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CHARTERED ACCOUNTANTS

Comment on...

Changes affecting non-UK resident companies disposing of interests in UK property

All UK property disposals by non-resident companies within the charge to tax

Non-UK resident companies investing in UK property have been subject to Capital Gains Tax on the disposal of residential property since 2015. The latest changes, effective from 6 April 2019, widen the scope of those rules, bringing both commercial property and disposals of shares in property-rich companies by non-resident companies, within the charge to tax. Broadly, the rules seek to tax disposals of an interest in UK property by non-UK resident companies where that disposal arose on or after 6 April 2019. A disposal is defined as a sale, gift or deemed disposal of an interest in land/property. This interest may be a direct interest – as in the case of a disposal of commercial or residential property. It may also be an indirect interest such as a significant shareholding (>25%) in a property-rich entity: an entity deriving more than 75% of its value from UK land/property.

The new rules mean that such disposals will now be subject to UK corporation tax

For disposals after 6 April 2019, tax on capital gains for non-UK resident companies will be subject to UK Corporation Tax rather than Capital Gains Tax, as previously applied to disposals of residential property by non-UK resident companies. This change means that gains on property disposals will be charged at the UK Corporation Tax rate, which is currently 19%, but which is due to fall to 17% from 1 April 2020 (subject to any changes announced in the budget on 11 March 2020). This is the same rate for both resident and non-resident companies. Similarly, both UK resident and non-UK resident companies will be able to utilise any capital losses on the disposal of property against gains. The reduction in the tax rate represents good news for most non-UK companies investing in residential property as the most recent changes harmonise the tax due on gains on residential property which were previously taxable at income tax rates of up to 28%. Companies disposing of commercial property or shares in property-rich companies will be within the charge to tax for the first time.

How gains are calculated

For assets acquired after 6 April 2019, the gain or loss on disposal is calculated under the normal principles. For assets acquired before 6 April 2019, the cost of the asset may require to be rebased to determine the gain chargeable to tax. Whilst gains on commercial and residential property now both fall within the charge to tax, the distinction between the two remains important for the calculation of the gain and in particular, its cost for tax purposes.

For commercial property and shares in property rich companies acquired before 6 April 2019, there is an assumption that the cost of the property is its value at 6 April 2019. Records of the valuation at 6 April 2019 should therefore be kept now rather than attempting to value the property retrospectively. Alternative methods of determining the tax base cost are permitted, including indexed historic cost, and whether this is advantageous should be determined on a case-by-case basis. For residential property, the cost for tax purposes will depend on when the property was acquired and what it has been used for since it was acquired. The cost of property held before 6 April 2015, which was previously fully chargeable, will be rebased to 6 April 2015. Contemporaneous valuations should be maintained as at 6 April 2015, where relevant. Special care should be taken where the property has had mixed use, or there has been a change of use of the property over the course of ownership.

Corporation Tax Regime

As the new rules now bring these disposals within the charge of UK Corporation Tax, many non-UK resident companies will be required to register for UK Corporation Tax for the first time. A company should register within three months of the date the company first becomes chargeable to Corporation Tax: in these circumstances, this will usually be within 3 months of the date of disposal of UK property. As this deadline is relatively short, a company may choose to register for UK Corporation Tax in advance of any disposal. Chargeable disposals made after 6 April 2019 are then reported within the normal Corporation Tax Self-Assessment (CTSA) rules: with a full tax return usually due to be submitted to HMRC 12 months after the date of disposal, and any tax usually due 9 months after the date of disposal, although quarterly instalments may be required. Advice should be sought on these due dates as they may change if the company operates a trade in the UK (such as renting property from 6 April 2020).

Taxation of rental income on UK property

At present, profits from a UK property business undertaken by non-UK resident companies are subject to UK Income Tax at a rate of 20%. From 6 April 2020, non-UK resident companies holding UK property will be subject to UK Corporation Tax at 17% (subject to any changes announced in the budget on 11 March 2020) on profits of a UK property business. This is the standard UK Corporation Tax rate and applies equally to resident and non-resident companies. Similarly, non-resident companies will be able to access the same reliefs as UK resident companies on any losses incurred from a property rental trade. However, the corporation tax rules for UK property businesses are generally more complex than the income tax rules. For example, larger companies may be affected by the rules that restrict the use of brought forward losses and cap the tax deduction available for borrowing costs. Non-UK resident companies with such income will be required to register for UK Corporation Tax purposes within 3 months of becoming chargeable to tax. Therefore, for most companies with an existing property business and no disposals in the year, this will be by 30 June 2020.

- Information correct at 14 February 2020

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