

Our ref: PC/PD/NM

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Re: Residential Zoned Land Tax (the "RZLT")

Dear David

Further to a submission made by the Irish Home Builders Association ("IHBA") on the RZLT to the DOH on 18 November 2022 and as agreed in our virtual meeting on 19 December last with representatives from the DOH and the Department of Finance, we have set out below examples of what we view as key points of contention with the tax as currently legislated.

That RZLT which will become payable as a result of such issues is not in our view in line with the RZLT policy objective. If left unamended this will have significant repercussions for those genuinely seeking to advance the development of new homes but which are being frustrated in doing so by matters outside of their control but which in many cases are within the control of different arms of the State.

To assist with resolving these issues we have, where possible, proposed solutions (following the identification of the relevant point of concern) on what actions could be taken to resolve these issues while still ultimately ensuring the policy objective of the RZLT is adhered to. While viability remains a fundamental issue to increasing supply, we understand this matter is accepted and that alternative discussions are taking place in this regard. For this reason, while we remain strongly of the view that viability is a fundamental issue in bringing forward new developments, we have not considered herein how issues around viability will in many cases result in the imposition of RZLT.

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The examples below assume that the sites in question are within the scope of the tax in the first instance. It is our belief that the criteria for inclusion on the map outlined in section 653B TCA are drafted broadly. Moreover, the publication of the initial draft RZLT maps indicate that the legislation is being interpreted broadly by local authorities. For context in this regard, we note that over 1,700 appeals have been made in respect of the draft RZLT maps originally published and that it is currently the case for some developers that it is not possible to obtain an appointment with a planning consultant to advance new developments due to the level of demand being utilised for RZLT related queries.

Issue 1: Factors outside the control of the landowner: prior to commencement

A. Delays in the planning process

The legislation assumes that the acquisition of planning permission is entirely within the control of the landowner. Where no planning permission has been obtained the RZLT charge will arise.

A “deferral” of the RZLT charge is only available where the following conditions are met under section 653AH(1) Taxes Consolidation Acts 1997 (“TCA”):

- (a) a planning permission has been granted in respect of development on a relevant site,*
- (b) all or part of the development consists of residential development (and such portion of the development as consists of residential development on the relevant site shall be referred to in this section as “relevant residential development”), and*
- (c) a commencement notice, in respect of the development, has been lodged with the local authority in whose functional area the relevant site is situated.*

Therefore, there is no opportunity to “defer” the tax unless and until planning permission has been obtained and a commencement notice has been lodged, regardless of the genuine efforts of the landowner to acquire such permission and lodge such a notice. As will be shown in the examples below, the time and cost involved in acquiring planning permission is significant and, at many intervals, is outside the control of the landowner.

B. Appeals by the landowner¹

As is often the case, planning permission may initially be rejected by a local authority and appealed to An Bord Pleanála by the landowner. Where An Bord Pleanála reject this appeal, the landowner may bring an application for judicial review. In certain circumstances planning permission may be granted after judicial review only (indeed it may not be granted at all).

Ultimately, the landowner has no control over the decisions of any statutory body, court or tribunal. There is no provision in the legislation preventing a charge to RZLT arising throughout what is in many cases a prolonged appeal period. The landowner is effectively being punished for exercising its statutory right of appeal. **Example 1** below illustrates the inherent unfairness of this position.

¹ As the focus of this submission is on sites that are already deemed to be within the scope of the legislation, we do not feel it is necessary to discuss section 653AE TCA which relates solely to appeals/judicial reviews regarding inclusion on an RZLT map.

