



Key Property Tax Issues—Update

From April 2020 there will be a major change in the taxation of non-UK resident companies who receive UK property income. For the first time, these companies will become subject to the UK corporation tax regime. These changes are in addition to those introduced in April 2019 relating to property-rich companies. As if that wasn't enough, a recent UK tax case has raised concerns that UK withholding tax obligations could be interpreted to catch interest payments in a much wider range of scenarios.

The combined effect of these developments could lead to significant adverse UK tax consequences for some non-resident companies. Each affected property business will need to review the suitability of its current financing and operating structure in light of the issues discussed below. Should this review conclude that a restructuring is necessary, care will have to be taken to avoid triggering tax charges under the complex property-rich company legislation that could potentially bring gains of non-UK residents into the UK tax net.

Fortunately, here at Lubbock Fine we have the expertise to advise on how the changes could affect your business, and we can work with you to identify any actions that need to be taken in advance of April 2020 in order to minimise any additional tax burden.

The headline implications of the changes are set out below.

1. New regime from April 2020 - administration

From April 2020 non-resident companies realising income or gains from UK property will be fully subject to the UK corporate tax regime. This will generate a number of administrative requirements in addition to the technical implications of the new regime.

These include:

- The need to submit corporation tax returns and computations supported by appropriate statutory accounts.
- The corporation tax return may need to be supported by iXBRL tagged accounts.
- It will be necessary to register the company with HMRC for corporation tax purposes.
- New agent authorisations will need to be completed and submitted to HMRC to allow HMRC to correspond with the company's UK tax agent.

2. New regime from April 2020 – differences between corporation tax and income tax

The fact that the non-resident companies will fall fully within the UK corporate tax regime will mean that these entities may be subject to a markedly different tax regime than the one they have been used to. These differences include:

- Tax will be payable at the corporation tax rate of 19% from April 2020 rather than the income tax rate of 20%.*
- Non-resident companies will pay corporation tax on any gains at 19%.*
- The corporation tax regime contains different rules in relation to items such as loan relationships, including particular restrictions on late-paid interest to related parties, and the treatment of derivatives or currency swaps.
- The implications of the transitional provisions covering entry into the corporation tax regime in relation to things such as accumulated losses and capital allowances will need to be assessed and understood.
- The level of profits within a company or group will determine the tax payment date(s) for UK corporation tax purposes.

The cashflow implications of this need careful attention as tax payments may be accelerated.

- The corporation tax loss relief rules can in some cases deny full relief for losses brought forward into an accounting period, so the potential impact of these rules needs consideration.
- The Corporate Interest Restriction regime will be applicable and can in some cases deny full tax relief for interest costs when a company or group has in excess of £2m per annum net UK interest expense. The implications of this for the way a property business is funded may therefore need attention.

** A previously announced 17% rate of corporation tax, due to apply from April 2020, is now expected to be deferred.*

3. Withholding tax

The general rule is that a borrower is obliged to deduct 20% income tax against any UK source annual interest paid to non-UK residents and account for this to HMRC, unless the recipient can prove that they are exempt under the terms of a double tax treaty. Determining whether interest has a UK source is potentially a complex matter and a variety of factors need to be considered in reaching a conclusion, including the residence of the debtor, the performance of the contract, the payment method and the residence of any guarantor of the debt.

HMRC have tended to judge whether interest has a UK source based on a balance of the relevant factors, with the most important factor being that of the residence of the debtor and where its assets are located. However, a recent UK court case has suggested that other important factors could be the location of a company's business and the source of funds used to make the interest payments.



We have seen HMRC tentatively raise this issue on specific cases, which suggests that they are considering whether to change their published guidance in light of this judgement. We await further commentary on the case or other communications from HMRC on this issue, but in the meantime careful consideration needs to be given to the implications for payments of interest and related withholding tax obligations.

How we can help

We would be pleased to help with further advice in this area. If you would like to discuss any of these matters further please contact one of our Tax Partners, Chris Sparkes, chrissparkes@lubbockfine.co.uk or Phil Moss, philmoss@lubbockfine.co.uk.

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