HM Treasury

HM Revenue & Customs

Reserved Investor Fund

Consultation

April 2023

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Chapter 1
Introduction

1.1 At Budget 2020, the government announced that it would carry out a review of the UK funds regime to consider reforms which have the potential to enhance the UK's attractiveness as a location for asset management and fund domicile, and which would support a wider range of more efficient investments better suited to investors' needs. The review has since delivered a series of initiatives aimed at meeting these objectives, including:

- the launch of the Long-Term Asset Fund (LTAF)
- the introduction of the Qualifying Asset Holding Companies (QAHC) tax regime
- enhancements to the tax regime for Real Estate Investment Trusts (REITs)
- a consultation covering the VAT treatment of fund management fees, to which the government will respond in due course

1.2 As part of this review, the government launched a wide-ranging 'call for input'[1] in January 2021 and – in its February 2022 formal response[2] – set out its intention to progress several other workstreams. This included further work to explore options for the introduction of a new unauthorised contractual scheme, as well as a review of the genuine diversity of ownership (GDO) condition, consideration of further reforms to the REIT regime, and other tax and regulatory proposals.

The case for an unauthorised contractual scheme

1.3 Prior to the launch of the review of the UK funds regime, industry representations suggested that there was a gap in the UK's existing funds range for a new UK contractual scheme that was open to professional and institutional investors, but not available to a broader retail investment market. Representations suggested that this new contractual scheme fund should be unauthorised[3] and open to all asset

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[1] See "Review of the UK funds regime: a call for input"

[2] See "Review of the UK funds regime: a call for input – Summary of responses"

[3] The UK funds regime consists of both authorised and unauthorised fund vehicles, each with different regulatory treatment and a range of possible legal structures. UK funds marketed to the general public in the UK, including retail investors, must generally be authorised and have restrictions on what they can invest in.

classes, although it was expected to be particularly attractive to commercial real estate investors (given that such funds would likely be able to reclaim input VAT charged on management fees).

1.4 In the formal response to the call for input, the government acknowledged industry demand for the fund type and announced its intention to explore options for its introduction.

1.5 The establishment of a contractual scheme, as defined in s.235A FSMA, that is not authorised by the Financial Conduct Authority (FCA) is permitted under the existing provisions of the Financial Services and Markets Act 2000 (FSMA). While such funds established as unauthorised contractual schemes will not be authorised by the FCA, the manager of those funds must be either authorised or registered with the FCA under the Alternative Investment Fund Managers Regulations 2013 (AIFMR).

1.6 Further details of the proposed regulatory treatment of the unauthorised contractual scheme are set out in Annex B.

1.7 Industry responses to the call for input noted the importance of branding and providing a recognisable name for a new contractual scheme. It is anticipated that the new fund would be named the 'Reserved Investor Fund (Contractual Scheme)' or 'RIF(CS)' for shorthand (see 'Chapter 2: Branding' below for more information). For the purposes of this consultation document, it will simply be referred to as the 'Reserved Investor Fund' or 'RIF'.

1.8 The government has been conducting further work, including engagement with the funds industry to develop a suitable tax regime and understand the regulatory requirements for a RIF. It has been suggested that the RIF tax regime should replicate that which applies to Co-ownership Authorised Contractual Schemes (CoACS). This would include simplified capital gains tax rules. However, the government has identified a significant issue related to the treatment of gains arising on disposal of UK property, which may impact on the scope of the RIF proposal.

1.9 If the capital gains tax rules for CoACS were to be replicated for RIFs without any further provisions, in some circumstances it would be possible for a gain to arise on disposal of UK property by a RIF without a non-UK resident investor being liable to tax on that gain. Any RIF tax regime would need specific rules to address that issue, but those tax provisions may be complex. Therefore, the government is considering introducing a 'restricted' RIF. A 'restricted' RIF would only be available in circumstances where there is no risk of loss of tax from non-UK resident investors on disposals of UK property, and in those circumstances the CoACS simplified capital gains rules could be adopted. The government

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Conversely, unauthorised funds generally cannot be marketed to retail investors but have fewer restrictions on what they can invest in. Even when a fund is unauthorised, the manager of that fund must be authorised by or registered with the Financial Conduct Authority (see paragraph 2.2 below).

is also seeking feedback on the more widely available 'unrestricted' RIF which may require more complex tax provisions.

1.10 This consultation is designed to help the government understand whether to proceed with either the unrestricted RIF or a restricted RIF, by seeking views on the design and commercial viability of each proposal, including the potential tax rules and restrictions to address effective taxation of gains on disposals of UK property. This will then inform a final decision on whether to introduce such a fund. If taken forward, the tax regime for a RIF would be legislated for in a Finance Bill, and separate regulatory legislation would be introduced to provide certainty on the rights and liabilities of investors.

1.11 The consultation seeks views on the following areas –

- **Whether the government should introduce the RIF, and if so whether it should introduce the unrestricted RIF or a restricted RIF.** In particular, the consultation invites views on:
    - **Restrictions to the investment strategy and/or eligible investors.** Particularly whether the aims for a new unauthorised contractual scheme can be achieved if the RIF was restricted, either in relation to the assets the fund can invest in, or the type of investors permitted to invest in the fund.
- **The eligibility and notification criteria.**
- **The branding of the RIF**. The consultation seeks views on the proposed fund name: 'Reserved Investor Fund (Contractual Scheme)', or RIF(CS).
- The proposed **design of a new tax regime** for a RIF. It is intended that the tax regime should largely replicate the tax rules for Co-ownership Authorised Contractual Schemes (CoACS).
- The **application of the non-resident capital gains rules** to a RIF. The government is seeking views on options to overcome challenges identified with the non-resident capital gains tax rules.
- The **treatment of unauthorised co-ownership contractual schemes that would not fall within the RIF regime.**

Responding to this consultation

1.12 This consultation will run for six weeks and will close on 9 June 2023.

1.13 The government welcomes contributions from any stakeholders with an interest in the Reserved Investor Fund. Responses should be submitted electronically to UKfundsreview@hmtreasury.gov.uk before the closing date.

1.14 The government may share consultation responses with the Financial Conduct Authority unless otherwise requested.

1.15 Once the consultation has closed, the government will then assess the responses and issue a formal response, including next steps. This response will confirm the government's decision on whether to proceed with the introduction of the RIF, and in what form.

1.16 The government will be consulting relevant stakeholders and interested parties on the proposals through meetings during the consultation period. If you would like to be included in a consultative meeting, please contact us via the email address above before 10 May 2023.

1.17 A list of consultation questions can be found in Annex A.

1.18 Annex B includes a summary of the regulatory treatment of the Reserved Investor Fund.

1.19 Annex C sets out how we will use any personal data provided in response to this consultation and explains respondents' relevant rights under the UK General Data Protection Regulation (UK GDPR).

Chapter 2

Scope of the Reserved Investor Fund

Branding

2.1 Responses to the government's call for input were clear that any successful branding for new structures introduced to fill gaps in the UK's funds offering must clearly signal the legal structure and target investors.

2.2 Industry feedback stated it should also avoid terms such as 'unauthorised' and 'unregulated' because these terms risk confusion – particularly among international investors – by obscuring the fact that the fund manager must be either authorised or registered with the FCA under the Alternative Investment Fund Managers Regulations 2013 (AIFMR).

2.3 The name 'Professional Investor Fund (Contractual Scheme)', or 'PIF(CS)', was initially suggested by industry to reflect the target market of the fund vehicle envisioned at that time.

2.4 However, following the government's scoping work and more recent discussions with the funds industry, the government proposes that the appropriate branding for the new unauthorised contractual scheme should be 'Reserved Investor Fund (Contractual Scheme)', or 'RIF(CS)'.