Example 1

Date	Event
September 2021 - January 2023:	Pre-planning engagement with stakeholders including preparation of planning permission application
April 2023:	Local Authority reject planning permission application. Appeal lodged with An Bord Pleanála.
May 2024:	RZLT paid
September 2024:	An Bord Pleanála reject application
December 2024:	Judicial review application lodged by landowner
May 2025:	RZLT paid
May 2026:	RZLT paid
December 2026:	Judicial review overturns appeal and planning granted
May 2027	RZLT paid
January 2027 – June 2027	Detailed design and procurement
June 2027	Commencement notice lodged

The landowner did everything in its power to acquire planning permission and commence development, and ultimately did both. There has been no land hoarding. However, the decisions of the local authority and An Bord Pleanála have added 12% of the market value to the cost of the land (3%*4 occasions of charge). The additional RZLT cost in this example and those that follow ultimately place upward pressure on the price of new homes and increases the affordability challenges for prospective home buyers.

C. Appeals by a third party

Section 653AF TCA provides that a deferral is available where there is:

- (a) an appeal to An Bord Pleanála in respect of a grant of planning permission,*
 - (b) an application for judicial review of a decision of a local authority or An Bord Pleanála in respect of a planning permission, or*
 - (c) an appeal of a determination of a judicial review referred to in paragraph (b),*
- where the appeal or application, as the case may be, has not been made by—*
- (i) the applicant or the owner of the land on which the development to which the planning permission relates is to be carried out, or*
 - (ii) a person connected (within the meaning of section 10) with the applicant or the owner.*

Therefore, a deferral of RZLT is only available where the relevant appeal or judicial review application is brought by a third party.

The concept of a deferral is important here. This is not an exemption. Section 653AF(4) provides that:

- (a) *where the relevant appeal is determined such that the grant of planning permission is upheld, the tax so deferred shall no longer be due and payable,*
- (b) *where the relevant appeal is determined such that the grant of planning permission is overturned, the liable person shall amend each return in which such a claim was made, and pay any tax and interest due accordingly, or*
- (c) *where the owner sells the property before the relevant appeal is determined, the liable person shall amend each return in which such claim was made, and pay any tax and interest due accordingly.*

Therefore, where the landowner is granted planning permission which is ultimately overturned by third party appeal, then all of the deferred RZLT becomes payable (together with statutory interest for late payment).

Example 2

Date	Event
September 2021 - March 2023:	Pre-planning engagement with stakeholders including preparation of planning permission application
June 2023:	June 2023: Local Authority reject application. Appeal lodged with An Bord Pleanála.
May 2024:	RZLT paid
November 2024:	An Bord Pleanála overturn decision of local authority (planning permission granted)
December 2024:	Judicial review application lodged by 3 rd party
May 2025:	RZLT deferred
May 2026:	RZLT deferred
December 2026:	Judicial review overturns grant of planning permission. Planning denied.
December 2026:	RZLT for 2025 and 2026 paid (with statutory interest of 8% per annum).

The landowner will pay c. 10% of the market value of the land in RZLT and is back to “square one”. The decisions of the statutory bodies and courts above are outside the control of the landowner. The landowner acted in good faith.

D. Proposed Solution

Introduction of a bona fide test in relation to the application for planning permission such that, where an application for planning permission has been lodged, the site which is subject to the application should not be considered a relevant site under section 653O TCA until such time as either planning permission has been granted and the landowner has the right to proceed (e.g. not subject to any ongoing appeal etc.) with the development or planning permission has been refused and the landowner does not appeal this decision within 1 year of the refusal, unless it would be reasonable for the Revenue Commissioners to consider that such an application is frivolous or vexatious or has not been lodged for bona fide commercial reasons and forms part of an arrangement or scheme the main purpose or one of the main purposes of which is the avoidance of a liability to tax.

We propose that this exclusion would be included as an additional subsection in section 6530 TCA. It is acknowledged that such a solution will need to be sufficiently robust to prevent abuse. In the proposed solution above, this is the reason for allowing the Revenue to determine whether an application has been made in good faith or not.

Issue 2: Phased Development/Stock in Trade

A. Stock in Trade

We refer to paragraph 6.1.2 of Revenue Guidance on the RZLT:²

“Where a site is partly developed for residential purposes and the remainder is not developed, the treatment is as follows: where planning permission is granted in respect of the partial development of a site for residential purposes, that portion of the site in respect of which planning permission is granted is to be treated for RZLT purposes as a separate relevant site. A deferral may apply in respect of the separate relevant site where residential development is commenced. The other relevant site, being the original site less that portion in respect of which planning permission is granted, will continue to be chargeable to RZLT.”

