HM Treasury

Residential property developer tax: response to the consultation

October 2021

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Executive summary

On 10 February 2021, the government announced its Building Safety Package, which included a new tax that would apply to the UK residential property development sector from April 2022, in order to raise revenue and help fund the government's vital remediation work.

The government consulted on the Residential Property Developer Tax (RPDT) from 29 April 2021 to 22 July 2021. It received 130 responses to the consultation and held over 30 meetings with stakeholders.

This document summarises the feedback to the consultation and the government's response. Draft legislation has been published and was subject to a technical consultation from 20 September to 15 October.

Chapter 1
Introduction

Background

On 10 February 2021, then Secretary of State for Housing, Communities and Local Government set out a five-point plan to bring an end to unsafe cladding, provide reassurance to homeowners, and support confidence in the housing market.

This plan included two revenue raisers to help pay for the government's interventions:

- A new tax on the UK residential property development sector
- A new levy, which will be applied when developers seek permission to develop certain high-rise buildings in England

The introduction of these measures is not intended to imply responsibility on behalf of the payers for historic construction defects in relation to building safety defects.

Rather, given the significant costs associated with building safety remediation, the government believes it is right to seek a fair contribution from the most profitable developers in the residential property development sector to help fund it.

The government set out that the Residential Property Developer Tax (RPDT) would be introduced in 2022, be time limited, and seek to raise at least £2 billion over a decade.

The government published a consultation on the detailed design of the RPDT on 29 April which ran until 22 July 2021. A total of 130 responses were submitted to the consultation and the government also benefitted from a significant number of helpful meetings with stakeholders.

This document provides a summary of the main issues raised by stakeholders in their written responses to the consultation and during consultation meetings, and the government's proposed approach to the final design of the RPDT.

Consultation responses

The government has undertaken an extensive stakeholder engagement exercise to ensure that the issues raised in the consultation have been considered fully, and to help inform the final design of the tax.

This includes a wide variety of stakeholders such as those operating in the property market, relevant sector associations, those providing supporting functions to the

industry, investors, tax and accountancy firms and associations, individuals affected by building safety issues and groups representing them, as well as others.

Consultation responses covered both high-level issues such as the rationale for the RPDT and wider Building Safety issues, as well as more detailed questions of tax design.

On the former, many responses acknowledged the challenges facing many leaseholders across the UK in respect of building safety, and there was broad support for seeking contributions from residential property developers that make the highest profits.

In this context, many respondents cautioned about the £2 billion revenue target being insufficient in the context of remediation costs that are being passed on to affected leaseholders. This led some to call for an increased revenue target for the tax, or a reduction or removal of the annual allowance.

On tax design, respondents raised a number of issues mainly focusing on the approach to drawing the scope of the RPDT, the method for calculating the tax, administration, as well as the impacts of the tax on housing supply and market.

There was not always a clear consensus on these issues, with some respondents broadly agreeing with the government's proposed approach of taxing profits, but others proposing a series of alternatives.

Nonetheless, there were some common themes, particularly among business respondents. This included the benefits of an approach to calculating and administering the tax based on Corporation Tax (CT), which taxpayers are already familiar with, the difficulties that come from the proposed commencement date, and the significant challenges in applying the tax to the build to rent (BTR) sector.

Intended approach

The government will legislate for the RPDT to apply from April 2022, as set out in the consultation document. It is recognised that this tax is being delivered at pace, but the government believes that it is vital to begin raising revenue as soon as possible to help fund remediation costs that have been incurred.

The RPDT will be a tax on the profits that incorporated businesses make from their UK residential property development activity, as envisaged in the consultation. The government consulted on two different approaches to calculating the profits subject to the new tax. The activity-based approach received the most support and will be taken forward.

This means that taxpayers will need to identify their residential property development activity and the tax would apply to the amount of profits in a company that relate to that activity. Profits will be calculated in line with existing CT rules, with various adjustments to ensure fairness.

As mentioned in the consultation document, the government wishes to target the tax at residential property developers making the highest profits, to ensure that the administrative and compliance burdens of the tax are proportionate. Therefore, there will be an annual allowance to ensure that those with profits below that

threshold, are not subject to the tax. The level of the allowance will remain at [£25 million], the same level as proposed in the consultation document.

The scope and design of the tax are set out in more detail in the rest of this document and the legislation.

Summary of key changes or policy decisions

In some places this document confirms the intended approach as set out in the consultation document. In other places, the document outlines a change in approach to the design of RPDT following consultation process in order to ensure that the tax works is proportionate and works effectively. The government would highlight the following:

- Build to rent (BTR): Although an argument can be made for profits from BTR activity being subject to the new tax, to the extent profits relate to the development of residential property, the government has decided on balance that BTR activity should not be in scope of the new tax at this point in time. That reflects the significant challenges in designing a tax that applies on an administrable and proportionate basis to BTR developers, who operate a different model to build-to-sell developers and realise returns over a longer timeframe rather than at the point of completion of the development. It also reflects the fact that BTR developers retain direct responsibility for remediating their developments. In recognition that this is a new tax that is being applied in the context of an evolving market, the government will keep this decision on BTR under review.
- Administration: The government agrees with stakeholders in that there is a strong case to align the administration of the tax to CT. The tax will therefore be treated as an extension of CT, rather than as a separate tax with its own collection and payment criteria.
- Transitional arrangements: The existing CT quarterly instalment payment rules may result in some companies having RPDT due before the legislation is finalised. The government will therefore introduce transitional arrangements which provide that the first RPDT payment is due in the first quarterly instalment payment after commencement of the tax on 1 April.

The government believes that these changes will help in supporting its overall objective for a tax that is targeted, proportionate, and time limited.

Next steps

The government would like to thank respondents for their helpful and constructive engagement with the consultation, as well as stakeholders that have attended meetings focusing on the design.

The Tax Information and Impact Note has been published alongside this document and it contains more detail on the impacts of the tax.

The final legislation, representing the design set out in this document, will be published in the Finance Bill 2021-22.

HMRC guidance will be published in due course.

If there are any further questions on aspects of this document or the tax itself, please email rpdtconsultation@hmtreasury.gov.uk or Jasmine Kaur at Jasmine.Kaur@hmtreasury.gov.uk.

Chapter 2
Core principles

General comments on core principles

In commenting on the detailed design of the RPDT, some stakeholders raised general comments on the core principles that were set out.

- Duration: Some stakeholders expressed a preference for the tax to be legislated with a sunset clause, which would repeal the tax on the earlier of the tax revenue target of £2 billion being met, or 10 years, or a mandatory re-authorisation of the tax after this point.
- Scope: Whilst most respondents viewed the approach of targeting residential property developers that make the highest profits as fair, some stakeholders expressed concerns about the scope of the tax and suggested that it should be expanded to include a broader range of organisations that are involved in the construction and building approval process.
- Tax base: Some stakeholders expressed a preference for alternative approaches, such as a revenue or unit-based tax, increases to the CT rate, a direct CT surcharge on trading profits from residential development, or through changes to Stamp Duty Land Tax.
- Allowance: In the context of leaseholders' remediation bills, some stakeholders disagreed with this principle and suggested that there should be no allowance at all.

Government response

The government remains of the view that the tax should be time-limited, and that it should seek to raise at least £2 billion over a decade. The government intends that the tax is repealed once sufficient revenue has been raised and does not consider a sunset provision, which would repeal the tax at a fixed point, to be appropriate.

On the scope of the tax, the government believes that seeking a fair contribution from residential property developers that make the highest profits remains appropriate, reflecting the substantial benefit that they have derived from the government's housing market interventions, and the unlocking of the housing market through the Building Safety Package announcements earlier this year. As set out in the consultation, the introduction of these measures is not intended to imply responsibility on behalf of the payers for historic building safety defects.

On the tax base, the government considers that a profits-based tax, collected through existing mechanisms that taxpayers are familiar with, is the most appropriate way forward, which balances the need to raise revenue quickly in the least distortive way, with the burdens on taxpayers and HMRC. The final design of the tax, set out in this response document, is in essence a CT surcharge, with certain adjustments to CT profits that the government views as key to ensure a level playing field for property developers with different business models.

On the allowance, the government recognises the urgent need to raise revenue in order to provide certainty to leaseholders. However, the government continues to believe that, similar to other taxes, an annual allowance is essential to ensure that the tax is administrable and that the costs of business compliance are proportionate to liabilities.

