Non-resident companies subject to income tax and non-resident CGT

International Tax | Large Corporate | Personal tax

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In March 2017 the government published a consultation document which considers proposals to bring non-resident companies within the charge to corporation tax in respect of income arising from UK real property and also gains which are currently taxed as non-resident CGT gains (NRCGT gains). The CIOT commented that we would prefer to see a strategic review of property taxation and that further work should be done on the Exchequer and economic impact of the proposals before any decision is taken.

The consultation document states that the proposals are largely driven by the aim of achieving consistency of treatment with regard to income from UK real property between UK resident companies (already within the charge to corporation tax) and non-resident companies, particularly with regard to the corporate interest restriction and reform to the CT loss relief rules. We recognise that a level playing field is an important consideration (assuming these new rules on corporate interest restriction and loss relief are enacted) to ensure that UK resident companies which are investing in UK real property are not at a disadvantage from a tax perspective, or that there is a tax incentive to invest in UK real property using a non-resident company. However, we suggested that this rationale should be considered alongside the piecemeal changes to property taxation that have been made since 2013 which are identified in the consultation document: while individual changes may be introduced for cogent policy reasons, such fragmented change tends to increase complexity and to add to the costs and compliance burdens for taxpayers. We said that the CIOT has long held the view that property taxation needs a wider strategic review rather than this disjointed approach.

Broadly, we agree that, if the intention is that the corporate interest restriction rules and loss reform rules should apply to income arising from UK real property for non-

resident companies, it is preferable to bring UK real property income within the CT regime, rather than seek to apply these new rules through the income tax regime.

However, we also said that before any final decision is taken as to whether or not to bring income from UK real property into the CT regime, further work should be undertaken in relation to the assessment of impacts for both the Exchequer and the taxpayer. A fundamental change in the basis of taxation such as this will inevitably lead to a compliance burden for taxpayers (even if it is only cost of taking advice on how the new regime works) and costs for HMRC in policing the regime, and this should be balanced against the aim of consistency of treatment. We suggested that if there will be little or no Exchequer benefit from the proposals then it should be carefully considered whether achieving greater consistency in the area of UK real property taxation is worth the cost and effort the change will entail.

We also said that the government should be mindful of the fact that the corporation tax regime will not be familiar to a large number of smaller non-resident companies which are landlords in respect of one property occupied by, typically, a beneficiary of a trust that holds the shares in the company. It is likely that the administrative burden of transition to, and familiarisation with, a new corporation tax regime will fall disproportionately on such companies.

Our full response to this consultation can be found on the CIOT website.

We have also written to the Making Tax Digital (MTD) team to comment on the interaction of the proposals in the consultation document with the MTD project.

Under the proposals outlined in the consultation document, the government is exploring the case for moving non-resident companies from the income tax regime to the corporation tax regime. The government is separately proposing that digital record keeping and digital reporting obligations for businesses subject to income tax will take effect from either April 2018 or April 2019 (depending upon the business's turnover level), but that digital record keeping and digital reporting obligations for businesses subject to corporation tax will not take effect until April 2020.

As things stand, non-resident companies could be brought into the MTD regime from April 2018 for income tax purposes. However, if the proposals in the consultation document are adopted, and non-resident companies are moved to the corporation tax regime, they will be required to enter the MTD regime for corporation tax from April 2020.

We suggested that, given this potential move to the corporation tax regime, non-resident companies should not have to move into the MTD income tax regime in April 2018 (or April 2019), only to possibly have to move out of it again and into the MTD regime for corporation tax in April 2020; this would seem to be an unnecessarily confusing, costly and burdensome exercise for them to have to undertake.

We said that it would make sense to exempt non-resident companies from the MTD income tax regime altogether, or at least until a decision is taken as to whether or not they are staying within the charge to income tax or moving to corporation tax.

Our letter regarding MTD can be found on the CIOT website.