



Law Society
of Scotland

Consultation response

Residential Property Developer Tax: draft legislation

October 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Tax Law Sub-committee and Property Law Committee welcome the opportunity to comment on HM Treasury's consultation on *Residential Property Developer Tax: draft legislation*¹. We previously responded to the consultation on *Residential Property Developer Tax: policy design*².

Comments

Definition of “Group”

In order to fall within scope, the legislation requires that residential property development activities (RPD activities) must be carried out on land that the residential property developer (RP developer) has or had an interest in, or a related company has or had an interest in. This is defined in section 4(2)(a) as a member of the same group. “Group” is defined in section 19. We have three comments here:

- It is not helpful that section 19 falls under the heading of “miscellaneous”, as someone looking for definitions may not find this definition of “group”.
- It would seem more appropriate to include the definition of “group” in the definitions in section 21.
- We consider section 19(2) is unclear. It appears paragraph (b) could be dropped – if a company is the ultimate parent of other companies (per paragraph (a)) then it does not make sense to say it is not the ultimate parent of any other company.

Section 4: interest in land

Section 4 defines an interest in land.

The definition includes (in section 4(1)(a)(i)) an “estate, interest, right or power in or over land” as well as (in section 4(1)(a)(ii)) “the benefit of an obligation, restriction or condition...affecting the value of ...land”. We note that the current framing of the section 4 is primarily based on English law. We suggest that it would be appropriate to add to the definition of an interest in land something similar to the provisions of the Land and

¹ <https://www.gov.uk/government/publications/residential-property-developer-tax-draft-legislation>

² <https://www.lawscot.org.uk/media/371439/21-07-22-plc-pllr-tax-consultation-residential-property-developer-tax.pdf>

Buildings Transaction Tax (Scotland) Act 2013 section 4(2): “or, in relation to land in Scotland, a real right or other interest therein”.

Subsection (1)(b) goes on to say the “estate, interest, right or power in or over land” must be or have been trading stock, but does not mention the “benefit of an obligation, restriction or condition” part of the foregoing definition. It would be useful to add wording to clarify whether/ that there is no requirement for this to meet the test in (b), or otherwise be held for the purpose of the trade. The exclusion of “excluded interests”, which is defined in section 4(3) as excluding interests or rights held as security, and licences, partially addresses this concern. However, it would be clearer for readers if the point around being held for a trade (or not) was explicitly addressed in section 4(1)(b) in respect of the “benefit of an obligation, restriction or condition” part of the section 4(1)(a) definition.

Section 13: allowance

Subsection 5 deals with the basic position of the allowance for a non-group situation – we suggest that this should be first i.e. should be subsection 1. This would improve comprehension of the legislation by setting out the basic concept first before dealing with the more complicated position of where a group is involved and the need to allocate the allowance between members.

For further information, please contact:

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