On additional core principles, the government would like to make it clear that in designing the tax, it has carefully considered the impacts on the supply of affordable housing, as well as the impact on the quality and standard of new homes, and house prices. Further detail on the impacts of the tax is set out in Chapter 8.

Chapter 3
Scope

Taxpayers within scope of the tax

This chapter of the consultation invited views on what counts as development, the definition of residential property, and alternative ways to calculate the UK residential property development profits for the purposes of the RPDT.

Definitions of residential property and development activities

Question 1: Is this definition a reasonable basis for identifying residential property in scope for the tax? Will companies be able to identify profits in scope using this definition?

Whilst some respondents suggested that the proposed approach was broadly reasonable, others recommended that instead of amending existing definitions as proposed in the consultation, the government should use existing statutory definitions of residential property in tax legislation (SDLT[1] or VAT[2]) with which taxpayers are familiar and suggested making any changes to record the policy intent through explanatory notes. It was felt that this would simplify the definition, and that any departures would result in additional burdens.

Most respondents that provided views on this question said that it could be challenging to identify profits in scope using the proposed definitions of residential property and development activities and requested further clarification around the application of these definitions in practice. In particular:

- How sales of uncompleted developments, such as sales at the "golden brick" stage, forward funding, forward purchase, and part-exchange basis, would be treated
- The application of the definition to conversions and refurbishments
- When sales of undeveloped land would fall within the definition
- What a trade in land and/or ownership of freehold or long leasehold means, and whether a developer would have to perform all or some of the development activities in order to fall within the scope of the tax

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[1] Finance Act 2003, section 116(1)

[2] Notes to Group 5, Sch 8, VATA 1994

- Which parties in a development project would be in scope

Several respondents suggested that undeveloped land should not be included in the definition, and that the definition should be limited to the physical developments on the land, similar to the SDLT legislation.

Several respondents also suggested that lands or buildings for which planning permission has been obtained should not be sufficient to fall within the definition of residential property, on the grounds that existing tax rules do not consider this to be development. These respondents also explained that planning permission is often sought for a variety of different uses, for example, commercial and residential, in order to increase the value of the land.

Some respondents suggested that the definition should not capture pure land promoters, who will usually not hold an interest in the land. However, respondents have also recognised that some land promoters may be liable for RPDT as they may also engage in development activities.

Separately, some stakeholders requested clarification on whether universities, local authorities and charities will remain exempt under the RPDT in line with their exempt status for the purposes of CT.

Government response

The government acknowledges that identifying profits from residential property development activity may pose challenges in practice and respondents have raised a number of situations which will involve judgements being made based on the facts and circumstances of a given activity.

The RPDT will be applied to the trading profits from in-scope residential property development activity (RPD activities). Broadly, the approach aims to do the following:

- The legislation will define the concepts of a developer, RPD activities, interests in land, and residential property
- Businesses will be in scope of the tax if they are a developer carrying on RPD activities, have an interest in the land that forms part of their trading stock, and have made CT trading profits from those activities
- Businesses will then need to calculate their RPDT profits, and if those exceed the annual allowance, they will have an RPDT liability

A developer is a company that is within the charge to the UK CT and undertakes RPD activities.

The legislation provides a wide definition of RPD activities that are carried out by the developer on, or in connection with, land in the UK in which the developer or a member of the developer’s group has an interest. This includes activities that are typically carried out during the development process such as designing, constructing, adapting, marketing, managing or dealing in residential property.

The developer must have an interest in the land at some point for the activity to amount to RPD activities. This includes circumstances where a developer has a beneficial interest in the land, and that interest is held as stock for its trade.

Therefore, profits generated from first tranche sales of shared ownership homes and sales of uncompleted developments by a developer may fall in scope of the RPDT if they have an interest in the land being developed and have made CT trading profits from those activities.

However, profits from similar activities undertaken by companies acting purely as third-party contractors who are not the developer with the interest in the land, do not come within the charge to the tax. The government does not intend to capture other parties to a development project that provide fee-based services, such as pure land promoters.

Developers undertaking RPD activities which are considered charitable activities under the existing CT exemption, will not have CT trading profits, and would not therefore be in scope of the tax.

The statutory definition of residential property will be broadly similar to that proposed in the consultation document, as adapted from SDLT, with some differences to clarify points raised by respondents. The definition will therefore cover:

- Buildings designed or adapted for use as a dwelling
- Land that is intended for development where planning permission is being sought or has been granted for residential property development
- Land upon which residential property is being constructed

It is irrelevant for the purposes of the definition of residential property whether the land has multiple planning permission so long as one is residential. Any land that is intended to be provided along with a residential property, or general amenity land developed alongside the residential property, falls within the definition of residential property for the purposes of the tax.

In response to respondents' concerns, the government has removed reference to undeveloped land where a residential property "would be" constructed, given the uncertainty and subjectivity involved.

With respect to planning overages, the government would like to clarify that it does not expect, in most circumstances, that the original seller with an overage agreement to be in scope of the tax, however, the acquirer may, depending on the facts, fall within the scope of the definition.

This definition includes conversions, but mere refurbishments are not intended to be in scope of the tax.

In order to provide further clarity to taxpayers, the government intends to publish detailed guidance on the application of the definitions in due course.

Affordable housing

Question 2: Do you agree with the approach to affordable housing? What are the implications for housing associations and to what extent would their taxable activities fall in scope?

Most stakeholders that engaged with the topic of affordable housing suggested that the existing CT exemption for charitable activities would still result in some RPDT profits from affordable housing being taxable under the RPDT.

These respondents considered that the consultation approach could potentially result in some non-profit registered providers' wholly owned subsidiaries falling in scope of the tax and requested further clarifications around the operation of the corporate gift aid regime under the RPDT.

Respondents explained that a number of housing providers conduct commercial activities through wholly owned subsidiaries that choose to pay CT, to enable them to build up a level of reserves. Often this is driven by a need for the subsidiary to raise funds in its own right in order to provide income to the charity so it can further its charitable activities.

Therefore, it was suggested that an exemption for all non-profit registered providers of affordable housing and their wholly owned subsidiaries (i.e. an entity-based exemption) should be provided. This was on the grounds that, despite having subsidiaries that develop homes for open market sale, such providers view themselves as charitable groups as they are under a legal obligation not to pay out dividends to shareholders and instead must reinvest any surpluses or profits.

Some stakeholders also suggested that if such an exemption were to be provided, then some form of exit charge deterring avoidance activity would be welcomed.

Some stakeholders argued that a distinction should not be made between for-profit and non-profit registered providers because both types of providers have the same objective of developing affordable housing and are both required to comply with the same regulatory and governance code.

Several stakeholders suggested going further than an entity-based exemption and suggested that an exemption for all affordable housing activity would be appropriate as it would help to prevent any detrimental impact on the future supply of affordable housing.

In the absence of an activity-based exemption, stakeholders argued that additional provisions will be necessary to prevent developers from passing the costs of RPDT on to local authorities and housing associations through section 106 agreements.

On the other hand, some other respondents argued for no exemption for affordable housing, on the grounds of simplicity and fairness.

Government response

The government considers that there is a case to exempt non-profit registered providers of affordable housing and their wholly owned subsidiaries from the scope of this tax.

This is on the grounds that it is possible for taxable trading profits to arise within a group that is not profit seeking in the wider sense, and that this would be in line with the broader principle that profits derived from charitable activities should not be taxed.

In line with suggestions, the government has decided that this exemption should be complemented by an exit charge, which will apply where a corporate body benefitting from the exemption ceases to qualify for it, resulting in an RPDT charge at that point in future.

The government recognises that some would have preferred a broader approach which would exempt all registered providers of affordable housing. However, it believes that such an exemption is not justified on the grounds that the development of affordable housing with a view to making a profit from that activity, is clearly the development of residential property.

The government remains committed to increasing the supply of affordable housing, as demonstrated by additional £11.5 billion of funding available through the Affordable Homes Programme, which will deliver up to 180 thousand new affordable homes across England.

The programme will unlock a further £38 billion in public and private investment in affordable housing.

Communal housing

Question 3: Do you agree with this approach to communal housing?

Question 6: Are there additional forms of communal housing that you believe should be excluded from the definition of residential property for the purposes of the RPDT?

The majority of respondents agreed with the approach to communal housing as set out in the consultation.

