Alun Oliver FRICS, Managing Director of Property Taxation Specialist E^3 Consulting, discusses the recently published Levelling-up & Regeneration Bill (LURB), following the Queen's Speech on 10 May 2022.

The Government went on to publish a 'Further Information' document on 11 May that expanded upon the legislative framework to reform Community Infrastructure Levy as set out in clauses 113 to 115 and Schedule 11 of the draft LURB legislation.

What is community infrastructure levy (CIL)?

Many tax practitioners will have little awareness of CIL, but it has been in force across England and Wales since April 2010, having been legislated for within the *Planning Act* 2008. CIL was intended to be the mechanism to replace the idiosyncrasies of developer obligations under the *Town and Country Planning Act* 1990, s. 106 that extract cash from developers to provide necessary infrastructure within the relevant Local Planning Authority (LPA) associated with their development – a tax on new planning permissions to be clear!

An optional tax, Local Authorities could choose whether to adopt CIL and across most urban centres, particularly London and the Southeast most had adopted to apply this land tax charge. LPA's set rates for different types of development – mostly residential, retail, hotels and student accommodation; with some applying a flat rate across all new development, whilst other charging authorities had different rates to encourage (or dissuade) developers undertaking certain projects within the locality. The CIL charge is calculated by reference to the gross internal area of the project, multiplied by the CIL rate for the designated use, and adjusted for by the RICS CIL Index – that is an inflationary adjustment between the date of adopting the CIL rates and the date of planning being granted.

Extract from CIL Regulations

Reg.40 and Schedule 1. 1(4) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula–

$$\frac{R \times A \times I_p}{I_c}$$

where:

A = the deemed net area chargeable at rate R, calculated in accordance with paragraph (6);

I_p = the index figure for the year in which planning permission was granted; and

I_c = the index figure for the year in which the charging schedule containing rate R took effect.

Over the last ten years, CIL has ebbed and flowed with mixed emotions, particularly of those innocent homeowners that unexpectedly found significant CIL liabilities on their door mat following their grant of a new extension or annex. There were regular tweaks (12 in all) by Statutory Instruments issued between 2010 and 2021. Self build exemptions were added in 2014, in an attempt to remove homeowners from CIL altogether. Further significant changes came in 2019, again seeking to simplify the regime and reduce some of the anguish many families had experienced when falling foul of the complex rules. Some perhaps felt they were finally getting to understand the complex regulations – but the Government now wants to start afresh, rather than fix the remaining issues with the CIL Regulations!

New proposals – mandatory infrastructure levy (IL)

Infrastructure still needs to be funded to ensure developments do not overwhelm existing facilities – be they schools, GP surgeries, parks, affordable housing, public transport and roads, etc. Contrary to some of the pre-publication hype, s. 106 is not now being abolished, but the new Infrastructure Levy (IL) proposals within LURB will make it mandatory for all LPAs across England to adopt IL and set local rate(s) for their authority and applied to gross development value of the developments upon sale. Being linked to the actual transaction sounds simple, but there will be many cases where assets may not be sold upon completion and potential for wily 'scoundrels' to create innovative project structures to 'avoid' this new Development Land Tax. Hopefully, the drafting of the new legislation will address and prevent undue avoidance and be clear for all to understand their costs.

The Levy is to be charged on the value of property when it is sold and applied above a minimum threshold. Levy rates and minimum thresholds will be set and collected locally, and local authorities will be able to set different rates within their area. The rates will be set as a percentage of gross development value rather than based on floorspace, as with the current CIL calculation. Wales is unaffected and will either continue with CIL as is or await reform through the devolved Government's own approach. Equally the Mayoral CIL applied across all

London boroughs (on top of the Borough CIL) by Greater London Authority has also been 'carved out' of the proposed reforms. It is puzzling that CIL is good enough for Mayoral CIL (and Wales) – both with relatively low flat rates – but CIL is otherwise considered ill-suited for wider use around English planning authorities. Perhaps some sought to apply too many rates and gerrymander development outcomes through their CIL charges, than simply raise funds for necessary infrastructure.

Baby steps

The changes also set out a new 'test and learn' approach, whereby Government seeks to introduce and roll out nationally over several years, allowing for careful monitoring and evaluation, in order to adjust and improve based upon experience and ultimately achieve the most effective system possible. In effect this means the status quo will remain throughout much of the next 18–24 months, as the new system takes shape and begins to be adopted across English planning authorities.

Sites granted planning permission before the introduction of the new IL will continue to be subject to their respective CIL and s. 106 requirements – based upon those in place at (or negotiated with) the respective planning authority.

Other notable changes

There are scant details of the full proposals with the LURB really setting out the broad parameters for future legislation and LPAs tasked with putting flesh on the bones within their own charging schedules. However, there is no reference to self build exemptions – so the new IL will either seek to remove homeowners altogether or use the proposed 'threshold' to make most 'domestic' projects beyond its reach.

Charities are explicitly referenced in s. 204F as being exempted, where the property is used wholly or mainly for the charitable purpose. Whilst Social Housing currently enjoys relief from CIL, subject to application and meeting certain project criteria, it is much more open to interpretation on the future relationship between social housing and IL.

Lastly, the enforcement aspects have been 'ramped up' from the current maximum surcharge of 20% of the CIL or £2,500 (whichever is lower) to an eye-watering 40% of CIL or £50,000 (again, whichever is lower). Surcharges have been a good additional money spinner for many LPAs as so many developers and homeowners have 'fumbled in the dark' with CIL, failing to take advice at all, let alone early enough to avoid painful mistakes.

All tied up

These proposals come on top of the Residential Property Development Tax (effective since April 2022) and 'voluntary commitments' by UK developers to address cladding remediation issues on 11–18 metre high developments – cumulatively taking some £5bn out of the residential sector. All when the Government is seeking to boost housing numbers towards (or beyond) the ever elusive 300,000 units a year, whilst also grappling with an energy crisis, ever tighter environmental design requirements and wider global challenges. Never mind 'Mike the Merciless', as Michael Gove has been dubbed by some commentators, the UK property sector needs Harry Houdini!

About the author

Alun Oliver BSc(Hons) MCIM MBA FRICS is Managing Director of Property Taxation Specialists, E^3 Consulting, and is also a CEDR accredited mediator. He has worked in property tax since 1994 and advises a wide range of clients from FTSE100 through to regional developers and family offices on Capital Allowances, Land Remediation Tax Relief, CIL and Repairs & Maintenance throughout the UK. Email: alun.oliver@e3consulting.co.uk. Tel: 0345 230 6450. www.e3consulting.co.uk.

Useful links

For further commentary on the community infrastructure levy, see *In-Depth* at ¶37-280

HMRC Manual: VATGPB8660