RPGCC

Property talk...

Summer 2024

VAT on cladding and remedial building works

Have you overpaid VAT on cladding or remedial building works following Grenfell? Could you have a potential VAT claim?

Following the Grenfell Tower tragedy in 2017, it was identified that many buildings required remedial works to replace defective cladding. There has been a significant level of debate between taxpayers, advisers, and HMRC around the correct VAT treatment of remedial works relating to cladding.

Generally, the VAT liability of repair works to existing buildings is standard-rated for VAT (20%). However, there are specific circumstances in which reduced, or zero-rating may apply to remediation works where certain conditions are met.

HMRC explained its position in a memo to the JVCC which explained that remedial work to replace potentially unsafe cladding can potentially be zero-rated where:

a) the defective cladding was installed as part of an original zero-rated construction project;

b) the remedial work must be connected to the original build via a retention clause in the contract or warranty to rectify construction faults.

c) the remedial work is being commissioned by the person who commissioned the original construction (person constructing status); and

d) the remedial work is carried out as soon as possible.

There is necessarily consideration around who has "person constructing status" as this can be a very complicated point, especially where there have been previous joint ventures which are no longer in place, or TOGCs have taken place and "person constructing" status has been exchanged between taxpayers.

It will also be necessary to carry out detailed reviews of all contracts for the original construction and any additional agreements for remedial works to take place presently. As with many matters pertaining to VAT and contracts, the devil is in the detail and each case needs to be treated on a case-by-case basis.

RPGCC has significant experience in dealing with VAT and property and is well placed to assist taxpayers through the minefield of remedial works to buildings following Grenfell.

If you think this may apply to you we would be happy to review your case and set out how we might be able to assist you.

Talk to me about VAT

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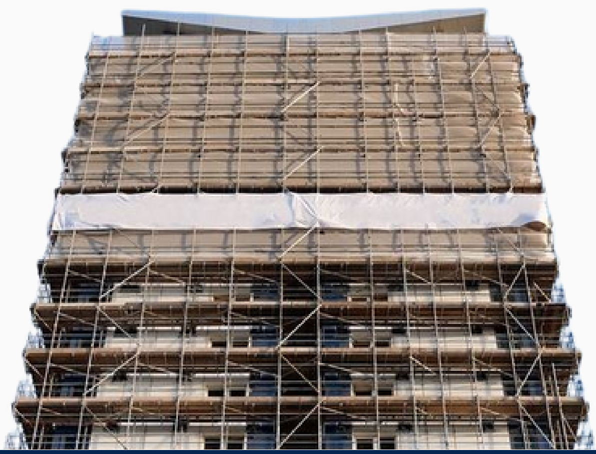

Funding investment property

If you are considering investing in property it will often be necessary to borrow money to fund the purchase of your investment property. Consequently, the purchaser is likely to incur interest and finance costs.

The extent to which tax relief is available for these costs depends on whether the property is let, the type of let and whether the property is let through an unincorporated property business or by a company.

Individuals who are eligible for tax relief for interest and finance costs should claim this through their Self-Assessment tax return, which must be filed online by midnight on 31 January after the end of the tax year to which the relates. For companies, the claim is made on their Company Tax Return, which must be filed within 12 months of the end of the accounting period.

So, landlords, what are your options for funding investment property?

Where a purchaser needs to borrow funds in order to buy an investment property, this may be done in various ways. The purchaser may choose to take out a buy-to-let or holiday let mortgage secured on the investment property. Alternatively, if they have sufficient equity in their own home or another investment property, they may wish to release some of that equity to provide the necessary funds.

The landlord will be able to claim tax relief for the associated interest and finance costs, although the method as to how this tax relief is calculated differs based on whether the landlord is a natural person or not, and the type of property (see below). To do this, it is not necessary for the loan to be secured on the let property; relief is also available for other borrowings, such as equity released from the main home or a commercial loan where this provides the funds to purchase the property.

However, relief is capped at the value of the property when first let out. Any subsequent borrowings will attract relief until this limit is reached.

If a property is used by the purchaser as their holiday or second home, rather than being let commercially, no relief is available for interest payments.

Where a company borrows money to purchase an investment property, relief is available on the associated investment and finance costs.

No tax relief is available for capital repayments.
Unincorporated landlords – interest relief for residential lets

Relief for interest and finance costs incurred by landlords in respect of residential lets is given in the form of a basic rate tax reduction.

This means that instead of deducting the interest and finance costs in calculating the taxable profits of the unincorporated property business, the reduction is deducted from the tax due on the profits of the property business. Further, relief is only given at 20% regardless of whether the landlord pays tax at the higher or additional rate.

