HM Revenue & Customs

HM Treasury

Taxing gains made by non-residents on UK immovable property

Summary of Responses

Publication date: 6 July 2018

Contents

1. Executive Summary

1.1. Following announcement at Autumn Budget 2017, the UK will significantly broaden its tax base with respect to gains made by non-UK residents on disposals of UK immovable property.

1.2. These changes will level the playing field between UK and non-UK residents investing in UK land, and simplify the current rules.

1.3. Draft legislation for the core provisions is published alongside this response document.

1.4. The draft legislation integrates the core mechanics of the changes this measure brings with a consolidation re-write of Part 1 of the Taxation of Chargeable Gains Act 1992. Aside from the changes for this measure, the changes to Part 1 only re-state the current rules without altering how they work.

1.5. The government recognises the complexity of these rules, and the scale of the changes proposed, and is grateful for the engagement of industry in this consultation. Following publication of this response there will be a period of further technical consultations on the legislation and proposals, and officials will continue to work closely with stakeholders to ensure the rules deliver a robust regime. The changes will be finalised for Budget 2018 and come into effect from April 2019.

2. Introduction

Background

2.1. On 22 November 2017 the government released a consultation document seeking views on proposed rules to expand the UK's tax base with respect to non-UK residents' gains on disposals of interests in UK immovable property.

2.2. The consultation document explained that from April 2019 non-UK residents would be taxed on gains on disposals of interests in non-residential property and disposals of interests in UK property-rich entities, and that the rules would apply to all persons.

2.3. Only those persons who are currently not liable to UK tax on capital gains, for reasons other than being non-UK resident, would be outside of the charge. In this response document, such parties are referred to as 'exempt investors', and this should be taken to include others who are similarly not subject to tax, such as those who benefit from immunity.

2.4. The new rules expand on the current UK rules that tax individuals, trustees, personal representatives, and close companies on disposals of interests in residential land. The consultation noted that the new and old rules would be aligned for a more coherent system.

2.5. The consultation document provided rules for the ways in which a new regime would work, most of which were fixed. Open areas for consultation were highlighted, and the proposals were open to comment where there were clear issues that needed to be addressed.

2.6. Alongside the consultation document a Technical Note was published outlining anti-forestalling rules that would be brought into force to prevent taxpayers moving their investments to take advantage of Double Taxation Treaties where the UK did not have taxing rights over non-UK residents' gains. These rules applied from publication of the Technical Note on 22 November 2017.

Overview of responses received

2.7. The consultation had over 120 responses, with the substantive ones mainly from the advisory profession and representative bodies, with a smaller number of businesses and individuals. Amongst the responses were 46 from individuals responding specifically to Question 8 of the consultation.

2.8. Officials from HMRC and HM Treasury met extensively with industry to establish the impact of the policy and test the rules proposed in the consultation document. The government welcomes the constructive input of industry.

2.9. The vast majority of respondents expressed sympathy with the government's aims of levelling the playing field and simplifying the existing rules affecting non-UK residents in this area. Many of the same respondents were also cautious, however, about the possibility of making the UK commercial real estate market less competitive in terms of inward investment, particularly in creating complex and burdensome rules and creating unfair tax outcomes.

2.10. The direct disposal rules, outlined in chapter 3 of the Consultation, were seen as largely uncontentious. Much more of the focus of the responses was on the indirect disposal rules in chapter 4 of the consultation document, and in particular the complexity of these, and difficulties with applying the 25% exemption and 75% property richness test.

2.11. By far the largest area of focus in technical responses was on the treatment of collective investment vehicles, and of exempt investors such as pension schemes. There was significant concern that investment in UK real estate would be impacted negatively if, under the proposed rules, currently exempt investors were left exposed to tax at lower tiers of investment. Further, responses highlighted that investors in collective investment vehicles were likely to suffer multiple tax charges on the same disposal due to the structures used and commercial practice in this area. It was also highlighted that exempt UK investors, such as UK pension funds, made significant investment in the UK real estate market through offshore funds, and would be impacted in the same way.

2.12. Many advisors expressed concern over the third-party reporting requirement, and how they would establish cases where a transaction was within the rules.

2.13. The responses to the consultation and the government's comments are presented in the following chapter.

Consolidation of Part 1 of the Taxation of Chargeable Gains Act 1992

2.14. In order to deliver on the aim of aligning existing and new rules better, the published draft legislation includes a re-write of Part 1 of the Taxation of Chargeable Gains Act 1992 (TCGA). This integrates the new rules more coherently, as well as consolidating changes made to Part 1 since it was first enacted in 1992.

2.15. Apart from the changes to implement this measure and changes required to bring the existing Non-Resident CGT (NRCGT) rules on certain residential property within the scope of CT from the measure on "Non-resident companies chargeable to income tax and non-resident CGT"[1], the draft is a re-statement of the existing law and makes no change to the way the existing provisions work.

2.16. Approaching the implementation of this measure in this way modernises and simplifies the UK capital gains rules, and addresses structural issues identified by the advisory profession by re-stating the core charging rules positively and in alignment with the new measure.

Calls for a new type of UK fund

2.17. Respondents in the fund industry, particularly from the legal and tax advisory professions, called for a new type of more lightly regulated tax transparent UK

[1] https://www.gov.uk/government/consultations/non-resident-companies-chargeable-to-income-tax-and-non-resident-capital-gains-tax

fund vehicle to attract those currently investing through offshore structures to move their investments to the UK.

2.18. These responses set out issues with current UK funds in terms of set-up and ongoing cost, and requirements that made them unattractive to institutional investors.

2.19. Officials appreciate the views which have been shared on this issue but it is not within the scope of this consultation and it is not being taken forward as part of this measure.

2.20. Respondents said that independent of the issues arising due to this measure, there were still reasons why such a vehicle would be beneficial. There was agreement, however, that a proportionate tax outcome that dealt with unintended tax impacts on exempt investors and double taxation in collective investment vehicles would address their immediate concerns.

Stamp Duty Land Tax and on-shoring

2.21. Some respondents asked whether Stamp Duty Land Tax (SDLT) seeding relief would be given to allow and encourage customers to move their property out of offshore structures and into the UK without incurring SDLT on the transactions.

2.22. It is not the intention of this measure to encourage on-shoring to the UK, but to create a level playing field for offshore and UK investors. Seeding relief is not appropriate in this situation, and the government has no plans to allow it as a part of this measure.

Review of the impact of recent changes

2.23. There was a call from the representative bodies in the real estate sector for a review of the recent changes across all taxes and levies.

2.24. The government keeps all taxes under review, and considers the impact on given sectors of progressive changes to tax and other rules. Officials have an ongoing dialogue with industry on these issues.

3. Responses

Overview

3.1. The following are detailed summaries of the responses to the consultation. Where responses do not apply specifically to any question, they are summarised in the opening section of the relevant chapter heading of the consultation document.

3.2. After covering the questions from the consultation document, there is a section on the interaction between this measure and the consultation that concluded on 1 December 2017 on “Non-resident companies chargeable to income tax and non-resident CGT”.

