BCLP. Client Intelligent

Insights

NEW UK RESIDENTIAL PROPERTY DEVELOPER TAX: TRIGGERS FOR LIABILITY

Sep 28, 2021

SUMMARY

Following publication of the new Residential Property Developer Tax for technical consultation, we examine when this tax will be charged and the types of development activities that will bring developers within scope.

The Treasury has published draft legislation for the Residential Property Developer Tax (RPDT) for technical consultation ahead of its inclusion in the 2021-22 Finance Bill. This follows an initial consultation on the policy design in April 2021, on which BCLP has previously blogged.

The RPDT is a new tax to be collected by HMRC that will take effect on 1 April 2022. It will be charged on large residential property developers and will be used to help pay for the removal of flammable cladding from high-rise buildings. The final design of the tax, including the rate of the tax, will be announced at the Autumn Budget on 27 October 2021.

Liability for RPDT

The RPDT will be charged on the residential property development profits of corporate residential property developers ("RP developers") at a rate that is yet to be announced.

As currently drafted, RP developers that are within the charge to corporation tax and undertake 'residential property development activities' ('RPD activities') will be liable for the RPDT. For the purposes of this blog, we discuss the types of activities that will potentially trigger liability for RPDT rather than the design of the tax.

What will bring a developer within scope of the RPDT?

To fall within the scope of the RPDT, RP developers must carry out an RPD activity:

- on or in connection with land it has, or had, an interest in; and

- for the purposes of, or in connection with, the development of residential property.

What constitutes an interest in land?

An interest in land is widely defined and includes interests, rights or powers over land which are held as part of trading stock of a trade. A company is deemed to hold an interest in land if an interest in that land is held by any related company. However, mortgagors and licensees are excluded.

What comprises an RPD activity?

Almost anything typically carried out during the development of residential property will be an RPD activity. The draft legislation provides a non-exhaustive list that includes dealing in, designing, seeking planning permission, constructing, adapting, marketing and managing residential property and any ancillary activities. Profits from these activities are all included within the RP developer's base for the tax.

Planning permission as an RPD activity

Profit arising from the grant of planning permission to build a residential property could be subject to the RPDT. However, under the current draft legislation the property needs to be held as trading stock of a trade for the tax to be triggered.

Developers who apply for or obtain planning permission for a residential development may be liable when they come to sell the property with the planning permission even if the development has not been constructed.

Are all residential property developments potentially subject to the RPDT?

Residential property includes buildings that are designed, adapted or are being constructed for residential use, as well as land intended for residential development where planning permission is sought or granted, along with general amenity land developed alongside residential property.

However, there are a number of exclusions for specialised residential uses (eg student accommodation, retirement homes where personal care is provided, hospitals etc), which are not defined as 'residential property' and therefore fall outside the scope of the RPDT. A policy decision has yet to be made on whether or not to exclude Build to Rent.

Comments

This widely drafted legislation has the potential to bring a large number of developers within its scope. Developers caught by the legislation need not be involved solely in residential development. Mixed use developments that contain some residential element may also be charged in relation to the profits from the residential activity.

The rate at which the RPDT is ultimately set will be critical. Alongside the new Gateway 2 Levy to be introduced in connection with the Building Safety Bill (for further details see here), there could well be a cumulative impact on development viability with potential impacts on housing supply, and thus the delivery of planning benefits including affordable housing.

Developers who wish to participate in this consultation have a small window to do so, as the consultation closes on 15 October.

RELATED CAPABILITIES

- Real Estate

MEET THE TEAM

Clare Eccles

London

clare.eccles@bclplaw.com
+44 (0) 20 3400 4267