

# The Non-resident Landlords Scheme

## Guidance notes for letting agents and tenants

These notes provide general guidance for letting agents and tenants on how to operate *The Non-resident Landlords Scheme* and how non-resident landlords can apply for approval to receive rental income with no tax deducted.

Letting agents should read Chapters 1 to 5 and Chapters 9 to 12. Tenants should read Chapters 1 and 2 and Chapters 6 to 12.

The notes are not binding and do not affect any person's rights of appeal. Neither are they a full statement of the law as it applies to the Scheme. Letting agents and tenants should refer to the relevant legislation where appropriate.

Unless stated to the contrary, all statutory references are to the Taxation of Income from Land (Non-residents) Regulations 1995, SI 1995 No. 2902. These Regulations can be found through the legislation.gov.uk website, the address at the time of writing being <http://www.legislation.gov.uk/ukSI/1995/2902/contents/made>.

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# CHAPTER 1

## 1 INTRODUCTION

### What is the Non-resident Landlords Scheme?

- 1.1 The Non-resident Landlords (NRL) Scheme is a scheme for taxing the UK rental income of persons whose 'usual place of abode' is outside the UK (see paragraph 2.3 below). For convenience, these guidance notes refer to such persons as 'non-resident landlords'.

The Scheme applies to UK rental income (see Chapter 9 below) paid to non-resident landlords from 6 April 1996. Different arrangements apply to UK rental income paid *before* 6 April 1996.

- 1.2 Letting agents of a non-resident landlord must:

- deduct tax from the landlord's UK rental income; and
- pay the tax to HMRC's Accounts Office, Shipley (see paragraph 1.16 below).

- 1.3 Where there is no letting agent, tenants who pay rent of *more* than £100 a week to a non-resident landlord must:

- deduct tax from the landlord's UK rental income; and
- pay the tax to HMRC's Accounts Office, Shipley (see paragraph 1.16 below).

Tenants who pay rent of £100 a week or less do *not* have to operate the scheme unless they are told to do so by HMRC (see Chapter 6 below).

Letting agents must operate the scheme regardless of the amount of the rent they collect - even if it is £100 a week or less.

- 1.4 For the purposes of the NRL Scheme, the year runs from 1 April to the following 31 March. Letting agents and tenants who have to operate the Scheme must account for tax each quarter - that is, for the three-month periods ending on 30 June, 30 September, 31 December and 31 March (see Chapter 4 [letting agents] and Chapter 6 [tenants] below).
- 1.5 Letting agents and tenants do not have to deduct tax from the rental income of a non-resident landlord if HMRC has told them in writing that the landlord is approved to receive the rental income with no tax deducted (see Chapter 11 below).

- Reg. 17
- 1.6 Non-resident landlords can apply to HMRC (see Chapter 11 below) for approval to receive rental income with no tax deducted where:
- their UK tax affairs are up to date; or
  - they have never had any UK tax obligations; or
  - they do not expect to be liable to UK tax for the year in which the application is made.

### **The purpose of these guidance notes**

- 1.7 These notes provide general guidance for letting agents and tenants on:
- who should operate the NRL Scheme;
  - how to operate the Scheme; and
  - how non-resident landlords can apply for approval to receive rental income with no tax deducted.

Letting agents should read Chapters 1 to 5 and Chapters 9 to 12.  
Tenants should read Chapters 1 and 2 and Chapters 6 to 12.

### **Administration of the Non-resident Landlords Scheme**

- 1.8 The NRL Scheme is administered by HMRC's - Personal Tax International (PTI). PTI's address and telephone numbers are shown in paragraph 1.15 below. The collection of tax due from letting agents and tenants is administered by HMRC's Accounts Office in Shipley. Its address and telephone number are shown in paragraph 1.16 below.

### **When the Non-resident Landlords Scheme started**

- Reg. 1(1)
- 1.9 The rules for the NRL Scheme came into effect on 1 December 1995. But the requirement to deduct tax under the Scheme applies to rental payments made on or after 6 April 1996.
- Reg. 7(1)
- 1.10 Letting agents who have to operate the Scheme must register with PTI (see paragraph 3.31 below). Tenants who have to operate the Scheme should notify PTI (see paragraph 6.10).

### **The legislation**

- 1.11 The legislation is in Sections 971 and 972 Income Tax Act 2007, which is supported by the Taxation of Income from Land (Non-residents) Regulations 1995, SI 1995 No. 2902.

The primary legislation was previously in Section 42A Income and Corporation Taxes Act 1988.

- 1.12 If you have enquiries about the old arrangements you should contact HMRC for advice.

#### **The non-resident landlord's tax liability**

- 1.13 Non-resident landlords can set off the tax deducted from their UK rental income under the NRL Scheme against their own tax bill when they complete their UK Self-Assessment Tax Return. They can also claim repayment of any excess tax deducted from their UK rental income (see paragraph 1.14 below).
- 1.14 The tax deducted by the letting agent or tenant is unlikely to be equal to the landlord's liability because the rules of the NRL Scheme are different from the rules for calculating the landlord's tax liability.

#### **Enquiries and further information**

- 1.15 Letting agents and tenants who have queries about the operation of the NRL Scheme can write to HMRC at

Charities, Savings and International 1  
HM Revenue and Customs  
BX9 1AU

For more information phone the Non-Resident Landlord Scheme Helpline on 03000 516 644 or if you are calling from abroad +44 3000 516 644.

Forms are available from the HMRC website,  
[www.gov.uk/government/organisations/hm-revenue-customs](http://www.gov.uk/government/organisations/hm-revenue-customs)

- 1.16 Letting agents and tenants who have queries about the payment of tax under the NRL Scheme can write to the Accounts Office at:

HM Revenue & Customs  
Bradford  
BD98 1YY

- 1.17 Letting agents and tenants can obtain information and forms from the HMRC website, searching under the phrase 'The Non-resident Landlords (NRL) Scheme'. Guidance about the taxation of income from UK property in HMRC's ['Property Income Manual'](#).

Where a non-resident landlord changes letting agents, or tenants where there is no letting agent, a notice held by the old letting agent or tenant cannot be transferred to the new letting agent or tenant.

The landlord should write to PTI with details of the new letting agent or tenant. PTI will then send a notice to the new letting agent or tenant. New letting agents or tenants must deduct tax until they receive a notice from PTI.

## 2 NON-RESIDENT LANDLORDS

### Who are non-resident landlords?

Reg. 2

- 2.1 Non-resident landlords are persons
- who have UK rental income (see Chapter 9 below), and
  - whose 'usual place of abode' is outside the UK.
- 2.2 Landlords, for the purposes of the Non-resident Landlords (NRL) Scheme, include individuals, companies and trustees. In the case of partnerships, each partner is treated as a separate landlord in respect of their share of the rental income.

### Usual place of abode

- 2.3 It is **usual place of abode** and not **non-residence** that determines whether a landlord is within the scheme or not. In the case of individuals, HMRC normally regard an absence from the UK of six months or more as meaning that a person has a usual place of abode outside the UK. It is therefore possible for a person to be resident in the UK yet, for the purposes of the scheme, to have a usual place of abode outside the UK.
- 2.4 Companies that have their main office or other place of business outside the UK, and companies incorporated outside the UK, normally have a usual place of abode outside the UK. However, companies regarded as resident in the UK for tax purposes do not have a usual place of abode outside the UK for the purposes of the NRL Scheme, even though they may be incorporated outside the UK.
- 2.5 The UK branch of a non-resident company, where that branch is within the charge to Corporation Tax, does not have a usual place of abode outside the UK for the purposes of the NRL Scheme.
- 2.6 Trustees have a usual place of abode outside the UK if all the trustees have a usual place of abode outside the UK (following the rules for individuals and companies, as appropriate). If one or more of the trustees does not have a usual place of abode outside the UK, the trustees are not a non-resident landlord for the purposes of the NRL Scheme.

### Jointly owned property

- 2.7 Where a property is jointly owned and one or more of the joint owners has a usual place of abode outside the UK, the share of rental income attributable to those joint owners falls within the NRL Scheme. The share attributable to joint owners who do not have a usual place of abode outside the UK does not fall within the Scheme. For husband and wife joint-ownership cases, see paragraph 2.8 below.

### **Husband and wife joint-ownership cases**

- 2.8 Where a husband and wife jointly own a UK property and both have their usual place of abode outside the UK, the NRL Scheme applies to both spouses and each is treated as a separate landlord in their own right. If the husband and wife both wish to receive the rental income with no tax deducted they must each complete a separate application form and send it to HMRC (see Chapter 11 below).

In such cases, letting agents and tenants should pay rental income with no tax deducted only to the spouse(s) named on the HMRC authorities they hold. Under no circumstances should they pay with no tax deducted to a husband and wife where they hold an authority to do so for only one spouse.

But if only one of the spouses has a usual place of abode outside the UK, the NRL Scheme applies only to that spouse's share of the rental income. The rental income belonging to the UK-resident spouse is not within the Scheme and no HMRC approval is required to pay the income with no tax deducted.

### **Members of HM Armed Forces and other Crown Servants**

- 2.9 Members of HM Armed Forces and other Crown Servants, including diplomats, are treated no differently from any other non-resident landlords. So if they receive UK rental income and have a usual place of abode outside the UK (see paragraph 2.3 above) the NRL Scheme applies to them.
- 2.10 If members of HM Armed Forces and other Crown Servants whose usual place of abode is outside the UK wish to receive rental income with no tax deducted, they should apply to HMRC for approval (see Chapter 11.1 below).

### **How do letting agents and tenants know whether a landlord has a 'usual place of abode' outside the UK?**

- 2.11 A landlord's usual place of abode (see paragraphs 2.3 to 2.6 above) will usually be evident without the need for special enquiries. If it is outside the UK, letting agents or tenants should operate the NRL Scheme. If the usual place of abode is in doubt, letting agents and tenants should get more information from the landlord to satisfy themselves on the point. In particular, PO Box numbers and 'care of' addresses alone should *not* be relied on as evidence that the Scheme does not apply. In cases of difficulty letting agents can get advice from PTI (see paragraph 1.15 above).
- 2.12 Where letting agents and tenants have no reason to believe that a landlord has a usual place of abode outside the UK they are not required to make any special enquiries. In these circumstances they do not have to operate the Scheme.