3.3. At the end of this chapter are comments on responses to the Technical Note on the anti-forestalling rule that accompanied the consultation document.

Responses to chapter 2 – Scope of the measure

3.4. Real estate representative bodies and businesses in the funds industry expressed concern over the impact on inward investment in the commercial market. In particular respondents called for a balance to be drawn between the aims of this measure and the government’s priorities in Investment Management Strategy II[2] regarding collective investment. Particular concern was raised regarding the potential impact on exempt investors and the possibility of them paying tax because of the interactions of the rules.

3.5. The point was made by advisors and UK pension schemes that many UK resident exempt investors use offshore entities and structures to hold UK property investments. A disposal made by such a person would be exempt from gains, so using offshore vehicles is not a means of avoiding tax but facilitating that non-taxability is retained where it is necessary to hold assets in a subsidiary entity or arrangement – such as for collective investment. UK exempt investors are therefore also impacted by this measure.

3.6. Some respondents questioned the timing of the measure.

3.7. Many respondents asked whether existing reliefs and exemptions applying to UK residents would also apply to non-residents – common examples being the Annual Exempt Amount for CGT payers, and the Substantial Shareholdings Exemption, and group transfer rules for CT payers.

Government response

3.8. The government monitors the impact of its policies, and keeps under review the way that they affect particular sectors, including the real estate sector. The government is mindful of the importance of the real estate and collective investment sectors, and their contribution to the UK economy.

[2] https://www.gov.uk/government/publications/the-investment-management-strategy-ii

3.9. The impacts on the collective investments industry and exempt investors, including those who are UK resident, is looked at in more detail under the responses to chapter 6.

3.10. The government recognises that in the past the UK did not exert its full taxing rights with respect to gains on UK immovable property. The government has taken gradual steps to bring non-residents into line with UK taxpayers, and believes now is the time for a comprehensive approach. Allowing rebasing to April 2019 for those gains being brought into charge for the first time, ensures that only the gains attributable to changes in value from that date will be chargeable. This is a proportionate approach which reduces the potential impact on the market.

3.11. Existing reliefs and exemptions will apply to non-residents as they do for residents. This will include, among the other exemptions and reliefs, the Annual Exempt Amount, the Substantial Shareholdings Exemption, and the no-gain/no-loss intra-group transfer rules, which were specifically asked about in responses. In the main, these rules will apply as normal, but in some circumstances it is necessary to achieve the same effect through different mechanics. In any rare cases where there are differences, these are highlighted in the consultation and response documents.

Question 1

Are there any issues specific to non-residents when considering how they fit into the UK definitions of persons chargeable to UK tax (CGT or CT)?

3.12. Respondents in the legal and advisory profession commented that local laws and regulatory requirements may mean that there is doubt as to whether non-UK pension schemes would meet a narrow interpretation of the definition of "offshore pension scheme" in current UK law (within Part 4 of the Finance Act 2004), and thereby may not benefit from the exemption from capital gains for overseas pension schemes (section 271(1A)).

3.13. The respondents noted that this measure had the capacity to bring these non-UK pension schemes into charge for the first time in many cases. The definition and exemption from capital gains for overseas pension schemes not having previously been relevant.

3.14. Many respondents noted that entity classification (whether a given foreign entity type is opaque or transparent for tax) would become more relevant as more entities are brought into the UK tax base, and that HMRC would need to update its guidance.

Government response

3.15. Following this response document HMRC officials would welcome detailed submissions on circumstances where current definitions are insufficient. If these definitions need to be updated this will be approached as part of this measure and with regard to the policy objectives of the exemptions.

3.16. HMRC publishes guidance on entity classification, and lists the general view[3] that HMRC has toward foreign entities. Where an older date is displayed, this is because the classification has been so regarded since then. The views expressed in the list are disclaimed as "general" views, and clearance applications are encouraged for a view on a specific case[4]. Should a sufficient number of clearances be received HMRC will always look to update any relevant guidance.

Question 2

Do you see any issues or complications arising with respect to rebasing which need to be addressed?

3.17. There were two key areas where respondents expressed concerns about the rules as proposed in the consultation document.

3.18. The first was that not allowing a time-apportionment method meant that those who wished to benefit from only being taxed on the gain that accrued from commencement would be forced to get a valuation, which would be costly and in some situations impractical.

3.19. The second was that not allowing any option but rebasing for indirect disposals was disproportionately burdensome. The specific point was made by some that the valuation of a less than whole ownership of a property-rich entity, particularly a marginal interest, is very difficult and costly. Not allowing the retrospective method was intended to prevent situations where the original value was not representative of assets that had been disposed of prior to becoming chargeable in the UK.

3.20. Many respondents also noted that having multiple rebasing points (for ATED-related CGT, Non-Resident CGT, and the new regime) would create complexity, and anything that could be done to reduce this would be welcome.

Government response

3.21. The government recognises the burden on taxpayers in having to obtain valuations, but believes that offering the retrospective basis as an option means those unable to get a valuation can use original cost. Time apportionment is still available on purely residential property disposals, and for commercial and mixed-use property it is likely most taxpayers will obtain a valuation for rebasing to ensure they use the most tax effective calculation method.

3.22. The government recognises that in some circumstances on indirect disposals it will not be practical to obtain a valuation at April 2019, and so will allow the retrospective basis to be used. To prevent this creating significant losses arising from assets that were not in the UK tax base prior to commencement, where the retrospective basis is used on indirect disposals, it will not be able to produce an allowable loss. Not allowing losses that accrued pre-

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[3] https://www.gov.uk/hmrc-internal-manuals/international-manual/intm180030

[4] https://www.gov.uk/hmrc-internal-manuals/international-manual/intm180020

commencement is coherent with the overall policy, and aligns with the treatment of gains.

3.23. Hence in indirect disposal cases the retrospective basis would only be capable of producing a chargeable gain. Any loss would not be an allowable loss.

3.24. The government intends to abolish ATED-related CGT. The reasons for this are outlined in the section on chapter 5. This will simplify the rules.

Responses to chapter 3 – Direct disposals

3.25. The rules for direct disposals follow established rules, and the focus of respondents in this chapter was on whether the existing rules – particularly exemptions and reliefs- would apply equally to non-UK residents as well as to UK residents. As noted in the section on Chapter 2, this is the case.

Question 3

Do you agree with the basic principle that gains on direct disposals within these new rules should be computed using the same computational rules as other chargeable gains?

3.26. All respondents who expressed an opinion on this question agreed that the existing rules should apply.

Question 4

Further to the specific modifications identified, are any other changes needed to recognise differences in how the tax system applies to non-residents?

3.27. Again respondents commonly noted that there would be changes needed to existing provisions to allow non-UK residents to interact with them, including exemptions and reliefs such as the group transfer rules. This point is addressed in the section above regarding chapter 2.

3.28. Several respondents noted that it was unclear whether certain transparent offshore funds, such as property unit trusts, would be treated as transparent or opaque entities for the purposes taxing gains. Given how ubiquitous property unit trusts are, they felt it would be important to clarify this in legislation. Others noted that if transparent offshore funds were treated for gains as opaque and chargeable entities, they should benefit from the same treatment as companies under such rules as the Substantial Shareholdings Exemption and intra-group transfers.