See the following example for the impact on phased development and stock in trade.

Example 3 – Phased Development – No statutory restriction

The landowner owns a 60 acre site which the landowner intends to develop in phases. The landowner receives planning permission in relation to phase 1 (of 3) which relates to development on 20 acres. On the grant of planning permission, those 20 acres become a separate relevant site. The landowner lodges a commencement notice in respect of the 20 acres. A deferral is claimed in respect of the RZLT charge relating to those 20 acres. The remaining 40 acres continue to be subject to RZLT until planning permission is obtained for those 40 acres **and** a commencement notice is lodged. The landowner must retain the remaining 40 acres as stock in order to maintain a viable business.

B. Proposed Solution

A new RZLT section should be incorporated to provide for a time limited tax credit (based on RZLT paid), which should be available for use on a group basis. This credit would be available to be set against either VAT due on the sale of completed residential units or corporation tax due on profits from the sale of completed residential units. This credit would be created once the RZLT is paid and expire after the end of 5 years of this date. This credit would recognise that in some cases it will be required that land needs to be developed on a phased basis. The credit would also provide an allowance for stock in trade which is a fundamental requirement for the operation of a viable property development business. The time limited nature of the credit would also incentivise progress on existing developments.

C. Phased Development – Statutory Restrictions

The Planning and Development (Amendment) Act 2010 introduced the requirement for a Core Strategy to be incorporated as part of all County Development Plans. Under section 10(2A)(d)(ii) of that Act, *“a core strategy shall [...] in respect of the area in the development plan proposed to be zoned for residential use or a mixture of residential and other uses, provide details of [...] how the zoning proposals accord with national policy that development of land shall take place on a phased basis.”*

² Guidance on the Residential Zoned Land Tax: Part 22A-01-01: <https://www.revenue.ie/en/tax-professionals/tm/income-tax-capital-gains-tax-corporation-tax/part-22a/22a-01-01.pdf> (accessed on 11 January 2023) (“Revenue Guidance on the RZLT”)

Where lands are zoned residential and otherwise meet the criteria for inclusion on the RZLT maps, local area development plans often cap the number of units that can proceed to the planning application stage in the first instance or to construction where planning permission has been granted. Such restrictions can be imposed through general phasing policies; policies on sequential approach to development; and specific phasing objectives tied to delivery of particular items of public infrastructure and services. Indeed, there may be other (non-phasing) restrictions in a development plan which may obstruct development of a site.

In these circumstances a landowner may not incur the expense of a planning application where the phased approach adopted by a local authority would mean the planning application would not succeed. In this circumstance, the bona fides exemption proposed under Issue 1 would not be available to the landlord.

Example 4 – Phased Development – Statutory restriction

The landowner owns a 60 acre site which **according to statutory planning policy can only be** developed in phases. The landowner receives planning permission in relation to phase 1 (of 3) which relates to development on 20 acres. On the grant of planning permission, those 20 acres become a separate relevant site. The landowner lodges a commencement notice in respect of the 20 acres. A deferral is claimed in respect of the RZLT charge relating to those 20 acres. The remaining 40 acres continue to be subject to RZLT until planning permission is obtained for those 40 acres **and** a commencement notice is lodged. The landowner must retain the remaining 40 acres as stock in order to maintain a viable business.

D. Proposed Solution

We propose that, where a development plan or local area plan provides for the phased development of a site (or a similar restriction on development contained within such a plan), that site (or, where appropriate, a specific part of such a site) should not be considered a relevant site under section 653O TCA where at the relevant liability date (i.e. 1 February each year) development of that site or where relevant part of that site would not have been possible because of such restrictions.