### 3 LETTING AGENTS

#### Letting agents' obligations

3.1 Letting agents who have to operate the Non-resident Landlords (NRL) Scheme must:

- register with PTI (see paragraphs 3.31 to 3.36 below);
- account quarterly for any tax to HMRC Accounts Office, Shipley (see Chapter 4 below);
- complete an annual information return (see Chapter 5 below);
- where they are required to account for tax, provide their non-resident landlords with a certificate each year (see Chapter 5 below); and
- keep sufficient records to show that they have complied with the requirements of the Scheme (see Chapter 12 below).

#### Who are letting agents?

3.2 A letting agent is a person:

- |                            |  |
|----------------------------|--|
| Reg. 3(3)(b)               | • whose usual place of abode is in the UK; and   |
| Section 971(3)(b) ITA 2007 | • who acts on behalf of a non-resident landlord in connection with the management or administration of his UK rental business; and |
| Reg. 3(3)(b)(ii)           | • who has power to receive income of that rental business, or has control over direction of that income; and                       |
| Reg. 3(3)(b)(iii)          | • who is not an excluded person (see paragraphs 3.4 and 3.5 below).  |

3.3 This includes people acting in a professional capacity such as estate agents, solicitors and accountants. But a friend or relative of the landlord may also be a letting agent for the purposes of the Scheme, if they fall within paragraph 3.2 above.

#### Who are not letting agents?

- |           |   |
|-----------|---|
| Reg. 4(1) | 3.4 Persons who are 'excluded persons' are not treated as letting agents for the purposes of the NRL Scheme. An excluded person is a person whose activity on behalf of the non-resident landlord is confined to the provision of legal advice or legal services. |
|-----------|---|

3.5 For example, excluded persons include solicitors who do no more than:

- receive apportioned rental income or a premium in the course of a conveyance; or
- take legal proceedings for the recovery of arrears of rental income.

But solicitors who draw up a lease and collect the rent for the first period are *not* excluded persons. Whilst drawing up a lease would be the provision of a legal service, in collecting the rent the solicitor is going beyond the provision of legal services and acts as a letting agent for the purposes of the NRL Scheme.

3.6 Banks and building societies who do no more than provide an account into which rental income is paid and from which withdrawals are made are not treated as letting agents for the purposes of the NRL Scheme.

3.7 Persons who find tenants for non-resident landlords and who:

- receive fees for that service but do not handle or control any rental income; or
- handle or control income only for short periods within paragraph 3.27 below

are not treated as letting agents for the purposes of the Scheme.

### **Which letting agents must operate the Scheme?**

#### **Chains of letting agents**

3.8 Some non-resident landlords have more than one letting agent in the UK in respect of the same source of rental income (a chain of letting agents). Where there is a chain of letting agents, it is the last agent in the chain who must operate the Scheme (but see paragraph 3.9 below). For example, one letting agent may collect rents and pass them on to a second letting agent. In these circumstances it is the second letting agent who must operate the Scheme (subject to paragraph 3.9 below).

#### **Elected letting agents**

Reg. 4

3.9 Where there is a chain of letting agents, the last letting agent and any other letting agent in the chain can jointly elect to transfer the responsibility for operating the Scheme from the last letting agent to the other letting agent making the election.

3.10 For example, ABC Ltd collects rents from tenants of a property owned by a non-resident landlord. It pays the rents to John, who is

responsible for meeting the costs of repairs to the property and paying the balance of the rents into the landlord's bank account. John is responsible for operating the Scheme because he is the last letting agent in the chain. But, if they both wish, ABC Ltd and John can jointly elect for ABC Ltd to operate the scheme.

3.11 Letting agents who wish to make an election should write to PTI providing the following information:

- the name and address of the elected letting agent;
- the name and address of the other letting agent;
- the name and address of the non-resident landlord or landlords; and
- the date from which the election is to take effect (the letting agents can choose this date but it cannot be earlier than the first day of the quarter in which the election is made).

The election must be signed by both letting agents making the election. They can make an election by sending in one letter signed by both parties or by writing in separately and each providing the same information. There is no special form for making an election.

3.12 Letting agents may wish to make an election in respect of only part of a landlord's rental business. They can do this by identifying the property to which the election relates.

3.13 Either letting agent may revoke the election by notice in writing to PTI. Such a revocation will take effect from:

- the first day of the quarter next following the date on which notice of revocation is received by PTI; or
- 30 days following the date on which the notice of revocation is received by PTI;

whichever is the later.

3.14 Where an election is revoked, PTI will write to both letting agents advising them of the date from which the revocation is effective.

#### **Notices from HMRC**

Reg. 3(1)

3.15 PTI may issue a notice to a letting agent requiring the letting agent to operate the Scheme. The notice will usually specify the landlord(s) in respect of whom the letting agent must operate the Scheme, and the date from which the letting agent must operate the Scheme. A letting agent who receives such a notice must operate the Scheme until PTI withdraws the notice or until he or she ceases to act for the non-resident landlord(s), if earlier.

### Operation of the Scheme by branches of a letting agent

Reg. 6 3.16 Letting agents with a number of branches can, if they wish, apply to register each branch as a separate letting agent. They can apply only if the branches deal with an average of five or more non-resident landlords each. 'Branches' means the units into which the letting agent divides his or her business. It includes areas, regions and other administration centres.

Reg. 6(2) 3.17 Letting agents who want their branches to operate the Scheme separately must apply to PTI on form NRL5i. The form is available from the HMRC website, [NRL5i](#) On the form letting agents must provide the following information:

- their name and head office address;
- the name of their Tax Office and their tax reference number;
- the name and address of each branch that is to be registered to operate the NRL Scheme; and
- the number of non-resident landlords dealt with by each branch.

It will help PTI if letting agents also provide the name and telephone number of a contact at each branch.

The letting agent must make a declaration on the form that he or she does not act for any non-resident landlord other than those whose business is managed by the branches identified.

Reg. 6(3) 3.18 When PTI approves an application, each branch will be able to operate the Scheme separately from the first day of the quarter following the quarter in which the approval is given, and for any subsequent quarter. PTI will notify each branch and give each branch a separate reference number.

3.19 For example, letting agents ABC Ltd applies on 25 June 2011 to PTI as it wants its branches at Anytown and Bigtown to operate the Scheme separately. PTI approve the application on 3 July 2011.

The quarter containing 3 July 2011 ends on 30 September 2011. As a result, the Anytown branch of ABC Ltd and the Bigtown branch of ABC Ltd will be treated as separate letting agents from 1 October 2011. ABC Ltd must operate the NRL Scheme for both branches until 30 September 2011.

Reg. 6(4) 3.20 Letting agents may revoke approval for branches to operate the Scheme separately by giving notice in writing to PTI. It is the letting agent, not the branches, who must give notice. Revocation will take effect from the first day of the quarter following the quarter in which the revocation is made.

3.21 For example, ABC Ltd writes to PTI revoking approval to operate the Scheme through the Anytown and Bigtown branches. PTI receives the letter on 3 December 2011.

The quarter containing 3 December 2011 ends on 31 December 2011. So the revocation takes effect from 1 January 2012. ABC Ltd must operate the Scheme (for both branches) from 1 January 2012, and both branches must operate the Scheme separately up to 31 December 2011.

3.22 Where PTI has approved branches to operate the Scheme separately and a branch closes, or ceases to act for non-resident landlords, the head office should contact PTI to enable PTI to amend its records. Where a new branch opens or a branch starts to act for non-resident landlords, the head office should write to PTI providing details of the additional branch and confirming that the branches still act for an average of five or more non-resident landlords each.

#### **Refusal of approval**

Reg. 6(6)

3.23 PTI may refuse an application where it has reason to believe that:

- the average number of non-residents per branch is less than five; or
- the letting agent is likely to fail to comply with the obligations imposed on him by the rules of the Scheme; or
- the declaration on form NRL5i is incorrect.

Reg. 6(8)

3.24 Where PTI refuses an approval, it will do so by notice in writing to the letting agent, and give its reasons. The notice will explain how the letting agent may appeal against the refusal. Appeals should be made in writing to PTI within 30 days of the date of the notice. If the appeal cannot be settled by agreement between PTI and the letting agent it will be heard by an independent appeal tribunal.

#### **Withdrawal of approval**

Reg. 6(7)

3.25 PTI may withdraw approval where they have reason to believe that:

- the average number of non-residents per branch is less than five; or
- the letting agent has failed to comply with the obligations imposed on him by the rules of the Scheme; or
- the declaration on form NRL5i was, or has become, incorrect.

Reg. 6(8)

3.26 Where PTI withdraws approval, it will do so by notice in writing to the letting agent, and give its reasons. The notice will explain how the letting agent may appeal against the withdrawal. Appeals should be made in writing to PTI within 30 days of the date of the notice. If the appeal cannot be settled by agreement between PTI and the letting agent it will be heard by an independent appeal tribunal.

#### **Tenant-finders**

3.27 Some persons enter into arrangements with non-resident landlords whereby they find a tenant for the landlord's property. The tenant-finder then collects rent for a period from which he or she recovers the fee. The tenant subsequently pays rental income directly to the landlord. In such circumstances the tenant-finder does not have to operate the NRL Scheme in respect of the landlord, provided:

- the period for which rent is collected is no more than three months; and
- the tax which would be payable would be no more than £100.

#### **3.28 Example 1**

Janet finds a tenant for a non-resident landlord in respect of a property rented at £500 per month. Janet collects two months' rent in order to recover her fee, £700. The tenant pays the rent direct to the landlord from the third month.

If Janet were required to operate the scheme, her tax calculation would be (see Chapter 4 below):

Rental income received	£1000
<u>Less deductible expenses</u>	<u>£700</u>
	£300
Basic Rate tax on £300 (20% for 2010/11)	£60

As the tax is less than £100, Janet does not have to operate the Scheme.