3.29. Some respondents asked whether the option to use rebasing would be lost if a non-resident became UK resident, so that the gain or loss could only be calculated using the original cost.

Government response

3.30. The government intends for officials to explore an elective system for transparent offshore funds to be treated as transparent or opaque entities from the perspective of the non-UK resident investor. This treatment will not disturb the treatment for UK resident investors. This is explored in more detail in the sections on chapters 4 and 6 regarding indirect disposals and collective investment vehicles, and in Annexe A.

3.31. In order not to dis-incentivise on-shoring, the government is content to allow for companies who become UK resident to retain the ability to calculate their gains or losses using rebasing to April 2019.

3.32. This retention of rebasing does not currently apply to those chargeable to CGT. This will continue to be the case.

Question 5

For businesses: Will the proposals for direct disposals mean that your company will now be required to register for UK CT?

3.33. Respondents noted that there was an interaction with the changes to non-UK resident corporate landlords as part of the consultation on “Non-resident companies chargeable to income tax and non-resident CGT”. Many non-UK resident companies who might come within the corporation tax rules because of making a gain within this measure will also be deriving rental income from their UK property investment. Until the other measure comes into effect, they will be separately chargeable to income tax and CGT. Those making a disposal in the tax year 2019-20 (when the new capital gains rules will apply, but they are still liable to income tax on the rental income) will need to register for UK CT for the first time. Some asked that the rules be aligned so that these changes came in at the same time.

3.34. Some respondents also made the point that the guidance would need to be clear on whether a company needed to register for CT when there was no tax due on the disposal (for example, because an exemption applied).

Government response

3.35. The government’s response to the interaction with the measure applying to non-resident corporate landlords is covered toward the end of this chapter.

3.36. Officials will produce guidance which covers when taxpayers need to file returns. There is more on this in the section on chapter 7.

Question 6

For businesses: Will the proposals for direct disposals lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

3.37. The majority of respondents who answered this question said that there would be an increase in costs. Valuations, tax registrations, and restructuring were seen as the one-off costs. Ongoing costs included engagement of advisors with knowledge of UK tax, administration in tracking shareholders and whether they were exempt. Most who commented said that valuation will be the highest cost.

Government response

3.38. The government believes that the rules as outlined will place no more burden on a non-UK resident taxpayer brought into by this measure than is placed on an equivalent UK taxpayer.

Question 7

For individuals: Will the proposals for direct disposals mean that you will be required to pay Capital Gains tax for the first time?

3.39. The small number of respondents who answered this question noted that non-residential property disposals and indirect disposals were likely to bring more people within the scope of CGT.

Responses to chapter 4 – Indirect disposals

3.40. Respondents all considered that this area of the rules outlined in the consultation document presented the most complexity. Many felt that there were areas where changes could be made to reduce complexity.

Question 8

Do you consider that the rules for indirect transactions are fair and effective?

3.41. It was noted by a majority of respondents that exempt investors could be charged to tax at the level of their subsidiary holdings. This is explored in the section on chapter 6.

3.42. Many respondents were concerned by the 'cliff-edge' nature of the 75% property richness test. They noted that fluctuations in the value of property and other assets could lead to cases where an entity strayed in and out of property richness. Some were concerned that real-estate rich trades such as retail and hotel chains and utility companies could fall to be property-rich, or that investors in these trades might be concerned that they were, and be forced to go to lengths to explore the rules and test their situation, often finding that there was no impact.

3.43. To ameliorate this, a number of respondents asked for a trading exemption to make it simple for smaller investors to understand when the rules did not apply to them. They noted that the main policy aim was to tax UK land, not interests in retailers or utility companies.

3.44. Similarly some respondents asked for an exemption for infrastructure, noting how important offshore investment was to the sector. Easements over land for infrastructure, as well as structures themselves such as power plants, were cited as examples where exemption should be given in order to continue to promote investment.

3.45. The majority of respondents also noted that the 25% ownership test is complicated by the look-back elements and the breadth of the connected party considerations. Many questioned why it was necessary to consider those 'acting together', and noted that this concept would be little understood by the target audience of the 25% exemption – i.e. less sophisticated investors.

3.46. A small number of respondents pointed out that the aggregation rules could mean that a person met the threshold for the 25% holding, but did not meet tests for other beneficial rules such as the 10% holding necessary for the Substantial Shareholdings Exemption to apply.

3.47. A small number of respondents pointed out that those using partnerships would be disadvantaged over those using corporate vehicles, or other legal persons or arrangements. The 25% exemption would apply to a disposal made by a person with an interest in a company, and the disposal would only be in charge if the entity were property-rich. In contrast, someone disposing of an interest in a partnership would be treated as making a direct disposal of their interest in any amount of UK property held in partnership without consideration of the other assets of the partnership, and the 25% exemption would not apply.

3.48. Some respondents felt that using the value of the interest in the entity disposed of for calculating the gain was inequitable. Instead, these respondents suggested that the disposal value should be the underlying UK land. The commonly used example was of a company that was only 75% UK property-rich, pointing out that the remaining assets would be charged to UK tax whilst not being the intended target of the measure.

3.49. There were also 46 responses that only addressed this question and commented that the UK-Luxembourg Double Tax Treaty did not allocate the UK taxing rights over UK property-rich entities.

3.50. The following is a quote from all of the 46 responses:

> *"Consideration should be given to potential solutions. These could include one or more of:*
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> - *"The Government announcing that it intends to renegotiate and amend relevant double tax treaties, and that these amendments will not "grandfather" pre-existing structures. Whilst it may take several years for such negotiations to be completed, and amended treaties to be ratified, the mere fact of such an announcement would deter many companies from using such Luxembourg structures.*
> - *"The indirect disposal rules could include a provision similar to section 5A Corporation Tax Act 2009, permitting adjustments to be made where a tax advantage is being obtained by a tax treaty, but that tax advantage is contrary to the object and purposes of the treaty. Any structure that facilitates double non-taxation of gains is contrary to the objects and purposes of a tax treaty.*
> - *"Indirect disposals could be taxed under a new tax (e.g. "offshore property gains tax") - existing UK tax treaties would not provide relief against the new tax."*

Government response

3.51. In looking at the gross asset value of an entity, the 75% property richness test mirrors the provisions in international treaties. A different domestic test would still need to be underpinned by consideration of the Treaty test, to see whether the UK has taxing rights, meaning it would only add complexity to deviate from this. The government also considers that a quantitative test is easier than a qualitative one.

3.52. The government believes that setting the bar at 75% or more of the gross asset value is sufficiently high so as to catch only cases where an entity is, in essence, an envelope for UK land.

3.53. Officials will produce guidance making it clear what level of due diligence is required to assess the property richness test. In many cases, it will be sufficient to look at a balance sheet or similar statement that represent recent valuations of the assets.

