24 July 2019

UK TAX ON PROPERTY FOR NON-UK RESIDENTS – RECENT CHANGES

Overview

- From April 2019, all direct disposals of UK land and property by non-UK residents are now subject to UK tax on capital gains
- Some indirect disposals (of shareholdings in “property-rich” companies) are also caught
- From April 2020, non-UK resident companies which have UK property-related income (e.g. rental income, profits on property-related loans etc.) will be subject to UK corporation tax instead of income tax
- As a consequence, non-UK resident owners of UK land and buildings may have new and unfamiliar tax liabilities and reporting obligations

Historical background

- Historically, non-UK residents (whether companies or individuals) were not subject to UK taxes on capital gains when they disposed of UK land and buildings, unless the property was used in a UK permanent establishment
- Non-UK residents were typically only subject, in the UK, to:
  - income tax on rental income
  - stamp taxes when property was acquired

Gradual widening of scope of UK taxes

- The UK government has been gradually widening the scope of taxes on UK land and buildings
- Since 2015, all non-UK residents have been subject to UK Capital Gains Tax (CGT) on disposals of UK residential property
- Subject to certain exemptions, since 2013 the Annual Tax on Enveloped Dwellings (ATED) is charged on residential property which is held within a corporate vehicle

April 2019 changes

- From 6 April 2019, all direct disposals of UK land and buildings (both residential and commercial) by a non-UK person are subject to UK tax on capital gains
- Non-UK companies are charged corporation tax on their gains. Individuals are charged CGT
- Indirect disposals, of a 25% or more interest in a “property-rich” company (ie a company which derives 75% or more of its value from UK land) are also subject to UK tax, subject to certain exemptions

- Generally, only the part of any gain which accrues after 6 April 2019 will be subject to UK tax (April 2015 if the property is residential). For this reason, it is advisable to keep any records which show the market value of properties owned at these dates.
- Transactions must be reported and any CGT paid within 30 days of the disposal (3.5 months for corporation tax if the company is not otherwise subject to UK tax).
- A return must be filed even if no tax due

April 2020 changes

- From 6 April 2020, non-UK resident companies will be subject to UK corporation tax on UK property-related income (e.g. rental income, profits on loans related to the property business, etc.). Currently, such companies are liable to income tax.
- This change will result in a reduction of the tax rate paid by companies on property-related income (corporation tax will be 17% from April 2020, compared to the UK basic income tax rate of 20%)
- However, such companies will have to calculate their income based on UK corporation tax principles. For instance, this includes applying the Corporate Interest Restriction rules. Broadly, these rules can restrict a group's ability to deduct interest where this exceeds £2 million per annum
- Affected companies will also have to register for UK corporation tax and file annual corporation tax returns, which may be an unfamiliar process. This change will need to be planned for in advance.
- For an accounting period which straddles 6 April 2020, a UK income tax return to 5 April will be needed followed by a UK corporation tax return to the end of the accounting period
- Depending on the level of annual profits, such companies may also become liable to pay their UK corporation tax by quarterly instalments

Double taxation treaties

- We expect that in most cases UK tax will be payable on gains and income from UK property and it will be necessary to seek a credit (depending on the terms of the double taxation treaty) against any non-UK tax liability which arises on the same income or gain. Each treaty will need to be considered on a case-by-case basis

Further information and support

- These changes are likely to mean that many non-UK resident owners of UK land and buildings will have new and unfamiliar tax liabilities and reporting obligations. There may also be complexity in the transition from the previous tax treatment of UK property income, and existing property-holding structures may no longer be optimal.
- To help you deal with these challenges, Claritas Tax (www.claritastax.co.uk) are able to assist with all of the following:
  - Advice on the scope of the new rules
  - Planning for the transition to and effect of the new rules
  - Moving to a new property-holding structure where the existing structure is no longer suitable
  - Preparation and filing of UK Capital Gains Tax returns
  - Preparation and filing of UK Corporation Tax returns
- We hope that you find this briefing note helpful. However please note that it has been prepared for awareness purposes only and, as such, represents only a high-level and simplified summary of the rules. It does not constitute advice and is not a substitute for taking proper advice tailored to your specific circumstances.