#### **3.29 Example 2**

John finds a tenant for a non-resident landlord in respect of a property rented at £2000 a year. John collects six months' rent in advance from which he recovers his fee of £500. John also pays insurance and repairs of £400.

John's tax calculation is (see Chapter 4 below):

Rental income received	£1000
<u>Less</u> deductible expenses	<u>£900</u>
	£100
Basic Rate tax on £100 (20% for 2010/11)	£20

The tax is only £20 but because John collects more than three months' rent he must operate the Scheme. He should deduct the tax of £20 and pay it with his quarterly return (see Chapter 4 below).

- 3.30 Where tenant-finders collect a period's rent and do not have to operate the Scheme, the non-resident landlord will receive rental income with no tax deducted for that period. Subsequently tenants will pay rent direct to the landlord and may have to operate the Scheme (see Chapter 6 below). In these circumstances it would be helpful if tenant-finders notify the tenant of his or her obligations under the NRL Scheme.

### Registration

Reg. 7

- 3.31 Letting agents who have to operate the NRL Scheme must register with PTI within 30 days of the date on which they are first required to operate the Scheme. This includes letting agents who have been approved to pay rental income to all their non-resident landlords with no tax deducted.
- 3.32 In order to register, letting agents should give the following information to PTI:
- their name and address; and
  - their tax reference number and the name of their Tax Office.
- 3.33 It will help PTI if letting agents also provide a contact name and telephone number to enable them to deal with any queries relating to the NRL Scheme.
- 3.34 When a letting agent registers, PTI will give them a registration number and issue the appropriate forms and information enabling them to operate the Scheme.
- 3.35 Letting agents can use the registration form (Form NRL4i) available from the HMRC website, [NRL4i](#)
- 3.36 Letting agents who fail to register within the time specified in paragraph 3.31 above may be charged a penalty under Section 98 Taxes Management Act 1970.

## 4 LETTING AGENTS: CALCULATION AND PAYMENT OF TAX

### Letting agents' obligations

- Reg. 9
- 4.1 Letting agents who have to operate the Non-resident Landlords (NRL) Scheme must calculate the tax for each quarter (subject to paragraph 4.3 below). Quarters end with the last day of June, September, December and March. Letting agents must pay the tax due to HMRC's Accounts Office, Shipley, within 30 days of the end of the quarter.
- Section 971(4) ITA 2007
- 4.2 Letting agents have the right to deduct tax they have to pay under the NRL Scheme from rental income they receive on behalf of the non-resident landlord, or from any other money owing to the landlord. They also have the right to recover from the landlord any tax they have to pay under the Scheme where they did not deduct it from the rental income or other money owing.
- 4.3 Letting agents are not required to calculate or pay tax on the rental income of a non-resident landlord if the HMRC has told them *in writing* that the landlord is approved to receive the rental income with no tax deducted. But letting agents should not accept a non-resident landlord's statement that rental income may be paid without deduction of tax - they should act only on a notice from the HMRC. (see paragraph 1.17).

### How letting agents calculate the tax

- Reg. 9
- 4.4 Letting agents should calculate tax at the basic rate on rental income (see paragraph 4.5 below) less any 'deductible expenses' (see paragraph 4.6 below).
- 4.5 Letting agents should include in their calculation rental income (see Chapter 9 below) they receive in the quarter and rental income which:
- was income which they had the power to receive; and
  - was paid away in the quarter at their direction to another person without being received by the letting agent (see paragraph 4.8 below).
- 4.6 Letting agents should include in their calculation:
- deductible expenses (see Chapter 10 below) which they paid in the quarter; and
  - deductible expenses which were paid away in the quarter at their direction by another person (see paragraph 4.8 below).

#### 4.7 Example 1

ABC Ltd is due to collect rental income of £5000 a quarter for Jean, who is a non-resident landlord. In one quarter it collects only £2500. It pays out £200 for gardening and cleaning.

The calculation is:

Rental income received	£2500
<u>Less</u> deductible expenses paid	<u>£200</u>
	£2300
Basic Rate tax on £2300 (20% for 2010/11):	<u>£460</u>

#### 4.8 Example 2

ABC Ltd is due to collect rental income of £3000 a quarter for Joan, a non-resident landlord. But ABC Ltd authorises the tenant to pay £1000 to a third party in settlement of a loan (this is not a deductible expense).

The calculation is:

Rental income received	£2000
<u>Plus</u> rental income paid away at ABC Ltd's direction	<u>£1000</u>
	£3000
Basic Rate tax on £3000 (20% for 2010/11):	<u>£600</u>

#### 4.9 Example 3

If, in Example 2, ABC Ltd had authorised the tenant to pay £1000 to a builder to repair a leaking roof, instead of the payment to a third party to repay a loan, the £1000 would be a deductible expense. The calculation would then be:

Rental income received	£2000
<u>Plus</u> rental income paid away at ABC Ltd's direction	<u>£1000</u>
<u>Less</u> deductible expenses	<u>£1000</u>
	£2000
Basic Rate tax on £2000 (20% for 2010/11):	<u>£400</u>

#### Excess expenses

Reg. 9(5)

4.10 Where the deductible expenses for any quarter exceed the rental income to be taken into account for the quarter, letting agents should treat the excess expenses as follows:

### Carry back

- firstly, by carrying back excess expenses and deducting them from rental income of the same landlord for previous quarters in the same year to 31 March, taking later quarters before earlier quarters; and

### Carry forward

- secondly, by deducting the balance of any excess from rental income of the same landlord received for subsequent quarters, taking earlier quarters before later quarters. The carry forward of excess expenses is not restricted to quarters within the same year to 31 March.

#### 4.11 Example: carry back

ABC Ltd, a letting agent, acts for a non-resident landlord, Juan. In the quarter to 30 September 2010 it receives rental income of £2000 and pays deductible expenses of £500. In the quarter to 31 December 2010 it receives rental income of £2000 and pays deductible expenses of £3000. ABC Ltd's calculation for the quarter to 31 December 2010 is as follows:

#### Quarter to 31.12.10

Rental income received	£2000
<u>Less deductible expenses paid</u>	<u>£3000</u>
Excess expenses	(£1000)

ABC Ltd should set off the excess expenses against rental income received in the quarter immediately before the quarter to 31 December 2010, that is the quarter to 30 September 2010. Its revised calculation for that quarter will then be:

#### Quarter to 30.9.10

Rental income received	£2000
<u>Less deductible expenses paid</u>	<u>£500</u>
<u>Less excess expenses brought back</u> from quarter to 31.12.10	<u>£1000</u>
Revised net income on which basic rate tax is due	<u>£500</u>

ABC Ltd will have paid tax of £300 for the quarter to 30 September 2010 ((£2000 - £500) @ 20%).

Paragraph 4.14 below describes how to recover the repayable amount.

#### 4.12 Example: carry forward

ABC Ltd, a letting agent, receives £2000 rental income for a non-resident landlord, Juanita, in the quarter ending on 30 June 2010 and pays £3000 deductible expenses. In the quarter to 30 September 2010 it receives £500 and pays no expenses.

**Quarter to 30.6.10**

Rental income received	£2000
<u>Less deductible expenses paid</u>	<u>£3000</u>
Excess expenses	(£1000)

ABC Ltd cannot carry back the excess expenses because carry back is restricted to earlier quarters in the same year to 31 March.

**Quarter to 30.9.10**

Rental income received	£500
<u>Less excess expenses brought forward</u>	<u>£1000</u>
Balance of excess expenses available to ABC Ltd to carry forward	(£500)

- 4.13 Letting agents must not deduct excess expenses paid for one landlord from the rental income of another landlord. In the above examples, ABC Ltd cannot deduct excess expenses paid for Juanita from Juan's rental income.

**Repayable amounts**

Reg. 9(6)

- 4.14 Paragraph 4.10 above describes how excess expenses for a quarter can be carried back to an earlier quarter. This will reduce a letting agent's tax liability in respect of that earlier quarter. This reduction is called a 'repayable amount'. This paragraph describes how letting agents can obtain a set-off or repayment of the repayable amount. They can do this:

- by setting-off the repayable amount from the total tax due to HMRC in respect of other non-resident landlords for the same payment quarter as that in which the excess expenses arise; and
- if they cannot set off all the repayable amount in this way, by claiming a repayment from PTI on the form NRLQ (see paragraph 4.17 below) which they complete for the quarter in which the excess expenses arise.

**4.15 Example 1**

	<u>Landlord A</u>	<u>Landlord B</u>
<b>Quarter to 30.6.10</b>		
Rental income	£1000	£2000
<u>Less deductible expenses</u>	<u>£200</u>	<u>£1000</u>
	£800	£1000
Basic Rate tax (20% for 2010/11)	£160	£200
Total tax payable (£160 + £200)		<u>£360</u>
<b>Quarter to 30.9.10</b>		
Rental income	£1000	£2000

<u>Less deductible expenses</u>	<u>£1500</u>	<u>£1400</u>
	( £500)	£600
Basic Rate tax (20% for 2010/11)	Nil	£120
Excess expenses carried back	£500	

When the letting agent carries back the excess expenses of £500 to quarter 1, his tax liability for quarter 1 will be reduced by £100 (£500 @ 20%).

He can set off this £100 against the tax calculated for quarter 2, £120. This leaves £20 (£120 less £100) payable.

#### 4.16 Example 2

	<u>Landlord A</u>	<u>Landlord B</u>
<b>Quarter to 30.6.10</b>		
Rental income	£1000	£2000
<u>Less deductible expenses</u>	<u>£600</u>	<u>£1000</u>
	£400	£1000
Basic Rate tax (20% for 2010/11)	£80	£200
Total tax payable (£80 + £200)		<u>£280</u>
<b>Quarter to 30.9.10</b>		
Rental income	£1000	£2000
<u>Less deductible expenses</u>	<u>£1200</u>	<u>£1950</u>
	(£200)	£50
Basic Rate tax (20% for 2010/11)	Nil	£10
Excess expenses carried back	£200	

When the letting agent carries back the excess expenses £200 to the earlier quarter, his tax liability for that quarter will be reduced by £40 (£200 @ 20%).

