

Proposed changes for non resident corporate landlords

(Lecture B1068 – 8.42 minutes)

When corporation tax was introduced in 1965, the UK profits of non-resident companies were included within new corporation tax regime while other UK sources income fell within the income tax and capital gains tax regime.

Non resident corporate landlords were liable to income tax on their rental profits and capital gains tax on any gains. More recently the rules have been amended so that non-resident corporate landlords have become liable to tax on ATED-related gains from April 2013, UK residential property gains from April 2015 and all UK property from April 2019.

Moving non-resident corporate property owners into the corporate regime

On 20 March 2017 the government published a consultation document seeking views on changing the way that the UK taxes rental income from UK property owned by non-UK resident companies, as well as gains on disposals of UK residential properties by certain non-resident companies. They proposed that non-resident corporate property owners should become liable to corporation tax on UK property income and gains.

This change would ensure that from April 2020:

- both resident and non-resident corporate landlords would be subject to the same interest restrictions and loss rules;
- non-resident corporate property owners would become liable to corporation tax rather than capital gains tax on the disposal of UK property. Gains would fall within corporate reporting and payment deadlines, replacing the current 30-day NRCGT rule.

Accounting periods

Under the new rules, there would be a deemed cessation of the UK property business at 5 April 2020 for income tax but with no balancing allowances or charges for capital allowance purposes. The first corporation tax period would start on 6 April 2020. If a non-resident company was already within the corporation tax regime then their property profits would be time apportioned around 5 April 2020.

The computational rules would be unchanged, adopting the accruals basis. Interest would be dealt with under the loan relationship rules, with a company having property profit, a loan relationship deficit with sideways offset of the deficit being available.

Corporation tax loss reforms

The new loss relief regime would not apply to losses that arose before the UK property business profits came within the corporation charge so they would need to be ring fenced.

Once under the new regime:

- the first £5m of profits can be relieved in full; then only 50% of profits can be relieved by losses brought forward.
- brought forward losses and loan relationship deficits can be grouped provided they are not losses relating furnished holiday lettings.

The new interest restriction

From 1 April 2017 there is a £2m de-minimis exemption of net interest expenses to be shared by any worldwide group.

A non-resident company may qualify for exemption from the £2m restriction in respect of its third party debt for their UK property rental business.

Management expenses

A non-resident company holding an investment property may fall within the definition of an investment company.

HMRC are concerned that “management expenses” might be claimed in respect of assets that are not within the UK corporation regime and are looking to restrict the deductibility of such expenses to those that relate to UK chargeable assets only.

If a non-resident company ceases to carry on their UK property business then any unused property losses would not “convert” to management expenses and so would be lost.

Transitional provisions

Any unused losses to carry forward at 5 April 2020 would be computed under income tax principles but then available for use under the corporate regime against profits of the UK property business without restriction.

If the UK property business were to cease then any unused income tax property losses would be extinguished.