2.5 The government believes that 'Reserved Investor Fund' would be most appropriate because:

- It more accurately describes the target investors – that is, the investors that the fund is reserved for – because the unauthorised contractual scheme can be promoted not only to professional investors, but also to other investor categories such as certified high net worth investors, certified sophisticated investors, and self-certified sophisticated investors (see Annex B for more information),
- It avoids reference to 'unauthorised' or 'unregulated', and
- It clearly describes the fund vehicle's legal form – contractual scheme – and could easily sit as part of a range of onshore,

unauthorised fund vehicles with different legal forms (if the government decided to explore those).[4]

Question 1: Do you agree that the 'Reserved Investor Fund (Contractual Scheme)', or 'RIF(CS)', is the most appropriate name for the new structure? If you disagree or suggest a different name, please give reasons for your response.

Restricting the investment strategy and categories of investor

2.6 The government is considering the introduction of a RIF which can be promoted to professional and sophisticated investors and has an unconstrained investment strategy. See Annex B for more details on the proposed regulatory treatment.

2.7 However, as explained at paragraph 1.9 and further detailed in Chapter 4, the government needs to address risks related to the wider policy of taxing non-UK resident investors on disposals of UK property. Consequently, the government is considering the case to introduce a RIF which would be restricted in terms of its investor base and/or the assets it can invest in, where there is no risk of loss of tax from non-UK resident investors on disposals of UK property. Current restrictions on scope being considered are that the Reserved Investor Fund regime (including the applicable tax rules) would only be available:

- where at least 75% of the value of the RIF's assets is derived from UK property (so the RIF is 'UK property rich' for the purposes of the non-resident capital gains rules); or
- where all investors in the fund are exempt from tax on gains (for example, certain pension funds); or
- where the fund does not directly invest in UK property, or in UK property rich companies (see Chapter 4), with the possible exception of minor interests in UK property rich collective investment vehicles.

2.8 Further detail on the mechanisms for such restrictions are set out in Chapter 4.

Question 2: Would a restricted RIF add value to the existing range of UK fund structures, particularly compared to a structure without such restrictions? What would the relative attractiveness be of the proposed restrictions to the RIF regime?

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[4] Alongside an unauthorised contractual scheme, respondents to the call for input requested an unauthorised limited partnership and unauthorised corporate vehicle. Together, this range of structures would be named: Reserved Investor Fund (Limited Partnership) / RIF(LP), Reserved Investor Fund (Corporate Vehicle) / RIF(CV), Reserved Investor Fund (Contractual Scheme) / RIF(CS). Industry stakeholders were clear that without a change in the VAT treatment of fund management fees, that the RIF(LP) and RIF(CV) were commercially unviable, whereas the RIF(CS) was still commercially attractive for real estate. Therefore the government did not commit to progressing work on the RIF(LP) or RIF(CV), in the response to its call for input 2.170 – 2.171.

Question 3: Are there investment asset classes besides real estate for which a RIF would be particularly attractive?

Eligibility and notification

2.9 The government proposes that the Reserved Investor Fund should be limited to co-ownership contractual schemes which meet certain eligibility criteria, including a notification requirement.

2.10 As explained in Annex B, the government does not intend to insert a definition of a RIF into the Financial Services and Markets Act 2000 (FSMA). Instead, the government intends to include the eligibility criteria for a RIF in primary tax legislation.

2.11 A notification requirement would allow the government to monitor the RIF population and give certainty of treatment for investors by requiring that the fund specify a date from which it wishes to be treated as a RIF. It would also reduce administration by allowing self-assessment of the eligibility criteria without a formal approval process (although this would be subject to possible HMRC checks).

2.12 The eligibility criteria would contain a definition of a RIF, alongside other criteria necessary to ensure that the RIF aligns with the government's aim of facilitating greater collective investment in productive investment strategies. Therefore, the government expects that the eligibility criteria would, as a minimum, require that a RIF:

- is a 'co-ownership scheme', as defined in section 235A of FSMA, which is not authorised by an authorisation order in force under section 261D(1) FSMA (for completeness, it is not the government's intention to permit a 'partnership scheme', as also defined in section 235A FSMA, to fall within the definition of a RIF).
- is 'UK-based', which would be defined as -
  - the operator and depositary must be bodies corporate incorporated in the United Kingdom, which administer their respective affairs in the United Kingdom (modelled on section 261D FSMA);
  - the operator and depositary must each have a place of business in the United Kingdom (also modelled on section 261D FSMA); and
  - the deed setting out the arrangements which constitute the scheme is governed by the law of England and Wales, Scotland or Northern Ireland and contains a statement to that effect;
- is an 'AIF' (Alternative Investment Fund), as defined in regulation 3 of the Alternative Investment Fund Managers Regulations 2013;
- complies in substance with s.261E(2)-(4) FSMA (see Annex B);

- meets either a GDO condition or non-close test, in each case to be modelled on the tests in Schedule 5AAA of the Taxation of Chargeable Gains Act 1992 (TCGA); and
- has notified HM Revenue and Customs that it wishes to become a RIF and makes a declaration that it meets the above criteria.

2.13 The government is currently undertaking a review of the GDO condition and would expect that policy changes made as part of that review, including those announced at Budget 2023, would be reflected in the eligibility criteria for the RIF.

2.14 If a RIF subsequently ceased to meet the eligibility criteria, then the government proposes that it would lose its status as a RIF. However, the government is willing to consider mitigations where any breach is temporary, for example, where a RIF temporarily breached the non-close test. Please see Chapter 5 for more information.

Question 4: Do you foresee any legal or administrative issues with the proposed eligibility criteria? Would you recommend that the government include additional requirements for an unauthorised co-ownership contractual scheme that wishes to become a RIF? If so, please explain the reasons for this.

Chapter 3
Design of a new tax regime for a Reserved Investor Fund

3.1 This section of the document sets out the design proposal for the tax treatment of a Reserved Investor Fund, should the government decide to proceed with its introduction.

3.2 The government's objectives for the RIF tax regime are:

- Tax neutrality, such that an investor in a RIF will be in a broadly similar tax position as if they had invested in the underlying assets of the fund directly.
- To provide investors with certainty as to their tax treatment.
- To protect against risks to the Exchequer, so any tax rules should:
  - Be compatible with the UK's existing tax regimes (see Chapter 4).
  - Ensure that the UK continues to exercise its taxing rights effectively.
  - Adhere to the government's robust approach on tax avoidance and evasion, and with the UK's international commitments.

3.3 The government's response to the call for input explained that respondents were largely in favour of replicating the tax rules that apply to Co-Ownership Authorised Contractual Schemes (CoACS) for an unauthorised contractual scheme. Officials have reviewed the CoACS rules and the extent to which it is suitable to adopt similar tax treatment for a RIF, as explained in this Chapter and Chapter 2: Eligibility and notification.

3.4 It has been suggested by industry stakeholders that the main use of a RIF would be holding real estate. Therefore, this consultation predominantly considers tax provisions that are relevant for RIF investment in real estate.

Question 5: Are there are there any are specific tax provisions that should be considered to facilitate RIF investment in asset classes other than real estate?

Income and reporting to investors

3.5 A RIF would be structured as a contractual arrangement. It would not be a taxable person for direct tax purposes and consequently, any income received by a RIF would arise directly to investors.

Reporting obligations

3.6 To ensure investors in the RIF have the necessary information to enable them to comply with their tax obligations, it is intended that a RIF would be subject to income reporting obligations which largely mirror those applicable to a CoACS. The operator of the RIF (as defined in section 237(2) FSMA) would be required to provide a report to participants and HMRC for each accounting period.

3.7 The report to investors would need to contain 'sufficient information' to enable investors to complete their income tax filing obligations. The report to HMRC would need to provide the names and addresses of investors, the number and classes of units in the scheme at the end of the accounting period, as well as the amount of income per unit in each class.

3.8 The information report would need to be provided to investors and HMRC within six months of the end of an accounting period and where that requirement was not complied with, it is the government's intention to make the operator liable for a penalty.

3.9 It is also intended that the rules would give HMRC the ability to request further information where necessary to determine an investor's liability to UK tax. For example, it is expected that the rules would state that HMRC will be entitled to obtain the information that the operator was required to provide to participants within 5 years of the end of the accounting period.