He can set off this £40 against the tax calculated for the quarter to 30.9.10, £10. This leaves £30 repayable. The letting agent should show £30 as repayable on his form NRLQ for the quarter to 30.9.10 and the Accounts Office will repay £30.

#### Quarterly returns and payment of tax

Reg. 10

- 4.17 Letting agents must pay any tax due each quarter to HMRC's Accounts Office, Shipley, with return form NRLQ. The return form will normally be issued to them by the Accounts Office. Letting agents who need a form NRLQ should contact the PTI at the address shown at paragraph 1.15 above. Quarterly returns are due for the periods ending 30 June, 30 September, 31 December and 31 March.

- 4.18 Letting agents who are not required to make a payment of tax for any quarter generally do not need to complete a quarterly return form for the quarter. However, they should complete one if they receive a notice in writing from PTI telling them to do so.
- 4.19 Letting agents must include the following details on the return form:
- the total amount of tax due in respect of all their non-resident landlords for that quarter; or
  - where there is no tax due in the quarter but the letting agent is due a repayment (see paragraph 4.14 above), the amount of the repayment claimed.
- 4.20 Letting agents who act for more than one non-resident landlord should calculate the tax due for each landlord separately. They should then add together the amounts due and subtract any repayable amount. They should show the result of this calculation on form NRLQ.
- 4.21 Letting agents should send payment for the amount due with the completed return form. The form and payment should be sent to the Accounts Office at the address shown in paragraph 1.16 above.
- 4.22 The return form NRLQ must be sent in time to arrive at the Accounts Office no later than 30 days after the end of the quarter to which it relates. For example, form NRLQ for the quarter to 30 September 2001 must arrive by 30 October 2001.

#### **Interest payable on late payment**

- Reg. 10(6) 4.23 Where tax is due but a letting agent does not pay that tax by the due date, the Accounts Office may charge interest from the date when tax became due until the date it is paid.
- Reg. 10(7) 4.24 Where interest is charged in respect of late payment of tax and that tax is subsequently repaid, the letting agent is not entitled to recover any of the interest.

#### **Assessments to recover tax**

- Reg. 10(9) 4.25 Under the NRL Scheme, tax is payable by letting agents without the need for the HMRC to make tax assessments. But where the HMRC have reason to believe that:
- an amount should have been paid but was not; or
  - a quarterly return is incorrect

It can make an assessment. In these circumstances PTI will make the assessment.

- 4.26 When PTI makes an assessment it will give details of how the letting agent may appeal against the assessment. Appeals should be made in writing to PTI within 30 days of the date of the assessment. If the appeal cannot be settled by agreement between PTI and the letting agent it will be heard by an independent appeal tribunal.
- 4.27 The Accounts Office may charge interest on assessed income tax from the date when the amount of tax became due until the date it is paid.

## 5 LETTING AGENTS: ANNUAL RETURNS AND CERTIFICATES

### Annual returns

- Reg. 11
- 5.1 Letting agents who have to operate the Non-resident Landlords (NRL) Scheme must provide to PTI by 5 July each year an information return on form [NRLY](#), available on the HMRC website, for the year to 31 March. The following details must be shown separately for each non-resident landlord:
- the landlord's name and address;
  - the amount of rental income for the year to 31 March calculated in accordance with paragraph 4.4 above, before the deduction of expenses;
  - if the letting agent is not authorised to pay rental income to the landlord with no tax deducted
    - the deductible expenses for the year to 31 March, and
    - the total of the tax shown as payable in the letting agent's quarterly returns for the year to 31 March;
  - if the letting agent is authorised to pay rental income to the landlord with no tax deducted, the landlord's approval reference number.
- Reg. 11(2)
- 5.2 Annual returns must be made on form [NRLY](#), this is available to download from the HMRC website. A letting agent who is unable to download form NRLY can contact PTI at the address shown in paragraph 1.15 above.
- 5.3 Forms NRLY will need to be accompanied by continuation sheets (form [NRLY Cont](#)) if letting agents have more than 7 landlords to report. If letting agents wish, they can attach their own schedules to the form NRLY rather than use forms NRLY Cont. They might, for example, want to do this where they can produce computer-generated schedules. However, their schedules must contain all the details set out in paragraph 5.1 above.
- 5.4 **Example**
- ABC Ltd has to operate the scheme for two non-resident landlords, Jordi and Jan. On 17 March 2009 ABC Ltd receives a notice from the HMRC authorising it to pay rental income to Jordi with no tax deducted. The notice shows that Jordi's approval number is 0123456 (see paragraph 11.12 below). In the year to 31 March 2011, ABC Ltd keeps the following records.

Jan

<u>Quarter to</u>	<u>Rental Income</u>	<u>Deductible Expenses</u>	<u>Tax Due</u>	<u>Repayable Amount</u>
30.06.10	2000	500	£300	
30.09.10	2000	3000	-	£200
31.12.10	2000	1000	£200	-
31.03.11	2000	1000	£200	-
TOTAL	8000	5500	£700	£200

Jordi

<u>Year to</u>	<u>Rental Income</u>	<u>Deductible Expenses</u>	<u>Tax Due</u>	<u>Repayable Amount</u>
30.03.11	16000	Not applicable*	-	-

\* Letting agents do not have to record deductible expenses for landlords who are approved to receive rental income with no tax deducted.

ABC Ltd should complete the annual return as follows:

<u>Name and address</u>	<u>Approval No</u>	<u>Rental Income</u>	<u>Deductible expenses</u>	<u>Tax</u>
Jordi Doe 1 Main Street Anytown Florida USA	0123456	16000		-
Jan Doe 1 High Street Bigtown South Africa	-	8000	5500	500

The total tax is the amount included in quarterly returns for the year in respect of the non-resident landlord. That is, the tax less any repayable amounts. In this example, the amount for Jan, £500, is the total of the three amounts of tax (£700) less the repayable amount (£200).

- 5.5 Letting agents should always include on the annual return either an approval reference number, or a figure of deductible expenses (if there were any). Where they receive a notice authorising them

to pay rental income with no tax deducted part way through the year they should show:

- the approval reference number; and
- the tax shown on the quarterly returns up to the quarter in which the approval notice was issued.

5.6 Letting agents should provide the landlord's address as follows:

- where the non-resident landlord is an individual, his or her principal residential address;
- where the non-resident landlord is a trust, the address of one of the trustees
  - in the case of a corporate trustee, the address of its registered office or its principal place of business,
  - in the case of a professional trustee, the address of his or her employment or principal place of business
  - in any other case, the trustee's principal residential address;
- where the non-resident landlord is a company, the address of its registered office or its principal place of business.

### **Penalties**

Section 98 TMA 1970 5.7 Penalties may be charged under Section 98 Taxes Management Act 1970 for failure to make a return or for making an incorrect return.

### **Certificate to be provided by letting agents**

Reg. 12 5.8 Where letting agents are liable to pay tax under the NRL Scheme in any year in respect of a non-resident landlord, they must provide the landlord with a certificate by 5 July following the end of the year to 31 March.

5.9 The certificate must include the following information:

- the non-resident landlord's name and address;
- the letting agent's name and address;
- the year ended 31 March to which the certificate relates; and
- the letting agent's total liability to tax for the year ended 31 March in respect of the landlord.

In addition, certificates must contain a declaration by the letting agent that the particulars contained in the certificate are, to the best of their knowledge, correct and complete.

- 5.10 Letting agents may include additional information on the certificate if they wish.
- 5.11 Letting agents can use a copy of the certificate available from the HMRC website ([NRL6](#)). They should keep a copy for audit purposes. Landlords should not complete the certificate themselves.
- 5.12 Non-resident landlords should keep certificates. When they complete their UK Self Assessment Tax Return for the year to 5 April in which the relevant 31 March falls they can set off the tax shown on the certificate against their overall UK tax liability (provided, of course, the landlord has actually suffered deduction of the tax shown on the certificate). Landlords may be asked to provide the certificate to their Tax Office as evidence in support of their self assessment.
- 5.13 The amount of tax shown on the certificate will probably not be identical to the non-resident landlord's tax liability in respect of the profits of his or her rental business. This is because the rules of the NRL Scheme are not the same as the rules for taxing the profits of a rental business. For example:
- letting agents must calculate rental income paid less expenses paid whereas landlords must calculate rental income accrued less expenses accrued;
  - letting agents cannot deduct expenses paid by the landlord;
  - letting agents deduct expenses where they can reasonably be satisfied the expenses would be allowable when computing the profits of the landlord's rental business whereas the 'reasonably satisfied' test does not apply to landlords (see paragraph 10.2 below);
  - letting agents cannot deduct capital expenses whereas landlords may be entitled to capital allowances;
  - landlords who are individuals may be subject to the higher rate of tax; and
  - landlords who are trustees of a discretionary or accumulation trust may be subject to the additional rate of tax for trusts.

## 6 TENANTS

### Tenants' obligations

- 6.1 Tenants who are required to operate the Non-resident Landlords (NRL) Scheme must:
- notify the PTI – see paragraph 6.10 below;
  - send quarterly payments to the HMRC Accounts Office, Shipley, for any tax due under the Scheme (see Chapter 7 below);
  - where they are required to account for tax, provide their non-resident landlords with a certificate each year. Tenants can use a copy of the certificate (form NRL6) available from the HMRC website ([NRL6](#)) (see Chapter 8 below);
  - complete an annual information return, if appropriate (see Chapter 8 below); and
  - keep sufficient records to show that they have complied with the requirements of the Scheme (see Chapter 12 below).

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- 6.2 Tenants have the right to deduct any tax they have to pay under the Scheme from their rent, or from any other money owing to the non-resident landlord. They also have the right to recover from the landlord any tax they have to pay under the scheme where they did not deduct it from their rent or other money owing.

### Which tenants must operate the Scheme?

- 6.3 Tenants of a non-resident landlord have to operate the NRL Scheme:
- where they pay rent direct to a non-resident landlord (but see paragraph 6.7 below); or
  - where they pay rent to a person outside the UK (but see paragraph 6.7 below); or
  - where they pay rent to a person who is not a letting agent, as described in Chapter 3 above (but see paragraph 6.7 below), or a person prescribed by a notice under Reg. 3(1); or
  - where they receive a notice from the HMRC (see paragraph 6.5 below).
- 6.4 Rent paid by tenants into a non-resident landlord's UK bank or building society account is treated as paid direct to the non-resident landlord.

