



New loss “ring fencing” legislation confirmed

In a bill released earlier this month, the Government confirmed new legislation will be introduced next year that will restrict taxpayers from being able to offset their rental losses derived from residential investment property against other sources of income (as they are currently able to do).

From 1 April 2019 any losses derived from residential land will not be able to be offset against other sources of income (for example salaries or wages).

Where multiple properties are owned, rental losses from one property can be offset against profits derived from another rental property. However, an election can be made to instead apply the rules on a property by property basis.

Excess rental losses can be carried forward to the following income year and will only be able to be offset against other income derived from a rental property or from taxable gains derived under any of the land taxing provisions (including gains arising under the bright line rules). However, where an election has been made to apply the rules on a property by property basis those losses will only be able to be carried forward and offset against income from that same rental property.

There will still be exclusions relating to the family home, property subject to the mixed-use asset rules, land already taxable under the existing land provisions (ie development properties), property owned by widely held companies and certain employee accommodation.

The concept of “residential land” and the “main home” will be based on the existing bright line rules and the same limitations will apply for a main home owned by a Trust. As is the case with the bright line rules, residential property owned overseas will be included.

There will also be anti-avoidance rules designed to capture arrangements involving interposed entities in an attempt to get around these new rules (for example borrowing money to acquire shares in a company which uses the funds to buy a residential investment property). This really takes away the ability to “get around” the new rules.

The new legislation will apply from the start of the 2019-2020 income year (with no “phasing in period” as previously proposed. This means that the 31 March 2019 year will be the last year that you will be able to offset losses from rental properties against other income. Any repairs and maintenance work should be done now so that any resulting losses can be utilised prior to 31 March 2019.

If you have any queries in relation to the above please contact your Chapmans adviser.