UNITE STUDENTS

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HM Treasury
By email (capitalgains.taxteam@hmrc.gsi.gov.uk)

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Dear Sirs

**Consultation on implementing a capital gains tax charge on non-residents**

Unite Students welcomes the opportunity to provide you with our response to the proposals set out in the consultation document "*Implementing a capital gains tax charge on non-residents*" published in March 2014. We are the UK's leading provider of purpose built student accommodation ("PBSA"), providing a home to 41,000 students in over 120 properties across 23 of the UK's strongest University cities. Unite supports the Government's plans to ensure that any UK tax introduced is fair, sustainable and simple, and notes that the consultation document seeks to tax non-residents making gains on UK residential property in a comparable way to UK residents.

However, we note two areas of the consultation which have generated significant uncertainty for commercial and institutional investors in the PBSA sector.

- Firstly, it is unclear to us why the Government's policy appears to treat PBSA differently from other forms of "communal" property such as halls of residence, boarding schools and nursing homes.

- Secondly, it is unclear to us if the Government's policy is to tax non-resident individuals (or small groups of non-resident individuals) or all investors in UK residential property which would include large commercial and institutional investors.

The consultation document indicates that the Government's policy is to produce a level playing field between UK and non-resident owners of UK residential property in relation to UK tax on its disposal. The fact that exclusions are proposed for "halls of residence for students in further or higher education" and diversely held funds suggests that the Government is not inclined to extend these measures to all disposals of student accommodation.

However, the proposed exclusion for "halls of residence attached to an institution" introduces uncertainty, complexity and unfairness. If PBSA does not fall within this exemption, a "institution" will be able to offer a more attractive investment opportunity over a PBSA provider, as the former will not be subject to UK tax on disposal. Furthermore, PBSA providers may try to ensure that their properties fall within the definition of a "halls of residence attached to an institution"; potentially skewing physical design and operating contracts with qualifying bodies.

We infer from the Consultation Document that the Government does not want an exemption to exist from the new CGT charge for residential property purely on the basis that it might be occupied by students as this could include part of the buy-to-let market. We believe that this is appropriate because the Higher Education market, which is critically important to the UK economy, is dependent on the quality of accommodation provided, which can best be achieved by large scale professional providers. The PBSA providers have supported the growth in the Higher Education sector, by accessing different pools of private capital to facilitate the building of modern, purpose built residences to accommodate domestic and international students. It is extremely important that the

definition for the exclusions for student accommodation is wide enough to differentiate normal student housing from PBSA, and the diversity of ownership test is properly drafted to include inadvertent funds so that institutional investment is not diverted from this important sector.

**Purpose Built Student Accommodation**

The PBSA sector constructs and manages student accommodation in a way unlike other residential lettings. Investment in this sector is typically by institutional investors (such as pension funds and life companies) or sovereign wealth funds that treat the investment as they would any other real estate in their portfolio. The property is owned, either directly or through a fund vehicle, in order to produce a reliable income return and capital appreciation.

If the Government's policy intention is to tax the sale of "student houses" owned by non-residents, we believe this should be clearly incorporated into the definition of residential property with the proposed exclusion for halls of residence to be extended to include PBSA.

A possible approach for achieving this could be to replace "hall of residence attached to an institution" with "student hall of residence or similar building that is designed or adapted to provide residential accommodation for students".

An alternative approach would be to move away from trying to define end use as student accommodation and instead focus on the nature of the transactions that include multiple residences. We understand that the Government does not want to exclude from the new charge the disposal of multiple dwellings in a single transaction, however, we ask that this is reconsidered in the case of student accommodation. The sale of six or more "student accommodation" dwellings in a single transaction between the same two parties could be treated as non-residential for the purposes of the proposed charge. This could be based on existing SDLT legislation (for example, FA 2003 s116 (2)(b) and (3)(b) could be used in conjunction with s116 (7) to identify the sale of large blocks of student accommodation).

The use of well understood and accepted SDLT principles would align the treatment of direct tax charges for PBSA with the SDLT legislation providing for a simpler regime in line with the Government's objectives.

**Non-resident institutional investors**

We would welcome clarity on the Government's policy objective with regard to the non-residents intended to be within the scope of any new charge.