Several stakeholders expressed a preference to follow the existing tax definitions of communal housing, such as those set out in the Stamp Duty Land Tax rules.

Several stakeholders asked for more clarity as to what constitutes purpose-built supported housing.

Several stakeholders suggested other forms of communal housing that should be excluded from the definition of residential property, including:

- Staff and key worker accommodation, for example, nursing accommodation on hospital grounds
- Refuges and other safe houses for those sheltering from domestic violence
- Short-term respite care accommodation
- Communal housing built by registered social landlords
- Co-living and shared ownership developments, and other asset classes which have elements of investment and communal living characteristics
- Properties used for a relevant charitable purpose

- Homes of multiple occupancy

On the other hand, a few respondents suggested that specialist communal housing should be in scope on the basis that exclusion would create a competitive advantage in the market as they compete with residential developments for land in the market, and that such dwellings have also been affected by building safety defects.

Student housing

Question 4: Do you agree with this approach to student housing?

Some respondents agreed with our proposal to use self-containment, i.e. a unit with the three basic amenities, as the basis for determining student accommodation in scope of the definition. However, the majority of respondents suggested that instead of designing a novel approach based on self-containment, the exemption should be based on the existing legislative definitions.

Most respondents suggested that purpose-built student accommodation (PBSA) should not be included in the scope of the RPDT and instead treated in line with other specialist communal housing for the following reasons:

- PBSA is different to typical residential dwellings, often with planning restrictions on use, and is not in competition with the wider residential property market
- PBSA already falls within the Capital Gains Tax definition[3] on which the proposed communal housing exemption is based
- PBSA is vital in maintaining the supply of adequate student accommodation across the UK, which is important for the government's wider Education Strategy

Some respondents suggested that a limited exemption should be provided for university halls of residence only, or that an exemption should be limited to university-owned accommodation both on and off campus.

On the other hand, some respondents argued that no student housing should be excluded from the definition, on the grounds that some of these developments have experienced building safety defects and can be highly profitable.

Retirement housing

Question 5: Is there an alternative to the approach described for retirement housing, which considers provision of care and allied services, that should be considered?

There were varied views on the proposal to tax the profits from the development of retirement housing.

The consultation document proposed excluding care homes only. Some respondents felt that this approach was appropriate on the grounds that other retirement offerings are frequently indistinguishable from non-retirement offerings and going further would introduce distortions.

[3] Taxation of Chargeable Gains Act (TCGA) 1992, Sch. 1B, para 4(5)

Most respondents suggested that all retirement housing, that is care homes[4], extra care housing[5] and housing with support[6], and affordable retirement housing should be excluded from the scope of the RPDT, on the basis that:

- The sector has not benefitted from the government's recent housing market interventions
- The sector has not been responsible for the provision of high-rise buildings with defective cladding
- There is an undersupply of specialised retirement housing
- Specialist retirement housing relies on extensive communal areas and is built to a higher standard of accessibility, resulting in higher build costs than conventional residential developers
- Retirement housing providers do not compete with conventional residential developers for the same land
- Specialist retirement housing contributes to fiscal savings for the NHS and other social care services
- The RPDT could disincentivise the future development of specialist retirement housing, potentially harming the government's ambitions to create a more diverse social care system
- The RPDT, as proposed, could disproportionately impact retirement housing developers because they would not be able to deduct historical COVID-19 related losses from the measure of profits

Some respondents suggested that the proposed exemption for care homes should be extended to extra care housing only on the basis that extra care housing provides access to and availability of on-site CQC regulated care provider unlike housing with support.

Respondents suggested that residents in extra care housing could be receiving the same level of regulated personal care from an on-site care provider as in care homes. Even though residents would not be mandated to use the on-site CQC regulated care provider, the vast majority of care in such homes would be delivered by the on-site care staff.

In contrast, several respondents acknowledged the difficulties with drawing distinctions between extra care housing and housing with support for the purposes of an exemption from RPDT.

[4] Care homes include residential care homes, nursing homes and dementia care homes, which are regulated by the Care Quality Commission (CQC) and consist of individual rooms within a building for residents.

[5] Extra care housing are purpose-built, self-contained units for older people with wide range of communal facilities and availability of regulated personal care, typically through an on-site CQC registered provider.

[6] Housing with support are purpose-built, self-contained flats or bungalows for older people with some communal facilities and availability of support services (such as 24-hour emergency alarm, and on-site wardens)

Government response

The government would like to reiterate that the RPDT is not intended to imply responsibility on behalf of the payers for any historic building safety defects.

Therefore, decisions on whether to include or exclude certain dwellings from the definition of residential property are not based on the existence or lack of building safety defects.

Communal housing

The government remains of the view that it is appropriate to exclude specialist purpose-built communal housing from the definition of residential property on the grounds that they have different characteristics relative to residential dwellings and that these are not permanent dwellings.

The government intends to maintain a definition similar to that proposed in the consultation but expand the definition to include premises providing temporary sheltered accommodation such as emergency shelters and respite care, as well as on-site and residential accommodation for members of the emergency services, to ensure that comparable forms of specialist communal accommodation are not treated differently.

Student housing

The government agrees with the majority of respondents in that PBSA is different to other residential dwellings, and more akin to other types of specialist communal dwellings given the temporary nature of the occupation by students and the design of such accommodation.

On that basis, the government intends to exclude PBSA from the definition of residential property. In line with stakeholders' preferences, the government will seek to define PBSA in line with the Capital Gains Tax legislation: a building that is designed or adapted for use by students and is expected to be occupied by students for at least 165 days a year.

Retirement housing

The government recognises the diversity of views on the approach to retirement housing development and would like to thank stakeholders for their significant engagement on this topic.

The government has carefully considered the case for extending the care home exemption to all types of retirement housing as well as the case for a narrower extension to certain models involving more intensive care such as extra care homes.

The government maintains the view that only care homes should be excluded from the scope of the RPDT, as originally proposed in the consultation document.

It is clear that extra care housing and housing with support are more akin to mainstream residential dwellings than communal housing such as care homes or hotels, with the main difference being that they are marketed to older people and that care can be provided on site if desired. The government considers that any exemption would likely introduce distortions between competing retirement models

in the market and require lines to be drawn between the different types of retirement housing that risk being complicated and unstable.

Build to rent models

Question 7: How should income from the development stage of build-to-rent activities be measured for the purposes of the tax? Do groups already recognise build-to-rent income in their development profits? On what basis?

The majority of respondents to this question recommended that build to rent (BTR) activity should not be in scope of the tax, on the grounds that:

- The proposed notional profit-based method for including BTR within the scope of the tax would amount to a "dry tax charge"[7] as there are no realised economic profits at the completion of their developments and a BTR developer might actually be economically loss making
- The tax as proposed could disproportionately impact the BTR sector because it is different to the build to sell (BTS) sector. The two sectors attract different capital, have different funding models, generate different rates of return, are taxed differently and will often operate in different areas of the country experiencing opposing market forces and cater to differing needs.
- The tax's design features, such as the adjustments on interest costs, pre-commencement losses, and the £25 million annual allowance are likely to have a disproportionately negative impact on BTR businesses. This is because BTR developers tend to have higher leverage, fluctuating profits and, under the model set out in the consultation, would see notional development profit realised at a single point in time rather than spread over multiple periods.
- There could be significant complexities and uncertainties involved in the valuations of BTR developments, as they can fluctuate substantially depending on the point at which they are made. It was suggested that valuations for the purposes of the tax would likely need to be prepared on a different basis to that currently required, resulting in significant administrative and financial burdens.
- The BTR sector has not reached maturity, and it was felt that the tax could have an impact on the sector's ability to attract investment. It was further suggested that investment could be redirected to other countries, and that the tax could put the UK BTR sector at a competitive disadvantage.
- BTR businesses have not benefitted from wider government housing market interventions, and it is also unable to obtain funding through the Building Safety Fund. The sector must fund remediation costs directly, rather than those costs being passed onto tenants.
- The concerns about avoidance, for example a developer first renting out a property then selling at a later date were unrealistic because there are significant administrative, financial and practical barriers involved in

[7] i.e., a tax levied in the absence of available cashflow to pay it.

engaging in a substantial rental operation. Respondents explained that planning permission is often sought on the intended use basis and must be adhered to.

- BTR businesses are more likely to engage in building high-rise developments, which means that the separate Building Safety Levy is likely to exacerbate the detrimental impact on the BTR sector.

