

FOCUS ON

Residential Property Developer Tax

Residential Property Developer Tax (RPDT) will be effective from 1 April 2022 resulting in an additional 4% tax charge on residential property development profits for many large developers.



RDPT forms part of the government's 'Building Safety Package', which aims to share the cost of removing unsafe cladding from high-rise buildings with housing developers. All residential property developers need to be aware of how RPDT might affect them once it is implemented."

RDPT is a new tax due to come into force from 1 April 2022 and is intended "to ensure that the largest developers make a fair contribution to help fund the government's cladding remediation costs".

Revenue from the tax will assist the Treasury with the funding cost of remediation works to remove and replace unsafe cladding from high-rise buildings. It is therefore considered by the government a means for the industry to pay 'its fair share' of remedying a problem of its own creation.

Many developers are of the view that this is an unfair conclusion to the consultation that began in 2021 and that RPDT will affect many developers who were not in any way involved in the kind of development that has resulted in the use of the unsafe cladding materials in question.



Who does it apply to?

RPDT will apply to developers with annual groupwide profits from residential property development in excess of £25m and will be payable as if it were the developer's corporation tax liability for a particular accounting period.

It applies to companies that are undertaking development activities in respect of property that it holds or held as stock in trade regardless of where that company is resident, therefore property investment companies are excluded from RPDT. There is a wide definition of development activities for these purposes which include:-

- dealing in residential property;
- designing;
- seeking planning permission;
- constructing or adapting property;
- marketing residential property;
- managing residential property;
- any activities ancillary to any of these other activities.

In the main it is only developers that hold or have held an interest in the land who are subject to RPDT, so third party contractors who do not or have not held an interest in the land will not be subject to the tax.

Those companies who previously held an interest in land held as stock in trade will be subject to RPDT in respect of that land if it makes a profit from design fees, seeking planning permission and the construction of that property.

Exemptions

Communal dwellings such as hotels, residential nursing homes or student accommodation are excluded from the definition of residential property although the rules can be complex. An exemption is available for "non-profit housing companies" which are not for profit companies that have been established specifically for the purpose of providing affordable and social housing.

Conclusion

RPDT is supposed to be a time limited tax, as the government announced that it would only apply for a period of 10 years after implementation. However it is notable that the draft legislation is missing a formal 'sunset clause'; so there is no legislative guarantee that RPDT will end when the government says it will. The inability to deduct interest costs from the calculation of RPDT profits is also particularly unwelcome and brings more developers into charge than one would have expected.

For further information please contact your local office or email: info@mhllp.co.uk or visit our website: mha-uk.co.uk

How will it work?

Stand alone companies and groups will have an allowance of £25 million for every 12 month accounting period to deduct from their RPDT profits. To the extent that the RPDT profits exceed this allowance then RPDT is payable of 4%.

Where there is a group, the £25m allowance is split between the group entities which are subject to corporation tax, a nominated company will allocate the allowance between relevant group companies by submitting an allocation allowance statement on behalf of the group to HMRC.

RPDT profits are calculated using normal corporation tax principles but ignoring:-

- Profits and losses not relating to the RPD activity (apportioned on a just and reasonable basis).
- any amounts of loss relief, group relief or group relief for carried forward losses except for those relating to the RPD activities (see below);
- any credits or debits that would otherwise be brought into account in relation to the loan relationship rules.

The exclusion of finance costs from the RPDT profit calculation has a massive impact and will no doubt bring developers into the scope of RPDT who previously thought that they would not exceed the allowance.

RPDT is payable as if it is corporation tax and will therefore fall due for payment on the same dates. Therefore quarterly instalment payments will apply as will group payment arrangements.

Relief for losses

The legislation provides for a form of group relief available from another group company which has a residential property development activity incurring RPDT losses for the same period.

Relief for brought forward losses (whether arising in the company or surrendered by another group company) will be restricted to 50% of RPDT profits assessable in any year. This restriction might act to significantly defer relief available for losses arising in previous periods.

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