The consultation document sets out, at 2.8, the Government's intention to tax non-resident entities, as it is noted that "... many alternative forms of property ownership are open to non-resident individuals who do not want to own their UK residential property directly."

We believe that this is fundamentally different from institutional and commercial investors buying into real estate portfolio vehicles made up wholly, or in part, of residential property. Indeed, it is not practically possible for these investors to hold real estate directly and therefore, they must invest via an ownership entity.

Non-resident unit trusts and companies are often used as investment vehicles for UK property (including residential portfolios). These funds attract investment from (amongst others) UK pension funds and overseas commercial property investors. If these vehicles were included within the scope of the proposed charge, they would become immediately unattractive to UK exempt bodies. A withdrawal of this amount of capital overnight would be extremely damaging to UK residential

property and student accommodation both of which, we understand, is a sector in which the Government is proactively trying to encourage investment.

We support the Government's proposal to exclude funds that meet a Genuine Diversity of Ownership ("GDO") test and believe that this principle should be extended to all ownership entities ensuring that it is possible to look through to the ultimate investors when determining how to apply any such test.

For closed ended funds, we believe that this can be achieved through the "close company" rules (CTA 2010 s439) combined with the "institutional investor" in the REIT rules (CTA 2010 s528(4)). Where an entity is determined not to be closely held by virtue of these combined tests, it should be outside the proposed charge. Again, the use of well understood and accepted principles would align the treatment of the proposed charge with other parts of the tax code providing for a simpler regime in line with the Government's objectives.

**Consultation questions**

1) *Would an exclusion of communal property from the scope of the new regime result in any unintended tax consequences?*

   Please see our comments above. We would welcome confirmation that PBSA is considered to be communal property for the purposes of the proposed charge.

   Alternatively we suggest that the sale of six or more "student accommodation" dwellings in a single transaction between the same two parties is treated as non-residential for the purposes of the extended CGT regime.

2) *Are there any other types of communal residential property that should be excluded from the scope?*

   Not that we are aware of.

3) *Are there any particular circumstances where including non-resident partners in the scope of the charge might lead to unintended consequences?*

   Provided that non-resident partners are taxed as if they held the property directly, we are not aware of any adverse consequences that may arise. It will be important that any exemptions that would apply to direct ownership of the property would equally apply to partners in a partnership.

4) *Are there any particular concerns where including non-resident trustees in the scope of the charge might lead to unintended consequences?*

   The consultation does not appear to consider non-resident unit trusts. For the purposes of capital gains, unit trusts are treated as companies. As such, the unit trust itself (rather than the unitholders or trustees) are subject to tax on their capital gains (where appropriate). Taxing non-resident trustees of unit trusts would have a significant and detrimental impact on the UK real estate investment market. Within the funds we manage, there is approximately £1bn of investment provided by UK tax exempt investors. If these funds were to become taxable there would be a significant risk that this equity would be withdrawn from the UK residential sector.

5) *Is a genuine diversity of ownership (GDO) test an appropriate way to identify funds that should be excluded from the extended CGT regime, and to ensure that small groups of connected people cannot use offshore fund structures to avoid the charge?*

We support the Government's proposal to exclude funds that meet a Genuine Diversity of Ownership ("GDO") test and believe that this principle should be extended to all ownership entities ensuring that it is possible to look through to the ultimate investors when determining any such test. We believe that this can be achieved through the "close company" rules (CTA 2010 s439) combined with the "institutional investor" in the REIT rules (CTA 2010 s528(4)).

6) *Are there any practical difficulties in implementing a GDO test?*

It is not possible to comment on any practical difficulties in implementing a GDO test without knowing the details of the proposed test(s). In order to maintain a simple regime in line with the Government's stated objectives, it is imperative that entities are able to assess whether they meet the test or not easily and with certainty.

7) *Is there a need for a further test in addition to a GDO? If so, what would this look like and how would it be policed?*

It is not possible to comment on the need for an additional test without knowing the details of the proposed first test(s).