Some respondents did not explicitly suggest excluding BTR from the scope of the tax, but highlighted the difficulties in taxing the sector fairly, and suggested that the approach would require very careful consideration.

Some respondents requested further clarity on the application of the proposed approach to Real Estate Investment Trusts (REIT) and Property Authorised Investment Funds (PAIF). It was suggested that REITs and PAIFs should be excluded from the scope of the tax if BTR was in scope, because it would be contrary to the policy objectives of those vehicles and add complexity to the RPDT regime.

Some respondents also suggested that, should the charge apply to REITs and PAIFs, the amount of RPDT due should be allowable as a deduction in computing the profits required to be distributed, so that the payment of RPDT did not trigger a breach of the respective regimes.

Some suggested the following alternative methods for taxing BTR activity:

- Taxing the capital value of the development post completion
- Taxing rental income
- Having BTR related tax payments spread in instalments over a longer timeframe
- Calculating BTR profits as a multiple of gross rental income, for example £1 million rental income multiplied by 6
- Exempting all affordable housing developed for rent
- Calculating BTR profits based on the accounting treatment

In contrast, some respondents suggested that BTR should be within scope of the tax as proposed in the consultation, on the basis that the scope of the tax should be as broad as possible.

Government response

The government would like to thank respondents for their substantial engagement on this topic over the course of the consultation period.

The government still considers a valid argument can be made for development profits from BTR activity being subject to the RPDT, as properties that are specifically BTR are still a form of residential property.

However, the government does recognise that the BTR sector's business model is different to that of BTS, with upfront costs being recovered over a longer timescale, and profit therefore being achieved longer after completion of a development, and investors into the sector targeting a different rate of return.

The government also recognises that the policy justification for the RPDT might have less relevance to the BTR sector. Unlike BTS developers, BTR operators retain responsibility for the developments upon completion, including ongoing maintenance and rectification of any building safety defects.

The government accepts the concerns that have been raised throughout the consultation process that, as a result of these differences, the application of the RPDT to BTR by taxing a deemed development profit would introduce substantial complexity and result in a dry tax charge on unrealised profit.

It also accepts that some elements of the tax's design including the approach to interest costs, pre-commencement losses, and the £25 million annual allowance, could have a more significant impact on BTR operators.

Given these challenges and the fact that BTR is still a small, growing sector, the government is not minded to include BTR within scope of the tax at this time.

That said, in recognition that this is a new tax that is being applied in the context of an evolving market, the government will keep this decision on BTR under review.

The BTR sector will still contribute to the costs of building safety remediation – notably through paying the new Building Safety Levy where they meet the criteria.

Fundamental design of the tax

Question 8: What are the implications of models 1, 2a and 2b for businesses?

Question 9: Which approach is preferred?

Question 10: Which of these would be administratively easier for major residential property developers to operate?

The consultation set out three potential models for calculating RPDT profits.

Model 1 would apply to individual companies conducting residential property development activity or contribute to a group's UK residential property development activities – with a significance test to avoid applying the tax to companies undertaking small amounts of this activity. This would be calculated on the same basis as companies' CT profits, with certain adjustments.

Model 2 would instead require the calculation of profits specific to residential property development activity. Model 2a would require this calculation based on CT profit, while Model 2b would require calculation using an accounting measure of profit.

Model 2a

Of the three models proposed, a large majority of respondents expressed preference for Model 2a on the grounds of fairness and similarity to the UK CT regime.

Respondents considered Model 2a to be more consistent with the RPDT's policy rationale than Model 1 as it would only capture CT profits attributable to UK residential property development activities. Many stakeholders maintained it would be fairer and less susceptible to manipulation than Model 1.

Respondents also preferred Model 2a because it uses the existing CT rules as a starting point for calculation of profits. Respondents suggested that Model 2a would be the simplest for most taxpayers to apply as most affected businesses already understand how to compute profits for the purposes of CT. However, respondents requested that the calculation of profits under Model 2a was as closely aligned to the CT regime as possible in order to ease administrative burden.

Some respondents nevertheless believed that Model 2a would impose significant administrative burdens for groups to identify and apportion relevant profits in relation to mixed use developments, citing the potential for error, revenue risk, and costs to business in carrying out the apportionment.

Model 2b

Very few respondents expressed a preference for Model 2b, with those that did doing so on the grounds that it would reduce the administrative burden for them by allowing a consolidated accounting view to be taken for each entity within a larger group of companies.

Whilst several respondents said Model 2b would benefit those groups that already measure and report profits from residential property on a group-wide basis in their consolidated accounts, the majority of stakeholders responding to this question made clear that it would entail substantial administrative cost for those that do not prepare their accounts on that basis.

Some respondents expressed concern that Model 2b would involve creating a new novel basis of taxation, which would bring undesirable complexity and would be difficult for taxpayers to understand and implement correctly in the limited time period.

Model 1

Only a few respondents expressed preference for Model 1 to be taken forward on the basis that it would be easier for them to operate than Models 2a or 2b.

Most stakeholders had concerns about the fairness of Model 1 as it could capture profits from out-of-scope activities and could unfairly impact groups that undertake a mixture of activities.

They felt that it may drive business restructurings to fragment activities into multiple corporate bodies, and/or lead to other distortions or incentives for avoidance behaviour.

Many respondents also considered Model 1 would not be as simple to administer as it seems at first glance, as it would require apportionments to be carried out between residential and non-residential development profits in order to establish whether or not residential development profits are "significant". Several respondents noted difficulties with designing a fair and clear methodology for the significance test.

Question 11: Where should the significance test be set for model 1?

Whilst acknowledging the challenges of Model 1, some respondents suggested that if Model 1 was to be taken forward, the significance threshold test should be set in the region of 70-90% in order to limit profits relating to non-residential

development activity risk being brought within scope (similar to the public infrastructure exemption in the Corporate Interest Restriction rules).

Other issues

Several respondents suggested allowing taxpayers an irrevocable option of electing into a model of their choice, in order to reduce administrative burdens for businesses.

Several respondents were of the view that none of the proposed models for a profit-based tax were desirable as they would impose significant administrative burdens on businesses, which could in turn reduce the amount reinvested in UK residential property development.

These respondents advanced alternative proposals for the design of the RPDT:

- A revenue-based tax, which would not be subject to judgments on deductions leading to fewer disputes between HRMC and taxpayers) and would be aligned with cash receipts
- A transaction-based tax levied on each residential property sold or unit that had been granted planning permission, potentially delivered through the planning system
- A plain surcharge on trading profits under the CT regime

Government response

The government recognises that the proposed models offer benefits to different businesses depending on their activities, business models, and the way in which their accounts are prepared.

The government intends to proceed with Model 2a for the final design of the RPDT. This is on the grounds that Model 2a is the appropriate design of the RPDT for a number of reasons:

- It is in line with the policy rationale of the RPDT as it focuses on profits that relate to residential development, limiting the impact on other activities (e.g., commercial development) that might be undertaken by affected businesses.
- The overwhelming majority of responses were in favour of following Model 2a.
- Closely following the existing CT regime allows the government time to implement it properly within the short timeframe and increases simplicity for taxpayers.

The government has considered the proposal to provide taxpayers with the option to elect into a particular model. However, it concluded that this would bring substantial legislative and administrative complexity for both taxpayers and HMRC.

The government has also given consideration to the alternative proposals raised during the consultation.

The government still intends to introduce a profit-based tax for the sector as set out in the consultation document. It continues to believe this approach is the fairest, and least distortive way of seeking a fair contribution from developers, to help fund government's building safety remediation costs.

The definition of profit

Question 12: What would be the best approach to achieving an apportionment for income and expenditure that is fair without being unduly burdensome?

Respondents noted that attributing income and expenditure between in scope and out of scope activities would be challenging in certain cases. This included where apportionment was required for construction and property developed for rental purposes.

Notwithstanding these challenges, respondents generally agreed that allowing businesses to make a just and reasonable apportionment of income and expenditure of in-scope activities was a sensible approach, which most businesses would already be familiar with.

However, several respondents expressed the view that subjective calculations would need to be undertaken to arrive at a fair apportionment of costs, which could be misused by some organisations. Therefore, these respondents recommended that prescriptive rules were designed in order to avoid disputes between HMRC and taxpayers.