The tax reduction is 20% of the lower of:
• the interest and finance costs;
• the profits of the property business before deducting interest and finance costs; and
• the landlords adjusted net income (i.e., their income after losses and relief but excluding savings and dividend income that exceeds their personal allowance).

The tax reduction cannot create a repayment, and where income and finance costs are not fully relieved in the year in which they are incurred, they can be carried forward for relief (as a basic rate tax reduction) in future years.

Funding investment property – unincorporated landlords – interest relief for furnished holiday lets

Currently, furnished holiday lets enjoy a favourable tax regime. One of the advantages of the regime is the ability to deduct interest and finance costs in full in calculating the taxable profits of the business. This allows the landlord to receive relief at their marginal rate of tax; the relief is not capped at 20% as is the case for residential landlords.

However, the favourable tax regime for holiday lets is to come to an end on 5 April 2025. For 2025/26 and later tax years, furnished holiday lets will be treated in the same way as other residential lets with relief for interest and finance costs being given as a basic rate tax reduction rather than as a deduction in computing profits.

Unincorporated landlords – interest relief for commercial lets

The interest relief restriction applying to residential lets does not apply to commercial lets, and where an unincorporated landlord lets a business property, they can deduct the associated interest and finance costs in full in calculating the profits of their property rental business.

Property companies, funding investment property – interest relief

A property company can deduct the associated interest and finance costs in full in calculating their taxable profit. The restrictions on relief for interest relating to residential lets incurred by unincorporated landlords do not apply to residential property let by a company.

Regardless of the type of let, the interest and finance costs can be deducted in full, even if this gives rise to a loss, which can be relieved in the usual way. The effective rate of relief will depend on the rate at which the company pays corporation tax, which in turn will depend on the level of its profits.

If you are a property landlord and you are considering your options for funding investment property please contact us. We would be happy to assist you and advise on the various aspects of property taxation.

Our team are waiting to help, call us today on 020 7870 9050.

Talk to me about Property

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Does your company need to file an ATED return?

ATED is a regime applicable to all non-natural entities (such as companies, partnerships with a corporate partner, or collective investment schemes) possessing UK residential properties valued over £500,000. It applies equally to companies that only own properties as well as those trading businesses holding the properties as an investment.

The £500k figure is tested against the value as at 1 April 2022, or the acquisition date if later, and this encompasses both UK and offshore structures.

Who needs to pay ATED?
Companies that own UK residential properties worth more than £500k that do not fall within the relief provisions.

The properties are let to unconnected third parties – do I still need to file?
Yes, an ATED filing will be required in order to claim the relief. There are other reliefs available so if you are not sure which may apply to your company, please get in touch.

What are a company's Annual Tax on Enveloped Dwellings (ATED) responsibilities?
Every year the window to submit the ATED return opens on 1 April, with penalties for late filing after 30 April and this year is no exception.

This means that the window to submit a 2024-25 ATED return or relief returns has already opened. If an ATED charge is payable, it must also be paid by 30 April 2024.

How is ATED different to other taxes?
In contrast to other taxes, ATED is a tax that looks forward and it covers the period from 1 April to 31 March each year.

For the 2024-25 period, the following ATED charges apply based on property valuation bands:
- £500,001 – £1,000,000: £4,400
- £1,000,001 – £2,000,000: £9,000
- £2,000,001 – £5,000,000: £30,550
- £5,000,001 – £10,000,000: £71,500
- £10,000,001 – £20,000,000: £143,550
- £20,000,001 and above: £287,500

It's important that offshore companies also comply with their Overseas Entities Register obligations. The initial registration deadline with Companies House was 31 January 2023, and there is a requirement to annually update this.

What should you do if you own UK property through an offshore entity?
If you own a UK property through an offshore entity it is important that you understand the UK reporting obligations. This includes UK Corporation Tax on property rental profits, filing of ATED returns, Capital Gains rebasing, stamp duty and Inheritance Tax rule changes.

What is classed as a 'dwelling'?
Your property is classed as a dwelling if all or part of it is used, or could be used, as a residence, for example a house or flat. It includes any gardens, grounds and buildings within them. Some properties are automatically not classed as dwellings. These include:

- hotels
- guest houses
- boarding school accommodation
- hospitals
- student halls of residence
- military accommodation
- care homes

If you require help establishing whether your property is classed as dwelling please contact us for assistance.

Anand, RPGCC's Corporate Tax Director added "ATED is, and has always been a complex area of tax. The reporting requirement comes around each year and there are several issues that must be considered. Careful thought and planning is required, and it is important to remember that what is right for one company might not be right for another. We have met with several clients in recent months who are opting to bring structures onshore and some are looking at restructuring which in turn has the potential to reduce the cost of running these kinds of structures".

