Real Estate compliance obligations

If any of the clients that you administer or manage own a property in the UK, there may be some UK filing obligations that you should be considering on their behalf

Annual Tax on Enveloped Dwellings (“ATED”) Return

ATED is an annual tax payable mainly by companies that own UK **residential** property valued at more than £500k. An ATED return will need to be submitted to HMRC if the property:

- Is a dwelling.
- Is in the UK.
- Was valued at more than £500k on 1 April 2012, or at acquisition, if later, for returns from 2016 to 2017 onwards.
- Higher thresholds apply for earlier years.
- Is owned completely or partly by a:
    - Company.
    - Partnership where one of the partners is a company.
    - Collective investment scheme - for example a unit trust or an open ended investment vehicle.
- New valuations are needed for 1 April 2018, the relevant valuation date being 1 April 2017.
- The annual charge ranges from £3,500 to £218,200 for 2016/2017 depending on the value of the property.
    - Property rental businesses qualify for a relief from ATED, however, a declaration form must be subsubmitted to claim the relief each year (limited other reliefs are available).

Annual reporting

Returns and payment are due by 30 April. For example, the 2016/2017 return and payment would be due by 30 April 2016.

Applies to any dwelling with a value of:

- £2million on 1 April 2012, or at acquisition if later, for returns from 2013 to 2014 onwards.
- £1million on 1 April 2012, or at acquisition if later, for returns from 2015 to 2016 onwards.
- £500,000 on 1 April 2012, or at acquisition if later, for returns from 2016 to 2017 onwards.

Non-Resident Landlord Return

Applies to non-resident individuals, companies and trusts receiving UK rental income:

- The tax due on the rental income can be paid through Self-Assessment in the UK, this is known as a Non-Resident Landlord Return (“NRL”).
- Need to register otherwise the letting agent or tenant will withhold tax at a rate of 20% of the gross rent payable - cash flow issue!
- A return is required to be filed annually by 31 January following the end of the tax year.
- Tax year runs 6 April to 5 April.
- Payment is due by 31 January - subject to being covered by the payments on account.
- Payments on account are made in January and July - 50% of the previous years’ tax liability.
- Taxable to income tax - individuals taxed at their marginal rate (20%-45%), companies at basic rate (20%) and trustees at the rate applicable to trusts (45%).
- Income expenses are allowable deductions against the rental income.
- Expenses of a capital nature are not.
- From April 2016 the wear and tear allowance has been replaced with the renewals basis.
- This will apply to such things as moveable furniture, televisions, fridges/freezers, carpets, curtains, linen, crockery and cutlery.
- New rules from April 2017 to be phased in relation to finance costs - restricting the amount of deductible interest against the rental income, up to the basic rate **(for properties held by individuals)**.
- For corporate NRL’s, the Government is considering bringing them within the scope of corporation tax. They will consult on this in due course.

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Real Estate compliance obligations

Non-Resident - Capital Gains Tax ("NRCGT") Return

From April 2015, Capital Gains Tax may be payable on UK residential property disposals by:

- Non-resident individuals.
- Personal representatives of non-residents who have died.
- Any non-residents who are partners in a partnership.
- Non-resident trustees.
- Non-resident companies or funds.
- Only applies to gains arising from 6 April 2015 (will need to obtain an April 2015 valuation).
- An election can be made to calculate the gain using the purchase price instead of the April 2015 valuation. This may be beneficial if it increases a loss.
- NRCGT losses can be carried forward and used against NRCGT gains arising in the same year or carried forward.
- Institutional and commercial properties are outside the scope, i.e. schools, old peoples homes, hospitals, etc.
- Special rules apply to student accommodation: if it's managed and controlled by the university or has at least 15 bedrooms, then it's outside the scope of NRCGT.
- Principal Private Residence relief may be available to individuals or trustees but not if the property is held through a company.
- Must notify HMRC in all circumstances when a non-resident disposes of a UK residential property by submitting form NRCGT.
- NRCGT forms need to be submitted within 30 days of conveyance of the property and the tax is to be paid at the same time.
- If already within self assessment, then you may pay the tax at 31 January following the tax year-end, i.e. normal tax due date but a NRCGT return is still required within the 30 days.
- Even if there is no charge to NRCGT a form must still be submitted.
- May be subject to both ATED and NRCGT - split gain. ATED gains have priority over NRCGT and any balancing gain may be chargeable under anti-avoidance rules that attribute gains accruing to non-resident companies to participators in the company and trusts to UK residents.

Annual Tax on enveloped Dwellings - Capital Gains Tax ("ATED CGT")

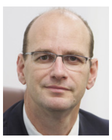
- Residential property within the annual charge to ATED will also be liable to CGT on disposal of the property.
- ATED CGT will only apply to the part of the gain that accrues on or after 6 April 2013. Providing an effective tax free uplift in base cost to 6 April 2013 for disposals by non-UK resident non-natural persons.
- An election can be made to calculate the gain on the whole ownership period.
- This is generally worth considering if the original base cost was higher than the disposal value.
- Only direct sales are within ATED, i.e. the sale of the shares in the property holding company are outside the scope of ATED CGT.
- ATED CGT gains are taxed at 28%.

How we can help

Our tax team, based in the Channel Islands, can help you understand your client's potential UK compliance obligations and can further assist with the completion of the various tax returns including, ATED returns, NRL returns and NR capital gains tax returns, which are required by HMRC.

We can also assist in other areas including, capital gains tax disposal calculations, capital allowance reviews, structuring and restructuring reviews and also considering the possible impact of the Diverted Profits Tax ("DPT") and Base Erosion and Profit Shifting ("BEPS") on your current structure.

Contacts



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