3.54. To put the matter beyond doubt, however, and to simplify the rules for smaller investors, the government will agree to add a trading exemption. When a disposal is made of an interest in an entity that is trading both before and after the disposal, as for connected parties under the Substantial Shareholdings Exemption rules, then it will not be considered to be an indirect disposal of an interest in UK land. Officials will need to explore this exemption with stakeholders to ensure it is proportionate and works to exclude only those situations which are not the target of the policy. Although the government does not intend to provide a specific exemption for infrastructure, a trading exemption should also deal with instances where the infrastructure disposed of is in use as part of an ongoing trade being disposed of alongside it in the arrangement.

3.55. A significant part of the reason for the 25% ownership exemption is to exclude investors who have insufficient knowledge of the entity they are invested in to be certain whether it is property-rich. If an investor has less than 25% interest in an entity, they should not need to consider the 75% property richness test. The government recognises that the 25% exemption as set out in the consultation document is complex, and so does not deliver on that objective.

3.56. The government proposes to simplify the main, mechanical test for the 25% exemption so that it will only look back two years, and only considers interests held by the person making the disposal, their spouse or civil partner, any children or parents of the person and their spouse or civil partner, companies the person controls, trustees of settlements the person is a settlor for, and companies connected to one another[5].

3.57. The more wide-reaching test presented in the consultation would be covered by the targeted anti-avoidance rule attached to the indirect disposal rules.

3.58. Rules aimed at preventing disaggregation commonly do not align to treatment of interests when looking at reliefs. The government believes that the revised rules for aggregation address this point sufficiently.

3.59. The government is considering special rules in the context of partnerships and other transparent entities that are collective investment vehicles, and these are covered in the section on chapter 6 and in Annexe A.

3.60. Careful consideration was given between calculating the gain on the basis of the asset disposed of and the underlying land, and the government maintains that the correct approach is to tax the gain on the asset disposed of. Whilst the government recognises the issues noted by respondents, on balance the issues raised by the alternative approach are more problematic.

3.61. A taxpayer has made a disposal of their interest in an entity, and that is the value that they have realised. That value may be affected by other factors aside from the underlying UK property, such as loans or other liabilities and the value of other assets – so to charge the gain on the land could lead to tax

[5] So using a model as under section 286 TCGA, subsection (2) would be limited to direct descendants and antecedents of the person or their civil partner or spouse, and subsections (4) and (8) would not apply.

where no actual value has been realised, or on a greater sum than is in the hands of the taxpayer. Using this value engages existing rules for such disposals, such as those handling sales of shares, rather than needing parallel rules for interests in underlying assets. Further, were a UK resident to make a disposal of an interest in an entity then they would be taxed on the value of that interest, recognising all of the other factors including liabilities and diminution in value of other assets, as well as appreciation and other factors. The 75% property richness test is the means of establishing whether the value of the entity predominantly represents UK land, the value of the interest in that entity is therefore the amount that should be used to calculate the gain.

3.62. To address each of the points raised in the emails from individuals concerned over the provisions of the Luxembourg Treaty:

3.63. The government is in discussion with Luxembourg, and it is always UK policy to pursue the securitised land provision, which allows taxation of indirect disposals of UK land.

3.64. The anti-forestalling rule detailed in the Technical Note that accompanied the consultation document is a rule to tackle treaty abuse in this area, and an ongoing rule to this effect will be in the provisions.

3.65. The government sees no need to create a new tax on gains specific to offshore property gains. Abusive transactions can be tackled with existing anti-avoidance provisions and those that will be included in the new regime.

Question 9

Are any other conditions necessary to ensure the policy is robust in meeting the objective of taxing non-residents on gains on indirect disposals?

3.66. Some respondents asked here for a trading exemption. This point is addressed in question 8.

3.67. Some respondents noted that the 25% test as presented only looked at the disponers immediate interest being disposed of, and not whether they held an effective 25% of the property-rich entity bringing the disposal within the rules. Further, some questioned how the 25% test would interact where a company held a less than 25% interest in a subsidiary in terms of attributing the assets of those subsidiaries when considering the 75% property richness test.

3.68. A small number of respondents gave the example of a taxpayer disposing of a holding company with no assets but two subsidiaries of equal worth, one of which derived 100% of its value from UK property. Using the rules presented in the consultation, the holding company is not property-rich, deriving only 50% of its value from UK property. If the same transaction was undertaken by selling the subsidiaries separately, the taxpayer would be chargeable on the disposal of the property-rich company as it would considered alone. It was noted that there are commercial reasons why the buyer may not want to acquire the holding company, and that the rules should avoid forcing them to structure the deal with one.

Government response

3.69. The government believes that looking at the immediate interest a person has in an entity is the only consideration needed. The objective of the 25% ownership test is to exempt those who are unlikely to know the nature of the underlying assets of what they have invested in. If a person has 25% or more of the interests in an entity, there is an economic bond between those parties and it would be expected that the investor has made that investment in the knowledge of what the underlying assets and income sources of the entity are. Having a test to look at effective control down a chain of entities would also add further unnecessary complexity to the rules.

3.70. The government welcomes the engagement of respondents in this consultation, and the technical feedback that has been provided. Officials have reviewed the responses and this feedback will inform the legislation.

Question 10

For businesses: Will the proposals for indirect disposals mean that your company will now be required to register for UK CT?

3.71. The small number of respondents who answered this question mirrored the answers to question 5.

Question 11

For businesses: Will the proposals for indirect disposals lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

3.72. The small number of respondents who answered this question mirrored the answers to question 6.

Question 12

For individuals: Will the proposals for indirect disposals mean that you will be required to pay Capital Gains tax for the first time?

3.73. The small number of respondents who answered this question mirrored the answers to question 7.

Responses to chapter 5 – Disposals of residential property

3.74. Responses to this chapter focussed primarily on the complexity of ATED-related CGT.

3.75. For the avoidance of doubt, residential property disposals that fall within the existing NRCGT rules will continue to be within that regime, with gains chargeable from 2015.

Question 13

Do you consider that it is right to harmonise ATED-related CGT given the changes proposed in this document?

3.76. There was strong steer from a significant number of respondents that the ATED-related CGT rules were too complex, and seemed unnecessary once this measure comes into force. In particular, the rebasing provisions, and the interaction between ATED-related CGT, Non-Resident CGT, and the new rules, was cited as creating a very difficult system for taxpayers to understand and operate within.

3.77. Respondents were clear that removing the ATED-related CGT rules would be very welcome.

Government response

3.78. The government recognises the complexity that retaining the rules relating to ATED-related CGT would add, and that the new rules would now cover disposals that would otherwise only have been caught under the ATED-related CGT provisions. It is therefore intended that these rules would be abolished.

Question 14

Are there any issues, risks, or complexities created by harmonising the ATED-related CGT rules in the manner proposed, and how can these be addressed?

3.79. Those who responded to this question noted the complexity of the rebasing rules, and the interaction with other provisions such as sections 13, 86, and 87 TCGA which may tax pre-commencement gains. This issue is addressed in the response to question 13.

3.80. Some respondents used this question to ask for clarity on points of the definition of UK land.

Government response

3.81. The government recognises the complexity of this area. Questions of definition will be dealt with on a case-by-case basis, but officials will produce guidance to assist taxpayers, which will rely on existing practice in defining land and other assets for the purposes of capital gains.