Talk to me about ATED

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Furnished Holiday Let Regime

Landlords letting furnished holiday lettings (FHLs) benefit from tax advantages not available to landlords letting residential property on longer lets.

However, at the Spring Budget, the Chancellor announced that the FHLs tax regime will be abolished from 6 April 2025. From that date, Furnished holiday lets will be taxed in the same way as other residential lets.

Abolition of Furnished Holiday Lets Regime, what are the key dates?

The abolition of the tax regime for furnished holiday lets will be abolished from 6 April 2025. In this article we explain the present FHL tax regime and the impact of the abolition.

What are the advantages of the current FHL tax regime?
A separate tax regime applies to FHLs. The profits or losses arising on FHLs are computed separately from those on long-term residential lets and landlords of FHLs benefit from a number of tax advantages.

Landlords who let properties that qualify as FHLs are able to deduct finance and interest costs in full when calculating their taxable profits.

They are also able to benefit from a number of capital gains tax reliefs that are available to traders, including business asset rollover relief and relief for gifts of business assets. Where the conditions for business asset disposal relief are met, they are would benefit from the preferential 10% capital gains tax rate on qualifying gains up to the £1 million lifetime limit.

Landlords of FHLs are also able to claim capital allowances on items such as furniture, fixtures and fittings. Finally, the landlord's rental profits count as earnings for pension purposes.

These advantages are not available to landlords letting residential properties that do not pass the FHL tests.

What qualifies as a Furnished Holiday Lets (FHL)?

A property will only qualify as a FHL if it is in the UK or the European Economic area. The property must be let furnished and the furniture provided must be sufficient for normal occupation and available use by guests staying in the property. The property must be let commercially with a view to making a profit.

Finally, it must pass three occupancy tests.

To meet the pattern of occupancy test, the total of all lettings that exceed 31 continuous days must be less than 155 days in the year.

To meet the availability condition, the property must be available for letting as furnished holiday letting accommodation for at least 210 days in the tax year,

To meet the letting condition, the property must be let commercially as furnished holiday letting to the public for at least 105 days in the year. Lets of more than 31 days are not considered.

Days when the property is used by the landlord or let to friends or relatives below a commercial rate are also excluded.

Abolition of the Furnished Holiday Lets tax regime
The FHL tax regime is to be abolished from April 2025. For 2025/26 and later tax years, the profits from FHLs will be taxed in the same way as the profits from other residential property lets.

Landlords of FHLs paying mortgage interest and other finance costs will no longer be able to deduct these in calculating the rental profits of their unincorporated property business. Instead, relief for interest and finance cost will be given as a basic rate tax deduction, allowing landlords to deduct 20% of the costs from the tax due on the profits from their unincorporated property rental business.

The capital gains tax reliefs that are a major advantage of the current FHLs regime and the loss of these, will be a blow. Where the landlord is sitting on a large chargeable gain, consideration could be given to selling the property prior to 6 April 2025 to benefit from the current rules, and in particular, the preferential 10% capital gains tax rate where business asset disposal relief is available – for a higher rate taxpayer, the savings will be worth £1,400 for every £10,000 of gain.

However, it is prudent to check the detailed rules once available to ensure that the disposal does not fall foul of anti-avoidance provisions.

IAnti-forestalling rules apply to unconditional contracts entered into on or after 6 March 2024.

Landlord of FHLs who wish to make pension contributions should consider doing so prior to 6 April 2025. Pension contributions are capped by earnings as well as by the annual allowance. Profits from FHLs count as earnings for pension purposes; those from longer residential lets do not. Without higher earnings, pension contributions are limited to £3,600 gross (£2,880 net) each year.

Currently, losses can only be relieved against future profits from the same type of let. Once FHL and longer lets are treated in the same way, it is assumed that unrelieved losses from either stream can be relieved against the total profits from residential lets for 2025/26 onwards. However, the detailed rules are needed before this can be confirmed.

While the loss of reliefs will be a blow to landlords of Furnished Holiday Lets, the abolition of the regime will relieve them from the pressures of meeting the occupancy tests, paving the way for longer lets during the off-season without the risk of jeopardising the property's FHL status. This may boost income.

However, it should be remembered that occupancy tests, albeit less stringent ones, must be met to bring the property within business rates rather than council tax.

If you are a landlord and currently have a furnished holiday let property or properties and require help with this area of tax, or if indeed you require assistance with any area of Property Tax planning our team can help

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