8) *What are the likely impacts of charging gains (and allowing losses) incurred on disposals of residential property by non-resident property companies that are not already operating a trade in the UK?*

It is hard to consider the impact of charging gains when a non-resident company disposes of a residential property as we are not clear what the Government is trying to achieve. Paragraphs 2.24-2.32 are ambiguous and seem to confuse two very different types of corporate vehicle in our opinion;

- An individual owning a property using a corporate "envelope", and
- Institutional and commercial investors buying into real estate portfolio company

In the second case, the property is owned through a company in order to allow multiple investors access to a portfolio of property designed to produce a reliable income return and capital appreciation. This portfolio could include commercial, residential, PBSA and indeed other forms of "communal use" property such as nursing homes.

The impact of imposing a charge on non-resident companies in the second case could distort investment into the UK away from residential or mixed property portfolios.

9) *Are there other approaches that you believe would be more appropriate to ensure non-resident property investment companies and rental companies are subject to UK tax on gains that they make on disposals of UK residential property?*

We consider the proposed GDO test will achieve the aim of taxing non-resident individuals (or small groups of non-resident individuals) without distorting institutional and commercial investment into the UK property market.

10) *Are there any particular circumstances where changing the PPR election rules might lead to unintended consequences?*

We have no comment to make in relation to this question.

*11) Which approach out of those set out in paragraph 3.5 do you believe is most suitable to ensure that PPR effectively provides tax relief on a person's main residence only?*

We have no comment to make in relation to this question.

*12) Are there any other approaches that you would recommend?*

We have no comment to make in relation to this question.

*13) Do you believe that solicitors, accountants or others should be responsible for the identification of the seller as non-resident, and the collection of the withholding tax? If not, please set out alternative mechanisms for collection.*

We consider a responsibility for another party to collect tax in relation to this charge to be excessively burdensome, potentially complex and practically difficult to achieve. If the Government decides to impose some form of withholding tax, we believe it should be implemented as an extension to the Non-Resident Landlord's Scheme. This would allow non-residents selling residential property to apply to HMRC to receive the proceeds gross of tax.

*14) Are there ways that the withholding tax can be introduced so that it fits easily with other property transaction processes?*

Please see out comments in relation to Question 13.

*15) Do you think that the Government should offer the option of paying a withholding tax alongside an option to calculate the actual tax due on any gain made from the disposal, within the same time scales as SDLT?*

Please see out comments in relation to Question 13.

*16) Is it reasonable to ask non-residents to use self assessment or a variant form to submit final computations within 30 days? If not, what processes would be preferable?*

Please see out comments in relation to Question 13. A deadline of 30 days is unrealistic. Returns should be submitted in line with the current filing requirements.

**About Unite Students**

Unite Students is the UK's leading provider of student accommodation, providing a home to 41,000 students in over 120 properties across 23 of the UK's strongest University cities.

We work closely with our University partners to ensure we are providing a great student experience and are able to support their offering to students from the UK and internationally. The Higher Education sector is a critical component of the UK economy, contributing £17.5 billion annually with student expenditure supporting 830,000 jobs.

Students living in our high-quality buildings are provided with well-located, safe accommodation that is close to university campuses, transport and local amenities providing them with the best opportunity to succeed whilst at university.

Over our 23 year history, we have invested over £2 billion into the construction/refurbishment of purpose built student accommodation and provided homes for over 500,000 students. We are

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currently planning to spend a further £400 million on the construction of new accommodation over the next five years.

We are a FTSE 250 company listed on the London Stock Exchange. We are focused on providing attractive returns for our investors, while balancing investment in customer service, our operating platform and future development opportunities.

Unite Students is also a manager and investor in two specialist funds and joint ventures:

- UNITE Student Accommodation Fund (USAF) and
- London Student Accommodation Vehicle (LSAV)

In 2012 we set up our own charitable trust, The UNITE Foundation, which provides bursaries for disadvantaged students and supports several organisations that support widening access to higher education, integrating students into the community and promoting employability.

We are committed to having a positive impact on the communities in which we operate and in 2012, we won the South West Business in the Community (BITC) Carbon Reduction Award for our environmental initiatives. We were also recognised as the residential regional sector leader for sustainability by the Global Real Estate Sustainability Benchmark (GRESB).

Yours faithfullv