Issue 3: Change of ownership/permanent cessation of development

As currently drafted, any deferred tax becomes due and payable on the earliest of the following events (section 653AH(3)):

- (a) the date on which the works (within the meaning of the Act of 2000) on the relevant site permanently cease where, on that date, certificates of compliance on completion in respect of all of the relevant residential development have not been lodged with the local authority concerned,*
- (b) the date on which there is a change in the ownership of the relevant site, where such a change occurs prior to certificates of compliance on completion having been lodged with the local authority concerned in respect of all of the relevant residential development, and*
- (c) the date of expiry of the planning permission period for the planning permission, where, on that date, certificates of compliance on completion in respect of all of the relevant residential development to which the planning permission relates have not been lodged with the local authority concerned.*

A. Permanent cessation of development

Under section 653AH(3), where development permanently ceases during the term of the planning permission, all RZLT deferred becomes due and payable, unless certificates of completion in respect of **all** of the development have been lodged.

Example 5

The landowner obtains planning permission for 5 years to build 500 houses on a site. At the end of year 4, when 400 units have been built, the landowner experiences financial difficulties and the development must cease. Certificates of completion have been lodged in relation to 400 units and so 80% of the development has completed. However, because certificates of completion have not been lodged in respect of 500 units, the landowner must now pay 4 years' worth of deferred RZLT in addition to statutory interest.

This would not appear to be the intended outcome based on Example 29 contained in the Revenue Guidance on the RZLT:

Aoife included €17,000 of deferred RZLT in her RZLT return for 2024 in respect of a relevant site in Ennis, Co Clare. In August 2024 all construction work ceased on the site. None of the houses or apartments under construction were complete and certificates of compliance on completion had not been submitted to the local authority (and in overall terms less than 15% of the development was complete such that the provisions outlined in section 6.1.6 are not applicable). The deferred RZLT for 2024 is due for payment on the date on which works permanently cease, which in this case is August 2024.

This example indicates that if, in theory, over 15% of the development had completed at the time of the permanent cessation of works, then a certain amount of relief would have been available to Aoife.

The issue is the legislation as currently drafted would not appear to achieve this intended outcome. Applying Section 653AH(3) to Example 5 above would result in the RZLT which has previously been deferred falling due for payment at the end of year 4. The potential relief provided for in Section 653AH(7)(b) would not apply as planning permission would not yet have expired which is the relevant point in time for the test in 653AH(7)(b). Further to this, when the planning permission has expired then at the end of year 5, the RZLT previously deferred would already have been paid such that there would be no deferred RZLT to now abate.

B. Proposed solution

Section 653AH is amended to make the point in time test which is relevant for applying the relief in Section 653AH(7)(b) the time at which the event crystallising the previously deferred RZLT takes place, provided the relevant completion notices have been lodged prior to the expiry of the planning permission period.

C. Change of ownership

We refer to paragraph 6.1.5 of the Revenue Guidance on the RZLT:

Tax deferred on a relevant site which is subject to a change of ownership without the lodgement of certificates of compliance on completion in respect of all residential development with the appropriate local authority is due on the date on which the sale or transfer is complete. A change of ownership for the purposes of this section includes a sale but also applies to other changes of ownership, such as those that take place by way of gift or as a result of a grant of a long lease.

Any change of ownership during the period of a planning permission (before all completion certificates lodged) will trigger a liability for all deferred RZLT. This provision would not seem to take into consideration the commercial realities of the construction industry, as identified in the following **Examples 6 and 7**.

Example 6

The landowner (BuildCo1 Ltd) has obtained a 5-year planning permission for residential development and commenced development. The acquisition and initial development work are financed by a related group company. At the end of year 2 it is clear that additional external funding will be needed to complete the development. The landowner approaches XYZ Bank for further funding. XYZ Bank will only provide funding if the land is transferred to a newly incorporated company (BuildCo2 Ltd). The transfer is intra-group (i.e. there is no change in the ultimate owners). However, a liability to all deferred RZLT is triggered. That means that the landowner must pay any of the deferred RZLT (plus statutory interest), despite the development being on track to complete within the lifetime of the planning permission.