Reg. 3(1)

6.5 PTI may issue a notice to a tenant requiring the tenant to operate the Scheme. The notice will usually specify the landlord in respect of whom the tenant must operate the Scheme and the date from which the tenant must operate the Scheme. Tenants who receive such a notice must operate the Scheme until PTI withdraws the notice or until they cease to be a tenant of the non-resident landlord, whichever is the earlier.

#### **Which tenants do not have to operate the Scheme?**

6.6 Tenants do not have to operate the NRL Scheme if they pay rent to a letting agent in the UK (see paragraph 3.2 above) or a person prescribed by a notice under Reg. 3(1).

6.7 Tenants do not have to operate the Scheme if they pay rent of £5200 or less per year, unless they receive a notice from PTI telling them to do so. Where a tenant occupies property for part of a year, the figure of £5200 is proportionately reduced. For example, a tenant who occupies property for six months in the year ended 31 March 2010 is not required to operate the scheme if he or she is due to pay £2600 or less.

6.8 Where two or more people share a property and each of them is a tenant under the lease, the £5200 limit will apply separately to each of the tenants in respect of his or her share of the rent. This is the case even though the tenants may be jointly and severally liable for all of the rent payable under the lease. Where two or more people share a property but only one of them is the tenant under the lease, the £5200 limit will apply to that person in respect of all of the rent payable under the lease.

6.9 The limit of £5200 applies in respect of each landlord. So, where tenants have several non-resident landlords, they are required to operate the Scheme only in respect of those landlords to whom they are due to pay more than £5200 a year. For example, a UK company renting six offices at £4000 a year each, from six different non-resident landlords, would not be required to operate the scheme (unless it receives a notice from PTI - see paragraph 6.5 above).

#### **Notification**

6.10 Tenants who have to operate the NRL Scheme should write to PTI at the address in paragraph 1.15 above, giving:

- their name and address; and
- the names and addresses of their non-resident landlords.

This will enable PTI to issue the appropriate forms and information in time for the tenant to complete returns and make payments of tax.

## 7 TENANTS: CALCULATION AND PAYMENT OF TAX

### Tenants' obligations

Reg. 8

- 7.1 Tenants who have to operate the Non-resident Landlords (NRL) Scheme should calculate the tax each quarter. Quarters end with the last day of June, September, December and March. Tenants must pay the tax due to the HMRC within 30 days of the end of the quarter.
- 7.2 Tenants are not required to calculate or pay tax on the rental income of a non-resident landlord if the HMRC has told them in writing that the landlord is approved to receive the rental income with no tax deducted. But tenants should not accept a non-resident landlord's statement that rental income may be paid without deduction of tax - they should act only on a notice from the HMRC.

### How tenants calculate the tax

- 7.3 Tenants should calculate tax at the basic rate on:
- rental income they pay in the quarter to the landlord; plus
  - any payments they make in the quarter to third parties, where those payments are not 'deductible expenses' (see paragraph 7.6 and Chapter 10 below).

#### 7.4 Example 1

Joan is due to pay rent of £1600 per quarter to a non-resident landlord. In the quarter to 30 September 2010 she can manage to pay only £1000. As the calculation is based on rental income paid (not due), her calculation for the quarter is:

Rental income paid	£1000
Basic Rate tax on £1000 (20% for 2010/11)	<u>£200</u>
	£800

As a result Joan pays £800 to the non-resident landlord and £200 to HMRC.

#### 7.5 Example 2

Jack pays rental income of £1500 per quarter to a non-resident landlord. In the quarter to 30 June 2010 the landlord tells him to pay £400 to a third party in settlement of a loan (which is not a deductible expense) and to pay the £1100 balance to the landlord.

Jack's calculation for the quarter to 30 June 2010 is:

Rental income paid to landlord	£1100
<u>Plus</u> rental income paid away to	

third party at landlord's direction	<u>£400</u>
	£1500
Basic Rate tax on £1500 (20% for 2010/11):	<u>£300</u>

### 7.6 Example 3

Julie pays rental income of £1500 per quarter. In the quarter to 30 September 2010 she pays out

- £200 for plumbing repairs;
- £100 to a third party, on the instruction of her landlord, in settlement of a loan (which is not a deductible expense); and
- £1200 direct to her landlord.

As the plumbing repairs are a deductible expense (see Chapter 10 below) but the settlement of the loan is not, Julie's calculation will be:

Rental income paid to landlord	£1200
Plus rental income paid to third parties, where the payment is not a deductible expense	<u>£100</u>
	£1300
Basic Rate tax on £1300 (at 20% for 2010/11):	<u>£260</u>

### Quarterly returns and payment of tax

Reg. 10

- 7.7 Tenants must pay tax due each quarter to HMRC's Accounts Office, Shipley, with return form NRLQ. The return form will normally be issued to tenants by PTI. Tenants who need a form NRLQ can get one from PTI at the address shown at paragraph 1.15 above. Quarterly returns are due for the periods ending 30 June, 30 September, 31 December and 31 March.
- 7.8 Tenants who are not required to make a payment for any quarter generally do not need to complete a quarterly return form for the quarter. However, they should complete one if they receive a notice in writing from PTI telling them to.
- 7.9 Tenants must include the following details on the return form:
- the quarter to which the return form relates; and
  - the total amount of tax due on rental income.
- 7.10 Tenants of more than one non-resident landlord should calculate the tax due for each landlord separately. They should then add together the amounts due and show the total for the quarter on form NRLQ.
- 7.11 Tenants should send the total payment with the completed return form. The form and payments should be sent to the Accounts Office at the address shown in paragraph 1.16 above.

- 7.12 The return form NRLQ must be sent in time to arrive at the Accounts Office, Shipley, no later than 30 days after the end of the quarter to which it relates. For example, the form NRLQ for the quarter to 30 September must arrive by 30 October.

#### **Interest on late payment**

- Reg. 10(6) 7.13 Where tax is due but a tenant does not pay the tax by the due date, the Accounts Office may charge interest from the date when the amount of tax became due until the date it is paid.

#### **Assessments to recover tax**

- Reg. 10(9) 7.14 Under the NRL Scheme, tax is payable by tenants without the need for the HMRC to make tax assessments. But where the HMRC has reason to believe that:
- an amount that should have been paid was not; or
  - a quarterly return is incorrect
- it can make an assessment. In these circumstances PTI will make the assessment.
- 7.15 When PTI makes an assessment it will give details of how the tenant may appeal against the assessment. Appeals should be made in writing to PTI within 30 days of the date of the assessment. If the appeal cannot be settled by agreement between PTI and the letting agent it will be heard by an independent appeal tribunal.
- 7.16 Accounts Office may charge interest on assessed income tax from the date when the amount of tax became due until the date it is paid.

#### **Repayments to tenants**

- 7.17 As tenants account for tax on rents paid there can be no question of excess expenses generating a repayment of tax.

## 8 TENANTS: ANNUAL RETURNS AND CERTIFICATES

### Annual returns

- Reg. 11
- 8.1 Tenants within the Non-resident Landlords (NRL) Scheme must provide HMRC's PTI, by 5 July each year with an information return on form [NRLY](#) for the year to 31 March. But see paragraph 8.3 below.
- 8.2 The following details must be shown separately for each non-resident landlord:
- Reg. 11(4)
- the name and address of the non-resident landlord;
  - the total amount of rental income paid to the landlord and rental income paid away to third parties in the year to 31 March;
  - if the tenant is not authorised to pay rental income to the landlord with no tax deducted,
    - the deductible expenses for the year to 31 March; and
    - the total of the tax shown as payable in the tenant's quarterly returns for year to 31 March;
  - if the tenant is authorised to pay the landlord with no tax deducted, the landlord's approval reference number.
- Reg. 11(3)
- 8.3 Where tenants have been told in writing by the HMRC that rental income may be paid to *all* their non-resident landlords with no tax deducted, the tenants do not have to submit annual returns. This means that a person who is a tenant of only one non-resident landlord, and who has authority to pay rental income with no tax deducted, is not required to submit annual returns. But a tenant of two non-resident landlords, who has authority to pay rental income to only one with no tax deducted, must submit a return which includes details for *both* landlords.
- 8.4 Annual returns must be made on form [NRLY](#), this is available to download from the HMRC website. A letting agent who is unable to download form NRLY can contact PTI at the address shown in paragraph 1.16 above.

### 8.5 Example

James is a tenant due to pay rental income of £2000 in each quarter to his non-resident landlord, Julia. For the four quarters in the year to 31 March 2011, James keeps the following records.

<u>Deductible expenses paid (1)</u>	<u>Non-deductible expenses paid (2)</u>	<u>Balance of rental payment (3)</u>	<u>Tax on (2) &amp; (3) @ 20%</u>	<u>Net rent paid to Julia</u>
-	£500	£1500	£400	£1100
£600		£1400	£280	£1120
-	-	£2000	£400	£1600
-	-	£2000	£400	£1600
<u>£600</u>	<u>£500</u>	<u>£6900</u>	<u>£1480</u>	<u>£5420</u>

James should complete the annual return as follows:

<u>Name and Address</u>	<u>Approval No</u>	<u>Rental Income</u>	<u>Deductible Expenses</u>	<u>Tax</u>
Julia 1 Main Street Smalltown Ontario Canada	-	£8000 *	£600	£1480

\* James must show the total amount he pays, both to Julia and to third parties. In this example he pays out £2000 each quarter, £8000 in total.

### Penalties

8.6 Penalties may be charged under Section 98 Taxes Management Act 1970 for failure to make a return or for making an incorrect return.

### Certificate to be provided by tenants

Reg. 12

8.7 Where tenants are liable to pay tax under the NRL Scheme in any year in respect of a non-resident landlord, they must provide each landlord with a certificate by 5 July following the end of the year to 31 March.