3.10 As a RIF would not be an authorised fund, it would not be required to prepare accounts in accordance with the Investment Association Statement of Recommended Practice (IA SORP). Therefore, the government intends to include requirements that the accounting period of a RIF is no longer than 18 months, that the accounts should be audited and that they must be prepared in accordance with the IA SORP or its principles, so far as relating to determining revenue and capital. These provisions are required to ensure that the information given to investors is consistent and provided on a regular basis.

Excess reportable income arising from an investment in an offshore fund

3.11 There are certain rules in regulations 11-13 of the Co-ownership Authorised Contractual Schemes (Tax) Regulations 2017 (SI 2017/1209) which make provisions about a CoACS that is invested in an offshore fund (within the definition of section 355 of the Taxation (International and Other Provisions) Act 2010). The rules are intended to ensure that any excess reportable income (which is the difference per unit between

the offshore fund's reportable income and the income that is distributed) is included as additional income of CoACS investors in proportion to their interests. It is the government's intention to replicate these rules for a RIF.

Question 6: Do you foresee any issues with the government's intended requirements for reporting income to investors, or with replicating the provisions related to excess reportable income arising to RIF investors from an investment in an offshore fund?

Personal Portfolio Bond legislation

3.12 The government is considering including a RIF in the list of property categories at section 520 Income Tax (Trading and Other Income) Act 2005 (ITTOIA 05). This would allow a policyholder to select a RIF within their life insurance policy without the policy being deemed as a Personal Portfolio Bond.

Question 7: Should RIFs be added to the list of permitted property categories at section 520 ITTOIA 2005 and do you consider that the structure and nature of RIFs means that individual policyholders would be effectively prevented from introducing personal assets into their life insurance policy?

Capital allowances

3.13 In order to qualify for capital allowances, a person must own plant or machinery or hold the relevant interest in a structure or building, which a RIF would not do in its own right. Instead, the individual investors would be entitled to claim capital allowances on their ownership share of the RIF's expenditure on an asset, provided the general conditions for claiming capital allowances are met.

3.14 For CoACS, there are rules which allow the operator of the scheme to make an election. This election enables the operator to calculate and apportion capital allowances to investors, which simplifies the process for those investors. The rules are contained within sections 262AA-262AF and 270IC-270IF Capital Allowances Act 2001.

3.15 The proposal for a RIF would be to replicate the existing treatment that is available for CoACS such that the operator of a RIF could make an election enabling them to calculate and apportion the capital allowances to the investors.

3.16 If an existing CoACS converted to a RIF, or vice versa, the election and simplified treatment would continue to apply as if the scheme had carried on in its previous form.

Question 8: Do you have any views on the proposed capital allowances treatment?

Capital gains

3.17 This section of the consultation sets out the intended default capital gains treatment of a RIF. However, this section should be read in combination with Chapter 4.

Investors' capital gains tax position

3.18 On first principles, a RIF would be tax transparent for chargeable gains purposes. For a CoACS, this default position is overridden and an investor's units in the CoACS are treated as their capital gains asset and their interest in the underlying property of the CoACS is disregarded (section 103D TCGA 1992).

3.19 The government intends to apply similar rules to a RIF. However, this is only possible where this does not conflict with the government's policy of taxing non-UK resident investors on gains on disposal of UK property. For more information, please see Chapter 4.

Umbrella Funds

3.20 As a RIF would be an unauthorised contractual scheme established in a co-ownership format, it could be set up as an umbrella fund (that is, a single entity which is divided into several sub-funds). See Annex B for further information.

3.21 The Financial Services and Markets Bill contains a power to enable the government to make regulations that statutorily segregate the assets and liabilities of those sub-funds.

3.22 The government also intends to make provision for a RIF to be structured as an umbrella fund for capital gains purposes by adding the RIF into the provisions in section 99A TCGA 1992. The effect of section 99A is that the umbrella is ignored for capital gains purposes and each sub-fund is treated as a separate and distinct collective investment scheme.

Exchanges, mergers, and reorganisations

3.23 It is anticipated that the rules in Chapter 4 of Part 3 of TCGA that allow certain collective investment schemes to undertake exchanges, reorganisation and mergers with other collective investment schemes without that being a chargeable event for investors would be extended to the RIF. However, the government expects that this would also be impacted by the conclusions reached in respect of the non-resident capital gains rules.

Question 9: Do you have any general comments on the proposed capital gains treatment of investors in a RIF, subject to the detailed questions in Chapter 4?

Provisions for investments by insurance companies

3.24 There are specific capital gains provisions at section 211B TCGA 1992 for insurance companies on the transfer of assets held as part of their long-term business into certain collective investment schemes. In

addition, section 212 TCGA 1992 contains provisions that deem an insurance company to have disposed of and immediately reacquired at their current market value units held in collective investment schemes at the end of each accounting period. In the event that the RIF is introduced, the government's intention would be that units held by an insurance company in a RIF will be subject to similar treatment, as set out below.

3.25 If an insurance company transfers an asset held as part of its long-term business into a RIF in exchange for units in the RIF, then the insurance company will be treated as having disposed of the asset to the RIF. This treatment is on the basis that neither a gain nor loss will accrue to the insurance company, if immediately after the transfer the asset is held in the same category as the original asset (so it is not a 'box transfer'). The units that the insurance company receives from the RIF will be treated as having been acquired for a consideration equal to the amount of consideration used to arrive at the no gain no loss position.

3.26 If an insurance company holds units in a RIF for the purpose of its long-term business then at the end of each accounting period there will be a deemed disposal and immediate reacquisition at market value of the units under section 212 TCGA 1992. The aggregate of the chargeable gains or allowable losses arising from the section 212 TCGA 1992 deemed disposals referable to Basic Life Assurance and General Annuity Business (BLAGAB) will be spread over seven years under section 213 TCGA 1992.

Question 10: Do you have comments on the proposed capital gains treatment for insurance companies?

RIF investments in other fund vehicles

3.27 The government is aware that the manager of a RIF may want to hold one or more interests in other fund vehicles and is seeking views on what tax rules would be required to facilitate this.

Real Estate Investment Trusts (REITs)

3.28 A REIT is required to have its shares listed or admitted to trading on a recognised stock exchange, unless 70% of the shares forming the ordinary share capital are directly or indirectly owned by one or more institutional investors (section 528(3)(b) of the Corporation Tax Act 2010 (CTA 2010)). The relevant rules (section 528ZA(4) CTA 2010) allow indirect ownership to be traced through certain entities, including a CoACS. The government intends to add a RIF to the list of those entities through which indirect ownership can be traced when determining whether a REIT has more than 70% of its shares owned by institutional investors.

Question 11: Would this proposed rule help facilitate a RIF's investment in REITs? Would any further tax provisions be required to facilitate a RIF's investment in other property funds?

Stamp Duty Land Tax (SDLT)

3.29 Stamp Duty Land Tax (SDLT) is charged on the purchase of land and buildings situated in England and Northern Ireland. Responsibility for property transaction taxes equivalent to SDLT in Scotland and Wales are devolved to their national administrations with effect from 1 April 2015 and 1 April 2018 respectively. SDLT therefore does not apply in Scotland and Wales.

3.30 SDLT is a marginal rate tax, with each rate applied to the portion of the purchase price that falls within each rate band. Different rates of charge apply depending on a number of factors, including whether the property acquired is wholly residential or not, whether purchasers of residential property already own other residential property, and whether the purchaser is UK resident or not.

3.31 As a default under existing legislation, SDLT rules would apply to co-ownership schemes which are unauthorised in a number of ways:

- Where the scheme acquires property, in practical terms the property will be acquired by the scheme operator on behalf of the investors. For SDLT purposes however, the purchase may be treated as having been made by the underlying investors on a joint and several basis. Each investor would be obliged to discharge the obligation to file an SDLT return, and each would be liable to account for the resulting tax due. This is administratively burdensome.
- Where property is held by the scheme, any change to investors' entitlements – perhaps through the addition of new investors or existing investors leaving the scheme – may result in a SDLT charge. This is because a change in the ownership of units represents the transfer of a beneficial interest in the underlying property.

