

Amendments 1 to 8 to Clause 36: Residential property development activities: “interest in land”

Summary

1. This group of amendments ensure that the Residential Property Developer Tax (RPDT) applies where a developer of residential property holds an interest in land in the form of a licence, often termed a ‘build licence,’ in the same way that it applies to developers holding a leasehold or freehold interest in the land they develop. They also ensure there is no unnecessary circularity to the drafting of the meaning of an ‘interest in land’.

Details of the amendments

2. Amendments 1 to 3 each replace references to an RP developer in clause 36 by the word ‘company’. This is to provide greater clarity to the drafting of the meaning of an ‘interest in land’.
3. Amendment 4 removes subsection (2) of clause 36. The definition of a related company for the purposes of Clause 36 is now to be found in a modified form in new Subsection 3C.
4. Amendment 5 inserts new Subsections 3A, 3B, 3C.
5. New Subsection 3A provides that a licence to use or occupy land is not an excluded interest in land for the purposes of clause 36(3)(b) if it is granted in connection with arrangements that give the developer or a related company the power to direct the grantor of the licence to convey an interest in the land being developed to the developer, a related company, or to any other person. This typically happens when the development activities are completed and the development or property within it is to be sold to a third-party purchaser, or if there is no such purchaser, to the developer or a related company.
6. New Subsection 3B provides a definition of arrangements for the purposes of new subsection 3A. It also provides for the actions of a person acting on the behalf of the original holder of the interest in land to be attributed to the person on whose behalf they are acting, whether as nominee or bare trustee.
7. New Subsection 3C sets out when a company is treated as related to another company for the purposes of Clause 36, this includes where they are members of the same group. A relevant joint venture company is also related to any company that has, or is a member of a group that has, a substantial interest in it. The meanings of a ‘relevant joint venture company’ and ‘substantial interest’ are provided in Clause 40 and that of ‘group’ in Clause 48.

8. Amendment 6 inserts new Subsection 4A.
9. New Subsection 4A provides for a licence that is not an excluded interest by virtue of new Subsection 3A to be treated as disposed of when the conveyance of the interest in land anticipated by the arrangements happens. Where that conveyance is to a third-party purchaser, then that disposal will be in the ordinary course of a residential property developer's trade of an interest in land mentioned by subsection 4. Where the conveyance is to the developer or a related company it will be the acquisition of a different interest in land for the purposes of the tax.
10. Amendment 7 makes a consequential change to Subsection (5) to ensure that the definition of a disposal applies to each use of the term in Clause 36.
11. Amendment 8 replaces the reference to an RP developer with 'company', for the same reason as in amendments 1 to 3.

Background note

12. Clause 36 of Finance (No.2) Bill 2021 sets out when an RP Developer is treated as holding an interest in land for the purposes of the tax. The amendments deal with situations where developers acquire a licence to use or occupy land that may otherwise be an excluded interest by virtue of Subsection (3)(b). in circumstances where that licence is granted alongside other rights. Those rights typically ensure a developer has a beneficial interest in any development on the land. This type of licence is commonly known as a build licence.