8.8 Certificates must include the following information:

- the non-resident landlord's name and address;

- the year ended 31 March to which the certificate relates; and
- the tenant's total liability to tax for the year ended 31 March in respect of the landlord.

In addition, certificates must contain a declaration by the tenant that the particulars contained in the certificate are, to the best of their knowledge, correct and complete.

- 8.9 Tenants may include additional information on the certificate if they wish.
- 8.10 Tenants can use a copy of the certificate (form NRL6) available from the HMRC website, ([NRL6](#)).
- 8.11 Non-resident landlords should keep certificates. When they complete their UK Tax Return they can set off the tax shown on the certificate against their overall UK tax liability (provided, of course, the landlord has actually suffered deduction of the tax shown on the certificate). Landlords may be asked to provide the certificate to HMRC as evidence in support of their self assessment.
- 8.12 The amount of tax shown on the certificate will probably not be identical to the non-resident landlord's tax liability in respect of the profits of his or her rental business. This is because the rules of the NRL Scheme are not the same as the rules for taxing the profits of a rental business. For example:
- tenants must calculate rental income paid less expenses paid whereas landlords must calculate rental income accrued less expenses accrued;
  - tenants cannot deduct expenses paid by the landlord;
  - tenants deduct expenses where they can reasonably be satisfied the expenses would be allowable when computing the profits of the landlord's rental business whereas the 'reasonably satisfied' test does not apply to landlords (see paragraph 10.2 below);
  - tenants cannot deduct capital expenses whereas landlords may be entitled to capital allowances;
  - landlords who are individuals may be subject to the higher rate of tax; and
  - landlords who are trustees of a discretionary or accumulation trust may be subject to the additional rate of tax for trusts.

## 9 RENTAL INCOME

### Background

- 9.1 Letting agents who have to operate the Non-resident Landlords (NRL) Scheme are required to calculate tax each quarter on the rental income received, less deductible expenses paid, in the quarter. For this purpose letting agents should take into account:
- all rental income they receive in the quarter; and
  - rental income they do not receive in the quarter, but which is paid away to a third party (including the non-resident landlord) at the direction of the letting agent.
- 9.2 Tenants who have to operate the scheme are required to calculate tax each quarter on the rental income they paid in the quarter. For this purpose tenants should take into account:
- all rental income they pay to the non-resident landlord in the quarter; and
  - all rental income they pay to third parties in the quarter, unless the payments are 'deductible expenses' (see Chapter 10 below).
- 9.3 Letting agents and tenants should take into account all rental income received or paid in the quarter notwithstanding that it relates to rent due for an earlier, or later, period. Letting agents and tenants should not calculate tax for a quarter on rental income that fell due in the quarter but was not paid in the quarter.
- 9.4 This chapter explains what is included in the term 'rental income' and Chapter 10 below gives guidance on 'deductible expenses'. Information about the taxation of income from UK property can be found by searching for the 'Property Income Manual'.

### When is rental income received or paid?

- 9.5 Letting agents receiving rental income by cheque receive the income on the day the cheque is paid into their bank account, and *not* on the day it is cleared. But if the cheque is subsequently dishonoured they should not take the amount into account in their calculation of tax due.
- 9.6 Tenants paying rental income by cheque make the payment on the day they send the cheque to the landlord and *not* on the day the cheque is cashed or cleared. But if the cheque is subsequently dishonoured they should not take the amount into account in their calculation of tax due.

## Examples of rental income

9.7 Rental income includes a wide variety of receipts arising from land and property. In particular, rental income includes:

- income from letting furnished, unfurnished, commercial and domestic premises, and from any land;
- where property is let furnished, any separate sums from the tenant for the use of the furniture;
- rent charges, ground rents and feu duties;
- premiums and other similar lump sums received on the grant of certain leases (see paragraph 9.8 below);
- income arising from the grant of sporting rights, such as fishing and shooting permits;
- income arising from allowing waste to be buried or stored on land;
- income from letting others use land - for example, where a film crew pays to film inside a person's house or on their land;
- grants received from local authorities or others contributing to expenditure which is an allowable expense (see Chapter 10 below) such as repairs to a let property;
- rental income received through enterprise investment schemes;
- income from caravans or houseboats where these are not moved around various locations;
- insurance recoveries under policies providing cover against non-payment of rent;
- service charges received from tenants in respect of services ancillary to the occupation of property (other than those falling within Section 42 of the Landlord & Tenant Act 1987 - see below).

Section 42 of the Landlord & Tenant Act 1987 requires that where the tenants of *two or more* dwellings contribute to the same costs by the payment of service charges, those charges shall be held upon trust for the contributing tenants. This means that the charges are not, at that stage, the income of the landlord and, as such, are not rental income for the purposes of the NRL Scheme. But once sums are paid out by the trustee (usually the letting agent) for service charges, then agents should treat those sums as the rental income of

the landlord and consider whether they are 'deductible expenses' or not.

### Premiums

- 9.8 Lump sums received up front for the grant of a lease of 50 years or less are liable to income tax. Such receipts are generally called 'premiums'. They are treated wholly or partly as rental income.
- Section 277 ITTOIA 2005 9.9 The amount treated as rental income is calculated on a sliding scale that depends upon the length of the lease. The rule is that the amount treated as rental income is the premium reduced by 2 per cent of the premium for each complete year of the lease after the first. Thus:
- the full amount of the premium is treated as rental income where the lease is for less than two years;
  - 98 per cent of the premium is treated as rental income if the lease is for two years or more but for less than three years;
  - 96 per cent of the premium is treated as rental income if the lease is for three years or more but for less than four years;
  - and so on until none of the premium is treated as rental income if the lease is for more than 50 years.
- 9.10 More information is provided about premiums in the [Property Income Manual](#) (see paragraph 9.4 above).

### Income which is not rental income

- 9.11 There are certain receipts arising out of the use of land that are not rental income. These include:
- income from woodlands managed on a commercial basis;
  - income from the types of concerns listed below
    - mines and quarries (including gravel pits, sand pits and brickfields),
    - ironworks, gasworks, salt springs or works, alum mines or works and water works and streams of water,
    - canals, inland navigations, docks, and drains or levels,
    - rights of markets and fairs, tolls, bridges and ferries,

- railways and other ways,
- lettings of tied premises by traders, and
- income which arises in the course of carrying on a trade such as running a hotel.

## 10 DEDUCTIBLE EXPENSES

### Introduction

10.1 Chapters 4 and 7 describe when and how letting agents and tenants calculate tax due. They should take into account expenses they pay that they can 'reasonably be satisfied' are allowable expenses in computing the profits of the landlord's rental business.

This chapter provides guidance on which expenses can be taken into account by letting agents and tenants when they calculate the tax due. Such expenses are referred to as 'deductible expenses'.

HMRC has published the [Property Income Manual](#), which gives further advice on allowable expenses.

### 'Reasonably be satisfied'

Reg. 9(4)  
Reg. 8(2)

10.2 HMRC does not expect letting agents and tenants to be tax experts in order to operate the Non-resident Landlords (NRL) Scheme. The test is that an expense should be deducted only where the letting agent or tenant can 'reasonably be satisfied' that it is allowable in computing the profits of the landlord's rental business. This provides protection for letting agents and tenants in two ways:

- where letting agents and tenants have reason to be uncertain whether an expense is an allowable expense of the non-resident landlord's rental business, they are justified under the rules in not deducting it when computing the tax due; and
- where letting agents and tenants can reasonably be satisfied that an expense is an allowable expense of the non-resident landlord's rental business, they can deduct the expense without fear of being penalised if it is later found that the expense is not in fact allowable.

10.3 Letting agents and tenants cannot reasonably be satisfied that an expense is allowable in computing the profits of the landlord's rental business merely because the landlord says that it is allowable. If they have reason to believe it may not be an allowable expense they should not deduct it.

### Allowable expenses of a rental business

10.4 Broadly, in calculating the profits of a rental business, expenses are allowable where:

- they are incurred wholly and exclusively for the purposes of the rental business; and

- they are not of a 'capital' nature.

The cost of land and buildings and the cost of improvements and alterations is expenditure of a capital nature. More information about what constitutes an expense of a capital nature is provided in the Property Income Manual (see paragraph 9.4 above).

10.5 Subject to paragraph 10.4 above, the following expenses paid by letting agents and tenants will normally be deductible expenses:

- accountancy expenses (incurred in preparing rental business accounts but not for preparing personal tax returns);
- advertising costs of attracting new tenants;
- charges for inventories;
- cleaning;
- costs of rent collection;
- Council Tax while the property is vacant but available for letting;
- gardening;
- ground rent;
- insurance against loss of rents;
- insurance claim fees;
- insurance on buildings and contents;
- interest paid on loans to buy land or property (but see paragraphs 10.6);
- interest paid on loans to build or improve premises (but see paragraphs 10.6);
- legal and professional fees;
- letting agents' fees;
- maintenance charges made by freeholders, or superior leaseholders, of leasehold property;
- maintenance contracts (for example gas servicing);
- provision of services (for example gas, electricity, hot water);

- rates;
- rental warranty and legal expenses insurance;
- repairs which are not significant improvements to the property, such as
  - damp and rot treatment,
  - mending broken windows, doors, furniture, cookers, lifts, and so on,
  - painting and decorating,
  - replacing roof slates, flashing and gutters,
  - repointing, and
  - stone cleaning;
- water rates.

#### **Value Added Tax (VAT)**

10.6 If any expenses that are deductible in computing the profits of the rental business have borne Value Added Tax (VAT) and that VAT cannot be relieved as 'input tax' because, for example, the landlord is not registered for VAT, the deductible expense is the amount inclusive of VAT.

#### **Letting agents' own fees**

10.7 Subject to paragraph 10.4 above, letting agents' own fees are deductible expenses, even though they are retained by the letting agent from rents received as opposed to paid out by the letting agent to a third party.

#### **Excess expenses**

10.8 Where, in a quarter, letting agents pay out more in deductible expenses than they receive in rental income, they can set off the excess expenses against rental income received on behalf of the same landlord for earlier or later quarters (see paragraphs 4.10 to 4.13 above).