Question 15

For businesses: Will the proposals for disposals of residential property mean that your company will now be required to register for UK CT?

3.82. The small number of respondents who answered this question mirrored the answers to question 5.

Question 16

For businesses: Will the proposals for disposals of residential property lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

3.83. The small number of respondents who answered this question mirrored the answers to question 6.

Question 17

For individuals: Will the proposals for disposals of residential property mean that you will be required to pay Capital Gains Tax for the first time?

3.84. The small number of respondents who answered this question mirrored the answers to question 7, but many noted that the tax base already included the majority of such disposals.

Responses to chapter 6 – Collective investment vehicles

3.85. This chapter sought views and detailed input from respondents on the impact on funds with UK real estate investments. The consultation recognised that this was an extremely complex area that would need a significant amount of engagement with industry.

3.86. The points raised in this chapter, and the interactions with the indirect disposal rules in chapter 4, were the greatest focus for the majority of respondents.

3.87. To make the issues clearer, some questions and responses have been incorporated under one heading, looking at chapter 6 and the impact on collective investment vehicles as a whole.

3.88. A number of respondents noted that this was an extremely complex area to cover in the time available, and asked for postponement of the elements of the policy that impact on collective investment vehicles. Whilst the government recognises the importance of carefully navigating the complexities in this area, it would not be beneficial for the market to defer implementation and maintain uncertainty for investors. Continued and timely engagement with industry is essential to ensure that the policy is formed correctly.

Issues identified

3.89. The two issues identified by the majority of technical responses as being of most importance were:

- The impact on exempt investors in offshore funds, where the rules as proposed could cause them to be taxed at the level of subsidiary holdings, and
- The potential for economic double taxation, due amongst other things to the indirect disposal rules, when disposals were made at a lower tier of a fund structure and the proceeds passed up to investors.

3.90. It was highlighted that it was normal for UK exempt investors, such as UK pension funds, to invest using offshore collective investment vehicles; not as a means of avoiding tax, but to retain their tax-free gains status when investing through subsidiary entities. The issues above therefore would also impact on UK exempt investors.

3.91. Underpinning these concerns respondents pointed out the significant level of investment by exempt and other offshore investors in UK commercial real estate. Respondents strongly considered that making the rules complex and creating tax outcomes unequitable with UK funds would have significant adverse impact on investment in UK real estate. This point was linked by some respondents to the government's aims in Investment Management Strategy II regarding collective investment.

3.92. Officials worked closely with stakeholders in industry to look at a range of options to address these issues, with ideas evolving over time with engagement and input. Interactions with the measure on "Non-resident companies chargeable to income tax and non-resident CGT" were also considered.

3.93. The point was made by many respondents that the broad UK policy for investors in UK funds is to tax the investor in a similar manner as would apply if they had invested directly in the underlying assets. The treatment for UK property funds, such as a Real Estate Investment Trust or a Property Authorised Investment Fund, is to exempt the gains on property in the fund itself and where relevant in subsidiaries, and to focus the tax point on the investor when they dispose of their interests in the fund. Thereby gains are recognised only once, and the status of the investor as either exempt or taxable is preserved.

3.94. Many called for parity of treatment between offshore funds and UK funds, noting this as befitting the policy objectives of the measure.

3.95. A further area of concern amongst respondents was that the issues above would be compounded if transparent offshore funds, such as unit trusts, were treated as opaque and taxable entities. It was noted that transparent offshore funds were commonly used within a fund's structure in order to hold a given property, often with another such fund holding those funds, and so on – thereby creating a complex tiered system of entities between the investors and the properties. Such structures were often inherited from previous transactions, building and compounding over time. Unwinding these structures in larger funds would be costly and difficult to administer.

3.96. The application of the 25% test in the context of funds was seen as complex, particularly in tracing ownership through. The five year look-back was also noted as an issue. Where, for the majority of the life of the fund, there may be dozens if not hundreds of investors, at points in the start when the fund was building up, and at the end when closing down, there will be small numbers who may effectively hold greater than 25%.

3.97. A number of respondents also saw that there was a risk that having a 25% exemption for funds would drive the market, leading taxable investors to limit the proportion of their investment, which could in turn lead to difficulties in obtaining sufficient funding. By a similar token, a smaller number of respondents felt that allowing a 25% exemption would undermine the policy entirely with respect to funds.

3.98. The vast majority of respondents did not see an issue with respect to the 75% property richness test as it interacted with collective investment. Typically, UK real estate funds would easily meet the ratio, whilst other types of funds – even pan-European real estate funds- would not come close to meeting it.

3.99. As noted in the introduction, a significant number of respondents highlighted that existing UK fund structures were not attractive to institutional investors for holding of UK real estate – particularly for the joint ventures that make up a significant proportion of the market. This is because they are seen as too costly and administratively burdensome for the investors' needs. This issue is outside of the scope of this consultation and will be considered separately. Respondents agreed that a suitable treatment for offshore funds would ameliorate the immediate need for a new, more lightly regulated UK fund, but saw this as still being a beneficial area to explore in the future.

3.100. In close consultation with representative bodies and advisors, officials looked at the types of structures common in offshore funds dealing with UK real estate. It was identified that the rules presented different challenges to smaller, joint venture fund with institutional investors and fixed life funds than those faced by larger funds, which may have hundreds or thousands of investors, including retail investors, and tend to be perpetual. Further complications arise in definitional terms in that some funds may set out to attract a large number of investors but find sufficient funding with a few; whilst others target a small number of investors but end up being, over time, widely held. Solutions would need to deal with these situations.

3.101. The complexity of the fund structures themselves was also highlighted, with funds commonly employing a range of types of entities – some transparent and some opaque, in multiple tiers. Tracing value through these mixtures of entities was seen by many as challenging or impractical in some cases.

3.102. Some respondents referred to 'The Collective Investment Schemes and Offshore Funds (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2017' (SI 2017/1204), which sets out the capital gains position of UK resident investors in offshore tax transparent funds, and questioned whether this was intended to also be relevant for the purposes of this consultation. These Regulations addressed a number of issues that arose before and separately to the consultation on this measure, and the Regulations were, themselves, subject to extensive engagement with industry. The Regulations are not determinative of the position for non-UK resident investors, and officials will continue to work with stakeholders to develop rules that support the policy intentions of this specific measure, and not related policy.

Solutions proposed

3.103. There was a strong call from respondents for gains by a fund itself being treated as not taxable, and instead charging investors when they realise value.

3.104. The possibility of making this a quid-pro-quo for reporting and other requirements on the offshore fund was recognised by respondents as a proportionate solution that would benefit industry and government, and provide parity between UK and offshore funds.

3.105. Reporting of the investors, their disposals, and the value of the interests in the fund were generally seen as possible to provide, as regulatory and other requirements would mean that this information was regularly updated; but some potential difficulties regarding, for example, nominee holdings and valuations were noted.

3.106. Withholding tax was seen as difficult to administer, particularly given the different rates applicable to different types of investor (exempt and taxable, CGT payers and CT payers, UK residents and non-UK residents).

