STATUTORY INSTRUMENTS

2020 No. 151

CORPORATION TAX

INCOME TAX

The Taxation of Income from Land (Non-residents) (Amendment) Regulations 2020

Made - - - -	*13th February 2020*
Laid before the House of Commons	*17th February 2020*
Coming into force - -	*9th March 2020*

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 971(1) to (3) of the Income Tax Act 2007(**a**), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Taxation of Income from Land (Non-residents) (Amendment) Regulations 2020 and come into force on 9th March 2020.

(2) These Regulations have effect in relation to an annual period commencing on or after 1st April 2020.

(3) In these Regulations, "annual period" has the meaning given in regulation 2 of the Taxation of Income from Land (Non-residents) Regulations 1995(**b**).

Amendment to the Taxation of Income from Land (Non-residents) Regulations 1995

2. The Taxation of Income from Land (Non-residents) Regulations 1995 are amended as follows.

Amendment to regulation 2 (interpretation)

3. In regulation 2, in the definition of "deductible expense"—

(a) after "means" insert ", subject to regulation 9A(6),", and

(b) at the end insert "or is capable of being offset against those profits under the Tax Acts".

(**a**) 2007 c. 3; section 971(2) and (3) were amended by paragraph 716 of Schedule 1 to the Corporation Tax Act 2009 (c. 4).

(**b**) S.I. 1995/2902, to which there are amendments not relevant to these Regulations. Paragraph 169 of Schedule 2 to the Income Tax Act 2007 modifies these Regulations so any references to payments to be made to the Board in respect of tax that is or may become chargeable as the income from a business of a non-resident (as defined in those Regulations) are to be read as references to income tax to be paid to the Commissioners for Her Majesty's Revenue and Customs in respect of non-resident landlord income (as defined in section 971(2) of the Income Tax Act 2007).

Amendment to regulation 9 (calculation of payment of tax by agent)

4. In regulation 9—

(a) for paragraph (4), substitute—

"(4) The expenses specified are all amounts paid in the quarter by the prescribed person or by another person at the direction of the prescribed person that—

(a) the prescribed person is reasonably satisfied are deductible expenses, and

(b) in relation to financing costs, where the prescribed person elects, do not exceed the financing costs allowance.", and

(b) after paragraph (9) insert—

"(10) For the purposes of this regulation, "financing costs" and "the financing costs allowance" have the meanings given in regulation 9A(5)."

Insertion of new regulation 9A

5. After regulation 9 insert—

"Election in relation to financing costs

9A.—(1) This regulation applies where an election is made under regulation 9(4)(b).

(2) The election—

(a) must be notified to Her Majesty's Revenue and Customs with the annual return which relates to the first quarter to which the election applies, and

(b) is irrevocable.

(3) Where in any quarter in an annual period, the financing costs that the prescribed person is reasonably satisfied are deductible expenses exceed the financing costs allowance, the amount of the excess is carried forward and treated as financing costs in the next quarter, including a quarter after the end of that annual period.

(4) Where in any quarter in an annual period, the financing costs allowance exceeds the financing costs that the prescribed person is reasonably satisfied are deductible expenses, the amount of the excess ("the unused allowance") is carried forward and included in the financing costs allowance in the next quarter, including a quarter after the end of that annual period.

(5) For the purposes of this regulation—

"financing costs" has the meaning given in section 544(4) and (5) of the Corporation Tax Act 2010(**a**), but in applying subsection (5) the reference to "accounting period" is to be read as a reference to "annual period";

"the financing cost allowance" for a quarter is the sum of—

(a) an amount equal to 30% of the relevant amount for that quarter, and

(b) the unused allowance for the previous quarter;

"the relevant amount" for a quarter is the greater of—

(a) zero, and

(b) the difference of I-OE,

where—

I is the amount of income for that quarter specified in regulation 9(3), and

OE is the amount of expenses for that quarter specified in regulation 9(4) other than financing costs.

(**a**) 2010 c. 4; section 544 was amended by paragraph 41 of Schedule 4 to the Finance Act 2012 (c. 14), paragraph 4(8) of Schedule 14 to the Finance Act 2019 (c. 1) and S.I. 2014/518.

(6) For the purposes of this regulation and regulation 9, in applying the definition of "deductible expense", the reference to the Tax Acts is to be treated as not including Part 10 of the Taxation (International and Other Provisions) Act 2010 (corporate interest restriction)(**a**)."

Transitional provision

6.—(1) Where an election is made under regulation 9(4)(b) of the principal Regulations, inserted by regulation 4(a) of these Regulations, financing costs attributable to any time before 6th April 2020 may be included as a deductible expense but must not be taken into account in determining the extent, if any, to which financing costs exceed the financing costs allowance for any quarter in an annual period.

(2) The amount of financing costs attributable to any time before 6th April 2020 must be determined on a just and reasonable basis.

(3) In this regulation—

"annual period" and "quarter" have the meanings given in regulation 2 of the principal Regulations;

"deductible expense" has the meaning given in regulation 2 of the principal Regulations as amended by regulation 3 of these Regulations;

"financing costs" and "financing costs allowance" have the meanings given in regulation 9A(5) of the principal Regulations, inserted by regulation 5 of these Regulations;

"principal Regulations" means the Taxation of Income from Land (Non-residents) Regulations 1995.

Angela MacDonald
Ruth Stanier

13th February 2020 Two of the Lords Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 17 of, and Schedule 5 to, the Finance Act 2019 made provision for non-UK resident companies to be chargeable to corporation tax in relation to profits of a UK property business with effect from 6th April 2020. These Regulations make consequential amendments to the Taxation of Income from Land (Non-residents) Regulations 1995 ("the principal Regulations").

Regulation 3 amends regulation 2 of the principal Regulations to amend the definition of "deductible expense" to permit expenses to be offset and make a consequential amendment in relation to the exclusion of the corporate interest restriction rules in Part 10 of the Taxation (International and Other Provisions) Act 2010 where an election is made under regulation 9(4)(b) of the principal Regulations.

Regulation 4 amends regulation 9 of the principal Regulations and regulation 5 inserts a new regulation 9A into the principal Regulations to make provision for an election to apply a rule in relation to the amount of financing costs that may be taken into account as an expense in calculating the amount to be withheld on account of tax from rental income before it is paid to a non-UK resident subject to corporation tax. The rule restricts the deduction for financing costs to an amount representative of the amount which would be deductible on the application of the corporate interest restriction in Part 10 of the Taxation (International and Other Provisions) Act 2010 to a non-UK resident company.

(**a**) 2010 c. 8; Part 10 was inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2017 (c. 32).

Regulation 6 makes a transitional provision to disregard any financing costs attributable to any time before 6th April 2020, before non-UK resident companies become chargeable to corporation tax, where an election has been made.

A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

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