

Non-UK resident corporate landlords' new charge to Corporation Tax from April 2020: Are you ready?

1. Background

- 1.1. Non-UK tax resident companies are currently subject to UK Income Tax at the base rate (currently 20%) on UK property rental income after deducting any allowable expenses including interest payments unless the income is in relation to a UK permanent establishment through which they are also carrying on a trade.
- 1.2. Payments of rental income to non-UK resident landlords are subject to withholding tax at the basic rate of Income Tax (currently 20%) under the Non-Resident Landlord Scheme (“**NRLS**”). Under this regime, a tenant making rental payments (or, if an agent whose usual place of abode is in the UK has been appointed to collect the rent and pay it to the landlord, that agent) is required to withhold the tax and account for the same on a quarterly basis to HMRC. Landlords may register for gross payment status and receive rent without deduction of tax (but will be liable for Income Tax under self-assessment).
- 1.3. This contrasts with the position of UK resident companies which are subject to Corporation Tax on net rental profits at 19%.
- 1.4. From 6 April 2020, all non-UK tax resident companies which carry on a UK property business will be brought within the scope of Corporation Tax in respect of the profits of that business.
- 1.5. HMRC published additional guidance for companies transitioning from Income Tax to Corporation Tax as a result of these changes on 15 January 2020.

2. Overview of new regime: Key elements

2.1. Calculation of profits

Normal Corporation Tax principles apply to profits brought into tax under the new regime. That is, a company's taxable profits are calculated by reference to accounting periods and constitute the sum of its income profits and chargeable gains less certain deductible payments, and subject to specific rules such as the corporate interest deductibility restriction and other restrictions on loss relief.

2.2. Returns

Non-UK resident companies receiving rental income from UK property currently submit HMRC Form SA700 to HMRC. The Form must be submitted in relation to the Income Tax year (i.e. 6 April to 5 April) and by post. In contrast, from April 2020 HMRC is automatically registering Non-Resident Landlords for Corporation Tax and issuing a Unique Tax Reference (“**UTR**”).

Companies should contact HMRC if they have not received a UTR by 30 June 2020 or if they already have a UTR. Agent authorisations will not transfer and you will need to submit a new authorisation form to allow a tax agent or adviser to deal with your Corporation Tax on your behalf. Authorisation can be set up online or by completing a paper application. The CT600 Corporation Tax Form must be filed online together with online accounts. It is also the case that accounting periods will be set up by default to end on 5 April and if the company prepares its accounts to a different date, it must inform HMRC in writing.

3. Practical application

- 3.1. The Government's intention in extending Corporation Tax to non-UK resident companies in this way was to level the playing field between UK resident and non-UK resident companies in terms of the tax treatment of income from UK immovable property.
- 3.2. Non-UK resident landlords will welcome their applicable tax rate fall (from 20% to 19%). The change from Income Tax to Corporation Tax will nevertheless have other tax implications for non-UK resident companies. The implications most likely to be relevant as a result of the transition to Corporation Tax are set out below, but each taxpayer will need to undertake a full analysis of the impact to ensure all consequences are considered.

4. Anti-avoidance

- 4.1. A targeted anti-avoidance rule has been introduced with effect from 29 October 2018 where a company enters into an arrangement, the main purpose or one of the main purposes is to secure for any person a tax advantage related to the coming into force of these provisions.

5. Interaction with the NRLS

- 5.1. Despite earlier doubts on the issue, it is now certain that the NRLS will continue to apply.
- 5.2. Under the NRLS, if approval from HMRC for a Non-Resident Landlord to receive rental income gross has not been applied for and confirmed by HMRC, the letting agent (or tenant where appropriate) must calculate the tax due at 20% and pay it to HMRC on a quarterly basis. The rate of withholding tax will be at 20%, notwithstanding that corporate Non-Resident Landlords will be subject to Corporation Tax. To the extent that the 20% withholding exceeds the Corporation Tax liability in respect of the net rental income the Non-Resident Landlord will be able to make a reclaim.

6. Compliance

The change from Income Tax to Corporation Tax will have significant compliance implications as noted above in paragraph 2.2 in terms of filing requirements.

7. Rate of tax

Following a policy change announced in the Tory Party manifesto in the last election in December 2019, the Corporation Tax rate in April 2020 is not expected to be reduced to 17% and will remain at 19% in contrast to the Income Tax rate for companies which continues at 20%. The Spring Budget on 11 March 2020 will be expected to confirm the position.

8. Interest restriction

Broadly speaking, from 1 April 2017, companies have been restricted in the deductions that they may obtain for interest and other financing amounts in computing profits for UK Corporation Tax purposes. Generally, the corporate interest restriction applies to individual companies or groups of companies that will deduct over £2m in net interest expenses over a 12 month period. Where it applies, an "interest allowance" will determine the net expenses that may be deducted. The restrictions have only applied however in terms of Corporation Tax so as a result Non-Resident Landlords of UK property which are currently subject to Income Tax on their UK property income have not had to be concerned with them. This will change from 6 April 2020.

9. Hybrid mismatches

Broadly speaking, hybrid mismatches are arrangements that exploit a difference in the tax treatment of an entity or instrument under the laws of two or more jurisdictions to produce a mismatch in the tax treatment of a payment made under the arrangement. Where the legislation applies it seeks to counteract the benefit of any mismatch. Although the hybrid mismatch legislation is unlikely to apply to simple property businesses, non-UK resident companies will need to understand its provisions to ensure it does not apply.

10. Next steps – What should I do now?

It is evident that a non-UK resident company holding any UK property should carry out a full analysis of the Corporation Tax regime with its professional advisers to assess the application of the new rules and in good time before they come into force on 6 April 2020. In most low value structures the transition is unlikely to produce dramatically different outcomes on the basis that the calculation of profits for Income Tax and Corporation Tax are not radically dissimilar. Nevertheless, the provisions (enacted in the Finance Act 2019) do contain uncertainties (particularly with regard to the practical application of the new rules insofar as they affect non-UK resident companies investing in UK resident property unit trusts).

For further guidance on these measures, please contact Robert Drysdale or any other member of our [Wealth Planning](#) team:



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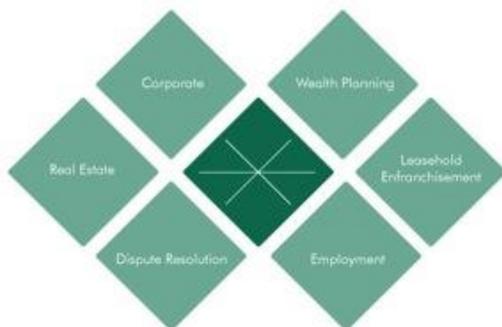
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