3.107. Respondents recognised the need not to disadvantage UK funds, or place a lighter burden on offshore funds.

3.108. Many who proposed an exemption at fund level saw this as bringing equivalence with a direct disposal, and noted that the 25% test could therefore be removed.

3.109. Removing the 25% exemption only for funds who agreed to report and thereby received special tax treatment, however, was also seen as an issue that could cause significant problems for fund managers and investors. The option would cause stark disagreement, so that those with sub-25% holdings would not wish to join the reporting regime, whilst many others would value the exemption at fund level. This would cause irreconcilable conflicts of interests between different groups of investors, potentially making agreement to adopt the treatment inaccessible for those who needed it.

3.110. Many proposed that transparent offshore funds, particularly when used for joint venture investments or small groups of institutional investors, should be transparent for capital gains, and noted that this would go some way to addressing the issues identified for exempt investors and double taxation within such funds. Others asked that there be an elective treatment, so that in situations where the investors wished for the fund to act as a reporting and taxable entity, it could do so in order to reduce reporting by the investors and administrative difficulty in changes in investors.

Government response

3.111. It is the government's intention to build on the detailed consultation responses and meetings to explore how best to produce rules that address the two key issues identified: taxation of exempt investors, and multiple taxation within fund structures.

3.112. It is the intention of government that officials continue to engage closely with industry on this extremely complex area, in order to establish whether the revised proposals create any unintended consequences in this area, and to provide a robust set of rules that addresses the issues appropriately.

3.113. The following are core proposals, which industry feedback to officials indicates will go most of the way to addressing the issues:

- Transparent offshore funds will be able to elect for transparency for the purpose of capital gains from the position of a non-UK resident investor (UK investors will retain their current treatment)
- Offshore funds that are not closely held, and which agree to reporting requirements, will be able to elect for a special tax treatment whereby gains by the fund or within its structure will not be taxable, but the investor will be taxed on disposals of their interest in the fund. This treatment would apply whether the fund was transparent or opaque

3.114. There will be situations where exempt investors are involved in structures that do not fit within the definitions above but represent functionally the same intended outcome of joint investment. The government recognises that other solutions will need to be considered in these situations.

3.115. The government recognises that the 25% exemption causes significant problems for the funds industry. There is also a strong argument that such an exemption is not necessary in the context of funds. As noted in the section on chapter 4, a significant part of the reason for the 25% exemption is to remove from charge investors who have insufficient knowledge of an entity they are invested in to assess whether it is property-rich. Those who invest in UK property funds know that they are investing in UK land, and the government believes that they should be within the rules.

3.116. Whist the government recognises that this will bring into charge some people who did not expect to be in scope of the changes based on the consultation document, the government believes this change in keeping with the overall aims of the policy and that it is fair to tax those who invest in UK land in this way. It also addresses issues of complexity in the application of the 25% test to collective investment vehicles, and removes the potential for conflicts of interests between investors.

3.117. The government recognises that there will be some changes necessary to the rules for UK funds, both to accommodate non-UK resident investors in those funds and to ensure parity of treatment between UK and offshore funds. Officials will engage with industry regarding such changes.

3.118. The government recognises the existing policy drivers that led to the current treatment of offshore funds from the perspective of UK resident investors, and does not intend to disturb that treatment. The changes will be with respect to the treatment of non-UK resident investors, and in the main to offshore funds.

3.119. Some further details of the proposals are provided in Annexe A to inform further discussion between officials and industry.

Question 18

Do you agree with the general approach to ownership of non-residential property through CIVs outlined above?

3.120. Responses to this question have been incorporated under the heading for this chapter.

Question 19

Will the proposals for CIVs mean that you will now be required to register for UK tax?

3.121. The small number of respondents who answered this question mirrored the answers to question 5. There were wider concerns regarding the need for multiple entities needing to return gains and register for tax within what was functionally one structure, but respondents recognised that a treatment that looked at the investors in the fund rather than disposals by the fund itself could address this issue.

Question 20

Will the proposals for CIVs lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

3.122. The respondents noted the extreme complexity of the funds business, and that monitoring beyond what was currently required would add to an already significant burden. Any reduction in administrative burden would be welcome.

Question 21

Are there changes needed to the rules for CIVs, particularly around exemptions, to ensure a robust system of taxing non-residents on gains on disposal of interests in UK property?

3.123. Responses to this question have been incorporated under the heading for this chapter.

Question 22

Are there any specific circumstances where the treatment of gains on non-residential UK property should be different to the treatment of gains on UK residential property in the context of a CIV?

3.124. Responses to this question have been incorporated under the heading for this chapter.

Question 23

Do you have any further comments on the taxation of gains on non-residential UK property held through CIVs?

3.125. Responses to this question have been incorporated under the heading for this chapter.

Responses to chapter 7 – Reporting and compliance

3.126. The majority of responses to this chapter focussed on the third-party reporting requirement.

3.127. More widely, those who responded to the other questions generally welcomed using existing methods of reporting and compliance, although in some circumstances noted that reduced reporting may be appropriate.

3.128. Alongside this response the government also publishes its response to the consultation “Capital Gains Tax: Payment window for residential property gains (payment on account)”.

3.129. The government confirms the extension of the current requirement to report disposals. From April 2019 the requirement will extend to non-residential property and indirect disposals.

3.130. For CGT payers, a payment on account will also be required to be made subject to the existing exceptions for those that are within self-assessment or make ATED-returns. However, these exceptions will cease from April 2020, in line with the introduction of a CGT payment on account requirement on all UK taxpayers.

3.131. The draft legislation contains provisions for payment on account within 30 days by CT payers, but this will not be enacted at this time.

Question 24

Do you foresee any difficulties with the reporting requirements for the seller?

3.132. The only area specifically highlighted, by a small number of respondents in meetings, was that establishing the taxable gain in indirect disposals within 30 days would be challenging.

Government response

3.133. Officials consider that by the point a disposal needs to be notified sufficient information should be available to calculate a gain, but welcome further discussion on this point.

Question 25

Do you foresee any difficulties with the charge on the UK group company?

3.134. A small number of respondents noted that consideration should be given to the group relationship, so that minority or joint venture holdings in the UK were not disadvantaged.

Government response

3.135. The government intends for officials to continue to explore this area.

Question 26

Do you agree with the proposal to use the normal CT Self-Assessment framework?

3.136. Some respondents suggested a simplified return for situations where the disposal was a one-off, or otherwise the company did not need to have an ongoing involvement with HMRC or disclose any other income.

Government response

3.137. Officials are considering reporting methods, but it is likely that existing forms and processes will be used.

Question 27

Will the proposed information and reporting requirements lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

3.138. Some respondents asked for a 60 day reporting and payment deadline, to allow for more complex transactions to be returned correctly.

Government response

3.139. The government objective in the area is to, as far as possible, have a single set of rules so that obligations are easy to understand and so as not to advantage one type of taxpayer over another.

Question 28

For third-party advisors: what is the best way to ensure the proposed information and reporting requirements do not lead to an undue increase in your administrative burdens or costs? Please provide details of likely one-off and ongoing costs in respect of any options or proposals.

