

**EXPLANATORY MEMORANDUM TO**  
**THE TAXATION OF INCOME FROM LAND (NON-RESIDENTS) (AMENDMENT)**  
**REGULATIONS 2020**

**2020 No. 151**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by Her Majesty’s Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends the Taxation of Income from Land (Non-residents) Regulations 1995 (S.I. 1995/2902), (“the Non-residents Landlord Scheme Regulations”).

2.2 The Non-residents Landlord Scheme Regulations ensure that landlords that are not resident in the United Kingdom (UK) for tax purposes pay tax on any income they get from renting out UK property. An amount in respect of tax is required to be withheld from the rent by either the tenant, or by an agent acting on behalf of the landlord who are known as “prescribed persons”.

2.3 Finance Act 2019 enacted rules under which non-UK resident company landlords that carry on a UK property business, or have other UK property income, will be charged to Corporation Tax on their property income from 6 April 2020, rather than being charged to income tax as at present. This instrument makes consequential amendments to the existing Regulations in relation to the application of Corporation Tax to non-UK resident company landlords.

2.4 This instrument amends

- (i) the definition of “deductible expense” to reflect the treatment of financing costs for Corporation Tax, and
- (ii) inserts a rule into the Non-residents Landlord Scheme Regulations to provide for an election to apply a rule to deal with the application of a Corporation Tax rule which limits the amount of financing costs that can be set against profits.

2.5 The rule restricts the deduction for financing costs to an amount representative of the amount that would be deductible on the application of the corporate interest restriction (CIR) in Part 10 of the Taxation (International and Other Provisions) Act 2010 (TIOPA) by a non-UK resident company.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Select Committee on Statutory Instruments*

3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.  
4.2 The territorial application of this instrument is the whole of the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The Non-residents Landlord Scheme Regulations came into force on 1 December 1995. This is the first use of the power since being rewritten at section 971 of the Income Tax Act 2007.  
6.2 Section 17 of, and Schedule 5 to, the Finance Act 2019 made provision for non-UK resident companies that carry on a UK property business or have other UK property income to be charged to Corporation Tax with effect from 6 April 2020.  
6.3 Therefore, from that date CIR in Part 10 of TIOPA would apply to such companies, including those where a prescribed person is required to withhold an amount on account of tax under the Non-residents Landlord Scheme Regulations from the companies' rental income.  
6.4 Under the Non-residents Landlord Scheme Regulations, an agent who is a prescribed person must withhold an amount on account of tax from rental income before it is paid to a non-UK resident landlord.  
6.5 In calculating the amount to withhold a deduction is allowed for expenses that the prescribed person is reasonably satisfied are deductible taking account of applicable rules in the Tax Acts. From 6 April 2020 these would include CIR in relation to a non-UK resident company chargeable to Corporation Tax on UK property income.

**7. Policy background**

*What is being done and why?*

- 7.1 The aim of CIR is to restrict a group's deductions for interest expense and other financing costs to an amount which is commensurate with its activities taxed in the UK, taking account how much the group borrows from third parties. CIR is complex and being reasonably satisfied as to its application may require an agent that is a prescribed person to have detailed knowledge of the non-UK resident company landlord and its wider group funding arrangements.  
7.2 Some agents will be able to apply CIR but others may not. For those agents that are unable to apply CIR on a reasonably satisfied basis it is expected that the existing Non-residents Landlord Scheme Regulations would typically prevent any deduction

for financing costs paid by the agent from the rental income, which would increase the amount to be withheld on account of tax.

- 7.3 The non-UK resident company landlord would need to file a company tax return to directly claim its financing costs, resulting in a refund of tax. The additional company tax returns filed as a result of this would increase administrative burdens on both HMRC and the non-UK resident company landlord.
- 7.4 To address these administrative burdens, this instrument introduces an irrevocable election for agents to use an alternative rule in place of CIR when applying the Non-residents Landlord Scheme Regulations. The rule provides that the deduction for any financing costs is limited to a fixed allowance of 30% of the UK rental income net of deductible expenses other than financing costs plus any unused allowance carried forward from a previous quarter period; any unused financing costs above the allowance may also be carried forward.
- 7.5 The rule is subject to an irrevocable election which is made by the prescribed person and is to be notified to HMRC with the annual return, made under the Non-residents Landlord Scheme Regulations, which relates to the first quarter period to which the election applies.
- 7.6 The rule does not apply to rental income paid by a tenant who is a prescribed person to non-UK resident company landlords since tenants are in a different position under the Regulations.
- 7.7 The non-UK resident company landlord must still ensure that the amount withheld on account of tax under the Non-residents Landlord Scheme Regulations meets its underlying Corporation Tax liability in respect of its UK property income.
- 7.8 A transitional rule is provided for financing costs which are attributable to any time before 6 April 2020, given that the landlord would still be subject to Income Tax up to that date (and so not subject to CIR). The alternative rule in respect of financing costs introduced by this instrument therefore does not apply to these costs.
- 7.9 Provided that the agent is reasonably satisfied that these costs would be deductible in calculating the taxable profits of the non-UK resident company's property business, they can be deducted from the rental income when calculating the amount to be withheld on account of tax under the Non-residents Landlord Scheme Regulations.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the regulations at this stage since an internal review of the Non-residents Landlord Scheme Regulations is currently in progress.

## **10. Consultation outcome**

- 10.1 Since this instrument introduces a technical change to accommodate the impact of CIR when calculating the amount on account of tax to be withheld under the Non-residents Landlord Scheme Regulations, and does not extend its scope, informal consultation has been undertaken with a group of external stakeholders on this change. Comments from representative bodies and other external stakeholders were taken into account in amending the statutory instrument following the consultation.

## **11. Guidance**

- 11.1 Guidance on how the rule introduced by this instrument works has been prepared and is published with the Tax and Information Impact Note. It will be incorporated within existing guidance on the Non-residents Landlord Scheme Regulations which is available on gov.uk at [www.gov.uk/guidance/paying-tax-on-rent-to-landlords-abroad](http://www.gov.uk/guidance/paying-tax-on-rent-to-landlords-abroad) in due course.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 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>.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small business (employing up to 50 people).
- 13.3 The basis for the final decision on taking no mitigating action is because the proposed financing cost deduction rule is intended to reduce the administrative burdens on both agents and non-resident company landlords.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is to keep the effect of the instrument under review through communication with affected taxpayer groups.
- 14.2 These regulations do not include a statutory review clause. They amend UK tax legislation and therefore fall within the exceptions at section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

## **15. Contact**

- 15.1 Susan Gardner at HMRC Telephone: 03000 563815 or email: [susan.m.gardner@hmrc.gov.uk](mailto:susan.m.gardner@hmrc.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Martyn Rounding, Deputy Director for CT Structure, (Business, Assets and International), at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.