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PRACTICE NOTE

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Commercial Letting Activities For The Purposes Of The Lower Company Band Rate

Introduction

Confusion has arisen as to the circumstances in which investment holding companies whose assets include one or more investment properties will by concession be accepted as carrying on a 'trading activity for the purposes of the lower company rate band where it is in receipt of significant income from the letting of commercial property.' The purpose of this Practice Note is to ensure consistency of treatment by defining 'a trade of commercial letting' for the purposes of the lower company rate band and to provide examples of how the definition will be applied using specific case scenarios. This Practice Note should be read in conjunction with PN78/99 'Application of The 15% Lower Company Rate'. Particular attention is drawn to the overriding definition of a qualifying company for the purposes of the lower company rate band.

Definition

Following discussions at Tax Liaison Committee a sub-committee comprising members of the Income Tax Division and of the professions was set up to look at this issue. The outcome has been agreed that, irrespective of the level of income concerned, the lower company rate will apply to any property falling within the following use:

Where the property concerned is used or is available for use exclusively for the purpose of carrying on a trade or trades".

This will therefore admit any property as qualifying where the whole of the premises is used or available for commercial use (and therefore advertised for commercial letting) but will exclude any premises in mixed use where for example the ground floor may be used for commercial purposes with the upper floors being let or available for let for domestic use. Providing the income and specific property expense streams can be separately identified or clearly quantified for the purposes of the computation of the taxable income, a company with a mixed portfolio will also qualify for the lower company rate in relation to the qualifying properties. Apportionment of the general company expenses will be accepted.

Case Scenarios

In the following case examples it has been assumed that the commercial letting income is at a market rate.

A Company Owns The Premises From Which An Associated Company Carries On A Trade.

The profits arising from the rental income will be chargeable at the lower company rate.

A Company Has A Portfolio Of Properties Both In The Isle Of Man And Elsewhere, All Of Which Comprise, Shops, Offices And Industrial Units.

Whilst the properties themselves may qualify for the concession, as the company does not derive the whole of its 'trading' profits from a trade carried on in the Island the company fails the primary test of being a qualifying company for the purposes of the 15% band as set out in PN78/99. The concessional application of the lower rate band to the Manx source letting income cannot therefore apply.

A Company'S Sole Income Producing Asset Is An Office Block In The Island.

The whole of the profits qualify for the lower company rate.

A Company'S Sole Income Producing Asset Is An Office Block In The Island And This Contains A Small Flat Occupied By A Full Time Caretaker Employed By The Company.

As the flat is an integral and insignificant part of the income producing asset and occupied by an employee of the company this would not affect the company qualifying for the lower company rate. The matter as to whether the occupation of the flat was on a rent free/paid basis would in normal circumstances not have a bearing. Such cases would be dealt with on a case by case basis with a clearance procedure to apply.

A Company Has A Portfolio Of Properties In The Island. One Or More Of These Is A Property Comprising A Split Use, I.E. A Retail/Professional Trading Operation On One Floor With The Remainder Occupied Or Available For Domestic Use.

Those properties with a 'split' use will not qualify for the lower company rate. The remainder, being wholly occupied or only available for commercial use will qualify providing the income and specifically attributable expenditure streams can be clearly separated.

A company's sole income producing asset is an office block in the Island. One floor is occupied by a concern carrying on an activity which is exempt for income tax purposes in the Isle of Man e.g. a registered charity

Such cases will be dealt with on a case by case basis and a clearance procedure will apply. In the case example, the Division would accept the profits of the company as qualifying for the lower company rate.

A Company'S Sole Income Producing Asset Is An Office Block In The Island. One Floor Is Occupied By An Exempt Or International Entity E.G. A Shipping Or Insurance Company.

Providing the activity being carried on by the entity concerned is a trading activity the exempt or international status of the tenant does not prevent the property concerned falling within the definition of commercial letting.

A Public House / Restaurant / Farm With Associated Living Accommodation Is Owned By A Company. The Tenant/Licensee Is The Occupant Of The Accommodation And Is Not A Connected Person For The Purposes Of Section 119C Of The Income Tax Act 1970 (As Amended)

The income stream from the property would qualify as commercial letting for the purposes of the lower company rate band.

Other investment income in addition to that from the letting of property in the Isle of Man. The lower company rate band will normally apply only in relation to the commercial letting income. Where, however, the only other income is interest from a financial institution and the amount concerned is insignificant (insignificant for this purpose being less than £1,000) this will by concession also be chargeable at the lower rate. Where the interest exceeds £1,000 the whole of the interest will be charged at 20% not just the excess over £1,000.

Will the concessional recognition of commercial letting income as 'trading' income for the lower company rate band be extended to that income stream generally for the purposes of the Income Tax Acts? The concessional recognition of commercial letting as a trade is solely for the purposes of the application of the lower company rate band. It will not be recognised for any other purpose e.g. loss relief or group relief nor will it permit qualifying companies to have their expenses in years prior to the introduction of the lower rate band to be treated as trading expenses.

Revision to Agreed Computations Where computations for 1999/2000 have been agreed and assessed granting the lower company rate to a company holding investment property in a manner which does not accord with this Practice Note, the Division will not seek to revise the assessment concerned. Revised computations for 1999/2000 and/or 2000/2001 are invited in any case which has been agreed and assessed where the lower company rate was not granted and the Company concerned now qualifies under the terms of this Practice Note. Following consideration of these, revised assessments for 1999/2000 will be raised where appropriate.

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Assessor of Income Tax

NOTE: This Practice Note is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person's right of appeal on points concerning their own liability to income tax.

Comments and suggestions for improvement of issued Practice Notes and suggestions for future Practice Notes are always welcome.