Briefing note

UK Property Income of Non-UK Resident Companies

This briefing note is aimed at companies and those who administer companies which hold UK property. There are significant changes to the regime which will be implemented in the coming years and the window of opportunity to mitigate any potential negative consequences is relatively short.

To date, non-UK companies have paid tax on their profits arising from the rental of UK properties under the income tax regime. In order to bring the position into line with UK resident companies and "level the playing field", this position will be changing from 6 April 2020.

The change in rules will be introduced in the Finance Bill 2018-19, the draft clauses for which were released on 6 July 2018. The fundamental change is that non-UK resident companies that have property businesses in the UK will be taxed under the corporate tax regime, instead of income tax as at present.

This change will align with the end of the personal tax year 2019-20 on 5 April 2020, and will interact with the previously announced extension of non-resident capital gains tax to commercial properties effective from 1 April 2019.

There are a number of differences under the corporation tax regime, as well as some similarities, which we have set out to discuss in more detail below.

Differences from the current system

One of the most significant differences is that instead of completing an SA700 tax return form, companies will need to complete a CT600 instead. The more complicated CT600 return must be filed online as opposed to the SA700, which can only be filed with a paper copy. CT600 returns usually must also be accompanied by iXBRL formatted statutory accounts (a form of computer 'tagging' to make the accounts 'machine readable'), although HMRC are yet to issue guidance on whether this requirement will be extended to overseas property companies.

The deadline for submitting a CT600 is 12 months after the end of the company accounting period end date, rather than an SA700, which is required to be submitted by 31 January following the tax year end. For most smaller companies, tax is payable nine months and a day after the end of the accounting period, rather than the instalment or withholding tax provisions of the income tax regime.

Another difference and one which will be welcomed by landlords, is the fact that the corporation tax rate in April 2020 is currently legislated to be 17% compared to the income tax rate for companies of 20%.

However, there are a number of operative differences between the corporation tax and income tax regimes, some of which may significantly impact the tax payable.

- Corporate Interest Restriction ('CIR') - rules introduced in 2017 mean that interest deductions against company profits are limited to 30% of the company EBITDA (or in some cases a higher group ratio for leveraged groups). The rules do allow for a £2m interest de minimis limit, below which no restriction applies so this is more relevant to larger companies and groups.

- Loss relief - the rules for corporation tax loss relief are different from those for income tax and as part of the April 2017 reform have generally become more restrictive for companies that do not form part of a group (although any impact of this will be limited for companies with profits below £5m). Property income losses incurred under the income tax regime are transferable across to the corporation tax regime, and available for use against future profits of that same business (but are not group-relievable).
- Tax on gains also falls within the remit of corporation tax and therefore we will see the ATED-related CGT regime fall away for companies. Companies also enjoyed the benefit of indexation allowance on chargeable gains, an additional deduction to take into account the impact of inflation on the purchase price, until this relief was removed in December 2017.
- Other provisions such as the Controlled Foreign Company rules, the anti-hybrid provisions and the loan relationship and derivative contract rules also apply to companies, although these are likely to have little or no impact on straight-forward property businesses.

Similarities to the current system

Despite the fact that corporation tax operates under a largely distinct set of rules from income tax, there are a number of similarities.

Like income tax, corporation tax is self-assessed, meaning that taxpayers who have previously self-assessed for income tax will retain the responsibility for calculating their own tax liability. The overriding principles governing the calculation of taxable property income are similar under each regime, and therefore the transition should not give rise to undue volatility in the level of taxable profits, all other things being equal.

Part of this comparability of treatment relates to capital allowances. The transitional provisions within the draft legislation allow for the capital allowance pool to be transferred across from the Income Tax to the Corporation Tax regime, without there having been a 'disposal event'. Beneficial capital allowance treatments such as those for energy saving plant and machinery and the annual investment allowance remain available.

Our offering

At Fitzroy, we have significant experience of dealing with offshore property structures, as well as with corporation tax compliance, and we can advise on all aspects of the changes as they are implemented. If you would like to discuss this in more detail, please contact Graham, David or Ben directly using the contact details below.

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