Real Estate Tax Checklist

What should be on your radar?

May 2025

Introduction

Since our last briefing, there have been a number of important tax developments which affect the real estate sector. The standout item is the recent introduction of the Reserved Investor Fund, a new type of investment fund expected to be of particular interest to commercial real estate strategies. Continuing the funds theme, we are still waiting for more detail as the Government considers the design of its fundamental reforms to the UK taxation of carried interest scheduled for April 2026 (which may actually improve the position of managers who currently cannot access capital treatment on carried interest returns). From a "bricks and mortar" perspective, we have seen the announcement of an increase in the VAT capital goods scheme threshold for property expenditure and two recent victories for the taxpayer against HMRC in the Tax Tribunal. All these issues and more are discussed in this briefing, which 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

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
Introduction of the Reserved Investor Fund (Contractual Scheme) ("RIF")	A new tax privileged fund type, the RIF, was launched in March, having been in development for some time. The RIF is transparent for tax on income and not subject to tax on gains, with transfers of its units being free from stamp taxes. Provided certain conditions are met, investors are only subject to gains tax when they dispose of their units. The eligibility criteria include that the scheme (i) is not closely held, (ii) is only closely held due to the presence of certain institutional investors, or (iii) meets a "genuine diversity of ownership" condition. A further requirement is that the scheme must, broadly, (i) not hold interests in UK land or in UK property rich companies (essentially, companies deriving at least 75% of their value from UK land), (ii) be UK property rich, or (iii) only have investors who are exempt from UK tax on gains (other than by reason of residence).	As the RIF is not authorised by the Financial Conduct Authority (although its manager will be subject to the AIF regulations), it should be flexible and easy to use. This, combined with the generous tax treatment being proposed, should make it attractive for investors in UK real estate, and, for the right investor base, a viable alternative to the JPUT. The RIF is available to professional investors, as well as those who invest at least £1m (or have already invested in it). For more detail on the tax position and eligibility criteria for the RIF please see our Autumn Budget briefing.
Reform of the carried interest tax regime	In the Autumn Budget, the Government announced significant reform to the UK taxation of carried interest. On 6 April, the minimum carried interest charge rose from 28% to 32%. More fundamentally, from 6 April 2026 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%. See our Autumn Budget briefing for more detail.	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 32% 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 still considering the detailed design of the new regime. We are expecting an update from the Government followed by draft legislation in the summer.
Scottish Government to consult on Land and Buildings Transaction Tax ("LBTT") position of certain fund vehicles	In its Budget last December, the Scottish Government announced that it would consult on draft legislation to provide relief from LBTT on the exchange of units within Co-ownership Authorised Contractual Schemes ("CoACS") investing in Scottish property. In addition, it said it will consult on the case for introducing LBTT relief for the seeding of properties from existing unauthorised investment vehicles into Property Authorised Investment Funds ("PAIFs") and CoACS.	The Budget announcements are welcome. If the proposals are implemented they would make Scotland a more attractive location for real estate investment and align the LBTT position with SDLT (depending on how they are implemented). That being said, reforms along these lines have been in discussion for some time. Indeed, back in 2018 the Scottish Government indicated that it would introduce seeding relief for PAIFs and CoACS and a relief for trading in units in CoACS. Hopefully, the proposals will gain more traction this time round. The Budget announcements did not discuss the RIF. It is hard to see why it should be treated differently from the CoACS (its authorised counterpart) for LBTT purposes, so hopefully the consultation process will lead to the reforms being extended to it.

Bricks and Mortar Tax

Development	Introduction	Impact
Changes to SDLT thresholds	On 1 April 2025, various changes to SDLT residential lower thresholds occurred. These include: <table><tr><th rowspan="2">Band</th><th colspan="2">Standard residential rate</th><th colspan="2">Rate for additional dwellings/purchases by companies</th></tr><tr><th>31 March</th><th>1 April</th><th>31 March</th><th>1 April</th></tr><tr><td>£0 – £125,000</td><td>0%</td><td>0%</td><td>5%</td><td>5%</td></tr><tr><td>£125,001 – £250,000</td><td>0%</td><td>2%</td><td>5%</td><td>7%</td></tr></table>	Taxpayers will be disappointed, but probably not surprised, that the Government allowed the scheduled threshold reductions to occur, generally taking them back to the level before September 2022's "mini-Budget".
Tribunal holds that a quay wall is qualifies for plant and machinery allowances ("PMAs")	In *The Mersey Docks and Harbour Company Ltd v HMRC* the First-tier tribunal ("FTT") held that a quay wall that acted as a foundation for cranes (which sat on rails embedded on it) was "machinery" for capital allowance purposes, rather than premises. This allowed the expenditure to qualify for PMAs. In its decision, the FTT considered in detail the functions of the wall, holding it was both a distinct asset (from the adjacent Container Transition Area) and apparatus rather than premises.	This is a welcome decision for taxpayers, with the FTT prepared to consider in detail the factual matrix when ascertaining whether a structure with premises-like features could qualify for PMAs. However, it remains to be seen whether HMRC will appeal.
FTT finds that SDLT refund for contract not carried into effect possible even after 12-month deadline	SDLT is usually due when the land interest is actually acquired, but it can be accelerated where there is "substantial performance" of the sale contract. This can occur when access is taken early or a "substantial" amount of the consideration is paid. A specific statutory rule gives relief for SDLT that has been accelerated in this way in circumstances where the contract is later not carried into effect or is annulled or cancelled, but in 2022, in *Candy v HMRC*, the Court of Appeal held that it was effectively subject to a 12-month time limit – even if the taxpayer could never claim in time because the contract was cancelled after that limit. However, in April 2025, Mr Candy had more success with a different argument, with the FTT holding that relief was available under a general back-stop provision giving relief for overpaid SDLT within a four-year time limit.	This decision, which will be welcomed by taxpayers, is a sensible way to interpret the relevant SDLT back-stop legislation so as to prevent over-taxation in situations where an available relief could not have been claimed within the time-limits applicable to narrower specific relief provisions. However, with a significant amount of SDLT at stake, there is a real possibility that HMRC will appeal the FTT decision.
Increase in VAT Capital Goods Scheme ("CGS") threshold for land	Under the CGS, input VAT that a taxpayer has reclaimed from HMRC on capital expenditure of £250,000 or more on land, buildings and civil engineering work can be required to be adjusted over a ten-year period. The adjustment turns on the extent to which the property is used in making VATable supplies differs from originally expected. In April, the Government announced that, as part of simplifications to the CGS regime to ease administrative burdens on small businesses, the £250,000 threshold would be raised to £600,000. The Government has not said the date from which the change is intended to take effect.	The £250,000 threshold has not changed since 1990, and so many people will see the increase as very overdue. Although the increase will produce winners and losers (as CGS adjustments can increase input VAT reclaims as well as generate repayment obligations), it should simplify matters (at least for new expenditure). One helpful impact of the change is that it should reduce the amount of relatively small developments that need to wrestle with the (extremely) complex anti-avoidance rules that can disapply the VAT option to tax and which drive off whether the relevant land is within the CGS.