MILESTONE

UK Land Development Structures

Background

The UK is almost unique in differentiating between incomes (such as rental income), capital gains (investment activities) and trading profits (developments) from immoveable property. As a result, it is possible to structure a UK land development such that the profits arising are not taxed in the UK.

If a UK property development is carried out by a UK company, UK corporation tax will be levied on the development profits. By contrast, if the development is carried out by a non-resident company the profits could be subject to nominal tax if structured correctly.

This is a very unusual situation since most countries assess a foreign company to tax in respect of any income derived from real estate, regardless of whether it is investment or trading income.

In respect of UK developments the key issue is to avoid a Permanent Establishment ("PE") in the UK. A PE could be, for example, a place of management or a construction site. If a PE exists in the UK a proportion of the profits derived from the activity will be taxed in the UK.

In the context of property developments, many double tax agreements ('DTA') provide that a PE will not exist provided the construction site in the UK lasts for no longer than 6 or 12 months. Thus, provided the development is concluded within the time-frame specified in the relevant DTA (and a PE does not exist for other reasons, such as management and control) the taxing rights are allocated to the non-resident company and taxed accordingly in the other country. In many instances this is counter-productive since the profits, whilst not liable to UK tax, could be subject to high rates of foreign corporate income tax.

The ideal solution is to identify a country that has a double tax agreement with the UK and that does not have a punitive tax regime in respect of foreign profits.

There are a number of countries that could be considered for UK land development structures. In this respect, Guernsey, Jersey and the Isle of Man have been widely used for many years. However, the introduction by these island states of a zero rate of corporate income tax will likely trigger the renegotiation of the relevant DTA's with the UK. Renegotiation has not commenced as of September '08 (as far as we are aware) but this is, in our view, inevitable and the likely result is that the current tax benefits may not be available long-term.

As a result of these developments and the protection afforded to companies incorporated and resident in the EU, we have undertaken extensive R&D to find alternative structures for UK property development. In our view, the Netherlands, Luxembourg, Cyprus and Hungary can all be considered.

Each of the above jurisdictions has its own particular benefits and nuances and the development profits will prima facie be liable to relatively high rates of corporate income tax. However, with a detailed knowledge of the above tax systems, relevant DTA's and ruling practices, some very beneficial structures can be implemented.

Implementation

To be effective, any international tax structure requires proper management and control, as well as substance – property developments are no exception. As part of the implementation process we recommend that independent Chartered Surveyors, property project managers and other consultants are retained such that the real management and control and decision making processes are conducted in the appropriate jurisdiction.

Tax Position of Beneficial Owners

The tax position of the beneficial owners is dictated by their personal tax residency status. UK resident individuals should note that they are subject to various far-reaching anti-avoidance provisions. While there may be a defence to the application of these provisions based on recent EU jurisprudence this should, in our view, be cautiously applied.

There are structures that can be used as ownership vehicles but these are aggressive and should not be entered into without a full and detailed analysis of the current law and your appetite for tax risk.

Fees

Our fees are based on a number of factors, such as:

- gross development value of the project
- complexity of the project
- residency status of the beneficial owner
- The timescale we are requested to work to
- The risk profile of the transaction
- The potential tax savings
- The time we need to spend / allocate to the transaction

Each project is different and the attached questionnaire will assist us in providing you with a quote.

Development Questionnaire

Ref

Client

Development Name

Location

GDV
£

Construction Cost
£

Development Type

☐ Residential ☐ Commercial ☐ Retail ☐ Leisure ☐ Industrial ☐ Other

Current Status

☐ Site Identified ☐ Outline Planning ☐ Detailed Planning
☐ Contract Confirmed ☐ On-site ☐ Completed

Development Type

a) Residential

__ no. x 1 bed apartments @ __ m2
__ no. x 2 bed apartments @ __ m2
__ no. x 3 bed apartments @ __ m2
__ no. x 2 bed houses @ __ m2
__ no. x 3 bed houses @ __ m2
__ no. x 4 bed houses @ __ m2
__ no. x 5 bed houses @ __ m2

b) Non-residential

__ m2 office
__ m2 retail
__ m2 leisure
__ m2 industrial
__ m2 _______
__ m2 _______
__ m2 _______

Special Features

Funding

☐ LOI ☐ Not Secured

Site Acquisition
__ %

Development Costs
__ %

S. 106 Planning obligations

a) Affordable housing

b) Other

Available Documents (List)

Programme

Current Status ______________________

Planning Application
__ / __ / __

Planning Permission
__ / __ / __

Detailed Design/Tender
__ / __ / __

On-Site
__ / __ / __

Phase 1 __ / __ / __ to __ / __ / __
Phase 2 __ / __ / __ to __ / __ / __
Phase 3 __ / __ / __ to __ / __ / __
Phase 4 __ / __ / __ to __ / __ / __
Phase 5 __ / __ / __ to __ / __ / __

Date

Milestone International Tax Consultants Ltd
45 Clarges Street, London W1J 7EP

Phone: +44 (0)20 7016 5480
Fax: +44 (0)20 7016 5481
Email: info@milestonetax.com