EVERSHEDS SUTHERLAND

Tax Changes under Finance Bill 2021

Real Estate

Finance Bill 2021 (the "**Bill**") has now been published, and is due to be passed into law by the passing of the Finance Act 2021 on 25 December 2021. In this update, we consider the changes made to stamp duty and zoned land tax under the Bill.

Stamp Duty

Section 13 of the Bill inserts the financial resolution published earlier this year as a new section 31E SDCA. Section 31E imposes a 10% rate of stamp duty on the acquisition, on or after 20 May 2021, of residential units where an aggregate of 10 or more such units are acquired during a 12-month period.

Acquisition of Residential Units in Bulk

The stamp duty rate that normally applies to the acquisition of residential property is 1% of the value of property up to €1 million and 2% of the value that exceeds €1 million. The new 10% rate of stamp duty applies in respect of the acquisition of residential units, such as houses and duplexes, but excludes apartments in an apartment block. The Bill confirms that references to residential units in section 31E SDCA do not include apartments.

Where a residential unit is acquired, regard must be had to any other residential units acquired on the same date or at any time in the immediately preceding 12 months. The new rate of 10% is to be applied retrospectively once the criteria of 10 residential units has been exceeded. The normal stamp duty rate of 1% or 2%, depending on the value of the property acquired, will be applicable until the threshold of 10 units is met.

Amended wording has been included to clarify that the term "acquisition" also applies to the indirect acquisition

Exemption of Social Housing

Measures included in the Bill provide for an exemption from the new 10% rate of stamp duty where residential units are acquired and leased to housing authorities for use in the provision of social housing support.

Where residential units are acquired and a housing authority lease is entered into with a housing authority on the same day, such units will not be considered when calculating whether the 10-unit threshold has been met in a 12 month period. However, the Bill confirms guidance previously issued, that an exemption from the 10% rate does not apply where there is already an existing lease in place at the date of acquisition.

Further clarification is included in the Bill that a refund can be sought for stamp duty paid at the new rate of 10% where residential units acquired are later leased to certain social housing providers within 24 months of the date of execution of the instrument of transfer. This would bring the final stamp duty liability back to the normal rate of 1% or 2%. Clarification is also included in the Bill that for a qualifying lease to be eligible for a refund under section 83E SDCA, the qualifying lease must be entered into after a residential unit is acquired.

Technical Amendments to S.31E

The Bill contains amendments to subsection 13 to narrow the unintended overly wide scope of subsection 12 of 31E SDCA. A contract or agreement referred to in subsection 13 will now only come within subsection 12 to the extent of the value attributable to a relevant unit within the meaning of subsection 5.

The Bill clarifies that existing stamp duty exemptions under section 82(1), 82(C)(2) and 88(1)(b) SDCA will be disapplied only in the case of the acquisition of a relevant residential unit under section 31E SDCA.

Zoned Land Tax

Section 77 of the Bill will introduce new provisions to legislate for a zoned land tax, which will be an annual tax calculated at 3% of the market value of the land. The key objective of this tax is to promote development by landowners of land zoned for residential development that is serviced. This zoned land tax will replace the existing vacant site levy, targeting any unused land that is zoned and serviced for housing, regardless of the size of the land.

Land within the scope of the zoned land tax is that which is suitable for residential development, that is serviced, and is not affected in physical condition by considerations which may impact the ability to provide housing on the land. However, there are a number of exclusions from the zoned land tax, being:

- existing habitable dwellings and their curtilage;
- land that is used for certain infrastructure or facilities, for example utilities, transport, social or community or recreational purposes;
- land where a site is designated as a derelict site and liable for the Derelict Sites Levy; and
- land which is zoned for residential use but is used to provide services consistent with a residential area (such as a corner shop).

Where land is zoned for a mixture of residential and commercial or other uses, only land that is not integral for the operation of a business shall be included within the scope of the tax.

The Bill outlines two chargeable periods for land that falls within the scope of the tax. Where land is already zoned for residential development on 1 January 2022, it will become chargeable from 1 January 2024. If the land falls within the scope of the zoned land tax after 1 January 2022, then it will be chargeable on the third year after it comes within the scope of the tax.

Regardless of whether the land is already within scope from 1 January 2022, or falls within scope after this date, owners of land that falls under the zoned land tax will be required to file annual returns in the format prescribed with the Irish Revenue Commissioners. Penalties will apply for failure to do so and will also apply in circumstances where the owner undervalues the land in question.

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