3.32 Meeting the liability for SDLT every time there is a change in ownership of units in the scheme would be burdensome to administer and cause complexity for investors. Respondents to the call for input suggested that such complexity with 'dry' tax charges could affect the desirability of the RIF as vehicle for real estate investment.

3.33 To deal with those issues, a number of changes to the SDLT rules would be required, broadly following those which have applied to CoACS since 2016.

Transactions in units

3.34 We would seek to ensure that unauthorised co-ownership contractual schemes (whether qualifying as a RIF or not) would be opaque structures for SDLT purposes, replicating the provisions which also treat CoACS as opaque (section 102A Finance Act 2003). This would ensure that transactions in entitlements or rights within such schemes would not result in any SDLT charge, making them easier to administer and reducing barriers to investment.

Reporting Requirements

3.35 Where an unauthorised co-ownership contractual scheme acquires a property, rather than the investors being responsible for reporting and paying SDLT, that responsibility would fall to the operator of the scheme instead. The investors would still ultimately bear the cost of paying the tax in line with the contractual arrangement that they enter into with the operator of the scheme but shifting responsibility to the operator would reduce administrative burdens. This follows the same treatment which applies to CoACS.

Deeming as a company

3.36 As part of the rules treating unauthorised co-ownership contractual schemes as opaque for SDLT, the fund – or where there is an umbrella scheme, each sub-fund – would be treated as if it were a company for the purposes of SDLT, except in relation to claims to group relief and reconstruction/acquisition reliefs under Schedule 7 Finance Act 2003. This means that where the scheme acquires property from connected parties, SDLT rules charging the transaction to the higher of the consideration given or market value would be engaged (section 53 Finance Act 2003). This follows the same treatment which applies to CoACS.

Seeding Relief

3.37 Where an unauthorised contractual scheme is first seeded with property by one investor and that investor holds all the units in the scheme, no SDLT would be due on the current treatment as the transparent and contractual nature of the scheme means there is no change in effective ownership of the property. If the government were to go ahead with the proposal to treat such schemes as opaque instead, those seeding transactions would then give rise to an SDLT charge based on the market value of the property seeded into the fund.

3.38 As such, the government is considering expanding the existing SDLT seeding reliefs which apply to the seeding of Property Authorised Investment Funds ('PAIFs') and CoACS to the seeding of unauthorised co-ownership contractual schemes which elect into the new RIF regime. As with the existing seeding reliefs, the scheme would need to meet a number of conditions, both at the time of purchase and for a period afterwards.

3.39 These include rules relating to the property portfolio held by the fund, withdrawal of units by seed investors, use of the property acquired by certain individuals, and a targeted tax anti-avoidance condition. The scheme would also need to meet the conditions required for it to be within the RIF regime – an unauthorised co-ownership contractual scheme which was not a RIF would not be able to benefit from any form of SDLT seeding relief.

Question 12: Would the proposal outlined here be a viable option to achieve fair SDLT treatment of property acquired by and held by

unauthorised co-ownership contractual schemes, whether or not they are within the RIF regime

Question 13: Are there any features of the existing CoACS seeding relief that are unsuitable to be applied to RIFs?

Question 14: The length of the control period for PAIF and CoACS seeding reliefs is three years. Would a similar period be appropriate for RIF seeding relief claims?

Stamp Duty and Stamp Duty Reserve Tax (SDRT)

3.40 Stamp Duty and Stamp Duty Reserve Tax (SDRT) are collectively known as Stamp Taxes on Shares (STS).

3.41 The government published a consultation on modernising the STS Framework on 27 April 2023. Dependent upon the outcome of that consultation, it is possible that the final policy design for RIFs may vary from the proposed treatment explained below.

3.42 Stamp Duty is charged on paper instruments that transfer the beneficial interest in stock, marketable securities or interests in partnerships where the partnership assets include stock or marketable securities. SDRT is a tax on agreements to transfer chargeable securities. It is charged on transactions where no physical instrument or document is required to effect the transfer and is predominately (but not exclusively) charged on securities which are transferred electronically.

3.43 'Stock' and 'marketable securities' are defined in section 122 of the Stamp Act 1891. 'Chargeable securities' are defined in section 99 of the Finance Act 1986.

3.44 Under existing legislation, Stamp Duty and SDRT would apply in the normal way to acquisitions of securities by a co-ownership unauthorised scheme. These schemes are transparent for STS purposes, so that the beneficial interest of the underlying scheme property is held by the participants.

3.45 The current treatment would be retained as the default STS position for co-ownership unauthorised contractual schemes that are not RIFs.

3.46 Respondents to the call for input requested that the government replicates the STS rules that apply to CoACS in a new tax regime for the RIF. This would mean that the following transactions would be exempt from STS:

Stamp Duty

- Transfers of securities to a RIF in consideration solely for the issue of units in the RIF (mirroring paragraph 25A(1)(a) of Schedule 13 to Finance Act 1999);

- Transfers of securities between sub-schemes of an umbrella RIF (mirroring paragraph 25A(1)(b) of Schedule 13 to Finance Act 1999); and
- Transfers of units in a RIF (mirroring paragraph 25A(1)(c) of Schedule 13 to Finance Act 1999).

SDRT

- Agreements to transfer securities to a RIF in consideration solely for the issue of units in the RIF (mirroring section 90(7B)(a)(i) of Finance Act 1986);
- Agreements to transfer securities between sub-schemes of an umbrella RIF (mirroring section 90(7B)(a)(ii) of Finance Act 1986); and
- Agreements to transfer units in a RIF (mirroring section 90(7B)(b) of Finance Act 1986).

3.47 As is the case with CoACS, these exemptions would not apply where the transactions formed part of arrangements for the avoidance of Stamp Duty or SDRT.

Reporting Requirements

3.48 RIFs would be transparent for STS purposes. However, the operator of the RIF may account for the duty or tax on behalf of the participants if allowed by the terms of the contractual agreement governing the RIF.

Question 15: Do you foresee any issues with the proposed Stamp Duty or SDRT treatment?

Value Added Tax

3.49 Value Added Tax (VAT) would apply to the management of RIFs as it does to the management of other funds. That is to say that the application of VAT should be determined based on the nature of the individual fund – if an individual fund meets the conditions to qualify as a Special Investment Fund (SIF) for VAT purposes then the provision of management services would be exempt from VAT, otherwise it will be taxable. It is worth noting that there are no current plans to amend Schedules 9 and 10 of Group 5 of the VAT Act 1994 to include a specific reference to RIFs.

Question 16: Do you have any comments on the VAT treatment of the management of a RIF?

Chapter 4

Application of the non-resident capital gains (NRCG) rules to a Reserved Investor Fund

Introduction

4.1 The government wants to ensure that the design of a new tax regime for a RIF is compatible with the purpose and operation of the NRCG rules. The government has become aware of an issue with the interaction of the proposed tax regime for RIFs and the NRCG rules, which is explained at paragraph 4.9 onward.

4.2 Consequently, alongside an 'unrestricted' RIF which may require more complex tax provisions to resolve the issue identified, the government is considering introducing 'restricted' RIFs. A 'restricted' RIF would only be available in circumstances where there is no risk of loss of tax from non-UK resident investors on disposals of UK property.

4.3 The types of 'restricted' RIFs being considered are a RIF:

- where at least 75% of the value of the RIF's assets is derived from UK property (see paragraphs 4.21-4.25) or
- where all investors in the fund are exempt from tax on gains (for example, certain pension funds) (see paragraphs 4.26-4.28); or
- where the fund does not directly invest in UK property, or in UK property rich companies, with the possible exception of minor interests in UK property rich collective investment vehicles (see paragraphs 4.29-4.31)

4.4 This section explains the NRCG issue, sets out the case for 'restricted' RIFs and considers the provisions that might be needed to introduce an unrestricted RIF (paragraph 4.32 onward). More general questions on the commercial viability and appetite for restricted RIFs are included in Chapter 2.