Some respondents raised alternative views on apportioning income and expenditure, such as:

- Apportionment based on the gross profit margin of each income stream
- Apportionment based on a blended margin
- Apportionment based on physical attributes such as floor area
- Apportionment based on commercial allocation methods under Finance Act 2012 for life insurance companies
- Apportioning general administration and overheads on a line by line, rather than generic basis
- A wider purposive test, to determine whether costs in holding and service companies contribute directly or indirectly to in-scope activities

Government response

The government intends to require apportionment on a just and reasonable basis.

A business will therefore need to attribute its income and expenditure to its in-scope activities. This should include all sources of income earned in connection with that activity.

The government recognises that the apportionment exercise will place an administrative burden on taxpayers in scope, and it considers that a more prescriptive approach, which would increase that burden, would not be appropriate.

The government recognises that the appropriateness of the methodology chosen will depend on the particular facts of the business.

Adjustments to CT or accounting profits

Losses

Question 13: To help inform the design, what are the sector's expectations for future losses?

Question 14: Do you consider there is any method of allowing carried forward losses, which can provide both fairness and minimal administrative burden?

Respondents noted a number of different expectations for the relief of losses.

Some were content with the government's proposal to restrict the use of losses incurred before the introduction of the tax, noting that this was a reasonable approach to a non-retrospective tax, and one which would limit additional complexity.

However, a majority of respondents raised concerns about this treatment of losses.

Many respondents preferred a loss relief regime for RPDT purposes that would mirror the CT loss regime, including loss carry back, terminal loss relief and pre-commencement losses. It was felt that any restriction would result in a higher effective tax rate which could lower investment in the residential property development sector.

Several respondents suggested that restricting pre-commencement carried-forward losses would be unfair, in particular for the retirement sector, on the basis that the residential property industry is cyclical, and losses have been incurred in 2020 as a result of the Covid-19 pandemic.

Some suggested that the additional administrative burden from allowing pre-commencement losses should be seen as a necessary cost of obtaining relief for losses, and that prohibiting pre-2022 losses would deny relief for commercial development costs arising prior to the introduction of the tax, and significant start-up costs for new entrants.

Some respondents disputed the government's view that restrictions on the use of losses would limit complexity, noting that developers would already track trading losses for CT purposes, and that asymmetries with the CT loss regime could compound the complexity introduced by the 2017 loss relief reforms.

Some respondents noted that the BTR sector made returns over a longer timeframe than other developers, and that it was normal for such businesses to be loss making during the development phase of projects. It was therefore felt that limiting loss carry-forward could disproportionately impact those undertaking BTR activities.

Respondents were generally opposed to the notion of a 50% restriction on post-commencement carried-forward losses, suggesting that this would be unfair given the time limited nature of the RPDT. Some suggested that this could lead to unused RPDT losses becoming 'stranded' at the end of the tax.

Group relief

Some respondents agreed with the government's proposal to 'ring fence' RPDT losses for the purposes of determining RPDT liability, which would mean that any losses incurred by the group in connection with out-of-scope activities could not be used to reduce RPDT profits. It was felt that this approach would be fair.

However, some respondents disagreed, suggesting that the rules should be more flexible and that all intra-group relief should be permitted.

Some respondents requested that consideration be given to a form of consortium relief for RPDT losses, akin to the CT group relief rules for consortia.

Loss carry back

A number of respondents noted an expectation for an RPDT loss carry back mechanism, predominantly on the basis of the broader expectation that the RPDT loss regime would mirror relief available for CT losses.

One stakeholder noted that an RPDT loss carry back mechanism would prevent the 'trapping' of RPDT losses at the end of the tax, by allowing losses incurred in the final years of the RPDT to be utilised.

Government response

The government remains of the view that, in line with other sector-specific taxes, any losses incurred before the introduction of the tax should not be capable of reducing RPDT profits.

This approach ensures that, as set out in the consultation document, the tax is focused on profits and losses arising from residential property development activity subsequent to its introduction and ensures that the tax revenue goal of at least £2 billion over a decade remains realistic and achievable.

Therefore, the government does not consider there to be a robust case for the RPDT loss relief to mirror the CT loss regime as this will be a different tax with a different population and purpose. However, the government recognises the important principle that businesses should be taxed on a long-term picture of their profitability.

The government therefore intends to allow the use of post-commencement carried-forward RPDT losses, and group relief from ring-fenced RPDT activities, against RPDT profits. The government considers that this is a proportionate and fair way of balancing the need to limit complexity and ensure that the tax meets its revenue target, whilst maintaining alignment with the principle that businesses should be taxed on a long-term picture of their profitability.

In line with the existing CT rules for large businesses, the government intends to subject post-commencement losses carried forward to a 50% restriction, mirroring the corporate income loss and capital loss restriction.

As the RPDT will only apply to the profits of a company or group which exceed an annual allowance of £25 million, the restriction will not be subject to a separate £5 million deductions allowance. The government considers this a proportionate way to ensure that large businesses in scope pay some RPDT in the years when they are making substantial profits.

The government considers that the post-commencement loss carry forward provision meets businesses' calls for fair RPDT loss treatment and balances this with the need to secure revenue and ensure deliverability. Therefore, it does not intend to introduce a loss carry back mechanism.

Interest and other funding costs

Question 15: What are the implications of excluding interest and funding costs from the measure of profits for RPDT purposes?

There were varied views on the proposal to exclude interest and other funding costs the measure of RPDT profits.

Some respondents agreed with the government's proposal, on the basis that excluding funding costs would help to avoid distortion between different funding models.

However, the majority of respondents to this question advocated allowing interest and funding costs as deductions for a number of reasons.

Many respondents suggested that excluding interest and funding costs would have a disproportionate impact on the BTR sector, which more heavily relies on debt financing.

Some respondents commented more broadly and noted that disallowing interest and funding costs would be unfair as it is a genuine business cost, and that it would be anti-competitive, given the extent to which some companies are heavily reliant on external funding, with the largest companies having the lowest funding costs, meaning they would benefit the most from a disallowance.

Some respondents suggested that interest and funding cost deductibility should be completely aligned with the CT rules, noting that there are already restrictions on how much interest expense is allowable by virtue of the Corporate Interest Restriction. It was felt that any divergence from the CT rules would result in an increased compliance burden, particularly for businesses that have mixed-use developments or joint venture (JV) interests.

Some respondents noted that any restrictions on interest deductibility would result in gift aid complexities for registered providers of affordable housing.

Government response

The government continues to believe that disallowing interest and funding costs from the calculation of RPDT profits is necessary in order to prevent distortions of

the tax base due to different funding models, which can vary significantly between different groups, and due to the challenges with otherwise having to link borrowing to in-scope versus out-of-scope activities, which is particularly different where borrowing is centralised and then passed on to group members through intragroup loans.

Accordingly, in order to ensure fairness across the tax base the government intends to restrict interest deductibility for RPDT purposes, mirroring the approach to interest and funding costs for the Oil and Gas supplementary charge.

Chapter 4
Allowance and rate

Annual allowance

Question 16: Do you agree that the same approach regarding treatment of carried forward losses for the calculation of the profits for the tax should apply for the calculation of profits for the allowance?

Respondents broadly welcomed the allowance and thought this contributed to ensuring the RPDT would be proportionate. Most respondents also agreed that the same approach should apply to the calculation of profits for the allowance and carried forward losses for the calculation of the profits.

Some responses did suggest that the allowance should be higher or increased over time, given the proposed adjustments to losses and interest costs, and that it would avoid disincentivising the growth of businesses around the threshold. Some stakeholders also suggested that the government could introduce a gateway test based on turnover, to reduce administrative burdens for companies clearly below the threshold.

However, others suggested that there should not be an allowance at all given the scale of leaseholders' bills, or that it should be set lower to bring more developers in scope of the tax.

Some respondents also suggested that there should be more flexibility in the use of the allowance, for example, the ability to carry forward and/or carry back any unused allowance. It was felt that this would ensure the RPDT was focused on the overall profits of a development and not the timing of the sale or completion.

Some respondents suggested that the loss offset should take place before the allowance, whereas others were of the view that the allowance calculation should take place after the loss offset.

Some respondents also suggested that apportionment provisions for the annual allowance would be necessary to ensure that groups are not penalised for having short accounting periods. Some responses suggested that the allowance would not benefit BTR businesses as much as those who are developing for sale, because BTR developments tend to be built faster, and income can be lumpy. It was felt that BTR developers would be at a disadvantage, as they are less able to slow down build out rates over multiple accounting periods to benefit from the £25 million allowance in each period, unlike other developers.

