

UK INCOME TAXATION IMPLICATIONS

UK Income Tax

Tax law applies throughout the United Kingdom on a uniform basis. This is unlike most other areas of law where England and Wales law is distinct from the laws in Scotland and Northern Ireland. Tax law is administered by HM Revenue and Customs, who are often referred to as the Inland Revenue.

The receipt of income in the United Kingdom creates obligations under UK income tax law. A system of self assessment has recently been introduced in the United Kingdom which is similar to the Irish self assessment system. The Tax year in the United Kingdom is similar to the old Irish Tax year i.e. 6th April until 5th April in the following year.

The tax payer must make a self assessment return annually. It must be submitted by 31 January in the year after which it relates or within 3 months of a notice of assessment by the Revenue, unless the Revenue grant an exemption from making returns. There are significant penalties for non-compliance.

Tax due must be paid with the Self Assessment return. As in Ireland, a payment on account of tax may be due during the current year. The taxpayer's income tax liability in the previous year less any tax deducted at source must normally be paid on account. Where payment on account is due, the first payment on account is due on 31 January in the year concerned and the second payment is due by 31 July. The remaining balance is then settled on 31 January in the following year with the self assessment tax return. The payment on account will not apply in the first year, as there will be no liability to tax for previous year.

Tax payers are required to keep necessary records to make a complete return. This includes a statement of all income, costs and supporting books of account, contracts, vouchers etc. The records must be kept for 5 years after the filing date. Interest and penalties arise on late payments. HMRC have significant rights to enquire into the

completeness of self assessment returns. It has powers to require production of documents, accounts and to require questions to be answered.

Rental Income Rules

The rules for computation of UK Income Tax on rent are similar to, but slightly different from the Irish Rules. Where an Irish Resident receives rent from United Kingdom Property, he must calculate his Irish Liability in accordance with the Irish Rules and his UK liability in accordance with the UK Rules.

Receipts from all UK rental properties are aggregated. Similarly related expenses are aggregated and deducted. Expenses incurred in the letting are deductible. This includes insurance, ground rent, agent fees, management expenses, repairs (not capital expenditure) and interest on a loan to acquire or improve a property. There are no capital tax allowances available against English UK rental income similar to the "Section 23" type reliefs and allowances in Ireland. A "wear and tear" allowance is given. If rental income is less than the allowable expenditure a loss arises. There are special rules for furnished holiday accommodation lettings.

The Personal Allowance in the UK is £6,035 per tax year (in 2008). This tax allowance is generally available to all EU residents. Unlike the Irish System, this is not a tax credit. Allowances are deducted from the net rental income to ascertain the taxable income. Therefore, an Irish resident individual may be entitled to taxable income of up to £6,035 before being subject to any UK income tax. It will frequently be the case that an Irish residential property investor by means of a combination of relief for interest on the acquisition loan and personal allowances will not have any actual UK income tax liability for income on rents.

Where there are a number of owners, each may be entitled to their full personal allowance, so that holding a property in two names can ease potential UK income tax liability significantly.

There is an obligation in the United Kingdom on a party paying rent to a non resident, to withhold tax at the standard rate (22%). This must be paid to HMRC. This obligation could fall on a tenant who pays directly to the Irish landlord. More typically,

it will usually apply to an agency which collects the rent on behalf of a non- resident landlord.

It is possible to apply to HMRC to dispense with the obligation on the managing agent or tenant to withhold income tax under the “non-resident landlord scheme”. See www.hmrc.gov.uk/cnr. This involves showing that there is no net income tax liability. This course is typically undertaken by Irish Residential property investors who do not have an net taxable income due to allowances and mortgage interest deductions.

The position will need to be reviewed annually as a situation may arise over time whereby liability to English income tax arises. The obligation to self account for tax will apply where liability commences.

Double Taxation Relief

The general rule is that a person who is not resident or ordinary resident in the United Kingdom is charged with income tax on UK “source” income, such as rent from English properties. The receipt of income from anywhere in the World by an Irish resident individual, will attract Irish Income Tax. Where the receipt of rents causes income tax liability both in the United Kingdom and Ireland, Double Taxation relief will usually be available. It is necessary to look at the overall effective rate of tax. As the property is situated in the United Kingdom, it has the primary right to receive tax on rental income in accordance with the Double Taxation Treaty. Credit for United Kingdom Tax Paid will be allowed in respect of an Irish tax liability where it arises.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.