SQUIRE PATTON BOGGS

Residential Property Developer Tax: What Is Your Fair Share?

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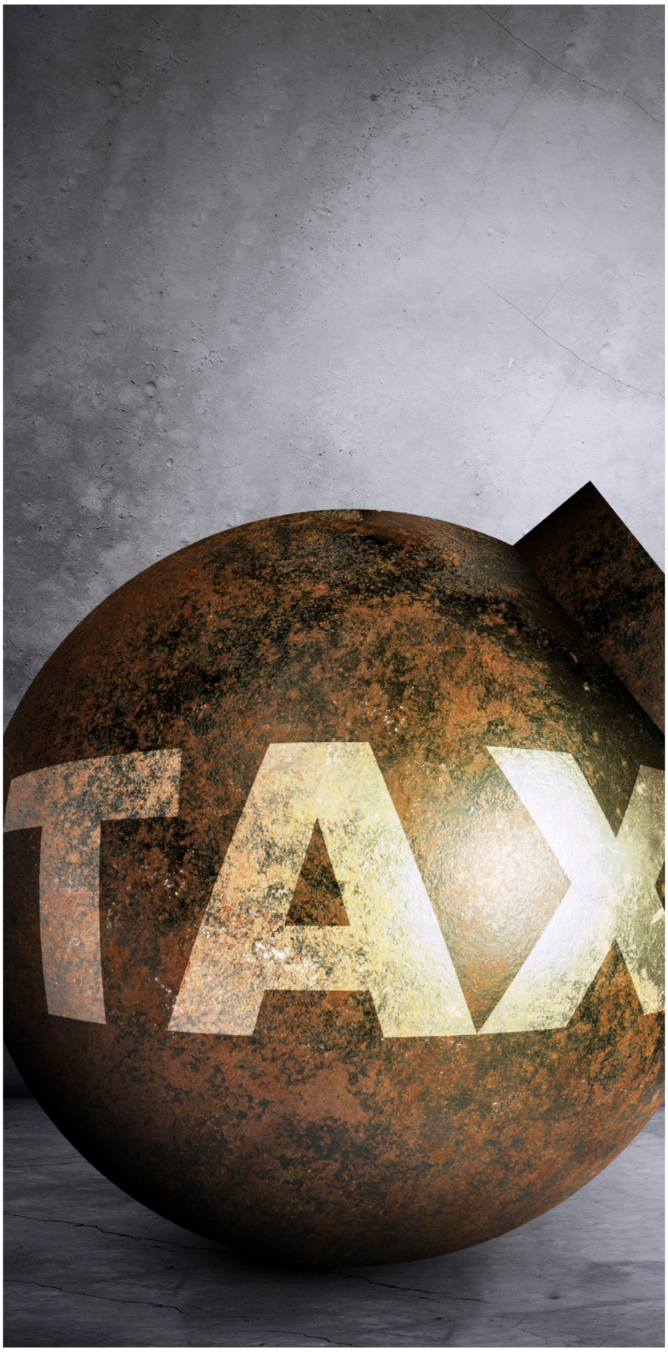
Are you a residential property developer operating in the UK? Do you enjoy annual profits exceeding £25 million (group-wide)? If so, you will be interested in the current government consultation (the Consultation) inviting views on a new tax on residential property developers, as you will probably be paying it in the not too distant future. And, in something of a left-fielder, the plans extend to developers of build-to-rent properties, even where those properties are retained for investment purposes. Joint ventures are also likely to be affected, with protections against double taxation.

If you are likely to be affected, read on to understand the potential impact on your business. You have until 22 July to respond to the Consultation and offer your views on the design and administration of the tax.



What Is the Tax For?

In a word, cladding. And, long term, ensuring that the government will not be responsible for meeting all of the costs associated with remediation of unsafe cladding on high-rise residential buildings. Earlier this year, the government announced its five-point plan to bring an end to unsafe cladding, of which the intention to impose an industry tax and levy is seen as being key in ensuring that the industry pays "its fair share". This, notwithstanding that not all developers were involved in building high-rises that now require remediation. A point the government acknowledges.

The Consultation relates only to the residential property developers tax (RPDT). There is scant detail, currently, on what is known as the "Gateway 2" levy, although it forms part of the Consultation to the extent that it will interact with the RPDT (with developers potentially liable for both).

The Proposals

In a nutshell:

- The government aims to raise at least £2 billion towards remediation works
- The RPDT will be introduced in 2022 and run for 10 years (it is intended to be time-limited)
- It will apply to residential property developers seeing profits in excess of £25 million – those the government considers to be the largest corporate undertakings making money from UK residential property development

Who Will Pay?

Companies or corporate groups. Targets may include a group of companies or a standalone company, provided that they undertake UK residential property development and generate profits as provided for by the proposed models – more detail below.

If It Is a "Done Deal", Why a Consultation?

It seems clear that, in one form or another, this tax is going ahead. However, there is an opportunity to contribute views on the tax's design, implementation and administration, including:

- What the definitions of "residential property" and "development activity" should be
- Consideration of two potential models for the tax
- What the approaches to setting the rate and allowance might be
- How the RPDT should interact with the Gateway 2 levy – especially considering some developers are likely to be caught by both
- What you think about methods of reporting, payment and compliance
- How the tax might impact housing supply and provision of affordable housing

The definitions and alternative modelling could well affect how much you pay, so it is worth giving each aspect of the proposals serious consideration.

