Real Estate Tax Checklist

What should be on your radar?

January 2024

Introduction

Since our last briefing, there have been several significant developments which affect the real estate sector, including amendments to previously announced policies (for example, making "full expensing" permanent) and important international measures coming into effect (such as the "GloBE" rules introducing a global minimum corporate tax rate for large multinational enterprises).

With so much going on, it can be difficult to stay on top things. This briefing provides a checklist of the key tax developments that those in the real estate sector should be aware of and the actions that you should now be undertaking in preparation.

How we can help

As one of the largest teams of tax lawyers in the City, we advise on all tax issues relating to real estate. We are currently advising clients on the matters identified in this briefing, and, through our membership of industry bodies and government working parties, are also involved in many of the new developments referred to here.

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Real Estate Vehicle Tax

Tax change	Introduction	What does this mean for the real estate sector?
Proposed introduction of unauthorised onshore contractual fund – timing update	In our previous checklist we explained that the Government was consulting on the possible introduction of a new fund type, the "Reserved Investor Fund (Contractual Scheme)" (RIF), and discussed its proposed features. That consultation closed on 9 June last year, and the government is analysing the feedback.	The RIF's proposed flexibility and generous tax treatment could, for the right investor base, make it a viable onshore alternative to the JPUT. However, clearly, much will turn on how the Government responds to the feedback on the consultation. If the RIF is introduced, a commencement date in 2024 now seems unlikely, but 2025 may be possible.
New Luxembourg/ UK double tax treaty – timing update	In November last year the new Luxembourg/ UK double tax treaty (signed back in June 2022) entered into force, with its key provisions coming into force at various dates in 2024. The treaty significantly changes the tax treatment of UK property holding vehicles owned by Luxembourg residents. For more detail please see our December 2022 briefing.	If they have not done so already, investors holding UK property via Luxembourg companies, should be considering how they are affected by the new treaty. The treaty will be effective in the UK in relation to disposals (i) from 6 April for capital gains taxpayers and (ii) from 1 April for corporation taxpayers.
Changes to the REIT regime	Following on from changes to the REIT regime in 2022 and 2023, the government has proposed a further batch of reforms. The measures are generally aimed at making the regime more attractive, for example, (i) making it possible, when applying the exemption from the close company condition for institutional investors, to trace through intermediate holding companies; and (ii) relaxing, in certain situations, the rule that can impose a tax charge on REITs that make distributions to a corporate shareholder with a holding of at least 10%. However, the measures restrict the ability of certain funds to benefit from the use of REITs unless they either meet the "genuine diversity of ownership test" (GDO) or are not closely held.	The changes are expected to be enacted in a finance act this year. The further relaxations to the REIT regime are welcome and should enhance its attractiveness. Restricting the ability of certain funds to use private REITs is in line with the recent trend of the Government using GDO compliance or non-closeness as a condition for collective investment arrangements to access preferential tax regimes. Helpfully, the draft legislation contains provisions to protect existing structures where REITs are held by funds that will not meet the new requirements. For more information on the proposals, please see our Autumn Statement briefing.
OECD Pillar Two – global minimum corporate tax rate now in effect	The Global Anti-Base Erosion rules (GloBE rules) came into effect in many jurisdictions, including the UK, for accounting periods starting on or after 31 December 2023. These rules seek to establish a global minimum corporate tax rate of 15% for multinational enterprises (MNEs) that meet a €750m revenue threshold. Exclusions apply, including for investment funds and their holding vehicles. For more detail please see our previous checklist.	As GloBE focuses on an MNE's effective tax rate in a jurisdiction (and not that jurisdiction's headline rate), large real estate businesses should carefully consider whether they are affected by the rules. Given the scale of the GloBE initiative, we expect that there will be some teething problems for MNEs (and tax authorities), as they work through how to apply the complex new regime in practice.
VAT fund management exemption – position 1 January 2024	The Retained EU Law (Revocation and Reform) Act 2023 repealed various aspects of "retained EU law" from 1 January 2024, including the principle of "direct effect". To prevent this destabilising the UK VAT regime (which is based on EU law), the Government has introduced provisions to limit the effect of the repeals on VAT, but their scope is not certain. The position of funds that do not fall within the UK domestic legislation containing the fund management exemption and have been relying on the direct effect of the EU exemption, is therefore, unclear.	Few funds rely on direct effect in relation to the fund management exemption, but for those that do, the current uncertainty is unhelpful. For funds that have full input tax recovery, this will be primarily a cashflow issue.

Bricks and mortar tax

Tax development	Introduction	What does this mean for the real estate sector?
Full expensing to become permanent	In the Autumn Statement in November, the Government announced that "full expensing" of qualifying capital expenditure, which had been scheduled to end in April 2026, would be made permanent. For more detail, please see our Autumn Statement pages.	Confirming the permanence of full expensing is welcome news for industry, allowing long-term capital investment plans to be made and removing the cliff edge of April 2026 that had been looming.
Government reconfirms extension of investment zones	In the Autumn Statement, the Government announced that the Investment Zones programme in England will be extended from five to ten years and three new zones were announced in Greater Manchester, West Midlands and East Midlands. This extension is said to double the envelope of funding and tax reliefs available in each Investment Zone from £80 million to £160 million.	The extension of the Investment Zone programme is good news, with the extended time limit expected to encourage long-term investment and the additional zones welcome news for the three areas. For more detail on investment zones, please see our previous checklist.
Construction Industry Scheme (CIS) consultation	Following a consultation that closed in July last year, the Government has announced that two changes will be made to the CIS from 6 April 2024. First, the majority of landlord-to-tenant payments will be removed from scope. Second, VAT is to be added to the list of taxes the subcontractor's compliance with which HMRC can consider when determining to allow it "gross payment status". In December, the Government published draft implementing legislation for consultation, which is narrowly drafted. We have provided feedback suggesting several important expansions.	Landlords will particularly welcome the exclusion of most landlord-to-tenant payments from the CIS. The drafting of the final regulations will be important to ensure the scope is sufficiently broad to cover the majority of situations in which landlords pay tenants. It makes sense for VAT to be should be included when HMRC consider a taxpayer's compliance history. Following our representations, HMRC has ensured that minor noncompliance (for example, late returns) will not impinge on gross payment status.
Business rates – support measures	In the Autumn Statement it was announced that (i) the small business multiplier in England will be frozen in 2024–25 (for the fourth consecutive year) at 49.9p (but the standard multiplier will be uprated to 54.6p based on September CPI), and (ii) the current 75% relief for eligible Retail, Hospitality and Leisure properties will be extended for 2024–25.	These measures will be welcomed by small businesses and the retail, hospitality and leisure sectors.