

## Non-resident landlords and Jersey income tax

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The non-resident landlord taxation scheme (the “NRL Scheme”) introduced by the Income Tax (Amendment No. 28) (Jersey) Law 2007 updated the way in which a non-residential landlord (“NRL”) pays tax on rental income earned from immovable property in Jersey, and includes an obligation on agents and tenants for tax to be withheld from rental payments.

### The NRL Scheme

The NRL Scheme applies to any lease or tenancy (residential or commercial) where the landlord is not resident in Jersey. The starting position under the Income Tax (Jersey) Law 1961 (the “Income Tax Law”) has always been that an NRL is obliged to pay Jersey income tax at the standard rate of 20% on rental income earned in Jersey (i.e. on rent receipts for Jersey properties). This position was not altered by the introduction of the NRL Scheme.

Instead, the NRL Scheme imposes legal obligations and requirements on agents (and, in certain circumstances, tenants) in respect of the rental income earned by an NRL, including withholding tax on rental payments due to the NRL. It also provides a certification scheme for NRLs so that rental income can be received without such deduction.

### Certificate for payment without deduction

In order to avoid the requirement for agents or tenants to withhold tax on rental payments as required under the NRL Scheme, an NRL may apply to the Comptroller of Income Tax for a certificate excusing the deduction of tax from rental payments, whether by an agent or a tenant (a “Certificate”). A Certificate may only be issued if the NRL can demonstrate that

either:

- the NRL is exempt from paying Jersey income tax under Article 115 of the Income Tax Law (i.e. in respect of certain charitable associations or pension funds), or
- that the NRL has consistently complied with the requirements of the Income Tax Law in full and without delay.

As the Certificate removes the obligation on the agent (or where applicable, the tenant), to withhold tax from rental payments, the NRL must ensure it pays the required tax on its rental income.

Once issued, a Certificate shall have effect until such time as it may be cancelled by the Comptroller, but they are normally valid for one year. A Certificate may be cancelled if the NRL ceases to comply with the Income Tax Law, or if the conditions imposed on such certificate are not met. If a Certificate is cancelled, the holder will be notified of the cancellation, and the Comptroller will take steps to notify any associated agent or tenant.

### What an agent needs to know

An “agent” for the purposes of the NRL Scheme is a person resident in Jersey who has the direction, control or management of land in Jersey that is owned by a non-resident and in respect of which rent is payable.

Any person who falls within this definition of “agent” must register with the Comptroller within 30 days of becoming an agent, detailing each non-resident for whom they are the agent, and providing full details of each property of which the

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agent has direction, control or management on behalf of the non-resident (including details of the address, rents, tenant names and whether or not a Certificate has been obtained by the NRL). Any changes to these details must be provided to the Comptroller within 30 days after the end of each quarter. Non-compliance with these requirements may incur a fine of up to £10,000.

Having registered, an agent who receives rent in respect of property in Jersey on behalf of an NRL is required to deduct and retain tax at the standard rate (i.e. 20%) from the rental payments received, or at higher rates of up to 35% where an NRL is in arrears with Revenue Jersey. However, this withholding of tax is not required where the NRL has produced a Certificate and the agent is satisfied that the Certificate is valid and in force at the time the rental is received. A record of all tax deductions must be kept.

An agent must also make quarterly returns within 30 days of the end of each quarter to the Comptroller in respect of each property for which he or she is an agent for an NRL, detailing the address of the property, the details of the NRL, the amount of rent due and paid in the relevant quarter, the amount and a description of each expense deducted from the rent received, and the amount of tax deducted (or a statement that no tax has been deducted where a Certificate has been issued to the NRL). There is a standard form of return, a copy of which is available from Revenue Jersey.

Importantly, the agent's obligations to account for rent and deductions via the quarterly returns are not dependant on the NRL's status pursuant to a Certificate. It is therefore vital that agents retain the relevant information in respect of each NRL for whom they act. An agent who does not provide a return to the Comptroller where one is required may be liable to a fine of up to £10,000.

Within 30 days of the end of the relevant quarter, the agent must pay to the Comptroller an amount equal to the aggregate of the tax deducted and retained by the agent. Failure to do so carries a penalty of a fine plus an obligation to account for the total amount of unpaid tax.

An agent who does not make a deduction of tax when accounting to an NRL but who remits the amount equivalent to the tax due to the Comptroller as if the deduction had in fact been made, may recover the amount from the NRL as a civil debt.

## What a tenant needs to know

Where:

- the rent payable to an NRL is greater than £25,000 per annum or (where the tenancy is for less than a year) the proportionate amount of £25,000 determined by the duration of the tenancy; and
- the rent is not received by an agent on behalf of the NRL,

then the tenant will be required to deduct and retain tax from the rent to be paid, in the same manner as an agent. A tenant paying less than £25,000 per annum where the rent is not

received by an agent on behalf of an NRL may still have to withhold tax, but only where notified by the Comptroller that it must do so.

As with the obligations placed on an agent, the tenant shall not be required to deduct tax if the NRL has produced a Certificate and the tenant is satisfied that the Certificate is valid and in force at the time the rental is to be paid. If a tenant is uncertain of the validity of a Certificate, they should make enquiries with Revenue Jersey.

If tax deductions from rent are made by the tenant, records of such deductions must be maintained. The tenant must also make a quarterly return (containing the same information as required to be furnished by an agent) in respect of each property he or she has paid rent after deduction of tax, and ensure that a sum equal to the amount of tax that has been deducted is remitted to the Comptroller, both of which must be done within 30 days of the end of each quarter. The penalties for non-compliance are the same as for agents.

A tenant is also required to make an annual return to the Comptroller no later than 31 March following the year in which the deductions have been made, confirming the NRL's details, property address, aggregate amount of rent paid and tax deducted, and the date of commencement and/or termination of the tenancy if applicable. Failure to produce the annual return could result in liability to a fine of £10,000.

As with agents, a tenant who does not make a deduction of tax when accounting to an NRL but who remits the amount equivalent to the tax due to the Comptroller as if the deduction had in fact been made, may recover the amount from the NRL as a civil debt.

## Tax deductions

The NRL Scheme imposes heightened obligations on property agents and tenants, and it is important that leases are carefully drafted to comply with the NRL Scheme. The retainers or service agreements entered into between NRLs and their agents or property managers should also make adequate provision for the Scheme.

To the extent that leases or service agreements provide for the payment of rent without deduction, that provision of such an agreement shall be void where it is inconsistent with the Scheme. It is recommended that specific legal advice be obtained before entering into any such agreement. It is important to note that even if a landlord is currently resident in Jersey, the NRL Scheme should be addressed to provide for future non-resident purchasers of the property in question.

At Carey Olsen, we have a strong and specialised Commercial Property Group that gives priority to speed, efficiency and quality of service. We would be delighted to advise agents, landlords or tenants on the practical implications of this law.

*All figures correct as at August 2020.*

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