

Insights

UK MAKES AMENDMENTS TO REGIME FOR AGENTS WITHHOLDING TAX ON RENT PAID TO NON-RESIDENT CORPORATE LANDLORDS

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SUMMARY

The Government has amended the existing non-resident landlord scheme regulations (S.I. 1995/2902) in readiness for the transition to corporation tax for non-resident corporate landlords from 6 April 2020. The changes impact on agents that withhold tax on rent paid to such landlords.

The new regulations allow an agent collecting rent for a non-resident corporate landlord to elect for an alternative method of calculating an allowance for tax deductible financing costs. In broad terms they allow the agent to make an assumption about the allowance that could be available under the corporate interest restriction regime, which applies to corporation taxpayers. The election is only available where a non-resident landlord uses an agent to collect its rent and that agent (or someone acting at its direction) pays the landlord's financing costs.

The issue is that under the existing rules the agent can deduct financing costs from rent before withholding tax on the net rent where the agent is "reasonably satisfied" that the costs would be deductible for the non-resident landlord from its chargeable profits for tax purposes. Without the ability to make the alternative election there is a concern that some agents will have difficulties applying the corporate interest restriction (CIR) to their landlord from 6 April 2020. The CIR is a complex regime that applies a maximum allowance on the amount of financing costs that can be deducted by the landlord for tax purposes. The agent may have insufficient information to apply the CIR for the landlord, for example because it is not able to make a judgement about whether the net UK tax interest expense is below the *de minimis* £2m threshold for CIR. Where the agent is having difficulties applying the CIR, in their guidance accompanying the new regulations HMRC says that the existing regulations would typically prevent a deduction for financing costs and increase the amount of tax withheld from the rent.

The election is an irrevocable election made by the agent. If the election is made, the agent can calculate the maximum allowance on the deductible financing costs equal to a fixed allowance

(30%) of the UK rental income, net of deductible expenses other than financing costs. There is the ability to carry forward unused allowance and unused financing costs above the allowance. This essentially creates a shadow CIR regime for the agent to apply. However, the agent still has to consider whether there is another tax reason why the financing costs may not be deductible for tax purposes.

Applying the election could provide both a cash flow impact and simplify the tax administration of the UK letting. However, the non-resident landlord would still be liable to pay the correct amount of corporation tax on its rental profit applying the actual corporate interest restriction regime rather than this shadow version aimed just at agents. The landlord will be able to reduce the amount of corporation tax it has to pay on its rent by the income tax withheld by the agent from the rent, but it will be liable for any excess corporation tax.

As indicated above, the election is not available where the tenant is the person that has to withhold tax under the non-resident landlord scheme.

The [guidance](#) accompanying the new regulations explains when a non-resident landlord needs to notify HMRC when it is chargeable to corporation tax from one accounting period to the next and also when it first comes within the charge to corporation tax.

The amendments have effect on or after 1 April 2020, subject to transitional provisions for financing costs attributable to the period before 6 April 2020.

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Anne Powell

London

anne.powell@bclplaw.com

+44 (0) 20 3400 2162

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