Rent Pooling

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1. Introduction

This manual outlines the tax treatment where rent is "pooled" from multiple properties. Rent pooling is often found in property-based incentive schemes such as the student accommodation scheme and the scheme for nursing home residential units but is may also occur outside such schemes.

Rent pooling generally refers to the amalgamation of rents and expenses for several properties to arrive at a single net profit or loss figure. This type of computation may provide the "correct" figure for tax purposes in most cases but not all, which is why the Tax Acts require separate rental computations for each property.

Certain structures involving management companies may allow a form of rent pooling that does not contravene the provisions of the Tax Acts.

2. Rent pooling in tax incentive schemes

Rent pooling is used to facilitate the collection and distribution of rent among multiple investors in proportion to their share of the overall expenditure on a development. It is not generally an acceptable way to calculate taxable income because it may not take account of "uneconomic rents" as defined in section 75(4) Taxes Consolidation Act 1997 (TCA) (discussed below), the uneven distribution of expenses among a group of properties, or the possibility that some properties in a development may not have met the qualifying conditions for a particular scheme; for example:

- in the case of an incentive scheme property, there must be a qualifying lease;
- in the case of the student accommodation scheme, the first tenant must be an appropriately registered student;
- in the case of a residential unit associated with a registered nursing home, the property must be let to an appropriately medically certified person selected by the registered nursing home.

3. Relevant legislative provisions

Section 75(4) TCA outlines the tax treatment of "uneconomic rents". In the context of the general trend over time of a particular let property, where (non-interest) expenses exceed the rent receivable from the letting, sections 75, 97 and 384 TCA are disapplied. This means that expenses that are generally allowable, including interest on borrowed money for the purchase or improvement of premises, are not deductible and losses cannot be used against other taxable rental income or carried forward to subsequent years. Expenses and losses attributable to such 'uneconomic rents' are effectively ignored for tax purposes.

Section 96 TCA provides that the "person chargeable" (the phrase used for Case V purposes) for tax purposes is the person who is entitled to the profits or gains from the rents.

Section 97(1)(b) and (c) TCA provide that the surpluses and deficiencies must be calculated in respect of each individual property, before all individual surpluses and/or deficiencies are combined to give an overall net surplus or deficiency for all the properties. Without such individual computations it would not be possible to identify any uneconomic rents for the purposes of section 75(4) TCA.

4. Management companies

Some properties which are subject to tax incentive schemes, particularly the student accommodation scheme and the scheme for residential units associated with registered nursing homes, are maintained by management or other intermediary companies.

The rental computation in these cases depends, *inter alia*, on the letting and other relationships between the owner of the property and the management company and between the management company and the ultimate tenants. The key questions are:

- who is the person chargeable for the rental income; and
- who pays the rents.

Both the owner and the management company may be chargeable persons in some cases. The owner could be a person chargeable in respect of their letting arrangement with the management company. The management company, in turn, could be a person chargeable in respect of its letting arrangements with the tenants. Anyone chargeable to tax for a chargeable period is required to submit a return of income, under section 959I TCA.

5. Possible rental structures

This paragraph examines rent pooling in different rental arrangements. The scenarios outlined below are not intended to be exhaustive. They are presented in a simplified manner and are intended solely for illustrative purposes.

The person chargeable – the person who is entitled to the profits or gains from the rents – and the manner the rental profits and losses are computed, will ultimately be determined by the facts and circumstances of each case.

Example 1: All the apartments in a "section 23" apartment block are owned jointly by several investors. Each investor has incurred a different amount of expenditure and owns a share in each of the apartments in proportion to his/ her share of the overall expenditure. At the end of the chargeable period in which the apartments were purchased, the investors have entered into qualifying leases directly with tenants for all except one of the apartments. The "section 23" relief and other expenses attributable to the unlet apartment cannot be included in the rental computation. If there are no 'uneconomic rents' the net rental profit/loss is distributed among the investors in proportion to their share in the overall development. The ten-year holding period for the unlet apartment will not commence until that apartment is let under a qualifying lease.

Example 2: All the apartments in a 'section 23' apartment block cost the same and are purchased individually by several investors. At the end of the chargeable period in which the apartments were purchased, all the investors except one had entered into qualifying leases for their apartments directly with tenants. The rental computation for each apartment depends on the rental income and allowable expenses attributable to that apartment. There are no allowable expenses attributable to the unlet apartment and the owner has no entitlement to any of the rental income from the other apartments.

Example 3: The owners of the houses in a student accommodation development enter into leases directly with tenants and use a management company to provide letting and management services, for which the company receives a fee from the owners. The management company lets all the houses, collects rent on behalf of the owners, deducts its fees and pays the net rent to the owners according to the rent received for the property in question. The owners are the persons chargeable for the rental income and each owner's share of the management company's fee is an allowable expense in her/his rental computation. The management company's fee income is Case I trading income.

Example 4: The owners of qualifying residential units in a nursing home development let the units to a management company acting for the registered nursing home. The owners are entitled to the profits or gains from the rent received under the lease with the management company and are chargeable persons in relation to that rent. Apart from the capital allowances arising from the purchase of the units, the only allowable expense incurred by the owners is the interest on the money borrowed to finance the purchase of the units. The management company, in turn, lets the units to elderly and infirm tenants. It decides on the amount of rent to pay to each owner and bases this on the size of each unit. It pays the agreed rent to each owner regardless of what happens to an owner's unit. This means the owners are not concerned with whether their unit is in receipt of 'uneconomic rents' or bears a disproportionate share of the management expenses. This is the concern of the management company, because it is the person chargeable in respect of the rent received under its leases with the tenants. In preparing its rental income computation the management company must establish the surpluses and deficiencies for each unit and take account of any "uneconomic rents" and the expenses attributable to a particular unit.