Government response

The government remains of the view that the RPDT should be limited to residential property developers that make the highest profits, given the need to ensure that the administrative burdens and costs of compliance are commensurate with the tax take.

Therefore, the government intends to maintain the group-wide annual allowance of £25 million, which will exempt £25 million of RPDT profits per year and ensure that groups with RPDT profits below this amount remain out of scope of the tax. The allowance will apply to profits after any carried forward RPDT losses have been deducted.

In line with most other taxes, the allowance will be annual, and it will not be possible to carry back or carry forward any unused allowance.

In order to reduce administrative burdens on businesses, the government will not expect businesses to file an RPDT return where it is reasonable to assume that the developer would have no liability to RPDT.

Application to companies across common ownership

Question 17: Do you think it is more appropriate for the definition of a group for the purposes of this tax to be based on a tax rule or an accounting standard?

Question 18: Which existing definition of a group for tax or accounting purposes do you think would be most appropriate for this purpose?

Question 19: What rules, in addition to your preferred group definition, do you consider would be required to ensure that the threshold is applied to a single economic entity?

Respondents were split between preferring to base the group definition on tax or accounting terms.

Most respondents who supported a tax definition suggested that an existing CT definition should be used because most taxpayers would likely already be familiar with it. It was felt that this would minimise complexity and reduce administrative burden for taxpayers.

Some respondents also believed that tax rules would be more difficult to plan around than accounting standards and would therefore ensure a level playing field. The following definitions were suggested:

- 'Associated companies' definition within the CT small profits relief rules[1]
- 'Groups of companies' or 'members of consortium' definitions within the CT loss relief rules[2]
- 'Company' and 'group' definitions under capital gains group rules[3]

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[1] Corporation Tax Act 2010, section 25

[2] Corporation Tax Act 2010, section 152-153

[3] Taxation of Chargeable Gains Act 1992, section 170

- The corporate 'control' definition[4]

On the other hand, some respondents suggested that an accounting definition of a group, such as the consolidated group definition under International Financial Reporting Standards (IFRS) or Generally Accepted Accounting Practice in the UK (UK GAAP) would be more appropriate, given that the RPDT group definition is to apply to both corporate groups and JVs.

Several respondents suggested using the definitions of 'worldwide group', 'ultimate parent' under Corporate Interest Restriction (CIR) rules[5], which is based on accounting standard.

Government response

As many respondents have recognised, the appropriateness of definitions depends on the model chosen. As set out in Chapter 3, the government intends to proceed with Model 2a, which will apply a charge on businesses apportioned residential property development profits, calculated on a CT basis.

The government therefore intends to proceed with a tax definition of a group which builds on the CT loss relief provisions for the purpose of defining the group when identifying the RPD profits.

Joint ventures

Question 20: What would you consider to be appropriate measures of economic participation in a joint venture?

Question 21: What would you consider to be an appropriate hurdle for a participator becoming liable to tax in respect of the joint venture?

Question 22: Do you have any other observations regarding the use of joint venture structures in the UK residential property development sector?

Most respondents suggested that the treatment of joint ventures (JV) should be aligned to the existing CT rules where possible and that they consider economic participation to be material at 25% of ordinary share capital or entitlement to profits available to distribution.

Most respondents believed that share capital was an appropriate measure of economic participation in a JV.

Most respondents raised the issues of double taxation and a dry tax charge if the proposed two-tier approach, of providing tax credit to a JV member subject to the RPDT where the JV is itself liable to pay the RPDT, was used to assess JV profits.

They explained that the approach may risk double taxation, and that a suitable credit mechanism should be incorporated into the design of the tax to prevent this. Respondents also emphasised that it could push an investor into the scope of RPDT when it otherwise would not be. In such cases, the investor would need to ensure

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[4] Income and Corporation Taxes Act 1988, section 840

that a cash distribution was made from the JV company to fund the tax on the JV partner.

To eliminate the risk of the dry tax charge, it was suggested that the government should:

- Provide an option to defer RPDT on the JV profit, until a distribution had been made to the JV partner; or
- Assess businesses on the basis of actual cash distributions from JVs, with the proposed credit for any RPDT paid by the JV entity/group.

Some respondents also believed that the proposed approach meant a tax-exempt JV participant could potentially incur an indirect liability to RPDT and requested clarity on whether tax exempt investors would retain their tax-exempt status when investing through JVs.

Some respondents also suggested that as the RPDT will apply to existing JV structures, some of them may not be able obtain sufficient information for participators to determine their RPDT liability on a timely basis.

Government response

The government will proceed with the consultation proposal that where the JV is a corporate body then the RPDT will apply at the JV level. As with all companies within the scope of RPDT, the JV will pay RPDT only on profits over the annual allowance.

The government recognises the need to avoid double taxation in proceeding with the two-tier approach, and has therefore decided that those holding interests in the JV will not be subject to the RPDT on their share of profits of a JV, to the extent that those profits have been subject to the tax at JV level.

To achieve this, JV interest holders will be taxed only on their share of JV profit that falls below the £25 million annual allowance, which means that interest holders will be attributed an amount of profit equal to their proportionate share of the £25 million annual allowance of the JV.

For example, if a JV member has a 50% share in a JV that has used its full £25 million allowance then £12.5 million (50% of that £25 million allowance) will be added to that JV member's RPD profits to reflect its RPD income from the JV.

The government will not seek to tax profits of JV members who are outside of UK Corporation Tax or are UK tax exempt. Instead, the government has decided to apply a proportionate reduction in the £25 million annual allowance available to the JV in line with the interest held the JV's profits by the exempt member, and providing a mechanism for this to be replaced by giving the tax-exempt JV member a notional annual allowance of £25 million to allocate across its JV interests.

These rules will only be relevant to JV interest holders who hold at least 10% of the relevant JV company's ordinary share capital unless the relevant JV company does not have ordinary share capital. In such a case, the government has decided that the threshold should be met where a developer has entitlement to at least 10% of the profits of the JV company that are available for distribution.

The government believes that 10% is an appropriate lower threshold which ensures that passive investors are not brought into scope of the new tax, while raising revenue as intended and seeking a fair contribution from development-related profits.

The government believes that this new approach will continue to meet the consultation aim of treating development profits fairly, regardless of how developers structure their investments.

Rate

Question 23: Do you agree that these principles should guide the decision on the rate of the tax?

Respondents expressed different views on the principles outlined by the consultation document.

Many stakeholders noted the need for early certainty on the RPDT rate as the industry would need time to prepare for introduction of the tax. It was felt that certainty was particularly important in the context of other significant changes, including the Building Safety Levy and CT rate increase, and regulatory changes within building regulations and carbon reduction policies.

In this context, several respondents agreed with the government on the importance of considering the RPDT tax rate in the context of the CT rate increase to 25% from April 2023. Some suggested that the RPDT and CT rate increase could impede developers' ability to invest, resulting in negative impacts on future housing supply.

Some respondents noted that they would not be able to provide an initial view of RPDT impacts until the RPDT rate was known. Nonetheless, there was consensus that the government should carefully consider the supply-side impacts of the RPDT rate and seek to mitigate uncertainty, which would impact investment decisions.

Government response

The government recognises the value of certainty for businesses in the context of significant changes to the CT system. Equally, as set out by the consultation, the government considers that it would not have been appropriate to announce a rate prior to the final design of the tax being established through close consultation with stakeholders.

The rate of the RPDT will be set at 4%.

In line with the principles set out by the consultation, the government considers that this rate balances the need to raise sufficient revenue and the need to seek a fair contribution from the residential property development sector, against the need to ensure that the tax does not have a significant impact on supply.

As with all policy changes, the RPDT rate has been carefully considered in the context of the upcoming increase in the main rate of CT, as well as additional taxes and forthcoming changes.

The government monitors the tax system continuously and will keep the tax under review.

Chapter 5

Interaction with Building Safety Levy

In the consultation document, this was referred to as the Gateway 2 Levy. This is now known as the "Building Safety Levy".

The government is consulting on the Building Safety Levy from 21 July 2021 to 15 October 2021[1].

Question 24: Do you have any initial views on the cumulative impact of the RPDT and the Gateway 2 levy?

Several stakeholders expressed concern about being in scope of both the RPDT and levy.

