

COMMERCIAL PROPERTY

80% windfall tax is a disaster

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The land market, decimated by the recession, will not recover while the 80 per cent windfall tax on rezoned land is in place

The Nama legislation provides that all changes in land zoning will result in such land being liable for an 80 per cent windfall tax rate when sold.

The land market, decimated by the recession, will not recover while this provision is in place. No one will buy or sell land other than at rock bottom prices. This is a seismic change for the property, planning and banking industries.

We have known for some time that the Nama legislation would include provisions for a windfall tax of 80 per cent on land that changed from agricultural use to development use. But this change by way of amendment to sections 644 and 649 of the Taxes Consolidation Act 1997 provides that the definition of rezoning includes, not only a change of use from agriculture, but also from one land use to another.

So, if you own land zoned for residential and the planners change it to industrial, then tax at 80 per cent will apply to a proportion of the profits attributable to the rezoning.

How the proportion of the profits subject to the higher tax will be arrived at is far from clear. The legislation is confusing and, at best, will cause a valuation nightmare.

At worst, from a taxpayer's perspective, the entire profit may be subject to tax at 80 per cent. It appears that, if there is no zoning change, the tax will be at 25 per cent.

Some might say that there will be no problem as sufficient land is already zoned to meet future demand for many years. This may be true but, due to the imprecise way the legislation is drafted, even a minor change in a development plan could bring such land into the 80 per cent tax net. Suddenly the pressure on planners will be persuading them not to rezone one's land!

The implications for the banking, property and planning industry may be far reaching.

For the banks it means that valuers, currently valuing assets going into Nama, will cut whatever remaining value might have been in development land – further decreasing the value of loans secured on development land. The consequence of this will be that the Government will have to recapitalise the banks to the extent of this extra write-down. It will also have implications for banking and using land as loan security.

For Nama, the uncertainty created will make it impossible to sell the large areas of development land that it will control and thus its ability to repay the ECB bonds.

Our planning system has been fundamentally undermined. Our entire approach to planning is based on the principle that land owners voluntarily bring their land forward for sale and development. This will now stop.

Our legislators seem to have entirely missed the key point that virtually no land is acquired by CPO procedures for urban expansion – except for roads and infrastructure.

This precept of the voluntary disposal of land by farmers and others could be changed but it would require a huge block of legislation and the putting in place of a complex land acquisition and management system. There is such a system in Holland but to put one in place in Ireland would be fraught with problems.

While no one can support the windfall gains by owners of agricultural land being taxed at only 25 per cent when agricultural land is rezoned, the Senate, by these apparently innocuous changes, has thrown the baby out with the bathwater.

The implication will only become clear over time as the valuers, developers and their lawyers try to unravel the consequences of the legislation. The devil will be in the detail as the new law gets analysed.

Indeed, I can immediately see a misfit between the wording in the new legislation and the classification of land use zones in the Dublin development plan and I am sure there will be conflicts in other plans which will keep the lawyers and tax experts very busy.

It is strongly suggested to the Government that this ill-conceived tax should be withdrawn and that a properly structured and comprehensive land (betterment) tax system be introduced. This would ensure a supply of land but not stop the market working; capture part of the betterment in land that is the subject of new rezoning and also land that may already be zoned; ensure that the funds secured by this tax go to provide local services, including schools and other social infrastructure; and create a system that is accepted as being fair by landowners, developers, politicians and the public, and which will stand the test of time.

However, the design of a system will take time, proper research and consultation.

A study should be carried out of land taxation systems at an international level and such a study should integrate the effects of Part V of the planning act, development levies, stamp duty and VAT.

Change of the magnitude made by the Senate 10 days ago should not be imposed on a vital industry on an ad-hoc basis in a last-minute change to important legislation.

Now is the time for the Government to commit to a comprehensive land tax system while the speculation in land is at its nadir and minds are open for change.

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