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Real Estate Tax Checklist

What should be on your radar?

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Introduction

Since our last briefing, there have been several significant tax developments which affect the real estate sector. The new Labour Government's first Budget included welcome confirmation that it will press on with introducing a new form of investment fund (the RIF) that is expected to be particularly attractive for investment in commercial real estate, and proposals for significant reform to the tax treatment of carried interest. Throw in increases in the SDLT additional dwellings surcharge and the rate of ATED-related SDLT, reforms to business rates and a defeat for HMRC in (what it at least considered to be) an SDLT avoidance case, and there is a lot to stay on top of. This briefing provides a checklist of the key tax developments that those in the real estate sector should be aware of.

How we can help

We are advising clients on the full range of matters identified in this briefing. If you have any questions, please get in touch.

Key contacts

Russell Warren
Head of Tax
russell.warren@traverssmith.com
+44 (0)20 7295 3227

Madeline Gowlett
Partner, Tax
madeline.gowlett@traverssmith.com
+44 (0)20 7295 3411

Elena Rowlands
Partner, Tax
elena.rowlands@traverssmith.com
+44 (0)20 7295 3491

Aimee Hutchinson
Senior Associate, Tax
aimee.hutchinson@traverssmith.com
+44 (0)20 7295 3663

Ian Zeider
Knowledge Counsel, Tax
ian.zeider@traverssmith.com
+44 (0)20 7295 3849

Real estate vehicle tax

Development	Introduction	Impact
Expected introduction of new unauthorised onshore contractual fund	The Government has confirmed that it will introduce a new tax privileged fund type, the "Reserved Investor Fund (Contractual Scheme)" (RIF). The RIF has been in development for some time. The Labour Party, before the election, had welcomed the RIF but made a couple of criticisms of the last Government's vision for it. There is therefore an element of relief that it has confirmed that the RIF will be introduced. For more detail on the tax position and eligibility criteria for the RIF please see our Autumn Budget briefing.	The introduction of the RIF is an exciting development. Its expected flexibility and generous tax treatment could, for the right investor base, make it a viable onshore alternative to the JPUT. It will be interesting to see how far (if at all) Labour's plans for the RIF differ from those set out in the draft detailed regulations that were published by the previous Government. We expect the detailed rules to be legislated this tax year, meaning that a commencement date of 6 April 2025 seems likely to us.
Reform of the carried interest tax regime	In the Autumn Budget, the Government announced significant reform to the UK taxation of carried interest. The changes begin on 6 April next year when the minimum carried interest charge rises from 28% to 32%. More fundamental reforms are to follow from 6 April 2026 when all carried interest returns (regardless of their underlying source) will be subject to tax as trading income – so at rates of up to 45% plus 2% NICs. However, "qualifying" carried interest will benefit from the application of a multiplier that will result in only 72.5% of it being within the charge, giving an effective tax rate (including NICs) of around 34.1%.	The reforms will give the UK the highest effective rate of carried interest tax amongst mainstream EU jurisdictions (just ahead of France on 34%). However, the move to a flat rate of tax applying to all carried interest may benefit fund managers in the real estate sector. This is because carried interest (promote) holders in real estate funds commonly cannot access the current 28% capital gains tax rate, due to a significant amount of their returns being income in nature (e.g. rent) and therefore taxable at rates of up to 45%. A flat rate of around 34% would therefore improve their position. The Government is currently considering the detailed design of the new rules.

Bricks and mortar tax

Development	Introduction	Impact
Increase in SDLT additional dwellings surcharge	From 31 October the SDLT additional dwellings surcharge was increased from 3% to 5%. The surcharge applies (on top of the standard residential rates), broadly, to (i) any individual purchasing an "additional dwelling" (i.e. any property other than their main residence) and (ii) any company that acquires any residential property.	The Government intends for the increase in the surcharge to disincentivise the acquisition of second homes and buy-to-let properties, freeing up housing stock for main home and first-time buyers. The change applies to land transactions with an "effective date" on or after 31 October 2024, subject to certain transitional provisions. See our Autumn Budget briefing for more detail.
Increase in ATED-related SDLT charge	From 31 October the single rate of SDLT payable by companies and non-natural persons acquiring dwellings for more than £500,000 was increased from 15% to 17%.	The change applies to land transactions with an "effective date" on or after 31 October 2024, subject to certain transitional provisions. See our Autumn Budget briefing for more detail.
Business rates – support measures	The Government has announced a package of business rate measures to support the retail, hospitality and leisure (RHL) sectors. The current relief for eligible RHL properties will be extended to 2025–26 but be reduced from 75% to 40% and the small business multiplier in England will be frozen (again) in 2025–26 at 49.9p (although the standard multiplier will be uprated to 55.56p). The Government plans to permanently lower business rates for RHL properties with a rateable value of under £500,000 from 2026–27, to be funded by increasing the standard multiplier for properties with a rateable value of £500,000 or above. The Government is also asking for views on reforming a number of other aspects of the business rates regime.	The 2025–26 measures will be welcomed by small RHL businesses, albeit with some disappointment with the reduction in the rate of relief. The Government's intentions for reducing business rates for relevant RHL businesses for 2026–27 onwards are potentially very significant for both those RHL businesses that stand to benefit and those other businesses that will bear the cost. In this regard, the Government specifically says that the majority of large distribution warehouses, including those used by online giants, have a rateable value of £500,000 or above. Wider ranging reform of the business rates regime will be relevant for all those in the real estate sector. If you wish to give feedback to HMRC, the consultation closes in March.
Taxpayer victory in acquisition and de-enveloping SDLT case	In the recent case of *BrindleyPlace Holdings Sarl*, a Luxembourg company ultimately owned by German pension funds acquired a UK property holding structure. The structure, under which (broadly) the properties were held by an English limited partnership (ELP) that was itself owned by a Jersey property unit trust (JPUT), was then collapsed, leaving the Luxembourg company holding the properties directly. The First-tier Tribunal (FTT), after considering a number of technical arguments, held that no SDLT was payable in relation to the arrangements. Notably, the "section 75A" SDLT anti-avoidance provision was held not to apply.	We have become accustomed to HMRC victories in relation to the application of section 75A, including (in the 2019 FTT decision in *Hannover Leasing*) on fairly similar facts to *BrindleyPlace Holdings Sarl*. However, this taxpayer success should be treated with caution. FTT decisions are not binding precedents and HMRC may well appeal the decision, and if it does, there is a real prospect it would be successful.