Background to the non-resident capital gains rules

4.5 Finance Act 2019 significantly expanded the UK's base for taxing capital gains made by non-UK resident individuals and companies on UK land and buildings, bringing gains made on all UK real estate within scope, including indirect disposals of UK land (Schedule 1A to the TCGA). An indirect disposal of UK land is brought within scope where there is a disposal of an interest in an entity which derives 75% or more of its value from UK property (known as a 'UK property rich' company).

4.6 The government's policy intention when introducing the NRCG rules was to level the playing field between UK residents and non-UK residents on disposals of UK property. However, it was recognised that the application of the NRCG rules could adversely impact investors in collective investment vehicles with holdings in UK property, either by exposing tax-exempt investors to tax charges incurred within investment fund structures (where such tax would not have been incurred had the exempt investor held the underlying UK property assets directly) or leading to multiple tax charges being incurred in relation to the same disposal.

4.7 In response to these concerns, specific rules were introduced which relate to the application of the NRCG rules to collective investment vehicles (Schedule 5AAA to the TCGA). These rules are consistent with the government's wider policy aim of facilitating the tax neutrality of investment funds, ensuring that investors are taxed in broadly the same way as if they had invested directly in the underlying assets.

4.8 Amongst other things, Schedule 5AAA enables offshore collective investment vehicles meeting certain conditions to make an election to be exempt from NRCG on direct or indirect disposals of UK property. To ensure the UK's taxing rights are preserved, one of the conditions for making such an election is that the offshore collective investment vehicle is UK property rich, which ensures that investors will be liable to tax on gains made on disposals of interests in the collective investment vehicle (unless the investor is exempt from UK tax on gains).

Technical issues related to treating the investors' units as their capital gains asset

4.9 As explained in Chapter 2, the government confirmed through the call for input that the tax rules for a RIF would likely mirror those that apply to CoACS.

4.10 The basic capital gains treatment for CoACS is to treat an investors' units as their capital gains asset and disregard any interest in the underlying property of the CoACS (section 103D TCGA 1992). This treatment is modified for NRCG (paragraph 5 of Schedule 5AAA), so that units in a CoACS are treated as shares in a company for the purposes of determining whether an investor has an interest in a 'UK property rich' company.

4.11 Indirect disposals are only subject to NRCG where an interest is held in a 'UK property rich' company (or an entity that is deemed to be a company, for example, certain collective investment vehicles under paragraph 4 of Schedule 5AAA). If the capital gains tax rules for CoACS were to be replicated for RIFs without any further provisions, in some circumstances, it would be possible for a gain to arise on disposal of UK property by a RIF without a non-UK resident investor being liable to tax on that gain. The reason for this is that a RIF would not be liable to direct taxes, the investors' capital gains asset would be their units in the RIF and if the RIF derived less than 75% of the value of its total assets from UK property then non-UK resident investors would not be liable to tax on gains when they disposed of their interests in it.

4.12 The government has been told that the RIF will primarily be aimed at investment in real estate and in most cases will be UK property rich. However, the government also needs to consider circumstances where a RIF may hold UK property, but not be UK property rich, including situations where a RIF ceases to be UK property rich. In those circumstances, it should not be possible for a non-UK resident investor who would otherwise be liable to UK tax on direct or indirect disposal of UK property to hold UK property through a RIF in a way that would result in no liability to UK tax (either at the investor or the fund level) on a disposal of that property.

4.13 The government has considered whether a RIF could be deemed to be a company for capital gains purposes, so that a non-UK property rich RIF could be brought within charge to tax on gains on disposals of UK land. However, the government's view is that this would materially increase the risk that investors in UK contractual schemes would face difficulty in accessing the benefit of the UK's Double Taxation Agreement network, so that benefits might be denied. For example, this could lead to difficulty in reclaiming relief on withholding taxes applied to dividends paid by non-UK companies, where a UK contractual scheme is used to hold financial assets including equities.

4.14 The risk that capital gains on the disposal of UK property remain untaxed for non-UK resident investors, as explained at paragraph 4.11, would also arise where a CoACS is non-UK property rich. Should it be considered necessary to make any changes to that regime, this would be subject to further consultation.

Question 17: Are there any circumstances other than that outlined in paragraph 4.11 that the government should be considering to ensure that the RIF tax regime aligns with the government's policy of taxing non-UK resident investors on gains on disposals of UK property?

Proposals for a restricted RIF

4.15 The government recognises that complex tax rules would be required to deliver a RIF which can hold UK property while being non-UK property rich and that this may mean that it cannot be designed in a form which provides enough certainty or simplicity of tax treatment

so that it is attractive to investors (see paragraph 4.32 onward). The government is therefore consulting on the possibility of the RIF being restricted to certain limited scenarios.

4.16 There are three options currently being considered for a restricted RIF: a RIF that is limited to being UK property rich, a RIF that is only open to tax-exempt investors, and a RIF that does not invest in UK property. An investment manager could use different restricted RIFs depending on their intended investor base and investment strategy.

4.17 The government recognises that a RIF will have a fixed investment strategy which could be designed to comply with any restrictions. However, rules are needed to deal with circumstances where a RIF breached the restrictions (for example, a UK property rich RIF becoming non-UK property rich). Therefore, restricted regimes would be predicated on the basis that if the restrictions imposed by those regimes were breached, the RIF would become tax transparent for gains permanently. The way in which this would be achieved is by disapplying the provision that treats an investors' units as their capital gains asset (section 103D TCGA 1992). The RIF would instead be taxed in line with first principles – that is, it would be transparent for capital gains purposes on disposals of UK property.

4.18 Transparency for capital gains would have the effect that gains on direct and indirect disposals of UK property would arise to all (UK resident and non-UK resident) investors and they would be within the charge to tax on their share of relevant gains made on disposals of UK property. In this circumstance it is expected the legislation would deem a RIF to be a partnership for gains to ensure that there is certainty on the basis on which gains would be computed.

4.19 Where a restricted RIF which is UK property rich ceased to meet any of the restrictions, the government's proposal is that there would be a provision for a deemed disposal and reacquisition of an investor's units in the RIF immediately before the RIF ceased to meet those restrictions (similar to that in paragraph 22 of Schedule 5AAA) to ensure any untaxed gains during the period in which the RIF was UK property rich do not escape the UK tax net.

4.20 The government would consider some mitigations to deal with minor or temporary breaches to ensure that the RIF remains commercially attractive, and these are explained further below.

Question 18: Would take-up of the RIF be affected, and if so to what extent, if section 103D TCGA was disapplied where a restricted RIF breached a restriction? Are there alternative ways that a breach could be dealt with?

UK property rich RIF

4.21 The government considers that a RIF which is required to be UK property rich (i.e. 75% of the value of its total assets is derived from UK property) would satisfactorily address much of the demand from industry for an unauthorised contractual scheme.

4.22 Where a RIF is UK property rich, a non-UK resident investor would be subject to tax on gains on disposals of units and so there would be no tax risk in treating an investors' units as their capital gains asset (by applying section 103D TCGA 1992). This would align with the government's policy of taxing non-UK residents on gains on disposal of UK property.

4.23 It is expected that rules similar to those for CoACS in Schedule 5AAA (for example, the ability to make an election for a gain to be exempt on disposal of UK property by a wholly owned subsidiary) would be applied to a UK property rich RIF.

4.24 The government considers that a mechanism for minor and temporary breaches of the UK property rich requirement may be required. However, to remove risks to the Exchequer, any grace period would have to be temporary, and it would need to include a condition that no disposals of UK property took place in that period.

Question 19: What, if any, legislative or administrative easements would be required for minor and temporary breaches by a UK property rich RIF?

4.25 The government recognises that this would impose commercial limitations in terms of the RIF's ability to invest in non-UK property or non-property assets, which would need to remain below 25% of the value of its total assets to prevent the RIF becoming non-UK property rich and defaulting to partnership treatment for capital gains purposes.