#### **Expenses that are not deductible expenses**

10.9 Letting agents and tenants can deduct only those expenses that they pay, or which are paid at their direction. This means they cannot deduct:

- expenses which the landlord pays (even if they have details of the expenses);
- expenses which have accrued in a quarter but which have not been paid in the quarter;
- capital allowances; and
- any personal allowances due to the landlord.

10.10 Letting agents and tenants must calculate tax due in respect of each of their non-resident landlords separately. In particular, they cannot deduct expenses paid for one landlord from rental income for another landlord. But in calculating the tax due in respect of one landlord they can deduct expenses relating to one property from rental income relating to another.

## 11 APPROVAL TO RECEIVE RENTAL INCOME WITH NO TAX DEDUCTED

### How non-resident landlords can apply

Reg. 17

11.1 Most non-resident landlords who wish to receive their rental income with no tax deducted should apply for approval to PTI (see paragraph 1.15 above).

However, landlords whose tax affairs are dealt with by HMRC's Public Departments 1 office should apply to their tax office. The addresses and telephone numbers are shown on the application form [NRL1i](#)

The application must be made on one of the following forms, available from the HMRC website:

[NRL1i](#) - if the applicant is an individual

[NRL2i](#) - if the applicant is a company

[NRL3i](#) - if the applicant is a trustee (including a corporate trustee).

Reg. 17(3)

11.2 Non-resident landlords can apply for approval to receive their rental income gross on the basis that:

- their UK tax affairs are up to date; or
- they have never had any UK tax obligations; or
- they do not expect to be liable to UK tax for the tax year in which the application is made.

### Sovereign immunity

11.3 Non-resident landlords who are a sovereign power and are exempt from UK tax because of sovereign immunity must apply to PTI if they wish to receive their UK rental income with no tax deducted. But they are not required to complete an application form. They can apply by writing to PTI, enclosing, where possible, a copy of the letter in which the HMRC confirms to them their 'sovereign immune' status.

### When can an application be made?

11.4 You should make the application no more than three months before you leave the UK. HMRC cannot consider an application before then. If you have already left the UK, you can apply immediately.

### **How to complete the application form**

11.5 There are explanatory notes on the application forms NRL1i , NRL2i and NRL3i. The notes tell non-resident landlords how to complete the forms. The following information supplements the explanatory notes.

### **Who can sign the application form?**

11.6 Application forms must be signed as follows:

- form NRL1i must be signed by the non-resident landlord;
- form NRL2i must be signed by the company secretary or a duly-authorized officer of the company;
- form NRL3i must be signed by a trustee.

### **Principal residential address: 'care of' and PO Box addresses**

11.7 Some non-resident landlords may live in parts of the world in which the only address they can provide is a 'care of' or 'PO Box' address. In these circumstances PTI will accept a correspondence address instead of a principal residential address. But non-resident landlords should attach a brief explanation to the form NRL1i of why they have not provided a residential address. Other non-resident landlords may have a principal residential address that is not a postal address. In these circumstances they should provide the principal residential address and a correspondence address.

### **UK Tax Office, tax reference number and NINO**

11.8 Non-resident landlords should provide details of their most recent UK Tax Office and tax reference number, if known. Non-resident landlords who are individuals should also give their National Insurance number (NINO) if they have one. Without this information PTI may not be able to process applications made on the basis that the non-resident landlord's tax affairs are up to date. Where a non-resident landlord's tax affairs have been dealt with in the past through a letting agent or tenant, the application should show, where known, the Tax Office and reference number for the letting agent or tenant.

### **Approval of applications**

Reg. 17(5)

11.9 PTI will approve an application by notice in writing to the non-resident landlord provided that:

- the application form is complete and correct; and
- it is satisfied that the non-resident landlord making the application will comply with all of his or her UK tax obligations.

The approval does *not* mean that the rental income is *exempt* from UK tax. Although the rental income will be paid with no tax

deducted, it is still liable to UK tax and the non-resident landlord must include it on any tax return HMRC sends him.

11.10 PTI will normally approve them after an initial check. Applications will be checked later, in more detail. Non-resident landlords may be required to supply additional information at a later date when the application is checked in detail. Failure to provide such additional information may result in the withdrawal of approval (see paragraph 11.16 below).

#### **Who receives notification of approval?**

Reg. 17(5)(a) 11.11 PTI will send a notice of approval to receive rental income without deduction of tax to the non-resident landlord. They will also send a copy to the non-resident landlord's accountant or tax adviser where they hold written authority to do so. These notices will show an approval reference number.

Reg. 17(5)(b) 11.12 PTI will also issue a separate notice to the letting agents or tenants named on the application form authorising them to pay rental income to the non-resident landlord without deducting tax. These notices will show an approval reference number.

11.13 All notices of approval will specify the date from which rental income should be paid without deducting tax. It will normally be the first day of the quarter in which the landlord's application (on form NRL1i, 2i or 3i) is received at PTI.

#### **Refusal of applications for approval**

Reg. 17(6) 11.14 PTI may refuse an application from a non-resident landlord if:

- it is not satisfied that the information provided in the application is correct; or
- it is not satisfied that the non-resident landlord will comply with their UK tax obligations.

11.15 PTI will refuse an application by notice in writing. The notice will explain how the landlord can appeal against the refusal. Appeals should be made in writing to PTI within 90 days of the date of the notice. If the appeal cannot be settled by agreement between PTI and the landlord it will be heard by an independent appeal tribunal.

#### **Withdrawal of approval**

Reg. 19 11.16 PTI may withdraw approval from a landlord if:

- it ceases to be satisfied that the information provided in the application is correct; or

- it is no longer satisfied that the non-resident landlord will comply with their UK tax obligations; or
- the non-resident landlord fails to supply information requested by PTI.

11.17 PTI will issue a notice to the landlord withdrawing approval, stating the reason for the withdrawal and the date from which it is effective. PTI will also notify the letting agent or tenant of the date from which they should start deducting tax from rental income.

11.18 The notice will explain how the landlord can appeal against the withdrawal. Appeals should be made in writing to PTI within 90 days of the date of the notice. If the appeal cannot be settled by agreement between PTI and the letting agent it will be heard by an independent appeal tribunal.

### **Changes of letting agent or tenant**

11.19 Where a non-resident landlord changes letting agents, or tenants where there is no letting agent, a notice held by the old letting agent or tenant cannot be transferred to the new letting agent or tenant. The landlord should write to PTI with details of the new letting agent or tenant. PTI will then send a notice to the new letting agent or tenant. New letting agents or tenants must deduct tax until they receive a notice from PTI.

Where PTI has not been told about a change, the new letting agent or tenant will not hold a notice from PTI allowing them not to deduct tax. In such cases tax will be deducted from the rental income of a landlord that has a valid approval. If this situation goes on beyond the 31 March in any year, the letting agent or tenant should simply complete an annual return and issue a certificate reflecting the tax deducted. However, if the letting agent or tenant receives a notice (see paragraph 11.12 above) prior to 31 March and has deducted tax from the landlord's rental income at any time since the previous 1 April, the letting agent or tenant may either

- contact Accounts Office Shipley to discuss the recovery of any tax deducted in respect of the relevant quarters (clearly recording the transactions through which any money is recovered and paid to the landlord) or
- agree with the landlord to issue a certificate after the end of the year to cover the tax deducted and to make no further deductions during the year.

### **If a non-resident landlord dies**

11.20 If a non-resident landlord dies, any HMRC approval notice to pay rent without deduction of tax automatically ceases to have effect.

Letting agents and tenants who have to continue paying the same rent to someone else after a landlord's death should deduct tax *unless* the new payee

- does not have a usual place of abode outside the UK (for example, a UK executor), or
- is someone for whom they already hold an approval notice (for example, the landlord's surviving spouse).

The new payees can of course apply for HMRC approval to receive their rent without deduction of tax (see paragraph 11.1 above).

Executors or trustees, all of whom have their usual place of abode outside the UK, should use form NRL3i (see paragraph 1.15 above) if they wish to receive their UK rental income without deduction of tax.

### **Irish charities, superannuation schemes and insurance companies**

11.21 Under Article 14A of the UK/Republic of Ireland Double Taxation Convention the following types of Irish tax-exempt landlords are exempt from UK tax on their rental income:

- charities
- superannuation schemes
- insurance companies (in respect of their pension business).
- These landlords should *not* fill in forms NRL1i, 2i and 3i. Instead they should claim exemption under the Double Taxation Convention by filling in a [form Ireland-Company](#), available from the HMRC website.

## 12 RECORD KEEPING AND THE HMRC AUDIT

### General

12.1 Auditors from PTI carry out audit inspections from time to time in order to satisfy themselves that letting agents and tenants have complied with their obligations under the Non-resident Landlords (NRL) Scheme. This chapter gives guidance on record keeping and the audit itself. It does not cover the responsibilities of record keeping outside the context of the NRL Scheme. In particular letting agents and tenants should take care not to discard records that a landlord may need in connection with any tax returns he has to make (see paragraph 12.4 below).

### Information to be provided

12.2 Letting agents and tenants who have to operate the NRL Scheme must submit quarterly and annual returns in the circumstances described in Chapters 4, 5, 7 and 8 above. They must also provide other information when requested to do so by PTI (see paragraph 12.3 below).

12.3 Letting agents and tenants must make available for inspection all books, documents and other records that they have or control as PTI may reasonably require to enable them to be satisfied that the letting agent or tenant is meeting his or her obligations under the Scheme.

### Records

Reg. 15

12.4 The rules of the NRL Scheme do not require letting agents and tenants to operate prescribed record-keeping systems. But records must be adequate to satisfy PTI that letting agents and tenants have complied with their obligations under the Scheme. In particular, letting agents and tenants should keep the following records separately for each non-resident landlord:

- a record of rental income received by the letting agent or paid by the tenant; and
- copies of any correspondence with the landlord regarding his or her usual place of abode.

And unless the letting agent or tenant is authorised to pay rental income with no tax deducted:

- a record of expenses paid; and
- invoices and receipts (or copies) to provide evidence of expenses paid.

