Offshore corporates owning UK property: HMRC letter campaign

Management of taxes

21 November 2022

HMRC launched a letter campaign in November 2022 to tackle non-compliance linked to offshore corporates owning UK property.

HMRC have reviewed data, including from the Land Registry, and have identified non-resident corporate owners of UK property that may not have met certain UK tax obligations. Depending on the circumstances, HMRC may issue one of two letters, the purpose of which is to prompt recipients to review their affairs and encourage those who need to rectify mistakes to make voluntary disclosures to HMRC.

The letters are accompanied by a Certificate of Tax Position and a Notice of Intention to Disclose. They explain that disclosures must be made by completing the certificate and notice and sending them to one of two dedicated email addresses, or by post to the address provided in the letters. The Worldwide Disclosure Facility via the Digital Disclosure Service must not be used.

While the letters are addressed to the corporates, both also recommend that the companies should ask connected UK resident individuals to ensure their personal tax affairs are up to date in respect of the related anti-avoidance provisions.

One letter will be issued to non-resident companies that own UK property and may need to disclose income received as a non-resident corporate landlord or a liability to the annual tax on enveloped dwellings. Under the transfer of assets abroad legislation, UK resident individuals who have any interest in the income or capital of a non-resident landlord, whether directly or indirectly, may be within the transfer of assets abroad income charge provisions at Income Tax Act (ITA) 2007 s 721 and s 727. A UK resident who has not personally transferred assets but benefits from a transfer made by somebody else (for example, occupation of property) may be within the transfer of assets abroad benefits charge at ITA 2007 s 731. The letter

recommends that any such individuals should seek professional advice to ensure their affairs are up to date.

The other letter will be issued to non-resident companies that appear to have made a disposal of UK residential property between 6 April 2015 and 5 April 2019 without filing a non-resident capital gains tax (NRCGT) return. Between 6 April 2015 and 5 April 2019, disposals of UK residential property by non-resident companies were subject to NRCGT. Where the company purchased the property before April 2015 and the whole of any overall gain is not charged to NRCGT (or otherwise), then that part of any gain not charged may be attributable to the participators in the company under TCGA 1992 s 13 (these rules have since been relocated to TCGA 1992 s 3). Additionally, such corporates may also be liable to pay UK tax on rental profits, income tax under the transactions in land rules and/or annual tax on enveloped dwellings. Again, the letter suggests that any individual participators should seek professional advice to ensure their affairs are up to date.

The letters have not been copied to agents because HMRC have no way of knowing if the company has an agent, since they are non-filers.

The CIOT has published guidance to assist members should a client, or potential client, receive one of these letters from HMRC. This includes guidance on how to respond to HMRC's letter, whether or not there is anything to disclose, and whether the client should sign and return the certificate in view of the serious consequences of making a false declaration.

The letters and guidance can be found on the CIOT website at: www.tax.org.uk/offshore-corporates-owning-uk-property-hmrc-campaign.

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