Question 20: To what extent would such restrictions on a RIF's ability to invest more than 25% of its total asset value in non-UK property, or non-property assets limit take-up?

RIF for investors who are tax-exempt on gains

4.26 This proposal is that a RIF should only be open to investors who are exempt from tax on gains otherwise than by reason of non-residence, similar to an eligible investor in an Exempt Unauthorised Unit Trust (regulation 3 of the Unauthorised Unit Trust Regulations 2013 (SI 2013/2819)). This restricted RIF would remove risks to the Exchequer, as such investors would not be liable to tax on gains on disposal of UK property. Therefore, it would be possible to treat the investors' units as their capital gains asset and disregard any interest in the underlying property of the fund (as in a CoACS) regardless of the assets held by a RIF.

4.27 The admission of an investor who was not exempt from tax on gains would result in a deemed disposal and reacquisition of all investors' units immediately before the ineligible investor was admitted and from that point onward the RIF would be treated as a partnership for capital gains purposes.

4.28 The government recognises that there would need to be a mechanism for unintended breaches, for example where a taxable investor was admitted in error, or where an investor ceased to be tax-exempt. However, to remove risks to the Exchequer, any grace period

would have to be temporary, and it would need to be a condition of the grace period that no disposals took place in that period.

Question 21: What commercial appetite would there be for a RIF that was only open to investors who are exempt from tax on gains?

RIFs where the investment policy is not to invest in UK property

4.29 This proposal is for a RIF that invests in assets other than UK property, such as equities and government or corporate bonds, or non-UK property, but would not be expected to acquire interests in UK property. This restricted RIF would remove risks to the Exchequer, as the RIF would not be invested in UK property and so the NRCG risks should not arise.

4.30 In some circumstances there is a risk that a RIF might acquire UK property despite that not being part of its investment strategy – for example, where a direct lending fund acquires an interest in property on the exercise of security. It has been suggested by some stakeholders that to accommodate this, de minimis holdings of UK property should be permitted. Other than an exemption mirroring paragraph 7B of Schedule 5AAA (which covers certain interests of less than 10% in UK property rich collective investment vehicles), the government is not minded to consider other exemptions as this would put a RIF in a better position than other fund vehicles, including vehicles which have made an exemption election under Schedule 5AAA.

4.31 If, notwithstanding this, a RIF in such a restricted category did acquire a direct or indirect interest in UK land then it is proposed that there would be a deemed disposal and reacquisition of investors' interests and from that point on the RIF would be treated as a partnership for capital gains purposes. This type of restricted RIF may not, therefore, be suitable for (for instance) a debt fund that could inadvertently acquire a UK property.

Question 22: Would there be appetite for a RIF that is restricted from investing in UK property?

Proposal for an unrestricted RIF

4.32 As explained in paragraphs 4.18 and 4.19 above, where a restricted RIF breaches the applicable restrictions on its investment strategy, it would default to being treated as transparent for gains purposes on a permanent basis.

4.33 As an alternative, the government is open to considering introducing a RIF which is unrestricted in terms of both its investment strategy and investor base. However, it is expected that complex tax provisions would be required to deal with a RIF which is non-UK property rich but holds UK property.

4.34 This section of the consultation considers two options for how such tax provisions could be delivered, set out below.

Transparency for gains only at the point of a disposal of UK property, or change in the RIF's investor base (option 1)

4.35 The government considers that one option may be to treat the investors' units in the non-UK property rich RIF as their capital gains asset and disregard their interest in the underlying property of the RIF (by applying section 103D TCGA 1992), except at the point where there was a disposal of UK property, or where there was a change in the RIF's investor base. This would ensure gains on disposal of UK property were liable to tax for non-UK resident investors, as gains on disposal of UK property would arise directly to investors in the RIF.

4.36 This may allow the RIF to pursue a wider range of investment strategies. For example, it may make it possible to set up a non-UK property rich multi-jurisdictional property RIF, or a multi-asset RIF which holds some UK property. The government considers that this may also minimise the administrative burdens of tax transparency for gains, because the non-UK property rich RIF would only have to consider tax on gains when a disposal of UK property occurred, or where there was a change of investors.

4.37 However, the government recognises that computations of gains on disposal of UK property are likely to be complex, particularly in respect of determining an investor's base cost in the UK property asset(s), as an investor's base cost is otherwise in respect of their units in the RIF. Further complexity could also arise where one RIF has an investment in another RIF. It is also expected that the tax rules would need to specify that the operator of the RIF would have the responsibility for providing investors with sufficient information to meet their UK tax liabilities.

Question 23: Do you have any suggestions about how the base cost of an investor should be computed on a disposal of UK property for a non-UK property rich RIF where the RIF was only transparent for gains at the point of a disposal of UK property or where there was a change of investor?

Transparency for gains for the period a RIF is non-UK property rich (option 2)

4.38 A further option is to treat the investors' units in a non-UK property rich RIF as their capital gains asset and disregard their interest in the underlying property of the RIF (by applying section 103D TCGA 1992), except throughout the period the RIF is non-UK property rich.

4.39 This would ensure gains on disposal of UK property were liable to tax for non-UK resident investors for the same reason as explained at paragraph 4.35. For this option, it is intended that transparency for gains would apply to disposals of all assets during the non-UK property rich period. It is also likely that any legislation would deem a RIF to be a partnership for gains purposes for the period it was non-UK property

rich to ensure certainty on the tax treatment of any gains, including where a change in the investor base occurred during that period.

4.40 It would be necessary for there to be a deemed disposal and reacquisition of investors units in a RIF, where the RIF transitions between UK property rich and non-UK property rich. A deemed disposal and reacquisition of investors' units in the RIF would lead to dry tax charges (where a tax charge arises but no cash has been distributed to investors by the RIF to pay that tax charge). The government may consider introducing provisions for deferral of the point at which tax on gains is payable similar to that in paragraph 23 of Schedule 5AAA to address this.

4.41 This option would provide greater flexibility and reduce the likelihood of unintended outcomes where a RIF may be temporarily non-UK property rich. For example, where a RIF intends to be UK property rich but is recently constituted and is in the process of acquiring UK property, or where a UK property rich RIF makes a disposal of UK property and the cash generated from that disposal reduces the value of its assets in UK property below 75% of the value of its total assets, which would make the RIF non-UK property rich. If the RIF were intending to reinvest that cash in UK property, such that it was only non-UK property rich for a short period, applying permanent tax transparency for gains from that point onward could be a disproportionate outcome.

4.42 However, as with option 1, the government expects that complex computations would be required to calculate gains on disposal of the underlying UK property, particularly in respect of determining an investor's base cost in the UK property asset(s), as an investor's base cost is otherwise in respect of their units in the RIF. Further complexity could also arise where one RIF has an investment in another RIF. It is also expected that the tax rules would need to specify that the operator of the RIF would have the responsibility for providing investors with sufficient information to meet their UK tax liabilities.

4.43 It would also be important that if a RIF's status does transition between UK property rich and non-UK property rich that it does not create risks to the Exchequer. Therefore, it may be necessary to introduce a targeted anti-avoidance rule.

Question 24: Do you agree that the RIF would need to be deemed to be a partnership for gains throughout the period it is non-UK property rich to give a basis for capital gains computations if option 2 were applied to a RIF which transitions between UK property rich and non-UK property rich?

Question 25: Do you think that applying option 2 to a RIF that transitions between UK property and non-UK property rich would achieve the government's aim of taxing non-UK resident investors on gains of disposals of UK property?

Question 26: Do you consider that there are any more effective ways by which the government could ensure non-UK resident investors in

a non-UK property rich RIF are taxed on gains on disposal of UK property? If so, please provide a detailed explanation of how this would work, and the advantages and disadvantages of applying a different treatment.

Question 27: To what extent could difficulties with tax transparency for gains be overcome through the way in which the RIF is structured, for instance using a separate class of units or sub-fund in an umbrella RIF to hold UK property?

