shareholders of companies should be aware that disposals of shares in "property-rich companies " are subject to UK CGT and are reportable, and the tax payable, within 30 days of the transaction. The definition of a property-rich company is discussed in detail on the above reference helpsheet.

We would be more than happy to assist with any related queries, and to help companies manage their new compliance requirements under the corporation tax system.

As a firm of accountants in the UK, we are well placed to assist with new HMRC registrations, preparation of company accounts and preparation of corporation tax returns.

For more information, please contact Janet Pierce on janet.pierce@charter-tax.com or Charlie Goss on charlie.goss@charter-tax.com or call us on +44 (0)20 7084 5771.

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Taxation planning concerns the application of complex statute and case law to future events. Accordingly, however expert the opinion given, it is always possible that the Courts will take a different view of the application of the law.

We undertake to apply reasonable care and skill in the provision of advice. We do not guarantee that tax planning steps will in all circumstances achieve a certain legal effect.