Community Infrastructure Levy
Key Facts

What is Community Infrastructure Levy?
Community Infrastructure Levy (“CIL”) is a form of tax levied by a local planning authority or public body e.g. the Mayor of London, (a “charging authority”) on commencement of development of land.

When it is relevant?
It can apply to freehold property and to leaseholds for more than seven years.

Where property is:
- about to be developed; or
- has recently been developed; or
- has been held by a charity since development and CIL was introduced for the locality before the development began it is essential to check whether CIL applies.

If it does, there is a compliance regime as well as a payment obligation. Owners, developers and financiers of development property should check their exposure. (Although charities are exempt, there can be a “clawback” payment when the charity sells.)

When was it introduced?
The Planning Act 2008 introduced CIL. Liability only arises in relation to planning permissions which were granted after both:
- the date the Regulations took effect (6 April 2011); and
- the charging authority has introduced CIL for its area.

Where does it apply?
It applies to all areas; but only after it has been introduced by the charging authority.

Introduction is effected by the charging authority approving and publishing a “charging schedule” following a consultation procedure.

What is the charging schedule?
The charging schedule sets out the rates payable (per m² of floor of extra space created).

A range of rates can apply to alternative types of development (e.g. housing, retail, etc.) and to different locations in any charging authority’s area.

The rates are index linked for the period from publication of the charging schedule up to the date the planning permission is granted.

How is the charging schedule assembled?
Charging authorities need to draw up a Development Plan for their area and must assess:
- total costs of all infrastructure required from CIL
- potential phasing of development
- other funding sources
- the impact of CIL on the viability of development

They attribute the overall CIL required to the anticipated flow of developments and can attach selected weightings to alternative types of development and different locations.

The draft charging schedule is produced for consultation. The consultation and authorisation procedures are carried through. On conclusion, the charging authority introduce CIL for their area and publish the charging schedule.
How is introduction progressing?

Some authorities have already concluded the process, others are close to introduction whilst some have only just started, or have not yet even started the process.

Newark and Sherwood District Council, Shropshire (Unitary) Council and the London Borough of Redbridge were the first to introduce CIL in January 2012.

The Mayor of London introduced CIL (to help fund Crossrail) on 1 April 2012.

Many other charging authorities are close to introduction – the situation is constantly evolving.

How can I find out if it has been introduced?

Ask the charging authority. The information should also be published on their website.

Who is liable?

This is a key point and has importance for owners, funders and potential buyers of companies which own, occupy or develop relevant property.

Normally, the developer who carries out the development will be liable. Liability can be shared, or be passed to others in different situations.

Liability depends on whether or not there has been an “assumption of liability notice” and whether the notice remains in force.

What is assumption of liability?

A non owner (or an owner) can register to be the party liable to pay CIL by giving an assumption of liability notice.

When an “assumption of liability notice” has been served on the collecting authority, the person serving the notice will be liable. This would normally be the developer.

This notice can be withdrawn, before development commences. It can also be transferred to someone else within 60 days of commencement of the development.

If no assumption of liability notice is given, liability is apportioned between the people who have a material interest in the land (e.g. landlord and tenant).

When land changes hands, liability (normally) falls on the new owner. There are detailed provisions for transfer of liability.

If an individual, who has assumed responsibility, dies before commencement of development, the notice lapses, and the default mechanism applies. If the death occurs after commencement of development, liability falls upon the estate.

When is it payable?

CIL is payable within 60 days of commencement of development pursuant to a planning permission (which was granted after CIL has been introduced for the relevant area) so long as an assumption of liability notice was given. If notice was not given, it is payable immediately on commencement of development.

In some cases it can be payable by instalments. Where this applies, it is essential to identify whether part payment has been made, how much remains outstanding, and when the balance will be payable.

Payment is made to the “collecting authority” This is usually the same as the charging authority; but not always – e.g. in London, the boroughs are the collecting authorities on behalf of the Mayor.

How does liability arise?

CIL attaches to any planning permission granted after the regime has been introduced. There is no obligation to pay until immediately before the development is commenced.

What is the Notices Regime?

