

NRL - Is it a company?

Prior to April 2020, all overseas persons (including companies) that were Non-Resident Landlords (NRLs) were subject to income tax on profits from their UK Property businesses. However, since 6 April 2020 (and 6 April 2019 for chargeable gains), NRL companies have been subject to corporation tax on these profits. In some cases, it will be obvious that the NRL will be subject to income tax as an individual, but where the property business is operated through a distinct legal structure such as a company or a partnership, it is vital to ensure that the correct entity classification is adopted for tax purposes.

The starting point in determining whether an NRL entity is subject to income tax or corporation tax on their profits from UK property is to establish whether the overseas entity is opaque or transparent for UK tax purposes, and whether the entity is holding property as a nominee for another party. How the entity is classified in their overseas tax jurisdiction is irrelevant for these purposes so this may not necessarily be a straightforward exercise.

In order to determine whether an overseas entity is an NRL company for UK tax purposes, several factors need to be analysed:

- a. Does the entity have a legal existence separate from that of the persons who have an interest in it?
- b. Does the entity issue share capital or something else, which serves the same function as share capital?
- c. Is the business carried on by the entity itself or jointly by the persons who have an interest in it?
- d. Are the persons who have an interest in the entity entitled to share in its profits as they arise or does the amount of profits to which they are entitled depend on a decision of the entity or its members, after the period in which the profits have arisen, to make a distribution of its profits?
- e. Who is responsible for the debts incurred as a result of the carrying on of the business – the entity or the persons who have an interest in it?
- f. Do the assets used for carrying on the business belong beneficially to the entity or to the persons who have an interest in it?



Some factors may point in one direction, whereas others may point in another, an overall conclusion should be reached by looking at the factors together in the round. However, HMRC do give particular significance to c) and d) above in determining the classification of an overseas entity that is a NRL.

Once the correct classification has been determined, it is then just a case of adhering to the correct corporation tax or income tax requirements depending on the NRL's classification.

Comparison in rules

The table on the next page includes the most significant differences between the income tax NRL regime compared with corporation tax NRL regime.

In addition to the above, certain non-natural persons such as companies may have an annual reporting requirement in respect of the Annual Tax on Enveloped Dwellings (ATED) where they own certain residential properties with a market value in excess of £500,000 as at 1 April 2022, or on the date of acquisition, if later.

Given the differences in the rules that are applicable to NRLs depending on their entity classification, it is more important than ever to ensure that the correct classification is adopted UK tax purposes.

If you require further details on any of the above points, or to discuss these rules with regards to your own circumstances, please get in touch with a member of the Business Tax team here at PEM.

NRLs (Income tax)

Tax on rental profits

20% income tax is withheld at source on rents received over £5,200 per year. Can apply to HMRC to receive rent gross.

Profits are shared amongst the persons who have an interest in the NRL entity. These persons are subject to income tax on amounts above their personal allowance under the usual income tax rates and bands.

Note that certain overseas individuals may not be entitled to a personal allowance.

Relief is given for tax withheld at source.

NRL Companies (Corporation tax)

20% income tax is withheld at source on rents received over £5,200 per year. Can apply to HMRC to receive rent gross.

The NRL company is a taxable entity in its own right. Profits from UK property are included in the calculation of Taxable Total Profits on which corporation tax is charged as follows:

- £0-£50,000 – 19%
- £50,000-£250,000 – 26.5%
- >£250,000 – 25%

The profit limits are divided by the number of associated companies.

Relief is given for tax withheld at source.

Tax payments

Income tax is payable on account with two instalments required, one by 31 January in the current tax year and the second by 31 July in the following tax year, each being 50% of the previous year's liability. A balancing payment is then due by 31 January following the end of the tax year.

Corporation tax is due for payment with reference to both the company's accounting period end date and size. Generally small & medium companies, with annual augmented profits below £1.5million, are required to pay their corporation tax within 9 months and 1 day of the end of their accounting period, although the position can be different for groups of companies. Large companies are required to pay their tax liabilities by instalments (please contact us for more details of the timings).

Filing requirements

Those persons who have an interest in the NRL entity are required to complete a self-assessment tax return by the 31 January following the end of the relevant tax year.

NRL companies are required to file a corporation tax return (CT600) within 12 months of the end of the company's accounting period.

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Currently the information required to support the income tax return does not need to be provided in a prescribed or electronic format.

The corporation tax returns and computations will need to be filed online in iXBRL format. Full accounts will need to be filed alongside the return, and in most cases these accounts will need to be iXBRL 'tagged'.

Finance costs

Interest costs are deductible as property business expenses if they are wholly and exclusively in relation to the property business. In the case of finance costs for residential properties, relief is restricted to the basic rate of income tax at 20%.

Interest expenses are deductible under the loan relationship rules, and can be offset against property income, subject to the transfer pricing rules and corporate interest restriction for large companies. There is no specific restriction for residential properties.

Tax on sale

Where the market value of the property has increased since 06 April 2019 (since 06 April 2015 for residential properties), on a disposal of a property this increase is shared between persons who have an interest in the entity and subject to capital gains tax. Amounts above the person's annual exempt amount are taxed as their top slice of income. Amounts falling within the basic rate band are subject to capital gains tax at 10% (18% for residential properties) with the excess taxed at 20% (28% for residential properties). For residential properties, the gain must be reported to HMRC and associated tax paid within 60 days.

The gain is also reported on the self-assessment tax return for the tax year of disposal, with relief given for tax already paid.

Where the market value of the property has increased since 06 April 2019 (since 06 April 2015 for residential properties) when the property is sold, this increase is included within the calculation of the NRL company's Taxable Total Profit for the relevant accounting period and is subject to corporation tax at the rates noted above.

The gain is reported on the corporation tax return for the accounting period of disposal.

Please note that the information contained within this factsheet is not intended to give specific technical advice nor should it be construed as doing so. Professional advice should always be sought before action is either taken or refrained from as a result of information contained herein.



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