

Non-UK resident companies with UK property

(Lecture B1132 – 15.53 minutes)

Ever since the introduction of the special corporate regime in 1965, non-UK resident companies:

- carrying on a UK property business; or
- receiving other UK property income

have been subject – uniquely – to a basic rate income tax charge on their property profits rather than to corporation tax.

However, from 6 April 2020 onwards, these non-UK resident property companies will no longer be charged income tax and will instead be subject to the corporation tax rules (S17 and Sch 5 FA 2019). This measure is designed to harmonise the tax treatment of UK-resident and non-UK resident companies receiving UK property income.

This change will have an impact on all non-UK resident companies that carry on a UK property business directly or through a tax-transparent collective investment vehicle such as a Jersey property unit trust. As a result of the FA 2019 legislation, such companies will need to calculate their profits in accordance with corporation tax principles that will sometimes be significantly different from their current *modus operandi*.

These notes examine the key differences.

Timing

For affected companies, the changeover will take place at the end of 2019/20, with their income tax property business being deemed to cease on 5 April 2020 and a new corporation tax business beginning one day later.

Where companies do not prepare accounts on a tax year basis, a time-apportionment of income and expenditure will be needed for the period that straddles the commencement date. Profits or losses arising in the period up to 5 April 2020 will be subject to income tax, but thereafter corporation tax rules will apply.

Illustration

Nicholas Properties (Guernsey) Ltd is a non-UK resident company that holds a large portfolio of UK residential rental properties. The company's year-end is 31 March.

For the year ended 31 March 2021, the proportion of the company's income and expenditure that will be subject to income tax is 5/365 and the proportion that will be taxed under the corporation tax regime is 360/365.

Losses

Any pre-6 April 2020 property business losses that the company holds at the changeover date will be grandfathered and carried forward into the new corporation tax business. These losses are classified as 'income tax property losses' and will be available for set-off against the company's post-5 April 2020 UK property business profits, but not against its income from other sources or its capital gains. Nor will income tax property losses be available for surrender as group relief.

Income tax property losses will be offset automatically against the relevant profits of future periods in priority to post-5 April 2020 losses and will never be subject to the 50% corporation tax loss cap. It will not be possible to disclaim them. If the UK property business comes to an end, the losses will lapse.

Losses generated by the company after it comes within the corporation tax regime will of course be subject to the normal corporation tax loss relief rules. In this situation, the 50% loss cap will be in point and post-5 April 2020 losses can be surrendered as group relief.

Finance costs

Financing is the area where many non-UK resident property companies will probably see the biggest difference under the FA 2019 rules. Finance costs and interest will no longer be deductible as an expense in calculating the company's property income. Instead, such items will fall under the loan relationship legislation. Under these provisions, profits and losses from loan relationships are computed separately from any other income that the company may have and are categorised as 'trading' or 'non-trading', depending on the use of the loan finance in question. With property companies, one will normally be looking at 'non-trading' loan relationships.

In recent years, there have been important changes to limit the deductibility of interest for corporation tax purposes – in particular, the corporate interest restriction rules brought in by F(No2)A 2017. These are designed to restrict tax relief for finance costs and interest to a percentage of taxable profits. The rules are extremely complicated and will need to be considered even where no disallowance of interest results, leading to an increased administrative burden for non-UK resident companies. In addition, companies with high levels of debt may find that some of their finance costs are no longer tax-deductible.

Capital allowances

Transitional provisions have been introduced to ensure that the move from income tax to corporation tax is not going to be treated as a disposal event for capital allowances purposes. Balancing adjustments will not be required. Instead, the tax written down values at the end of 2019/20 will simply carry over to the beginning of the first corporation tax accounting period on 6 April 2020.

Management expenses

The Government have confirmed that non-UK resident companies will be able to claim a deduction for management expenses that relate to their property income. In order to be deductible, these costs must be directly linked to the company's UK property business. No deduction will be allowed for costs related to managing non-UK property or subsidiaries.

Administration

Companies affected by the FA 2019 changeover will need to register for corporation tax with HMRC. This is the case even where companies are already registered under the Non-Resident Landlord Scheme.

Taxpayers will have to complete a final self-assessment return in the normal way, reporting the proportion of income arising up to 5 April 2020. A corporation tax return will need to be filed for the period commencing 6 April 2020 and for subsequent accounting periods.

This must be done online using iXBRL and should be accompanied by accounts and tax computations.

The tax payment dates for corporation tax also differ from those with which the non-UK resident property company will be familiar. The due date for companies with taxable profits of up to £1,500,000 falls nine months and one day after the end of the accounting period. Those with higher profits will need to pay their tax in quarterly instalments, two of which are due before the end of the accounting period.

Conclusion

The upcoming changes for non-UK resident companies holding UK property are very significant, with modifications to almost every aspect of how tax is calculated, paid and reported to HMRC.

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