Liability Notice: On grant of planning permission (for an area where CIL has been introduced) the collecting authority must issue a “liability notice”. This will identify the nature of the development and the CIL payable. It is served on the owner and any person who has assumed liability.

Commencement Notice: The developer must serve the collecting authority a “commencement notice” immediately before starting the
development for which a specific planning permission was granted. (The authority can override this with a deemed commencement notice if it claims development began earlier.)

Chargeable Development Notice: Where planning permission is automatically available (e.g. under a General Development Order) and no specific permission was needed, a “chargeable development notice” must be given to the collecting authority before commencement of development.

Demand Notice: The collecting authority must serve a demand notice once it receives the commencement notice. This identifies the sum payable and (if applicable) instalment details.

Default of Liability Notice: If CIL has not been paid by the person who assumed liability, there are default rights available against the owners of the property.

Can development include change of use?

CIL is charged on the amount of new floor space created by the development. “Development” includes change of use permitted by a planning permission.

Whilst pre-existing floor space is not (normally) subject to CIL, it is treated as new space if it was unused for six months in the year before the development. As a result, the total area brought back into use following the planning permission may be chargeable to CIL.

Will it be revealed by a normal search?

Once the development has commenced and the liability to pay is triggered, CIL is registered as a local land charge.

Before then, searches will neither reveal whether CIL has been introduced, nor whether a planning permission is potentially subject to CIL (on commencement of the development). (This may change as discussions are ongoing (as at September 2012) on whether searches should be extended to incorporate these issues.)

What thresholds, discretions and reliefs apply?

CIL only applies to buildings. Leisure areas e.g. golf courses (but not club houses) are exempt.

No CIL applies where the gross internal area to be built is less than 100m² (unless it is a dwelling). Change of use of a dwelling to two or more separate dwellings is exempt.

Payment by instalments is available where charging authorities permit. If they do, they must provide details on their website.

Charities are exempt if the building is to be used for charitable purposes. (Note there is a clawback of this relief when the charity ceases to own or to use for charitable purposes – so buyers from charities need to be alert to this possibility).

Social housing can attract relief.

There are procedures for relief to be available in exceptional circumstances.

What is the impact on s.106 Agreements?

Planning obligations under s106 and 106A of the Town and Country Planning Act 1990 will continue. Their scope is expressly limited by the CIL Regulations, so they have to relate directly to the proposed development.

Examples

The Mayor of London is charging £50 per m² in Zone 1 (8 inner London Boroughs) £35 per m² in zone 2 (17 other boroughs in inner and outer London) and £20 per m² in Zone 3 (8 outer London Boroughs).

Shropshire Council is charging £80 per m² for urban housing and £40 per m² for rural housing developments.

The London Borough of Redbridge is applying a flat rate of £70 per m² for all land uses. It has an instalment policy allowing up to four instalments (for the highest levels of CIL) of 120; 180 and 240 days for the 2nd, 3rd and 4th payments.
About us

Taylor Wessing is a leading International law firm with a single-minded approach: to help its clients succeed by thinking innovatively about their business issues.

Taylor Wessing has around 900 lawyers working across 22 offices in Europe, the Middle East and Asia, offering an integrated service across the full range of practice areas, with core strengths in corporate, finance, real estate, IP and private wealth. The firm also has particular expertise in advising clients in North America, Brazil and India.

Taylor Wessing has a clear focus on supporting the fast growing industries of tomorrow and is active in:

- Technology, Communications and Brands
- Life Sciences and Healthcare
- Financial Institutions and Services
- Real Estate and Infrastructure; and
- Energy and Environment.

The firm’s globally renowned expertise in intellectual property and technology underpins its strength in knowledge-based industries.

Key Contacts

Alistair Watson
Partner, London
+44 (0)20 7300 4240
a.watson@taylorwessing.com

Sarah Wotton
Senior associate, London
+44 (0)20 7300 4236
s.wotton@taylorwessing.com

Holly Grundon
Associate, London
+44 (0)20 7300 4214
h.grundon@taylorwessing.com

John Samson
Consultant, London
+44 (0)20 7300 4234
j.samson@taylorwessing.com