Some respondents noted the cumulative compliance impact of the RPDT, Building Safety Levy and future environmental regulations and design standards, including the Mayoral Community Infrastructure Levy rates.

Some expressed concern that, cumulatively, the tax and levy could impact investment in the sector and supply of residential property in areas of high density, which often correspond to high affordability pressures.

Some noted that cities, and the capital in particular, are likely to be impacted, given the prevalence of high-rise residential property which would likely be subject to the levy in addition to the RPDT.

Some respondents suggested that the BTR sector would be disproportionately impacted by the RPDT and the levy cumulatively, given the tendency for the BTR sector to build higher rise buildings. Stakeholders noted that the BTR sector is therefore likely to be affected by both measures.

A number of respondents suggested that levy payments should be allowed to be credited against RPDT liabilities, with unused levy payments available for carry forward. It was felt that this 'netting off' of contributions could minimise the risk of double taxation on large developers.

Government response

Whilst the government recognises respondents' concerns regarding the introduction of two new measures simultaneously, both measures, as part of the broader Building Safety Package, are essential to help bring an end to unsafe cladding and restore confidence to the property market. The two measures have strong and distinct rationales for doing so, as set out in each respective consultation:

[1] https://www.gov.uk/government/consultations/the-building-safety-levy

- The tax is a charge on RPDT profits to raise revenue to fund the package of measures designed to bring an end to unsafe cladding and unlock the housing market, to the benefit of market participants.
- The levy is a one-off charge on companies which engage in high-rise development activity (residential buildings which are 18 metres or more in height, or at least 7 storeys), reflecting the greater building safety risk.

As each consultation also sets out, the government considers that both measures, as part of the broader Building Safety Package, are essential to help bring an end to unsafe cladding and restore confidence to the property market.

Regarding recognition of levy costs in the RPDT, as a tax on trading profits, it is also appropriate that deductions follow the normal CT rules. Provided that levy payments were incurred wholly and exclusively for the purposes of the trade, they would be deductible for CT purposes.

The government considers that it would not be appropriate to go further and deviate from the CT rules to allow the levy amount to be subject to an additional credit against the RPDT liability itself.

The government carefully considers the interaction of all policies as a matter of course, and development of the RPDT and the levy has been undertaken collaboratively with HMRC and the Department for Levelling Up, Housing & Communities (formerly the Ministry for Housing, Communities and Local Government), with cumulative impacts at front of mind.

Chapter 6
Reporting

Reporting Periods

Question: Do you agree that the RPDT should be reported using the same periods as for CT?

Question: Do you see any difficulties applying the CT rules for accounting periods to any of the models and if so, how could they be overcome?

Almost all those responding to these questions agreed that the RPDT should be reported using the same periods as for CT, largely due to an existing familiarity with these rules.

Concerns were noted though regarding additional work which would need to be done alongside the usual reporting for CT, particularly from respondents in the BTR sector who would have to obtain valuations to compute their notional profit.

It was also highlighted that JV companies may have different accounting periods to parent companies, with the suggestion that existing CT rules should again be used to accommodate this scenario.

Reporting and Registration Requirements

Question: For models 1 and 2a would there be any difficulties for a given company in knowing that the group's thresholds for the RPDT have been satisfied?

Question: If there is a separate requirement for registration, is 90 days from the end of the accounting period a reasonable timeframe?

Many respondents did not foresee significant difficulties in companies being made aware that a group-wide allowance had been exceeded. However, some respondents with less centralised group structures did raise concerns, particularly in obtaining information from JVs with a different year-end.

The majority of respondents answering this question felt that the proposed requirement to register within 90 days of the accounting period ending was too short, particularly due to RPDT being a new charge. Many respondents suggested that the period should instead be between 6 and 12 months.

Government response

The consultation document noted that, at the time of writing, consideration was being given as to whether reporting liability to the RPDT could be done through the existing CT return or would require the creation of a new separate return. It was expected that the former would be preferable to both customers and HMRC due to familiarity with existing rules and systems. As noted above, the consultation responses received matched this expectation.

The government has therefore decided that, in line with the overwhelming majority of stakeholders, RPDT will be reported using the existing CT return (CT600). Further work will be undertaken in the coming months to determine the precise changes that will be made to the return to facilitate RPDT reporting and associated guidance will be published in due course.

In line with this decision, RPDT will be treated as an amount of CT for administrative purposes, mirroring the approach taken in areas such as the banking surcharge and bank levy. Existing rules, such as those for reporting periods, will therefore be apply to the RPDT.

As a new return is not being used for reporting RPDT, there will not be a separate registration requirement as the company's existing registration for CT will be sufficient.

Chapter 7
Payment and compliance

Payment Deadlines

Question 29: If possible, would including RPDT amounts within quarterly instalment payments be preferable? Or would this create any issues?

Opinion was split on whether RPDT amounts should be included within the quarterly instalment payments (QIPs) regime for CT. Those preferring inclusion cited familiarity with the existing rules and cashflow benefits. Conversely, many respondents advocated for a single payment date, usually 9 months and 1 day after the accounting period has ended.

Some respondents raised concerns about using the QIPs regime within the early phases of the RPDT's lifetime. In particular, questions were asked about the approach for instalment dates falling due prior to the RPDT's commencement date (1 April 2022). A handful of respondents suggested that an annual payment could be used for the first few years before later transitioning to QIPs.

A number of respondents sought clarity on interest in relation to insufficient or excessive QIPs. Alignment with the CT rate of interest was encouraged, as was allowing for a deduction against RPDT profits for any interest payable in respect of underpayments.

Nominated Entity

Question 30: Do you agree that allowing a nominated company to act on behalf of the group would reduce the compliance burden?

Question 31: Do you foresee any difficulties with the nominated company calculating and reporting RPDT liability on behalf of the whole group?

Question 32: Are there any practical issues around the nominated company accessing information from the rest of the group?

Question 33: Would specific rules be needed for companies whose AP does not coincide with the nominated company's AP?

Many respondents agreed that using a nominated company to report and pay the RPDT liability on behalf of the whole group could reduce the compliance burden.

However, concerns were raised for less centralised groups, for instance involving several JVs, where it may be more difficult gathering information from some entities.

Questions were also asked about any secondary or joint and several liability for RPDT payments attaching to other group entities, in the event of a default by the nominated company.

Commencement

Question 34: Do you have any comments on the proposed commencement date?

The majority of respondents to this question felt that the proposed commencement date for the RPDT (1 April 2022) was too early. Concerns about the time for reviewing consultation responses, drafting legislation and businesses building familiarity were often raised, in the context of the government's tax consultation framework[1].

Many respondents suggested that commencement should be deferred until 2023. A handful requested a limited deferral specifically for those in the BTR sector.

Anti-avoidance

Question 35: Do you have any views on avoidance risks generally, and how these should be minimised?

Question 36: Do you have any observations on the proposed anti-avoidance provisions, or other avoidance risks?

The consultation document proposed three anti-avoidance rules, to guard against forestalling, fragmentation and re-characterisation. Many respondents suggested that these rules were unnecessary, seeing that businesses were unlikely to change their activities or bring forward sales to fall outside of the RPDT, given the practical complexities involved. A number of respondents highlighted that market factors would be a much more significant driver of behaviour compared to the new tax.

A common theme across responses was to encourage simple but robust definitions in the core provisions to set an appropriate scope for the tax, rather than introduce a range of complicated anti-avoidance rules targeting particular scenarios.

Government response

As discussed in chapter 6, it has now been agreed that a company's RPDT liability will be reported and paid using the existing CT return and systems.

As RPDT will be treated as an amount of CT, the government intends for in-scope companies to pay their RPDT liability using the same schedule as they do for CT. Companies within one of the existing QIPs regimes (such as those for very large or large companies) will therefore need to pay their RPDT liability in line with the schedule they use for CT.

The concerns raised around QIPs due before the commencement of the RPDT are noted. A transitional rule will be introduced to cover this situation. The government

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[1] https://www.gov.uk/government/publications/tax-consultation-framework

intends to model this on the approach used by the banking surcharge, with RPDT only needing to be paid in instalment dates arising after commencement.

In line with the restriction on finance costs, the government does not intend to allow for a deduction in respect of interest charged on underpaid QIPs, when computing profits chargeable to RPDT.

To enable the tracking of amounts of RPDT paid, the government intends to mandate for customers to provide information to HMRC on the amount of RPDT included within a given payment, as is done for the banking surcharge and bank levy.