3.140. There were detailed responses from the advisory profession and their representative bodies on the proposal for a reporting requirement on third-party advisors who were involved in an indirect disposal.

3.141. The concern raised by all respondents in this area was whether they would know whether a given disposal was of a property-rich entity, and whether the 25% test was met with respect to the disponer. This was particularly the case where the UK property was held in a subsidiary entity that was remote from the entity being disposed of in the transaction. It was pointed out that it would also be simple for those seeking to avoid the rules to disaggregate advice so that UK advisors were not aware of the necessary information to report – creating the risk that only the compliant majority would be reported, whilst the intended targets of the rule would remain undisclosed.

3.142. In many cases to reduce risk respondents felt they would need to report on all possible transactions. Some respondents were also concerned that the rules, if not clear enough, could cause difficult interactions with legal professional privilege.

3.143. There was also widely-held concern that all advisors involved in the transaction would report, leading to significant cost across the UK advisory industry and for clients, and an operational burden for HMRC that also failed to provide information reliable enough to use in compliance.

Government response

3.144. The government recognises the challenges that this proposal creates, and that the rules as outlined in the consultation document have the potential to create significant cost, burden, and uncertainty, whilst not meeting the objectives aimed at. This issue must also be considered in the round with the proposed rules to incentivise offshore funds to make reports to HMRC regarding their investors.

3.145. As a consequence there will be no reporting requirement for third-party advisors.

Question 29

What channels and methods should HMRC use to raise awareness of this change in the law, to ensure that affected non-residents will know that they are impacted?

3.146. A minority of respondents addressed this question. Some considered that the changes were significant enough that they would be widely publicised in trade and professional periodicals and would become widely known.

3.147. Others noted that clear guidance and notices on GOV.UK were essential.

3.148. The following suggestions were also made: details of the new rules could be sent with council tax and non-domestic rates notifications at least once a year, possibly targeting those with addresses outside the UK; those already in the UK tax net could be sent notices; HMRC could write to advisors dealing with non-resident clients and invite them to send the information on.

Government response

3.149. The government welcomes the engagement of respondents on this issue, and officials will consider the responses and how best to take forward raising awareness of these changes.

Further responses to the consultation

Changes to treatment of non-resident corporate landlords

3.150. A consultation was released on 20 March 2017 and concluded on 9 June 2017 on “Non-resident companies chargeable to income tax and non-resident CGT”. The response to the consultation is published on GOV.UK[6].

3.151. At Autumn Budget 2017 the government announced that the changes arising from that measure would come into effect in April 2020. This included moving close companies, which are currently chargeable to Capital Gains Tax on disposals of UK residential land, to being chargeable to corporation tax.

3.152. A significant number of respondents asked that the changes should be made at the same time, thereby significantly reducing complexity and creating a more coherent system.

3.153. A smaller number of respondents noted that were the CGT changes to be aligned with this measure, there would be a transitional year in 2019-20 where some companies would be required to file tax returns for both CT and income tax.

Governments response

3.154. Having considered the balance of issues, the government will align the timing of moving closely held companies from CGT to CT to the start of this measure in April 2019. This will prevent the need for complex transitional rules for the year 2019-20.

3.155. Whilst this means that some close companies who make a chargeable disposal in 2019-20 may need to file both CT and income tax returns, the same would be true for widely held companies in any case. This is a circumstantial issue, and will not have the wider impact that a complex transitional period would impose.

Technical note on the anti-forestalling rule

3.156. Two representative bodies and a small number of others questioned whether it was legal for the anti-forestalling provisions in the Technical Note to have effect from 22 November 2017 when there was no accompanying legislation.

Government response

3.157. The government is very conscious that taxpayers are entitled to certainty in relation to the anti-forestalling rule in the period prior to the measure’s enactment, and believe that this certainty is achieved by the description of the rule in both the Consultation Document and the Technical Note.

3.158. The wording as set out in paragraph 19 of the Technical note, is rooted in the internationally agreed principles governing what the OECD Commentary calls

[6] https://www.gov.uk/government/consultations/non-resident-companies-chargeable-to-income-tax-and-non-resident-capital-gains-tax

"improper use of the Convention". This is explored at length in the Commentary to Article 1 of the OECD Model (paragraphs 7 to 26.2 in the 2014 version).

3.159. The wording has also appeared in the anti-forestalling rules for a number of recent measures (see for example, the rule in section 356OK of Corporation Tax Act 2010, and the accompanying commencement provisions in section 80(5) of Finance Act 2016, for the Transactions in Land provisions, and also section 917A Income Tax Act 2007 for the 2016 changes to the withholding tax rules).

3.160. The government believes that in practice, given the motive test, customers will have certainty as to whether actions they undertake could trigger the anti-forestalling rule.

4. Next steps

Further consultation

4.1. Draft legislation has been published alongside this response document covering the core provisions of the policy. A technical consultation will follow based on that draft and the proposals outlined in this response.

4.2. The government will consider the suggestions and recommendations put forward as it finalises the details of the policy.

4.3. Officials will continue to engage with stakeholder groups about the proposals for funds, and on the other changes highlighted in this document.

Finalisation of the policy

4.4. The policy will be finalised in Finance Bill 2018-19, and the changes will come into force in April 2019.

4.5. Officials will develop clear guidance about these changes.

Annexe A: Proposals for treatment of offshore collective investment vehicles

General points

A.1. As far as possible the rules will rely on existing definitions and generally understood principles in this area.

A.2. The proposals below are made at a high level to provide a framework for discussion. Officials will continue to work with industry on the details underlying these points to produce a robust policy.

A.3. The intention of these discussions is to find solutions to the core issues identified in the responses to the consultation on taxation of exempt investors and multiple tax charges in funds. These solutions will aim to deal with the majority of cases.

Transparent offshore funds

A.4. Transparent offshore funds will default to being opaque for tax from the perspective of non-UK resident investors. This will include commonly used entities such as Jersey Property Unit Trusts, which were a particular focus of the responses. They will, however, be able to elect to be treated as transparent. The treatment from the perspective of UK resident investors will not change.

A.5. Transparency would mean that investors in these funds would be treated in the same way as partners in a partnership under the new rules: they would be making a direct disposal of the underlying UK property. The indirect disposal rules would therefore not apply.

A.6. From the perspective of a non-UK resident investor, the acquisition and disposal values would be based on the value of the UK land, not the value of the interest (such as units) in the fund. In many cases these values will be the same, but where units are bought or sold on the secondary market the values may differ. Respondents to the consultation noted that funds will regularly value their property assets, so these amounts should be known.

A.7. Transparent offshore funds will also be eligible for inclusion in the special tax treatment that exempts gains by the fund and structure, and taxes the investors on disposals of their interest in the fund, using the value of the interest rather than the underlying asset.

A.8. Officials will explore any difficulties that arise from the disconnect between the value of the interests and the value of the underlying UK land, as well as any other issues.