Landlords fall within the scope of section 12B of the Taxes Management Act 1970, and so are required to keep records for the purposes of enabling them to submit correct and complete tax returns. Failure by a landlord to keep proper records could result in the landlord incurring a penalty. Letting agents and tenants should therefore discuss this subject with a landlord before disposing of any underlying records relating to that landlord's business.

- 12.5 The record of rental income received by the letting agent or paid by the tenant should show the date and amount of each receipt or payment.
- 12.6 The record of expenses should show the date and amount of each payment and a brief description of the expense. For example: 16/09/10 Gardening £25.
- 12.7 Letting agents and tenants may retain records on microfilm, microfiche or any other medium that preserves an exact copy of the original document. Letting agents and tenants who wish to retain documents in this way should contact PTI before destroying the originals.
- 12.8 If possible letting agents and tenants should retain records for six years after the end of the year to 31 March to which they relate. However, apart from letting agents and tenants being visited for the first time, the auditors will generally not ask to see records that are more than four years old.

### **Penalties**

- Section 98 TMA 1970 12.9 There are penalties for failing to make records available for inspection or for failing to provide information. The maximum penalty chargeable for failure to provide information is £300, and if the failure continues after that penalty is imposed, there are further penalties of a maximum of £60 for each day on which the failure continues after the day on which the original penalty was imposed.

### **The HMRC audit**

- 12.10 PTI undertakes inspections from time to time to check that the NRL Scheme has been operated correctly and letting agents and tenants have paid the correct amount of tax.

The objectives of the audit are to determine whether letting agents and tenants have met their obligations under the rules of the NRL Scheme. In particular, the audit is designed to ensure that:

- where letting agents and tenants have paid rental income without deduction of tax, they hold an HMRC notice authorising them to do so;

- the total rental income and expenses reported on the annual return, for each landlord, can be verified from the letting agent's or tenant's books and records;
- expenses taken into account in the letting agent's and tenant's computations are 'deductible expenses' (see Chapter 10 below);
- letting agents have operated the Scheme in relation to all non-resident landlords for whom they act;
- tenants have operated the Scheme in relation to all their non-resident landlords; and
- letting agents and tenants have accounted for the correct amount of tax on their quarterly returns and have submitted all returns punctually; and
- letting agents' repayment claims are in accordance with the rules of the Scheme.

To achieve these objectives, auditors will review procedures and accounting systems, and carry out sample checks.

12.11 Where letting agents are approved to operate the Scheme through separate branches, PTI will audit the branches separately.

12.12 HMRC has published guidance notes about how it carries out inspection of schemes. These ['Tax compliance checks'](#) can be found on HMRC's website. They explain agents' rights and promise that agents will be treated fairly and courteously. The guidance notes also say that HMRC will provide help where appropriate. They apply to letting agents and tenants who are required to operate the NRL Scheme.

12.13 New letting agents (or existing letting agents making major changes to systems or procedures) can seek information from PTI, which is happy to give advice and, if necessary, arrange an informal visit. PTI's telephone number is in paragraph 1.15 above.

### **Examining letting agents' and tenants' records**

12.14 Auditors will normally visit letting agents' head offices. However, where a letting agent's business is run through a number of branches, auditors may also wish to visit a selection of local branches. Where a letting agent is approved to operate the NRL Scheme through a number of branches separately, auditors will normally wish to visit all the branches. Some audits are conducted by correspondence rather than personal visits.

12.15 Auditors will normally check tenants' operation of the Scheme by asking tenants to send their records to PTI. Points arising from the

examination of the records can usually be dealt with through correspondence. Auditors will not normally visit tenants unless they are asked to do so.

12.16 The guidance notes (see paragraph 12.12 above) explain HMRC's general approach to examination of records. In relation to the NRL Scheme, auditors will want to see - or have available on request - the following documents or records in particular:

- all computer records, printouts, reconciliations, update statements, microfiche ledgers, and so on;
- invoices and receipts for expenses paid; and
- copies of correspondence received from non-resident landlords which may be relevant to the Scheme.

12.17 The auditors will also wish to check other records to ensure that the letting agent has identified all non-resident landlords for whom he or she acts. The auditor will not ask to see records of rental income received for landlords who are not non-resident landlords.

12.18 PTI will use the information obtained during an audit only to ascertain the tax liability of non-resident landlords, letting agents and tenants.

### **Selection for inspection**

12.19 The guidance notes (see paragraph 12 above) explain that most audits are routine, and that timing and frequency of audits generally depends on the amount of tax involved. The frequency with which a particular agent is inspected depends partly on the amount of tax and the results of any previous inspection or other information. However, the timing of an inspection may be affected by other factors, such as a merger with another agent.

### **Notice of inspection:**

#### **Letting agents**

Reg. 14(1)

12.20 PTI will issue a formal notice of an inspection at least 14 days before the date of the audit. It will telephone the letting agent after issuing the formal notice, usually within seven days to discuss the arrangements for the audit.

#### **Tenants**

12.21 PTI will write to tenants requiring them to make information, books and records available. The notice will specify the information and so on required and the time by which it must be made available (not less than 14 days after the date of the notice).

### **Selecting a sample: letting agents**

- 12.22 Depending on the number of cases within a letting agent's portfolio, auditors may select a general sample of records relating to non-resident landlords. The sample will be representative of the whole population and will usually be selected at intervals from the range of landlords, depending upon how the letting agent's records are kept. This sample will usually be at random. However, other methods of sampling - for example, samples taken at regular intervals - may be used, depending on how the letting agent's records are kept.
- 12.23 The size of the sample will vary from letting agent to letting agent, depending on the size of the business. The sample will be large enough to enable the auditors to determine whether a letting agent has failed in his or her obligations. Auditors will always explain the basis of sampling.

### **Reporting the results**

- 12.24 The auditors will always report their findings to the letting agent or tenant, normally within 20 days of an inspection.
- 12.25 If, on the basis of the inspection results and other information available, the auditors are satisfied that the correct tax has been paid, they will tell the letting agent or tenant that no further action is needed.
- 12.26 If the auditors have examined all a letting agent's or tenant's records and have discovered that the letting agent or tenant has paid insufficient tax, they will seek to agree the correct amount of tax payable and tell the letting agent or tenant that they must pay this amount.
- 12.27 If the auditors have examined a sample of a letting agent's or tenant's records and the number of errors is such that it would be unreasonable to conclude that similar errors are likely to exist throughout the rest of the population, and they are satisfied that the Scheme has otherwise been operated correctly, they will seek to agree the correct amount of tax payable in respect of those landlords. Letting agents or tenants will be expected to correct such cases for the future.
- 12.28 In other cases, where the auditors could reasonably conclude that errors exist throughout the rest of the population they will seek to agree the correct amount of tax payable in respect of all non-resident landlords, not just those included in the sample.

### **Extrapolation**

- 12.29 Where the auditors have examined a sample and they can reasonably conclude that errors exist throughout the letting agent's operation of the Scheme they will:

- seek to determine, by agreement with the letting agent, the amount of tax to be paid; and
- if appropriate, ask the letting agent to make a payment on account while the correct figure is calculated.

In these circumstances the auditors will normally extrapolate the agreed results for the sample across the rest of the letting agent's cases.

12.30 If a letting agent is unwilling to rely on the results of the inspection to quantify the amount of the tax underpaid, PTI may make an assessment to recover the estimated amount. However, the letting agent may undertake further work to quantify the actual amount. That may involve reviewing:

- all non-resident landlords; or
- a further sample of sufficient size to reassure PTI that the results are reliable enough to be extrapolated across the rest of the letting agent's cases.

If the letting agent decides to review all cases, the auditors will want to agree how the review is to be carried out and will wish to check the results of the review. They will also wish to agree the terms for the review of any further sample and in particular will need to be satisfied about the size and structure of the sample, and may similarly wish to check the results of this review.

### Interest

Reg. 10

12.31 PTI may charge interest on tax underpaid by letting agents and tenants from the date tax should have been paid to the date it was paid.

Interest will still be chargeable on the agent for the late payment of tax, as this should have been accounted for on the relevant quarterly return to which the rental income related

### Penalties

Section 98 TMA  
1970

12.32 PTI may charge penalties where letting agents and tenants submit incorrect quarterly or annual returns. The maximum penalty for an incorrect return is £3000. But, it is HMRC's practice to mitigate, or reduce, penalties to take into account a number of factors.

12.33 The auditors will seek to agree with the letting agent the level of penalties in order to determine the amount payable. [HMRC's Compliance Handbook](#) explains its approach to calculating penalties. Letting agents and tenants can find the relevant guidance in chapter 'CH82000'.

## **Audit protection**

12.34 HMRC's Statement of Practice SP8/91 explains the circumstances in which it will recover tax where an assessment has previously been settled by agreement. Briefly, HMRC does not go back on an agreement unless the information on which that agreement was based was misleading. In line with this practice, PTI does not seek to recover tax on returns made before the end of the period covered by the last inspection (whether or not that earlier inspection resulted in any recovery), unless:

- the settlement was based on misleading or incorrect information provided by the letting agent or tenant;
- the settlement was based on computational errors that the letting agent or tenant could not reasonably believe were correct or intended; or
- errors arose that were not readily susceptible to inspection checks.

## **What if the non-resident landlord has paid the tax?**

12.35 The obligations of letting agents and tenants under the NRL Scheme are distinct from the obligation of landlords to show their rental income on their tax returns and pay their tax. Where the auditors discover that a letting agent or tenant has failed to account for tax under the Scheme when required to do so, they will normally seek to recover the tax from the letting agent or tenant.

But where the letting agent or tenant is able to show that the non-resident landlord has either already paid any tax due on the rental income or has no liability to tax on it, the auditors will normally be prepared to agree to recover only interest and penalties from the letting agent or tenant. The letting agent or tenant has 30 days from the issue of the auditor's report to show this to the auditor's satisfaction. After that date the auditor will press for recovery of tax from the letting agent or tenant.

For reasons of taxpayer confidentiality, the auditors cannot disclose to letting agents or tenants whether a landlord has paid his tax.

## **Other issues**

12.36 There may be some particular issues that arise out of an inspection or that are of special concern to an agent. We will be pleased to give advice or explain their approach on any such issues.

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