The government has decided not to proceed with allowing a nominated company to report and pay RPDT on behalf of the whole group. This is no longer necessary as model 2b for computing profits (which was on a group-wide basis) is not being taken forward.

Whilst some respondents did see benefits in having a nominated company handle RPDT administration, the practical concerns raised by others highlighted that introducing this feature would inevitably involve legislative complexity. Instead, the government intends to allow for RPDT to be included within any group payment arrangements for CT.

The government intends to proceed with the commencement date outlined in the consultation of 1 April 2022. To mitigate the risks highlighted regarding the time available to produce legislation, a technical consultation was launched on 20 September and ran until 15 October, where stakeholders were able to provide comments on the draft legislation.

The draft legislation shared as part of the technical consultation contained a specific anti-avoidance rule in respect of forestalling. The draft legislation also included the intended definitions of in-scope activities. Comments were invited on both of these and will be considered as work progresses on the policy.

Technical and operational guidance will be published by HMRC in due course to assist taxpayers in their familiarising with the RPDT.

The existing CT compliance regime will apply to RPDT.

Chapter 8
Assessment of impacts

Impact on housing supply

Question 38: Would you adjust your development plans, build out strategy, or land acquisition strategy in response to the implementation of this tax? If yes, how?

Question 39: Are there other ways you would adapt your development plans in response to the implementation of this tax? If yes, how?

Question 40: Are there other potential impacts on housing supply?

Most respondents noted the difficulties with assessing the impacts of the tax without knowing the rate of the tax.

However, many respondents submitted that, as a tax on profit, and combined with the announced increase in the rate of CT and wider challenges in the sector, the RPDT would reduce funds available to developers to re-invest in development which may lead to a reduction in the scale and volume of future housing.

Many respondents noted that the tax may affect developers' build-out strategies specifically. They observed that, for example, some developers may slow down build out rates to maximise the benefit of the annual allowance and/or alter their development plans to avoid or minimise their exposure by deferring developments until after the end of the proposed duration of the tax.

Whereas some respondents noted that developers may reappraise the viability of developments currently in the pipeline, others were of the view that decisions on viability of developments are not tax-driven and therefore the RPDT is unlikely to affect developers' general business strategy.

Some respondents also noted that the tax could also impact land acquisition strategies and cause developers to bid at lower values for land, and vendors who are not needing to sell, may either hold off bringing sites to the market until RPDT is withdrawn, or consider alternative uses which creates more value. It was felt that this could also have a knock-on impact on UK house prices.

A few respondents did not envisage a significant impact on housing supply, given that there are reports suggesting that existing government measures, such as the Community Infrastructure Levy, have had a limited impact on property supply.

Question 41: Are there other potential impacts on housing supply?

Several stakeholders were of the view that the tax as proposed could reduce the supply of certain types of housing in particular, such as:

- Affordable housing
- Private rented accommodation
- Extra care retirement housing

Designing the tax

Question 42: Is there anything further the government might want to consider in relation to the design of the tax which would help minimise the impact on housing supply? Or other housing policy objectives?

Some respondents suggested that the government should consider the following design features, in order to minimise the impact on housing supply:

- A sunset provision to ensure that the RPDT does not become a permanent feature of the fiscal environment for residential property development
- A retrospective tax deduction or credit mechanism for expenditure on building safety remediation work
- Exemptions for rental, retirement, and affordable housing developments
- A targeted relief for regeneration projects or brownfield areas

Affordable Housing

Question 43: Is there anything the government might want to consider with regards to the impact of the tax on the supply of affordable housing?

Most respondents that responded to questions on impacts commented on the potential impact on the delivery of affordable housing.

Some respondents believed that, by rendering some developments marginal in viability terms, the RPDT could result in a reduction of proportion of affordable housing in future developments as developers would seek to negotiate down the minimum affordable housing requirements with local authorities, in order to maintain margins.

Separately, some respondents expressed a preference for an exemption from the RPDT for not-for-profit registered providers of affordable housing, noting that open market sales are a way to help subsidise development of affordable housing.

Summary of impacts

Question 44: Do you have any comments on the summary of impacts?

Several stakeholders argued that the proposed treatment of BTR under the RPDT may have an indirect equalities impact, because rental properties are more likely to be used by those with protected characteristics, such as women and disabled people, who face barriers renting traditional private rented accommodation.

Some stakeholders have also raised a concern that the RPDT may deter institutional and overseas capital into the UK.

Government response

The government carefully considers the impacts of all tax measures as a matter of course, and the development of the RPDT has been undertaken collaboratively with HMRC and Department for Levelling Up, Housing & Communities, with impacts at front of mind.

The government has considered the issues raised by the respondents about the impacts in designing the tax. It remains the government's intention for the tax to be designed in a way that minimises any detrimental impact on housing supply.

At 4% the government believes the impact of the tax on housing supply will be marginal, and the impact on rents or house prices negligible given that developers are generally price takers.

The government remains committed to its ambitions to increase the number of homes being delivered to 300,000 homes a year by mid-2020s. Earlier chapters in this response document set out the government's intentions on specialist communal housing and BTR development, which will reduce the impact on the availability of these models and the impact on groups who use them.

The government recognises that certainty on the duration of the tax is helpful. It remains the government's intention for RPDT to be time limited and for the tax to be repealed once sufficient revenue has been raised. As with other corporate taxes, annual tax receipts will be included in HMRC's Corporate Tax Statistics publication.

A full Tax Information and Impact Note for the RPDT has been published alongside this document.

List of stakeholders consulted

1. Addleshaw Goddard
2. Anchor Hanover
3. Associated Retirement Community Operators
4. Association of Real Estate Funds
5. Aster
6. Balfour Beatty
7. Barratt
8. BCLP LLP
9. BDO LLP
10. Bellway
11. Berkeley
12. Berg Kaprow Lewis LLP
13. British Property Federation
14. BPHA
15. British Land
16. Broadland
17. British Universities Finance Directors Group
18. Cadogan
19. Catalyst
20. Confederation of British Industry
21. Charity Law Association
22. Charles Russell Speechleys LLP
23. Churchill Retirement Living

24. Chartered Institute of Taxation
25. Clarion
26. Countryside
27. Curo
28. Deloitte
29. End Our Cladding Scandal
30. European Association for Investors in Non-Listed Real Estate Vehicles
31. Ernst & Young
32. Fairview
33. Far East Consortium
34. G15
35. Global Apartment Advisors
36. Galliard Homes
37. Gateley
38. Grainger
39. Grant Thornton
40. Greystar
41. Home Builders Federation
42. Highbury Group
43. Home Group
44. Homes for Scotland
45. Homes for the South West
46. Hyde
47. Intergenerational Foundation
48. Investment Property Forum
49. iQ Student Accommodation
50. JLL

51. John Lewis
52. Keepmoat Homes
53. Kier
54. KPMG
55. L&Q
56. Local Authority National VAT Consultative Group
57. Landsec
58. Law Society of Scotland
59. Legal & General
60. Lendlease
61. Local Government Association
62. Lifestory Group
63. Lloyds Banking Group
64. Lochailort Investments
65. London First
66. Long Harbour
67. Land Promotors and Developers Federation
68. M&G Real Estate
69. Mace Group
70. Macfarlanes LLP
71. Make UK
72. Mayor of London
73. McCarthy Stone
74. MJ Gleeson
75. Moat Homes
76. Morgan Sindall
77. Native Land

78. National Fire Chiefs Council
79. National Housing Federation
80. Osborne Clark LLP
81. Peabody
82. Peel Land & Property
83. Persimmon
84. Pinsent Masons
85. Places for People
86. PwC
87. Quintain
88. Redrow
89. Retirement Housing Group
90. Rippon Homes
91. Robertson
92. RSM
93. Saffery Champness LLP
94. Sage Housing
95. Scottish Federation of Housing Associations
96. Sovereign
97. Taylor Wimpey
98. Thirteen
99. Tilia Homes
100. Travers Smith LLP
101. UK Cladding Action Group
102. Unite Students
103. Urbanest
104. Unibail Rodamco Westfield

105. Vistry

106. Wates Group

107. Watkin Jones

108. Westminster City Council

109. Willmott Dixon

110. Zurich Insurance

20 individuals

HM Treasury contacts

This document can be downloaded from www.gov.uk

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