Changes to the UK taxation of non-residents owning UK property

- Non-UK companies now liable to corporation tax on UK property income from April 2020.
- Follows recent changes to taxation of both direct and indirect disposals of UK property owned by non-UK entities.

Each non-resident landlord company needs to ensure they have fully registered and are compliant with the new rules which start on 6 April 2020.

All non-resident companies and individuals should consider structuring in advance of property disposals, whether owned directly or through a 'property rich' company, to mitigate UK tax charges.

UK rental income received by non-resident companies subject to Corporation Tax from 6 April 2020

Historically non-resident companies have been required to submit an annual return to HMRC to report net income from UK property (or suffer withholding tax on the gross rental income). This income was subject to UK income tax at the basic rate (the current rate is 20%).

Going forward this income will instead need to be reported on a corporation tax return ("CT600") and will be subject to corporation tax (the current rate is 19%).

Any gains on UK property by non-resident companies are already subject to corporation tax – see below.

The last income tax return will be for the year ending 5 April 2020 and this needs to be filed by 31 January 2021 with any income tax due, paid by the same date.

A CT600 for the first accounting period ending on or after 6 April 2020 needs to be filed with HMRC within 12 months of the company's year end and any corporation tax due needs to be paid within 9 months and 1 day of the year end (different payment dates apply if the company's profits are over £1.5m).

Losses

Any income tax losses at 5 April 2020 will carry forward into the corporation tax regime.

Such losses can be set against future profits from the same UK property business; however, a loss cannot be relieved against gains where the company will be chargeable to corporation tax. This type of loss must be used in priority to any losses made on or after 6 April 2020 under the corporation tax rules.

Administration

- For an NRL company that currently files income tax returns HMRC will issue a new taxpayer reference ("UTR") before 30 June 2020. We are aware HMRC has already started issuing UTRs.
- Any agent authority for income tax will not carry over to corporation tax and therefore new authorisations will need to be completed once the new UTR is received.
- If the company does not prepare accounts to 5 April then the accounting date will need to be reported to HMRC.
- If the company's only source of UK income after 6 April 2020 is expected to be income from the UK property business, the company will not need to make any income tax payments on account for 2020/21. Any credit on an income tax self-assessment account will need to be refunded to the company as it will not carry over to the corporation tax account.
- All corporation tax returns with property income have to be accompanied by 'tagged' accounts in the iXBRL format.

Recent changes to taxation of property gains by non-resident companies

Over the past few years there have been a number of changes to the taxation of UK property owned by non-resident companies. We have summarised the main changes below.

UK tax on property gains

From 6 April 2019 all gains on UK property by non-resident companies became subject to corporation tax (residential properties had already been subject to UK capital gains tax since 2015).

Rebasing is available for residential properties to the value as at 5 April 2015 and non-residential properties to the value as at 5 April 2019, therefore only the gain arising after this date is taxable.

Directors of non-resident companies should therefore ensure that all UK properties held by the company are properly valued at the applicable date.

If the company has no other business in the UK (e.g. rental income) then the company must register for UK corporation tax and file a corporation tax return for a one-day period (covering the gain). iXBRL tagged accounts are not required.

If the company has or expects to have 4 or more disposals in a financial year, they must file a return for the full year with iXBRL tagged accounts.

Property Rich Companies

From 6 April 2019, in certain circumstances, a disposal by a non-resident of an interest in an entity (such as a company or certain trusts) that are 'property rich', is now within the scope of either CGT or corporation tax (for companies).

Rebasing is available to the value as at 5 April 2019 so that only the gain arising after this date is taxable.

This is a complex area with a widely drafted targeted anti-avoidance rule and double taxation agreements with certain jurisdictions may also over-ride the tax charge.

Pre-sale structuring is however possible in order to mitigate the taxable gain arising.

ATED (Annual Tax on Enveloped Dwellings)

Since 1 April 2013 a company owning UK residential property must pay an annual charge according to the market value of the property (with no deduction for any debt). This charge originally applied to properties worth more than £2m although this has now been reduced to £500k.

From 1 April 2013 to 5 April 2019 all properties within the ATED regime were also subject to UK capital gains tax on disposals of the property (ATED-CGT). From 6 April 2019 all properties within the ATED regime became taxable under the corporation tax regime mentioned above.

Gains attributed to UK shareholders

UK tax law also provides for gains made by an overseas company to be apportioned to UK resident shareholders (including trustees) who own (together with any connected persons) more than a 25% share in the company. The application of this provision is subject to the UK taxpayer's particular circumstances and reasons for establishing the non-resident structure, and will only apply to the extent that the gain is not already chargeable under one of the above provisions.

IHT

From April 2017 all UK residential property, however owned, also came within the scope of UK inheritance tax ("IHT"). IHT charges will potentially arise on death, the making of certain gifts as well as during the life of certain trusts ('ten-year anniversary' and 'exit' charges).

Key Actions

- ✓ **Ensure you have a system in place to meet the new compliance rules for reporting rental income**
- ✓ **Ensure all recent UK property disposals have been correctly reported (and tax paid!)**
- ✓ **Be aware of the impact and obligations associated with the property rich company rules**
- ✓ **Undertake a review of your structure prior to any future disposals to ensure you mitigate any UK tax liability**

To discuss how we can help please get in touch with Tim, Andrew or your usual Forbes Dawson contact:

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