Election for special tax treatment

A.9. Offshore funds which are not close and who agree to reporting requirements will be eligible for special exemptions. The extent of the definition of who will be eligible is to be discussed in further consultation. The fund itself will be exempt from gains from direct and indirect disposals of UK property, as will any non-resident entities within its structure that would be chargeable on such gains. Investors will be charged to tax on the gain on their interests in the fund; this will be based on the value of the interests.

A.10. It is proposed that closeness would be defined using a similar requirement as for UK Real Estate Investment Trusts in section 528(4)-(5) Corporation Tax Act 2010, but with necessary modifications to recognise that the fund may not be a body corporate and to address particular issues.

A.11. We recognise that defining the extent of the exempt structure will be difficult in some circumstances. The published draft legislation contains rules for indirect disposals that allow tracing various types of interests in UK land (for example through shares, partnership interests, trusts). These proposed provisions would be used to establish an interest in an entity making a disposal of UK land.

A.12. There will be a minimum interest required in the taxable entity, and exemption of the entity's gain would be proportionate to the level of interest held by the top-level fund. This pass-down exemption would combine with any exemptions from being separately held by exempt investors (explained below). So if an exempt fund held 50% of an entity, and a UK pension fund a further 30%, then 80% of the entity's gain on a disposal of interests in UK land would be exempt.

A.13. The funds must agree to report details of their investors, disposals of interests by the investors, and the value of the interests. In consultation other reporting may be established to be deemed necessary.

A.14. In most circumstances the fund will be required not to make capital distributions to investors. Respondents to the consultation have noted that this is rare, in any case, as it is in the better interests of the investors to reinvest capital to continue to produce income.

A.15. Officials will continue to explore whether it will be appropriate to place a requirement on the fund to withhold tax on certain redemptions. It is recognised that withholding is in most cases counter-productive to the main aims of the proposed exemption; however, it may be beneficial to deal with smaller retail investors through withholding, thereby reducing their need to report and pay tax directly on their gains.

A.16. In certain circumstances the fund may cease to meet the conditions for exemption, or for other reasons the exemption may be withdrawn. This will trigger a deemed disposal and reacquisition of investors' interests in the fund. In some cases, for example where the fund is transparent, it may be appropriate that the reacquisition be of a direct interest in the underlying property. It will be necessary to work through examples to establish the correct outcomes.

A.17. It will also be necessary to trigger a deemed disposal and reacquisition where a fund, such as a fixed-term fund, begins to close down. This close down is facilitated by liquidation of the UK land assets in order to fund redemption of the interests of investors. After liquidation of the UK land, the UK will cease to have taxing rights over the investors' interests, as they will no longer be in a UK property-rich entity. Having exempted the gains on the disposals of the property, it will be necessary to ensure that the exemption does not completely remove the UK's right to tax the gains by triggering a deemed disposal and reacquisition of the interests at an appropriate point in the process.

A.18. Other interactions with the UK's Tax treaties will need to be considered.

A.19. Reporting mechanisms for funds will need to be explored.

A.20. UK resident investors will continue to have the current treatment provided. There are strong policy reasons not to disturb this treatment.

Entities not meeting the definition of offshore funds held by exempt investors

A.21. There will be situations where exempt investors hold UK land though non-UK resident taxable entities and those entities will be taxable on gains, but the entity is not an 'offshore fund', nor sits within the structure of one.

A.22. This practice is undertaken to facilitate non-taxable status when investing jointly. In creating a charge on the non-UK resident entities, this facility to preserve non-taxable status is removed.

A.23. It is not the intention of this measure to extend exemption in all cases where an entity is held by exempt investors, but officials will seek to consider with industry the wider space of joint investment and the impact on exempt investors and others in structures that invest predominantly in UK land but are not funds.

A.24. Proposals have been made by respondents to deal with these wider scenarios, including a pass down exemption (modelled on the rules for Qualifying Institutional Investors in the Substantial Shareholdings Exemption rules in Schedule 7AC to TCGA, but applying to direct disposals of UK land rather than ordinary share capital), and systems whereby tax paid by entities at lower tiers could be reclaimed by exempt investors. There are recognised issues with both of these methods, such as the need to change existing terms of ongoing arrangements, and these will also be considered.

Annexe B: List of stakeholders consulted

Overall there were 122 written responses to the consultation, including 46 received from individuals as part of a campaign. The responses outside of the campaign were roughly split evenly between advisors, businesses, and representative bodies; with a small number of individuals writing in a personal capacity.

Of the respondents from the advisory profession most were legal advisors, with the balance being accountants, and tax and financial advisors; many also wrote in their capacity as fund and asset managers. The business respondents were a mix: mainly in the fund and asset management sector with particular focus on real estate, and a smaller proportion of insurers and pension funds. The representative bodies mirrored the business respondents and advisory bodies. There were responses from several parties based outside the UK, as would be expected.

HMRC and HMT also attended fifteen meetings to discuss the policy, including six group sessions and one plenary event. These mainly occurred before the consultation deadline, with some after. Meetings and correspondence continue.

The following parties responded to the consultation:

Aberdeen Standard Investments,
Aprirose,
AREF,
Ashurst LLP,
The Association of British Insurers,
The Association of Investment Companies,
The Association of Real Estate Funds,
The Association of Taxation Technicians,
AustralianSuper,
Aviva,
Aztec Group,
BDO LLP,
Berwin Leighton Paisner,
BlackRock,
Blick Rothenberg,
British Columbia Investment Management Corporation,
British Land,
British Private Equity & Venture Capital Association,
The British Property Federation,
BT Pension Scheme Trustee Ltd,
Chartered Institute of Taxation,
City of London Law Society,
CMS Law
Commerical Estates Group Ltd,
CREFC Europe,
D&G Asset Management,
Deloitte LLP,

DKS Accountants,
Ernst & Young LLP,
Eversheds Sutherland,
Forsters LLP,
Fried, Frank, Harris, Shriver & Jacobson LLP,
FTI Consulting,
Gary Richards,
The Global Infrastructure Investor Association,
Goodman Group,
Grant Thornton,
HB Reavis,
ICAEW,
ICAS,
The Investment Association,
Investment Management Limited,
The Investment Property Forum,
Ivanhoé Cambridge,
Jersey Finance,
Jersey Funds Association,
John Frobes Consulting LLP,
Kingston Smith LLP,
KPMG,
The Law Society of England and Wales,
The Law Society of Scotland,
Legal and General Group PLC,
M*G/Prudential Investments,
Macfarlanes LLP
Mazars LLP,
Mishcon de Reya LLP,
Moore Stephens LLP,
OMERS/Oxford Properties Group,
The Ontario Teachers' Pension Plan,
Osborne Clarke LLP,
Penningtons Manches LLP,
Pension Insurance Corporation,
Pension Investment Association of Canada,
Prestbury Investment Holdings LLP,
PricewaterhouseCoopers LLP,
Reed Smith LLP,
RICS,
Ropes & Gray,
SANNE Group,
Schroders,
Simmons & Simmons LLP,
Squire Patton Boggs (UK) LLP,
STEP,
TH Real Estate,
TheCityUK,

Travers Smith LLP, and
Unite Students