Example 7

The landowner has obtained a 5-year planning permission for residential development and commenced development of a number of apartment blocks. In year 3, as a form of end user financing, a buyer agrees to purchase the apartment blocks prior to completion provided a connected building agreement is provided by the builder to the buyer that will result in the completion of the development post the change in ownership. The earlier sale to the end purchaser will trigger a liability for all deferred RZLT, despite the development continuing.

The issue with the potential relief under Section 653AH(7)(b) would be the same as set out for Example 5 above.

D. Proposed Solution

An additional relief should be built into section 653AH to provide that the change in ownership would not result in the crystallisation of previously deferred RZLT where the development is completed prior to the expiry of the existing planning permission. Where the development is only partially completed the partial deferral provided by Section 653AH(7)(b) should be extended to cover this situation.

Issue 4: Factors outside the control of the landowner: after commencement

Where planning permission has been obtained and a commencement notice lodged, there are other factors outside of the control of the landowner which could be considered within the control of arms of the State and which can cause a charge to RZLT to arise.

As noted above, section 653AH(1) TCA allows for a deferral where planning permission has been obtained and a commencement notice has been lodged in respect of a site. Section 653AH(7) provides that where RZLT in relation to a site has been deferred under section 653AH(1) and:

- (a) one or more certificates of compliance on completion are lodged with a local authority in respect of all of the relevant residential development in advance of the expiry of the planning permission period relating to that site, then, on the making of a claim by the liable person, the amount of the deferred residential zoned land tax shall no longer be due and payable, or*
- (b) on the expiry of the planning permission period, one or more certificates of compliance on completion are lodged with a local authority in respect of part only of the relevant residential development and the percentage of completion, calculated in accordance with subsection (8), is within any of the percentages specified in column (1) of the Table to this section, then, on the making of a claim by the liable person, the percentage of the deferred residential zoned*

land tax relating to the relevant site which is due and payable shall be the percentage, set out in column (2) of that Table, opposite the relevant percentage of completion in column (1).

In short, where all certificates of completion are lodged before the planning permission expires then no RZLT is payable. Where at least one certificate of completion has been lodged before planning permission expires, then the amount of RZLT payable is by reference to the percentage of the development completed (based on floorspace).

A. Third Party Delays

Firstly, the above quantifies a landowner's tax liability based on whether certificates of completion have been lodged or not. There is no allowance for the fact that there may be factors outside the control of a builder which could prevent completion notices from being lodged e.g. there are currently significant delays being experienced in obtaining connections for developed homes from Irish Water/ESB (greater than 1 year in some cases).

Example 8

The landowner obtains planning permission for a 13-storey apartment block for a 5-year term. The landowner defers RZLT each year. By the end of year 4, the landowner has substantially completed development of the apartment block and is awaiting connection from Irish Water for certificates of completion for all units to be lodged. Despite the best efforts of the landowner, Irish Water does not make the required connections until after the planning permission has expired.

As no certificates of completion have been lodged at expiry of the planning permission, the landowner must pay all RZLT deferred over the 5-year planning period (together with statutory interest for late payment at 8% per annum).

Again, this punishes a landowner that has acted entirely within the spirit of the legislation and then only suffers the tax due to factors outside of its control.

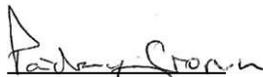
B. Proposed Solution

The possibility of further relief from the application of section 653AH(3)(a) should be provided for by way of an additional subsection to section 653AH to note that tax which has previously been deferred should not become due and payable under section 653AH(3)(a) unless the landowner is wholly or mainly responsible for any delay in lodging certificates of completion. Where the landowner is found to be so responsible, an additional rule is needed for apartments to determine percentage of completion given no unit in an apartment block will be complete until all units in the block are complete.

We are available for further discussion on any of the matters raised in this submission and are happy to arrange a meeting in relation to same.

Should you wish to discuss any of these matters directly, please do not hesitate to contact me.

Yours sincerely,



Pádraig Cronin

Partner

For and on behalf of Deloitte Ireland LLP