Question 28: To what extent would transparency for gains mean that a manager would not in practice choose to establish a RIF to hold UK property where it was not anticipated that the RIF would be UK property rich?

Reporting obligations for a RIF on disposals of UK property

4.44 To align with the reporting obligations for a non-UK collective investment vehicle (CIV), the government intends to include provisions that require the operator of a RIF to annually report disposals of UK land and details of the investors in a RIF to HMRC. This would be in addition to the reporting outlined in paragraphs 3.8-3.11.

Question 29: Do you foresee any issues with applying similar reporting obligations to a RIF as those that apply to a non-UK CIV that has made an exemption election?

Chapter 5

Unauthorised co-ownership contractual schemes that do not fall within the Reserved Investor Fund regime

5.1 As explained in Annex B, the government's analysis is that it is already possible to set up an unauthorised co-ownership contractual scheme, although the government is not aware that any such entity currently exists. This section sets out the tax treatment of an unauthorised co-ownership contractual scheme that is outside the RIF regime, which differs dependent upon the relevant head of tax, as explained below.

	Non-RIF unauthorised co-ownership contractual scheme	Reserved Investor Fund (RIF)
Income and gains	Income and gains arise directly to investors in the RIF.	Income arises directly to investors in the RIF. Refer to the Chapters 3 and 4 for capital gains implications
Capital allowances	Investors can calculate and claim capital allowances relative to their proportional ownership of the assets.	The operator can calculate and apportion capital allowances on behalf of the investors.
Stamp Duty Land Tax	Treated as a company	Treated as a company with access to SDLT seeding relief
Stamp Duty and Stamp Duty Reserve Tax	Transparent on first principles	Transparent on first principles, with certain statutory exemptions
Value Added Tax	Supplies made will be subject to the usual VAT rules.	Supplies made will be subject to the usual VAT rules.

5.2 The current proposal is that where an unauthorised co-ownership contractual scheme was within the RIF regime but subsequently fails to meet the eligibility criteria (see Chapter 2: Eligibility and notification) the RIF tax treatment would end immediately, subject to any mitigations. It is intended that there would be a deemed disposal and reacquisition of units immediately before the RIF ceased to meet the eligibility criteria. The summary table above then sets out the tax treatment from that point onward.

Question 30: Do you have any views on the point from which a RIF should lose its status, if it fails to meet any of the eligibility criteria?

Question 31: Do you foresee any issues with the tax treatment of a co-ownership contractual scheme that falls outside both the RIF and CoACS regimes? Should the government consider providing for the treatment of such an unauthorised co-ownership contractual scheme in legislation?

Question 32: Do you have any further views on the viability of the RIF design proposal, not otherwise covered?

Annex A
List of consultation question

Chapter 2: Scope of the Reserved Investor Fund

1. Do you agree that the 'Reserved Investor Fund (Contractual Scheme)', or 'RIF(CS)', is the most appropriate name for the new structure? If you disagree or suggest a different name, please give reasons for your response.

2. Would a restricted RIF add value to the existing range of UK fund structures, particularly compared to a structure without such restrictions? What would the relative attractiveness be of the proposed restrictions to the RIF regime?

3. Are there investment asset classes besides real estate for which a RIF would be particularly attractive?

4. Do you foresee any legal or administrative issues with the proposed eligibility criteria? Would you recommend that the government include additional requirements for an unauthorised co-ownership contractual scheme that wishes to become a RIF? If so, please explain the reasons for this.

Chapter 3: Design of a new tax regime for a Reserved Investor Fund

5. Are there are there any are specific tax provisions that should be considered to facilitate RIF investment in asset classes other than real estate?

6. Do you foresee any issues with the government's intended requirements for reporting income to investors, or with replicating the provisions related to excess reportable income arising to RIF investors from an investment in an offshore fund?

7. Should RIFs be added to the list of permitted property categories at section 520 ITTOIA 2005 and do you consider that the structure and nature of RIFs means that individual policyholders would be effectively prevented from introducing personal assets into their life insurance policy?

8. Do you have any views on the proposed capital allowances treatment?

9. Do you have any general comments on the proposed capital gains treatment of investors in a RIF, subject to the detailed questions in Chapter 4?

10. Do you have comments on the proposed capital gains treatment for insurance companies?

11. Would this proposed rule help facilitate a RIF's investment in REIT? Would any further tax provisions be required to further facilitate a RIF's investment in other property funds?

12. Would the proposal outlined here be a viable option to achieve fair SDLT treatment of property acquired by and held by unauthorised co-ownership contractual schemes, whether or not they are within the RIF regime?

13. Are there any features of the existing CoACS seeding relief that are unsuitable to be applied to RIFs?

14. The length of the control period for PAIF and CoACS seeding reliefs is three years. Would a similar period be appropriate for RIF seeding relief claims?

15. Do you foresee any issues with the proposed Stamp Duty or SDRT treatment?

16. Do you have any comments on the VAT treatment of the management of a RIF?

Chapter 4: Application of the non-resident capital gains (NRCG) rules to a Reserved Investor Fund

17. Are there any circumstances other than that outlined in paragraph 4.11 that the government should be considering to ensure that the RIF tax regime aligns with the government's policy of taxing non-UK resident investors on gains on disposals of UK property?

18. Would take-up of the RIF be affected, and if so to what extent, if section 103D TCGA was disapplied where a restricted RIF breached a restriction? Are there alternative ways that a breach could be dealt with?

19. What, if any, legislative or administrative easements would be required for unintended breaches by a UK property rich RIF?

20. To what extent would such restrictions on a RIF's ability to invest more than 25% of its total asset value in non-UK property assets limit take-up?

21. What commercial appetite would there be for a RIF that was only open to investors who are exempt from tax on gains?

22. Would there be appetite for a RIF that is restricted from investing in UK property?

23. Do you have any suggestions about how the base cost of an investor could be computed on a disposal of UK property for a non-UK property rich RIF where the RIF was only transparent for gains at the point of a disposal of UK property or where there was a change of investor?

24. Do you agree that the RIF would need to be deemed to be a partnership for gains throughout the period it is non-UK property rich to give a basis for capital gains computations if option 2 were applied to a RIF which transitions between UK property rich and non-UK property rich?

25. Do you think that applying option 2 to a RIF that transitions between UK property and non-UK property rich could achieve the government's aim of taxing non-UK resident investors on gains of disposals of UK property?

26. Do you consider that there are any more effective ways by which the government could ensure non-UK resident investors in a non-UK property rich RIF are taxed on gains on disposal of UK property? If so, please provide a detailed explanation of how this would work, and the advantages and disadvantages of applying a different treatment.

27. To what extent could difficulties with tax transparency for gains be overcome through the way in which the RIF is structured, for instance using a separate class of units or sub-fund in an umbrella RIF to hold UK property?

28. To what extent would transparency for gains mean that a manager would not in practice choose to establish a RIF to hold UK property where it was not anticipated that the RIF would be UK property rich?

29. Do you foresee any issues with applying similar reporting obligations to a RIF as those that apply to a non-UK CIV that has made an exemption election?

Chapter 5: Unauthorised co-ownership contractual schemes that do not fall within the Reserved Investor Fund regime

30. Do you have any views on the point from which a RIF should lose its status, if it fails to meet any of the eligibility criteria?

31. Do you foresee any issues with the tax treatment of a co-ownership contractual scheme that falls outside both the RIF and CoACS regimes? Should the government consider providing for the treatment of such an unauthorised co-ownership contractual scheme in legislation?

32. Do you have any further views on the viability of the RIF design proposal, not otherwise covered?

Annex B
Regulatory treatment of the Reserved Investor Fund

B.1 This annex sets out the government's view on some of the non-tax aspects of the RIF, such as its legal basis in FSMA, what it can invest in, and who it can be marketed to.

