UK Corporate Tax changes

November 2022

Non-UK resident companies which are subject to UK Corporate Tax ("UKCT") through their UK property rental business should now be fairly well adjusted to their new tax regime, having transitioned away from the Non Resident Landlord tax system from April 2020.

However, it is rare that UK taxation stays still for too long, and that is certainly the case at present. The UK Government have been undertaking a number of significant 'U-turns' of late in relation to fiscal policy. Having just recently got accustomed to the current UKCT regime, non-UK resident property companies will, from 1 April 2023, find that they are subject to:

1. **An increased 25% UKCT rate on their taxable income and gains - a 6% increase from the current 19%.**
2. **A new set of rules as to when companies are 'associated' with each other, which will see many companies under common control by non-corporates (e.g. individuals, trusts etc.) associated with each other - this can have a drastic impact on the dates upon which UKCT is payable.**

It is crucial that Channel Islands based companies are aware of these continued UK tax changes and proactively work to understand their impact, and mitigate where possible.

Set out below is some more of the detail on the above two significant changes.

Increase in UKCT Rate

The current UKCT rate of 19% applies as a single rate.

From 1 April 2023, this will cease to apply and shall be replaced by variable rates ranging from 19% to 25%.

Where a UK resident company has taxable profits of less than £50,000, the 19% small profits rate will apply. UK resident companies with profits of between £50,000 and £250,000 will pay at a tapered rate of between 19% - 25%. Above that higher limit, the 25% rate applies to all taxable profits.

These bandings are reduced proportionately if there are associated companies (see later) or an accounting period of less than 12 months.

Where an accounting period spans across this date, the taxable profit will require to be split to a period before and after 1 April 2023, with differing rates applied.

Application to Channel Islands companies

The lower and tapered rates of 19% - 25% do not apply to companies which are non-UK resident.

Companies which are incorporated and/or tax resident in the Channel Islands, and which are subject to UKCT, will pay at a flat rate of 25% for all taxable profits that arise after 1 April 2023. This is an increase of 6% additional UKCT.

The 25% rate will apply to all UK based property and trading income, and also to capital gains arising on all sales of UK investment properties.

Tax rate increases can be difficult to mitigate against, but the first thing that should be done is to understand how it will impact on the business financially, including the potential impact on investments and returns.

Companies may wish to look at accelerating taxable profits, for example the sale of property developments or investment properties, bearing in mind of course that such matters would be subject to commercial and other non-tax considerations:

De-enveloping UK Property

With the increase in UKCT rate, we are seeing an increase in interest for de-enveloping transactions, which can see a property held in a Channel Islands company be distributed to a company shareholder. This is often done via a Members Voluntary Liquidation of the company.

Upon distribution of the property, the company is making a disposal which can be subject to UKCT on any gain. As such, undertaking the transaction prior to 1 April 2023 could result in a saving of tax.

Where de-enveloping is to be considered, it is vital this is looked into well in advance of 1 April 2023. Each case requires to be looked at on its own merits, as to whether this is the best option from a tax and wider perspective, and it can take some time to achieve the end result.

Relevant considerations in such a de-enveloping can include (a) UKCT on the company which is distributing the property, in relation to any capital gain, (b) Income Tax or Capital Gains Tax position of the individual(s) receiving the property, (c) UK Inheritance Tax, (d) Register of Overseas entities transactions, and (d) Will and estate planning.

Change to Associated Company Rules

The rules which determine whether companies are associated with one another for UKCT purposes shall also change on 1 April 2023. The current test of 'related 51% group company' will be replaced with new 'associated company' rules. Consequently, companies that did not fall within the quarterly instalment payment (QIP's) regime previously may now fall within these rules.

At present, companies are generally deemed to be related 51% group companies where there is common corporate ownership of >50%.

However, the definition shall be significantly broadened to also include situations where both companies are controlled by the same 'person', or 'persons.' The definition of 'person' is very wide. It includes not only a company, but also individual, trustees of a trust, or partners in a partnership.

So for example, let us assume that a trust holds 100% of the shares in 10 separate companies. All company shares were settled into the trust by the same settlor and all companies are involved in very similar activities. Under current rules, there are no 51% group companies. However from 1 April 2023, there may be 10 associated companies.

Quarterly Instalment Payments ("QIPs")

As mentioned above, the number of associated companies will determine whether there is a requirement for a company to pay its UKCT via QIPs.

Most companies pay their UKCT within 9 months and 1 day after the year end, unless they fall into the QIP regime.

The QIP regime, broadly, applies where either:

1. **Taxable profit exceeds £1.5m in two consecutive accounting periods, or**
2. **Taxable profit exceeds £10m in a single accounting period.**

There are also more accelerated QIPs where taxable profits exceed £20m in a single accounting period.

It is vital to note that the limits of £1.5m, £10m and £20m are divided by the number of associated companies. As a result, it is anticipated that many companies which are not currently within the QIP regime, shall be once these changes come into effect.

Whilst falling into the QIP regime does not increase tax payable, it will have an impact on cash flow. There is also additional compliance obligations in order to forecast the taxable profits and pay on time, bearing in mind that missing or underpaying QIPs can result in interest and/or penalties being applied by HMRC.

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