What Does "Residential Property Development" Actually Mean?

Taking from existing statutory definitions, the government proposes the following:

> "a house or flat that is considered as a single residence, generally together with the grounds and garden or any other land intended for the benefit of the dwelling."

However, this could be extended to include **undeveloped land** where planning permission for residential development has been granted. **Affordable housing** profits will fall within the scope of the tax, if a profit is made. There is some relief for large housing associations whose focus is wholly or mainly on developing affordable housing. The government recognises that charitable activity should not be taxed and does not propose taxing those activities under the RPDT.

Communal dwellings, such as hotels and residential homes, are unlikely to fall within the remit of the tax, with one notable exception: **student accommodation**, the treatment of which remains uncertain, with the government exploring the case for inclusion/exclusion through the Consultation. **Retirement accommodation** is similarly under the spotlight, with distinctions proposed according to level of care provided, the basic principle being that if care is provided, the tax will not apply (primarily residential care homes) but if it is not, profits will be taxed.

One of the most interesting proposals, and one that may have come as a bit of a surprise to the industry, is the treatment of **build-to-rent** models, in relation to which the government considers profits derived from this type of development will fall within the scope of the RDPT. There is a clear rationale for this but it is recognised that differing commercial and accounting approaches may make measurement of income challenging.

What Will the RPDT Look Like?

There are two design models suggested:

Model	Model 1: Company-based Approach	Model 2: Activity-based Approach
RPDT applies to:	Standalone companies and groups of companies that undertake any amount of UK residential property development or support that work.	Standalone companies and groups of companies that undertake any amount of UK residential property development or support that work in other companies in the same group.
Tax applied:	In relation to groups, to companies within the group that either directly undertake or contribute to the group's UK residential property development activities.	In relation to groups, to the profits of companies within the group that undertake activity in relation to UK residential property development.
Tax calculated:	By reference to profits of those companies as computed for Corporation Tax (with potential adjustments).	Two methods proposed: • Model 2a: By taking profits as computed for Corporation Tax. • Model 2b: By taking the consolidated accounting measure of profit computed in line with UK GAAP in relation to residential property development activity as a separate division (with potential adjustments).
Subject to:	A "significance" test: if residential property development activity is "insignificant" (the meaning of which has yet to be determined – views sought) then that company's profits will not be included when calculating profits liable to RPDT.	None.
Liability sits with:	Individual companies within a group, with the option for a single group company to take responsibility for payment and returns.	Model 2a: individual companies within a group with the option for a single group company to take responsibility for payment and returns. Model 2b: a specific company to both file the return and make payment (default being the parent company).
What is the difference?	Applies tax to total profits of companies.	Requires identification of residential property development activities only. Tax based on the amount of profit in a company that relates to those activities.

What Is Profit?

It is, of course, all very well to say that "profit" will be taxed, but how will this be calculated, especially given that the persisting theme through the Consultation is that only the largest property developers will pay and that the tax should be proportionate? Stressing that neither model should be "unduly burdensome", the Consultation proposes different treatments taking account of:

- Appropriate starting point for calculation
- Necessity of apportionments
- Adjustments to Corporation Tax or accounting profits
- Treatment of losses
- Reliefs/deductions

Companies likely to be affected should examine the detail and respond to secure the fairest deal.

The Million Dollar Question – How Much Will I Pay?

The actual rate of the RPDT remains shrouded in mystery, but the government will be guided by the following principles:

- Tax burden to be proportionate (and considered within the context of the increase in Corporation Tax to 25%)
- The tax should raise at least £2 billion over a 10-year period
- Only the largest residential property developers will be subject to the tax
- The tax should not disproportionately impact housing supply
- While amendments may follow, it is not intended to be a fluctuating tax

Notably, while much has been made of the proposal that this is a time-limited tax, the small print allows the government to consider extending the deadline where insufficient money is raised within the intended timescale.

The Gateway 2 Levy (Levy)

There is little detail on the Levy, other than that its focus will be high-rise developments. The charge will apply when developers seek permission to develop high-rise buildings (above 18 metres). A future consultation should deliver more detail. However, in recognition that some developers could be liable for both the RPDT and the Levy, there is a general question around the cumulative impact.

Reporting, Registration and Payment

Requirements around reporting and registration are likely to follow Corporation Tax requirements and views are sought around the practicalities.

Critically, when will companies have to pay? Again, consideration is being given to aligning payment schedules to those used for Corporation Tax, so there is a possibility that payments will be made in quarterly instalments.

How Long Have I Got?

For your views to be heard, you have until 22 July. If this has piqued your interest, it is worth taking the time to respond. Although the Consultation is a little light on detail, with some obvious gaps, the RPDT is definitely on its way. You can access the Consultation here.

For implementation, you have just a few short months. The government intends that the RPDT will apply from 1 April 2022, "to profits recognised in accounting periods ending on or after that date".

You know the saying – only two things in life are certain. The RPDT is one of them.

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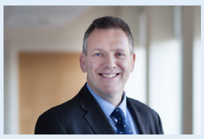

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