Legal form

B.2 Although some stakeholders requested that FSMA be amended to permit the creation of RIFs, the government believes that an unauthorised contractual scheme could be established within the existing regulatory framework. The government here takes 'unauthorised contractual scheme' to mean a contractual scheme under section 235A FSMA, that is not subject to an authorisation order by the FCA under section 261D FSMA. These vehicles are available in both co-ownership and partnership forms (and as an umbrella fund if established in the co-ownership form).

B.3 The government notes that even though FSMA is silent on the definition of what may be described as an 'unauthorised contractual scheme', the existing legislative framework does not prohibit the existence of a contractual scheme that is not FCA authorised.

B.4 For example, FSMA defines an authorised unit trust but is silent on unauthorised unit trusts[5], which as a legislative concept is established via their specific tax treatment. However, unauthorised unit trusts are still a widely used vehicle in the investment fund industry. Similarly, the government's view is that the RIF, if it were introduced, is permitted by the existing legislative framework.

Regulatory treatment

B.5 The RIF, as an unauthorised contractual scheme, as per the definition of a co-ownership scheme under section 235A(2) FSMA, would be a collective investment scheme (CIS) under section 235 FSMA.

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[5] Noting that FSMA defines a "unit trust scheme" per s.237(1) FSMA and "an authorised unit trust scheme" per s.237(3) FSMA.

We anticipate that it will be possible to set up a co-ownership scheme as an umbrella fund[6].

B.6 Therefore, a RIF that is an unauthorised contractual scheme established in a co-ownership format could be set up as an umbrella fund.

B.7 As a contractual scheme that is not authorised by the FCA, a RIF would be an unregulated collective investment scheme (UCIS) and an AIF.

B.8 Under the UK's regulatory regime, the manager of an AIF – in this instance a RIF – must be either authorised by the FCA as a full-scope UK AIFM, a small authorised UK AIFM, or registered with the FCA as a small registered UK AIFM.

B.9 Because the RIF would be an unauthorised AIF, there are no direct regulatory limits on the assets or investment strategies that could be pursued by a RIF.

B.10 In terms of structure, the RIF would be available as either a closed-ended or hybrid investment fund structure.

B.11 Finally, in virtue of being established as an unauthorised contractual scheme the RIF is not a company, and therefore cannot list on a trading venue.

Investors in scope

B.12 Should the RIF be introduced, the government is considering applying, in substance, the effect of the provisions set out in sections 261E(2)-(4) FSMA to the RIF. These provisions prohibit the issuing of units in the RIF to anyone other than:

- professional investors,
- investors who purchase units in exchange for a minimum payment of – or property worth – £1 million, or
- investors who already hold units in the scheme.

B.13 Moreover, if units are issued to other types of investors, then the operator is required to redeem those units as soon as practicable.

B.14 Sections 261E(2)-(4) already applies to authorised contractual schemes. Applying the same provisions and restrictions to RIFs will prevent a situation whereby an unauthorised fund vehicle is more

[6] The measure being sought in the Financial Services and Markets Bill 2022 with regards to "unauthorised co-ownership AIFs" will enable provision to be made for such schemes, that is similar to s.261P (1) and (2) FSMA.

accessible to those for whom it would be unsuitable – most importantly retail investors – than its authorised counterpart.

Financial promotions

B.15 As a UCIS, the RIF would be subject to the FCA's marketing rules for Non-Mass Market Investments (NMMI). The NMMI rules apply where an authorised person communicates or approves a financial promotion relating to an NMMI but not if, for example, the financial promotion could benefit from an exemption in the Financial Promotions Order (such as if it were communicated by an unauthorised person) or the Promotion of Collective Investment Schemes Order 2001.

B.16 Under the NMMI any mass marketing of the RIF to retail investors is not permitted.

B.17 The NMMI rules mean that the RIF could be promoted to professional investors, and other investor categories such as:

- certified high net worth investors
- certified sophisticated investors
- self-certified sophisticated investors

B.18 The restrictions of the NMMI rules apply to both primary issuance – that is those investors to whom units are issued by the RIF operator – and to secondary trading – i.e. those who are selling their RIF units to another investor.

B.19 The NMMI rules are set out in the FCA's Policy Statement 22/10 and can be found in the FCA's COBS handbook at 4.12B[7].

Rights and liabilities of participants

B.20 Discussions with stakeholders had highlighted concerns about the rights and liabilities of potential investors. In particular, stakeholders were concerned that under existing FSMA legislation investors' liability would not be limited to the value of the fund. This would impact on demand and likely make the new vehicle commercially unviable. The Financial Services and Markets Bill contains a power to enable the government to make regulations that effectively extend sections 261M-O and section 261P(1)-(2) FSMA to unauthorised co-ownership AIFs, which the RIF is proposed to be, should it be introduced.

B.21 If such regulations were made, effectively extending these provisions, this would be intended to:

[7] See the FCA's 'Conduct of Business Sourcebook' section 4.12B

- Make provision about the contracts and the rights and liabilities of the participants;
- Limit the participants' liability for debts incurred under, or in connection with, contracts which the operator is authorised to enter into on their behalf (the aim of this would be to limit any investors liabilities to the property held by the fund, and to the period that they are a participant in the fund); and
- Provide for the segregation of the liabilities of participants in sub-funds, where the unauthorised co-ownership AIF is constituted as an umbrella. This would mean, for example, that an investor in sub-fund A is not exposed to liabilities in sub-fund B.

Annex C
Processing of personal data

C.1 This section sets out how we will use your personal data and explains your relevant rights under the UK General Data Protection Regulation (UK GDPR). For the purposes of the UK GDPR, HM Treasury (HMT) is the data controller for any personal data you provide in response to this consultation.

Data subjects

C.2 The personal data we will collect relates to individuals responding to this consultation. These responses will come from a wide group of stakeholders with knowledge of a particular issue.

The personal data we collect

C.3 The personal data will be collected through email submissions and are likely to include respondents' names, email addresses, their job titles, and employers as well as their opinions.

How we will use the personal data

C.4 This personal data will only be processed for the purpose of obtaining opinions about government policies, proposals, or an issue of public interest.

C.5 Processing of this personal data is necessary to help us understand who has responded to this consultation and, in some cases, contact certain respondents to discuss their response.

C.6 HM Treasury will not include any personal data when publishing its response to this consultation.

Lawful basis for processing the personal data

C.7 The lawful basis we are relying on to process the personal data is Article 6(1)(e) of the UK GDPR; the processing is necessary for the performance of a task we are carrying out in the public interest. This task is consulting on the development of departmental policies or proposals to help us to develop good effective policies.

Who will have access to the personal data

C.8 The personal data will only be made available to those with a legitimate need to see it as part of consultation process.

C.9 We sometimes issue consultations in partnership with other agencies and government departments and, when we do this, it will be apparent from the consultation itself. This consultation is being issued by HMT in partnership with HM Revenue and Customs (HMRC), so any personal data received in responses will be shared between HMT and HMRC in order to understand who has responded to it.

C.10 As the personal data is stored on our IT infrastructure, it will be accessible to our IT service providers. They will only process this personal data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we hold the personal data for

C.11 We will retain the personal data until the consultation process has been completed and the policy is implemented. After this, we will only retain personal data that is embedded in responses but we will not use it for any unrelated purposes.

Your data protection rights

C.12 You have the right to:

- request information about how we process your personal data and request a copy of it
- object to the processing of your personal data
- request that any inaccuracies in your personal data are rectified without delay
- request that your personal data are erased if there is no longer a justification for them to be processed
- complain to the Information Commissioner's Office if you are unhappy with the way in which we have processed your personal data

How to submit a data subject access request (DSAR)

C.13 To request access to your personal data that HM Treasury holds, contact:

The Information Rights Unit

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

dsar@hmtreasury.gov.uk

Complaints

C.14 If you have concerns about our use of your personal data, please contact the Treasury's Data Protection Officer (DPO) in the first instance at privacy@hmtreasury.gov.uk

C.15 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner at casework@ico.org.uk or via this website: https://ico.org.uk/make-a-complaint .

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk