# Reserved Investor Fund

## Summary of responses

March 2024

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# Chapter 1
# **Introduction**

## Background

1.1 At Budget 2020, the government announced a wide-ranging review of the UK's funds regime, covering both tax and relevant areas of regulation. As part of this review, the government launched a 'call for input[1]' in January 2021 – and in its February 2022 formal response[2] set out an intention to progress several workstreams.

1.2 One of the proposals put forward by respondents to the call for input was for the introduction of an unauthorised contractual scheme. It was suggested that this new fund would fill a gap in the current UK funds range for an onshore lower-cost alternative to existing fund structures. Consequently, the government committed in its response to explore options for the introduction of such a fund.

1.3 Subsequent work on the possible scope and taxation of a UK unauthorised contractual scheme led to proposals for such a scheme – branded the 'Reserved Investor Fund (Contractual Scheme)', or RIF(CS) – and this was set out in a consultation document[3] published at Tax Administration and Maintenance Day on 27 April 2023.

## Policy design

1.4 The government set out to develop a UK unauthorised contractual scheme which would meet industry demand for a flexible, low-cost unauthorised fund vehicle.

1.5 The government is clear that any changes will be supportive of the UK's commitment to uphold the highest standards of regulation, supervisory oversight, and investor protection. The government recognised in the call for input that the UK's robust regulatory regime and its commitment to upholding these standards are among its key strengths in financial services, including funds.

1.6 The government's goal is for investment fund taxation to be non-distortive, and tax neutral, such that an investor investing through a fund will be in a similar tax position to if they had invested in the underlying assets of the fund directly. The government's intention, where reasonable to do so, was to replicate the tax rules which apply to Co-ownership Authorised Contractual Schemes (CoACS) in

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

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

[3] See "Reserved Investor Fund - Consultation"

acknowledgement of the fact that CoACS are familiar and well understood by industry. The government has also assessed how comparable unauthorised structures from other jurisdictions operate.

1.7 Due to issues identified with the non-resident capital gains (NRCG) tax rules, the consultation proposed introducing a series of "restricted Reserved Investor Funds (RIFs)". A restricted RIF would only be available in circumstances where there was no risk of loss of tax from non-UK resident investors on disposals of UK property, and in those circumstances the CoACS simplified capital gains rules could be adopted. The government also sought feedback on an "unrestricted RIF" which would be more widely available but may require more complex tax provisions for capital gains. The government's aim was to give stakeholders the fullest choice of options to consider, and the consultation sought views on the design and commercial viability of each proposal.

1.8 This summary of responses details the feedback received across the different areas covered by the 2023 consultation. It also sets out how the government intends to proceed in each of these areas. The government will begin legislating for the RIF in the Spring 2024 Finance Bill.

# Chapter 2
# Summary of responses

2.1 The consultation asked 32 questions on the scope and taxation of a new Reserved Investor Fund. The consultation sought views across the following areas:

- Whether the government should introduce the RIF, and if so whether it should introduce the unrestricted RIF or a series of restricted RIFs
- The eligibility and notification criteria
- The branding of the RIF
- The proposed design of a new tax regime for a RIF
- The application of the non-resident capital gains rules to a RIF
- The treatment of unauthorised co-ownership contractual schemes that would not fall within the RIF regime.

2.2 There were 37 responses to the consultation.

## Scope of the Reserved Investor Fund

### Branding

2.3 The consultation proposed "Reserved Investor Fund (Contractual Scheme)" or "RIF(CS)" as the appropriate branding for the unauthorised contractual scheme. It did so based on industry feedback that effective branding should accurately denote the target investors, clearly highlight the fund's legal structure, avoid references to 'unauthorised' or 'unregulated', and sit as part of a wider range of 'Reserved Investor Funds', should these be explored further by the government in the future.

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

2.4 All respondents to this question agreed that 'Reserved Investor Fund (Contractual Scheme)' was the most appropriate branding for the new structure, given the investors the fund can be promoted to under the FCA's Financial Promotions Rules, and those who can purchase units under section 261E(2)-(4) of the Financial Services and Markets Act 2000 (FSMA) .

2.5 Although welcoming the RIF branding, some respondents asked whether it would be possible to promote RIFs and issue RIF units to "elective professionals". In particular, some respondents were keen to

clarify if local authorities and local government pension schemes were able to receive RIF promotions and invest in RIF structures.

2.6 Some respondents noted that it is unnecessary to include 'Contractual Scheme' or 'CS' in the branding, and that in practice the structure will simply be referred to as the RIF.

## Government response

2.7 The government welcomes the confirmation that 'Reserved Investor Fund (Contractual Scheme)' is the most appropriate name for the new fund. The government will therefore proceed with this branding.

2.8 The government understands that there are instances where elective professional clients are eligible both to have the RIF promoted to them, and to invest in RIFs:

> **Promoted to:** The RIF is an unregulated collective investment scheme. Therefore, for example, if the person seeking to promote a RIF is an authorised person, then that person is restricted from promoting collective investment schemes under section 238 FSMA. That authorised person will need to see if any of the exemptions set out in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001/1060 ("PCIS") or COBS 4.12B apply. If any relevant exemptions apply, then that authorised person may promote the RIF. For instance, COBS 4.12B.7R contains an exemption for making financial promotions to "non-retail clients", such as "professional clients"[4].
>
> The government also notes that there may be other relevant exemptions for authorised or unauthorised persons seeking to promote a RIF if those persons have FCA approval for the marketing of AIFs – provided they are marketing to "professional clients" (see PERG 8.37.14G).
>
> **As a result, the RIF will be able to be promoted to certified high net worth individuals, self-certified sophisticated investors, sophisticated investors, per se professional clients, elective professional clients, and so on**.
>
> **Purchasing units:** A RIF will be required to comply with the substantive effect of section 261E(2)-(4) FSMA. This will restrict the issuing of units in a RIF to:
>
> (i) a professional investor (defined as a person who falls within one of the categories (a) to (d) of paragraph 3 of Schedule 1 to the markets in financial instruments regulation);

[4] A client that is either a per se professional client or an elective professional client (see COBS 3.5.1 R).

(ii) a large investor (defined as a person who, in exchange for units in the scheme, makes a payment of, or contributes property with a value of at least £1,000,000); or

(iii) a person who already holds units in the scheme.

**Any investor, including elective professional clients, that satisfy at least one of the three conditions above will therefore be permitted to hold RIF units and have RIF units issued to them.**

2.9 The government would also like to highlight that – setting aside the situation for elective professional clients generally – local authorities and local government pension schemes will likely be able to receive RIF promotions. Local authorities and local government pension schemes are likely to benefit from specific exemptions in the PCIS or Financial Services and Markets Act 2000 (Financial Promotion) Order 2005/1529 ("FPO"), depending on whether it is an authorised or unauthorised person that is communicating the promotion. To provide some examples, with regards to local authorities (or to the administering authorities of local government pension schemes that are local authorities), they may be an "investment professional" due to their status as "local authorities" (article 14(5)(d) PCIS or article 19(5)(d) FPO). Separately, with regards to administering authorities of local government pension schemes that are not local authorities, they may be exempt if they are an "authorised person" (article 14(5)(a) PCIS or article 19(5)(a) FPO).

2.10 Moreover, local authorities and local government pension schemes are likely to be able to invest in RIF units by virtue of the categories at section 261E(2) FSMA. For example, where the administering authority of a local government pension scheme is required to be authorised by the FCA and comprises "pension funds and management companies of such funds" (paragraph 3(a)(vi), schedule 1 of the markets in financial instruments regulation), it will be a "professional investor". Separately, local authorities or administering authorities of local government pension schemes could be a "large investor".

## Restricting the investment strategy and categories of investor

2.11 The government proposed introducing a restricted RIF, the availability of which would be limited to circumstances where there is no risk of loss of tax from non-UK resident investors on disposals of UK property. These circumstances would include (1) where a fund is UK property rich (i.e. the value of its assets derives at least 75% of its value from UK property), (2) where it invests in no UK property at all, and (3) where all of its investors are exempt from tax on gains.

**Question 2: Would a restricted RIF add value to the existing range of UK fund structures, particularly compared to a structure without**

**such restrictions? What would the relative attractiveness be of the proposed restrictions to the RIF regime?**

2.12 Overall, respondents were clear that a restricted RIF would add value to the UK funds regime. Respondents noted that the UK property rich RIF would be particularly attractive for investment in commercial real estate, and respondents also encouraged the government to take forward the other restricted RIFs.

2.13 Several respondents said the success of RIFs would be contingent on certain aspects of policy design. In general, respondents indicated a RIF regime with greater clarity, simplicity, certainty and flexibility would have greater take-up. References to specific points have been covered in their relevant sections of this document.

2.14 Some responses were more muted on the benefits of the RIF, notably in comparison with non-UK funds, and suggested take-up would therefore be dependent on the strength of preference for an onshore fund .

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

2.15 A number of respondents indicated infrastructure, private equity and private debt would also be asset classes of interest and that therefore, while real estate investments would be most common, the ability of the RIF to invest in other asset classes would be valuable. Some respondents did note, however, that the attractiveness of the RIF for investment in assets other than commercial real estate would be limited by their VAT treatment.

**Government response**

2.16 In line with respondents' views, the government will proceed with all three restricted RIFs. These are:

- where at least 75% of the value of the RIF's assets is derived from UK property (so the RIF is 'UK property rich' for the purposes of the non-resident capital gains rules); or
- where all investors in the fund are exempt from tax on gains; or
- where the fund does not directly invest in UK property, or in UK property rich companies.

2.17 The RIF will also be able to invest in a wide range of asset classes beyond real estate, subject to being within one of the three above restricted regimes.

## Eligibility and notification

2.18 The consultation proposed that the RIF be limited to co-ownership schemes which meet certain eligibility criteria, and for which the operator had made a notification to HM Revenue and Customs (HMRC). The government suggested that the eligibility criteria require the RIF to comply with the following:

- Is a 'co-ownership scheme', as defined in section 235A of FSMA, which is not authorised by an authorisation order in force under section 261D(1) FSMA
- Is to be 'UK-based', which would be defined as –
    - the operator and depositary must be bodies corporate incorporated in the United Kingdom, which administer their respective affairs in the United Kingdom (modelled on section 261D FSMA);
    - the operator and depositary must each have a place of business in the United Kingdom (also modelled on section 261D FSMA); and
    - the deed setting out the arrangements which constitute the scheme is governed by the law of England and Wales, Scotland or Northern Ireland and contains a statement to that effect
- Is an 'AIF' (Alternative Investment Fund), as defined in regulation 3 of the Alternative Investment Fund Managers Regulations 2013/1773
- Complies in substance with s.261E(2)-(4) FSMA
- Meets either a Genuine Diversity of Ownership (GDO) condition or non-close test, modelled on the tests in Schedule 5AAA of the Taxation of Chargeable Gains Act 1992 (TCGA)
- Has notified HMRC that it wishes to become a RIF and makes a declaration in that notification that it meets the above criteria.

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

2.19 Overall, respondents did not foresee issues with the eligibility criteria, but some concerns were highlighted.

2.20 Several respondents commented on the requirement for the RIF to be an AIF. Some respondents suggested that some potential uses of the RIF envisioned by industry may not be compatible with the requirement to be an AIF. In particular, respondents highlighted that being an AIF generally requires funds to raise capital from a number of investors, with a view to investing that capital in accordance with a defined investment policy for the benefit of those investors. Respondents argued that this could potentially exclude or create uncertainty for certain types of RIF such as single-property RIFs, those that are established as 'joint ventures', or those that simply have

existing assets or property transferred to them (rather than raising fresh new capital).

2.21 Of these respondents, some suggested that the government instead permit the RIF to be either a collective investment scheme (CIS) or an AIF. Examples were given of arrangements/structures that may constitute a CIS but not an AIF, including acquisition vehicles, co-investment vehicles, single asset vehicles, and certain arrangements between affiliated entities or closed groups where there will be no capital raising.

2.22 Similarly, some respondents noted that the power to make regulations for unauthorised co-ownership AIFs – which the government has taken through the Financial Services and Markets Act 2023 – is too narrow, and does not allow the government to extend the rights and liabilities under section 261M-P(1) and (2) FSMA for relevant authorised contractual schemes to the examples given in the previous paragraphs, on the basis that they may not be AIFs.

2.23 Some respondents suggested that – given the sophisticated nature of the types of investors the fund could be promoted and sold to – the requirement to have a depositary may create unnecessary costs. Some suggested that it would be more appropriate if it were optional for RIFs to operate with a UK depositary.

2.24 Respondents suggested that the GDO condition should be applied in a way which allows conversion from CoACS to RIFs. CoACS are not generally required to meet the GDO condition, although CoACS do need to meet the GDO condition to access SDLT seeding relief. One respondent suggested a transitional provision was needed, as a CoACS may not have included provisions in the fund documentation that would satisfy the GDO test. It was also suggested that the government should ensure that the test can be applied where there are multiple layers of RIFs. Finally, respondents also suggested that a grace period may be needed for both the GDO condition and non-close test to allow for RIFs to be established when it is clear the conditions would be met at a future point in time.

2.25 Several comments on the scope of a RIF were made in response to this question, and particularly whether the government should facilitate the introduction of a restricted RIF. Those responses have been included within the summaries to questions 19-22.

**Government response**

2.26 As respondents were largely in favour of the eligibility criteria for a RIF, the government intends to proceed with them, but with modifications as outlined below.

2.27 Through the Financial Services and Markets Act 2023 the government will only have the power to extend the relevant rights and liabilities available to authorised contractual schemes under sections 261M-P(1) and (2) FSMA – such as limited liability, and statutory segregation of sub-funds – to unauthorised co-ownership AIFs. Therefore, unauthorised co-ownership schemes that are not AIFs will

not be able to benefit from those relevant rights and liabilities, such as limited liability or statutory segregation of sub-funds.

2.28 The government acknowledges industry's concern that some uses of the RIF may not be compatible with the requirement to be an AIF. The government notes that the FCA have issued detailed guidance in their Perimeter Guidance Manual (PERG) setting out the FCA's view on how the definition of AIF might be applied in certain situations. The government would encourage firms to engage with both the legislation and the FCA's guidance when considering launching a RIF. For example, PERG 16 Question 2.10 says that in the FCA's view the commercial activity of taking direct or indirect steps to procure the transfer or commitment of capital by one or more investors to a collective investment undertaking for the purpose of investing it in accordance with a defined investment policy, should amount to the activity of raising capital.

2.29 The government acknowledges that the application of the non-close test will require continual monitoring and that there may be instances at the start of the fund where the RIF may not be able to meet the non-close test, or instances throughout the life of the fund, where a RIF may inadvertently cease to meet the non-close test for a short period of time. Both circumstances will be taken into account in the design of the RIF tax rules. In relation to the GDO condition, HMRC has recently updated its guidance detailing how the condition works in practice. Amongst other things, this updated guidance makes clear that a fund can update its fund documents to ensure compliance with the GDO condition on a prospective basis. This should ensure that a CoACS which converts into a RIF is capable of satisfying the GDO condition, provided it was appropriately marketed.

2.30 As to whether it is appropriate for RIFs to be required to use a depositary, the government would note that having a depositary is part of the definition of a co-ownership scheme as set out at section 235A FSMA. Given that changing the definition of a co-ownership scheme could have implications for all co-ownership schemes – authorised and unauthorised – such a proposal would require extensive policy consideration and fundamental legislative change.

2.31 Please see the responses to question 2 and questions 18-22 for further detail on restricted RIFs, how the government intends to deal with those rules, and the responses to questions 30 and 31 for the consequences of ceasing to be a RIF.

## Design of a new tax regime for a Reserved Investor Fund

2.32 This section of the consultation sets out the proposed tax treatment of a RIF. The government explained that the tax treatment of a RIF was largely expected to replicate the tax treatment which applies to Co-ownership Authorised Contractual Schemes (CoACS).

2.33 The government set out a number of objectives for a RIF tax regime, including:

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

## Investment by RIFs in assets other than real estate

2.34 As was explained in Annex B, there are no regulatory restrictions on RIF investments. While the government has already received feedback that the RIF would be suitable for investment in real estate, a question was asked about different investment strategies and the extent to which tax amendments were necessary to facilitate this.

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

2.35 Most respondents said that they were not aware of any specific provisions to facilitate investment in asset classes other than real estate.

2.36 One respondent said that to facilitate umbrella RIFs, it would be necessary that the tax liabilities of a sub-fund does not affect the investors in another sub-fund. The respondent specifically highlighted SDLT.

**Government response**

2.37 The government intends to provide for investment in umbrella RIFs. For SDLT purposes, the existing provisions relating to umbrella CoACS, and sub-funds, will apply to RIFs.

## Income and reporting to investors

2.38 The consultation explained that the RIF would not be a taxable person for direct tax purposes and, consequently, any income received by a RIF would arise directly to investors.

2.39 The government asked respondents to comment on the proposals for reporting income to investors and HMRC. The government also sought input on whether certain amendments were necessary with respect to holding an interest in a RIF in a life insurance policy.

Reporting income and excess reportable income arising from investments in an offshore fund

2.40 The consultation explained that, similarly to CoACS, it was the government's intention that there should be a requirement for the RIF

operator to provide a report to participants and HMRC for each accounting period. The report would need to include sufficient information to enable investors to complete their income tax filing obligations.

2.41 The consultation also stated that it was the government's intention to replicate for RIFs the provisions that apply to CoACS in regulations 11-13 of the Co-ownership Authorised Contractual Schemes (Tax) Regulations 2017 (SI 2017/1209) in respect of a CoACS investment in an offshore fund.

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

2.42 Respondents were in favour of replicating the income reporting rules (as explained above) and rules related to a RIF's investment in an offshore fund.

2.43 One respondent asked whether reporting in respect of income and (to the extent necessary) the non-resident capital gains rules could be combined.

**Government response**

2.44 The government will proceed with provisions for income reporting and investments in offshore funds.

2.45 With respect to reporting information for income and gains, it is the government's intention where possible to combine reporting by the RIF operator to minimise administrative burdens, and so this will be kept in mind when designing the information reporting rules. Investors will be responsible for completing their own filing obligations with respect to income and non-resident capital gains.

Personal Portfolio Bond legislation

2.46 The consultation sought views on the viability of including RIFs in the list of permitted property at section 520 ITTOIA 2005.

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

2.47 Respondents were unanimous that RIFs should be added to the list of permitted property categories at section 520 ITTOIA 2005. Some respondents also welcomed that this would allow for parity of treatment between RIFs and other investment vehicles. Respondents were in agreement that the structure and nature of RIFs would effectively prevent individual policyholders from introducing personal assets into their life insurance policies.

**Government response**

2.48 The government will proceed with adding an interest in a RIF to the list of permitted property categories at section 520 ITTOIA 2005. This will allow individual policyholders to select an interest in a RIF within their life insurance policy without the policy being treated as a personal portfolio bond.

## Capital allowances

2.49 The consultation proposed that the existing treatment available for a CoACS would be extended to a RIF such that the operator of a RIF could make an election enabling them to calculate and apportion any capital allowances in respect of a RIF's qualifying expenditure to investors.

2.50 The consultation also proposed that where a CoACS converts to a RIF, or vice versa, the simplified treatment would continue to apply as if the scheme had carried on in its previous form.

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

2.51 All respondents to this question agreed with the proposed treatment for capital allowances.

2.52 In addition, a few respondents said that there should be no capital allowances consequences for investors on entering or exiting a RIF.

2.53 Some respondents also said that RIF investors who are within the charge to corporation tax should be able to claim first-year allowances (FYAs) in a similar way to corporate partners in a partnership. FYAs are currently unavailable in respect of CoACS assets, where the operator has made an election to enter the simplified regime.

**Government response**

2.54 The government will include the proposals contained in the consultation in the design of the RIF. The government will consider whether any further provisions are required in respect of the additional views provided by respondents to this question as outlined at 2.53.

## Capital gains

2.55 The consultation set out the intended default capital gains treatment of a RIF.

2.56 The government proposed that the default treatment of a RIF broadly replicate the existing framework applying to CoACS. However, this was only possible if that did not conflict with the government's policy of taxing non-UK resident investors on gains on disposal of UK property, which was considered further in chapter 4 of the consultation.

2.57 Applying the same treatment to RIFs as applies to CoACS would result in the following treatment:

- The units in a RIF would be treated as an investors' capital gains asset and any interest in the underlying property of the RIF would be disregarded, as for tax transparent funds currently under section 103D of the Taxation of Chargeable Gains Act 1992 (TCGA). This would only apply where a RIF met the restrictions (subject to mitigations for breaches) as set out in Chapter 4 of the consultation.
- For capital gains purposes, an umbrella RIF would be disregarded, and instead each sub-fund would be treated as a separate and distinct collective investment scheme.
- Exchanges, reorganisations and mergers in respect of units in a RIF would not be a chargeable event for investors, subject to meeting the conditions in the relevant section in Part 4 of Chapter 3 TCGA 1992.

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

2.58 Respondents were overwhelmingly supportive of the proposal to mirror the capital gains treatment of a CoACS for a RIF.

2.59 Several respondents mentioned other considerations, which are discussed in more detail in Chapter 4, such as tax on entry or conversion into a RIF; mitigation for temporary breaches; and avoiding adverse consequences on ceasing to be treated as a RIF. Some respondents suggested that if no provisions were made that dry tax charges would impact take-up of the RIF. Some respondents also said that take-up would be affected if a RIF were permanently treated as tax transparent for capital gains.

**Government response**

2.60 As respondents were in support of the proposals to replicate the capital gains treatment that applies to CoACS, the government will proceed with this for RIFs. More information on non-resident capital gains is set out in the government's response to questions 17-29.

Investments by insurance companies

2.61 There are specific provisions at sections 211B, 212 and 213 TCGA 1992 which deal with capital gains treatment where life insurance companies hold units in certain collective investment schemes. The government proposed that units held by an insurance company in a RIF will be subject to similar treatment.

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

2.62 All the respondents agreed with the proposed capital gains treatment for investments by insurance companies in RIFs.

2.63 Two respondents highlighted issues with the existing tax legislation with respect to the treatment of Structures and Buildings

Allowances (SBAs) and Plant and Machinery Allowances (PMAs) where a life insurer invests in a CoACS or RIF and is subject to the "deemed disposal" rules under section 212 TCGA 1992.

**Government response**

2.64 The government will proceed with adding a RIF to section 211B TCGA 1992 so that insurance companies can invest in RIFs. Equivalent provisions to those already in place for insurance companies investing in certain types of investment funds will apply in relation to the way in which chargeable gains are calculated and assessed.

2.65 The government recognises the concerns raised regarding the treatment of SBAs and PMAs for life insurers invested in RIFs and CoACS and will address this for RIFs. The government wishes to ensure consistency across the two types of contractual scheme where possible and will therefore consider making similar future amendments in respect of CoACS.

## RIF investments in other fund vehicles

2.66 The consultation acknowledged that it may be necessary to make tax amendments to facilitate RIF investment in other funds, such as REITs, and vice versa.

2.67 The government suggested that with respect to RIF investments in REITs, an amendment may be needed to allow indirect ownership to be traced through a RIF for the purposes of determining whether a REIT has more than 70% of its shares owned by institutional investors when considering the requirement for its shares to be listed or admitted to trading on a recognised stock exchange (the listing condition).

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

2.68 Respondents agreed that the government should allow indirect ownership of REITs shares to be traced through a RIF for the purposes of meeting the listing condition. Respondents thought that this would enable RIF investment in REITs. Some respondents asked whether rather than making a specific change with respect to the listing condition the government could add the operator of a RIF to the list of institutional investors.

2.69 Respondents also said it would be helpful to understand how a RIF would be treated for the purpose of applying the non-close test in the REIT rules, as the operator of a RIF may hold voting rights in respect of REIT shares. Some respondents again suggested that a way to overcome this issue could be adding a RIF to the list of institutional investors. Respondents also said consideration would need to be given to the holder of excessive rights test.

2.70 It was also suggested that it should be possible to trace through a RIF that is only available to investors who are exempt from tax on

gains (other than by reason of residence) ('exempt investor RIF') to allow a REIT to use the qualifying institutional investor substantial shareholding exemption (QII SSE), similar to the way in which it is possible to trace through an exempt unauthorised unit trust (EUUT).

2.71 Comments were also made with respect to the payment of property income distributions, as respondents suggested that withholding tax would be based on the beneficial owner of payments made to a RIF.

2.72 Respondents also considered tax amendments that may be necessary where a REIT may invest in a RIF. It was suggested that to give equivalence to RIFs, relief should be given for a REIT disposing of shares in a UK property rich RIF, as currently applies on disposals of interests in offshore collective investment vehicles (CIVs) under section 535A CTA 2010. It was also suggested that a subsidiary of a RIF should be permitted within a REIT group.

2.73 Some respondents also commented on the need for the tax rules to accommodate a RIF investing into a qualifying asset holding company (QAHC).

**Government response**

2.74 The government is supportive of RIFs making investments into REITs. The government recognises that the simplest way to facilitate this would be to add RIFs to the list of institutional investors in section 528(4A) CTA 2010. The government will explore making this amendment to the REIT rules.

2.75 Where a REIT makes a property income distribution to a RIF, the government expects the withholding tax treatment to follow the position for equivalent transparent vehicles such as Jersey Property Unit Trusts, meaning that the REIT would look through to the beneficial owner(s) of the property income distributions to determine the applicable withholding tax treatment.

2.76 The government is also supportive of REITs being able to make investments into a RIF and will explore making appropriate amendments to section 535A to facilitate this.

2.77 In respect of investments by RIFs into QAHCs, the government believes that this can be accommodated within the current definition of 'qualifying fund' in the QAHC rules and does not anticipate that any amendments to the QAHC rules will be necessary.

2.78 As noted above, the government has no current plans to make any changes to the definition of a group for REIT purposes. The government intends to allow an exempt investor RIF to be treated the same as an EUUT with respect to the application of the QII SSE rules. Other RIFs and an unauthorised contractual scheme will not be able to benefit from QII SSE.

## Stamp Duty Land Tax (SDLT)

2.79 The consultation detailed how the SDLT regime would apply to the RIF as well to unauthorised co-ownership contractual schemes in general for purchases of property made in England and Northern Ireland.

2.80 The government proposed several changes to the current treatment of such schemes in order to reduce administrative burdens for scheme providers and complexity for investors, as well as removing tax barriers to investment. The proposals broadly followed the existing framework applying to CoACS:

- To treat all unauthorised co-ownership contractual schemes – including the RIF – as opaque for SDLT purposes. This would mean that transactions in the underlying units within the scheme would not result in an SDLT charge.
- To treat the scheme operator as the chargeable person, rather than the investors.
- To deem all unauthorised co-ownership contractual schemes – including the RIF – as companies for SDLT purposes except in relation to claims to group relief and reconstruction/acquisition reliefs under Schedule 7 Finance Act 2003.
- To extend the current SDLT seeding relief to include seeding transactions where the RIF is the purchaser. The relief would apply to RIFs only and not to unauthorised co-ownership contractual schemes which do not elect into and remain part of the RIF regime. The relief would only apply to seeding transactions: all other purchases would remain liable to SDLT in full.

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

2.81 Respondents were supportive of the proposal to treat unauthorised co-ownership contractual schemes as opaque for SDLT purposes, and to place reporting and payment requirements on the scheme operator rather than investors. Respondents noted that the consistency across all three variants of co-ownership contractual scheme and the ability to move between them without SDLT being charged were an important consideration for investors. Alongside the elimination of SDLT on transfers of units, they commented that this would be important to the success of the RIF.

2.82 Some respondents also explained that certainty about the SDLT treatment for non-RIF unauthorised co-ownership contractual schemes would be important for investors and fund managers.

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

2.83 Most respondents commented that the existing property portfolio test which applies to seeding relief claims by CoACS and is proposed to apply to claims by RIFs is too restrictive. The current test requires at least £100m of property assets in England and Northern Ireland to be seeded into the scheme, consisting of at least 100 residential properties, or 10 non-residential properties. Many respondents suggested that the test could be amended to reduce the requirements to £20m, 10 residential or 3 non-residential assets, with the benefit that this would open the RIF up to a larger pool of investors and fund managers operating in the Small and Medium sized Enterprise segment without opening up avoidance opportunities.

2.84 Several respondents queried the proposal to exclude all unauthorised co-ownership contractual schemes from qualifying for group and reconstruction/acquisition reliefs, explaining that enabling RIFs to form part of a group (or at least being able to head a SDLT group) would be advantageous from a financing or commercial perspective.

2.85 Some respondents noted that the RIF eligibility criteria would contain a diversity of ownership test requiring the RIF to either meet the GDO condition, or be non-close – they were concerned about RIF seeding relief only being available to those who satisfied the GDO, and not open to those schemes which qualified as RIFs by way of the non-close test.

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

2.86 Most comments received on the length of the control period were supportive of mirroring the current three-year period that applies to CoACS, noting that the RIF is targeted towards the long-term holding of real estate assets. Some respondents suggested that the length of the period is too restrictive and that it should be reduced to 12 months.

2.87 Overall, all respondents were broadly supportive of the proposal for unauthorised co-ownership contractual schemes to be treated as a company for SDLT purposes and were in favour of a seeding relief being in place for RIFs, based on the current rules applying to CoACS.

2.88 In addition to comments on the RIF proposals, a large number of respondents requested allowing Exempt Unauthorised Unit Trusts to convert to the RIF without SDLT arising, in a similar way to the existing relief which is available for conversions between Unit Trusts and Property Authorised Investment Funds (Stamp Duty Land Tax (Open Ended Investment Companies) Regulations (SI2008/710)). They explained that a number of significant EUUTs have expressed an interest in converting but are unable to do so because of the tax charges that would apply despite there being no change in beneficial ownership of the underlying assets, and no change in how SDLT would apply to the fund.

**Government response**

2.89 The government has carefully considered comments received on the proposal for unauthorised co-ownership contractual schemes to be treated as companies for SDLT purposes and confirms that it will proceed with the proposal for those schemes which elect into the RIF regime. It is not the government's intention however to provide tax advantages to unauthorised co-ownership contractual schemes which are not RIFs. The government therefore confirms that such schemes will remain transparent for SDLT purposes. To address avoidance concerns around the enveloping of assets, the government will also introduce legislation to deem elections by such schemes into the RIF regime as a land transaction for SDLT purposes, with tax charged based on the market value of any English and Northern Irish property held by the scheme at the date of entry into the RIF regime.

2.90 The government confirms that it will provide a seeding relief for RIFs, drawing largely on the existing provisions that apply to CoACS. The government recognises that some elements of the CoACS seeding relief rules will not be appropriate to the RIF, particularly around the need to ensure that seeding relief can be claimed using either the GDO, or the non-close test being met. Eligibility for relief will be based on the wider RIF eligibility criteria, and the current rules that apply to CoACS claiming relief.

2.91 The government recognises the points raised by respondents about the requirements of the property portfolio test but notes the need to ensure an appropriate balance between encouraging investment in UK real estate and guarding against the use of the RIF for avoiding tax. The government does not currently believe that there is a sufficient case for reducing the requirements and therefore intends for the property portfolio test to be based on the rules applying to CoACS.

2.92 The government does not intend to alter proposals to exclude RIFs from being treated as a company for group and reconstruction/acquisition reliefs, noting that this would diverge from the existing rules applying to CoACS and would result in additional complexity.

2.93 The government notes the suggestion of a relief for EUUTs converting to RIFs but is not persuaded by how the availability of such a relief might drive investment in UK real estate, and has no current plans to introduce a relief.

## Stamp Duty and Stamp Duty Reserve Tax (SDRT)

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

2.95 The consultation set out how the STS regime would apply to the RIF. The government proposed that the STS rules that currently apply to CoACS would be replicated in a new tax regime for RIFs. This would mean that the following transactions would be exempt from STS:

- transfers of securities/agreements to transfer securities to a RIF in consideration solely for the issue of units in the RIF;
- transfers of securities/agreements to transfer securities between sub-schemes of an umbrella RIF; and
- transfers of units/agreements to transfer units in a RIF.

2.96 The consultation also set out that unauthorised co-ownership contractual schemes that are not RIFs would be transparent for STS purposes, so that the beneficial interest of the underlying scheme property is held by the participants.

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

2.97 Nearly all respondents who provided detail on this question agreed with the proposals set out in the consultation. In particular, respondents were overwhelmingly supportive of the proposed exemptions for transfers of units/agreements to transfer units in a RIF, with many respondents also commenting that the exemptions should apply whether or not the RIF is within the restricted RIF regime, as otherwise the RIF would not be viable. However, one respondent commented that these exemptions are not required as a transfer of units in an unauthorised co-ownership contractual scheme should not be subject to STS on first principles.

2.98 One respondent commented that the exemption from STS for the contribution of securities to a RIF could be problematic if even just £1 of cash consideration is also given (or liability assumed) and prevents its application due to the inclusion of the word "solely", although they acknowledged that it was unclear how frequently this may be a problem in practice.

2.99 Clarification was also sought by one respondent on whether units would be stock or marketable securities in the scenario where a RIF loses its RIF status.

**<u>Government response</u>**

2.100 The government confirms that it will proceed with the proposals set out in the consultation document to mirror the STS exemptions that currently apply to CoACS in the design of the RIF.

2.101 The government notes the suggestion that accessing the exemption for the contribution of securities to a RIF could be problematic if a very low level of cash consideration is given or liability is assumed. However, in relation to the existing CoACS regime, the requirement that the issue of units be the sole consideration in order to access the exemption does not seem to be an issue for industry. Therefore, without more information and evidence of how this would materially impact the RIF regime, the government has no plans to consider this suggestion further.

2.102 The government confirms that it considers the status of the units of an unauthorised co-ownership contractual scheme will be the same

as the current status of the units of a CoACS, and that this status will apply whether or not the unauthorised co-ownership contractual scheme is a RIF. The units will not be considered stock or marketable securities within the meaning of section 122 of the Stamp Act 1891. The units will also not be considered chargeable securities within the meaning of section 99 of the Finance Act 1986. However, they will be capable of representing "money's worth" for the purposes of a charge to SDRT.

2.103 The government also acknowledges the comment that the exemptions for transfers of units/agreements to transfer units in a RIF are not required under first principles. Outside of this consultation, the government has received several representations that elements of the STS regime are unclear and difficult to interpret, and legislative clarity has been requested for a number of areas where it is already possible to conclude that transactions are not subject to an STS charge in order to make the rules easy to understand and apply. These representations are being considered through the government's work on modernising the STS framework. The government is also unaware of any practical issues created by the current exemptions for transfers of units/agreements to transfer units in a CoACS. This suggests that the exemptions do not materially affect the effective management and administration of existing CoACS, and similarly, would not affect the effective management and administration of RIFs. Furthermore, there was overwhelming support from respondents for the exemptions, with several respondents noting that they are a key contributing factor to the success of the RIF. The government therefore intends to proceed with statutory exemptions for the transfers of units/agreements to transfer units in a RIF.

## Value Added Tax (VAT)

2.104 The government consultation on the VAT treatment of fund management closed on 3 February 2023, and the government responded on 14 December 2023.

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

2.105 Several respondents noted the likely lack of alignment between the VAT treatment of management of a CoACS and that of a RIF under the current UK VAT regime. In general, respondents took the view that the management of a RIF should also be exempt from VAT, although a few suggested that an Option to Tax would also be worth consideration. Two respondents also suggested that a VAT zero-rate would be welcome. A few respondents raised concerns over administrative issues, such as VAT registration for RIFs and how RIFs would be able to participate in VAT Groups. Several respondents also noted that they would not want the introduction of the RIF to be delayed while VAT issues were explored and resolved.

**Government response**

2.106 The government notes these views. The summary of responses to the consultation on the VAT treatment of fund management was published on 14 December 2023, setting out the government's legal approach and providing further clarity and certainty to industry.

## Application of the non-resident capital gains rules to a Reserved Investor Fund

2.107 The consultation explained that the design of a new tax regime for a RIF should be compatible with the purpose and operation of the non-resident capital gains (NRCG) rules.

2.108 The consultation went on to explain that if the capital gains tax rules for CoACS were to be replicated for RIFs without any further provisions, in some circumstances, it would be possible for a gain to arise on disposal of UK property by a RIF without a non-UK resident investor being liable to tax on that gain. The reason for this is that a RIF itself would not be liable to direct taxes and by applying the treatment outlined in paragraph 2.57, the investors' capital gains asset would be their units in the RIF. If the RIF derived less than 75% of the value of its total assets from UK property, then non-UK resident investors would not be liable to tax when they disposed of their interests in it.

2.109 Consequently, the consultation explained that the government was considering introducing a 'restricted RIF'. A restricted RIF would only be available in circumstances where there is no risk of loss of tax from non-UK resident investors on disposals of UK property.

2.110 The government said it would consider three types of 'restricted' RIF:

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

2.111 The consultation also explained that while it would be possible to introduce an 'unrestricted RIF' – that is, a RIF with no restrictions on its investors or investment assets – that would likely require more complex provisions to prevent loss of tax on gains from disposals of UK property by non-UK resident investors.

2.112 Chapter 2 of the consultation asked respondents to consider whether a restricted RIF would add value to the existing fund structures (please see responses to question 2). Chapter 4 of the consultation

asked more detailed questions about how each regime might operate, for which the government's response is set out below.

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

2.113 Most respondents were not aware of any other circumstances beyond those outlined in paragraph 4.11 of the consultation where a non-UK resident investor investing in a RIF may not be taxed on gains on disposals of UK property.

2.114 One respondent said that there could be a further loss of tax if a RIF could distribute proceeds from a UK property disposal without triggering a UK tax charge.

2.115 One respondent said that a RIF could invest in non-UK property rich companies such that the disposal of these companies is not subject to tax. That respondent suggested that such a non-UK property rich company should be limited on how much it can invest in UK land.

**Government response**

2.116 In designing the proposal for a restricted RIF, the government will take appropriate steps to address all risks of the regime failing to align with the government's policy of taxing non-UK resident investors on gains on disposals of UK property, including points raised by respondents.

## Proposals for a restricted RIF

2.117 The consultation set out the proposals for three types of restricted RIF and explained that rules were needed to deal with circumstances where a RIF breached the restrictions (for example, a UK property rich RIF becoming non-UK property rich).

2.118 The consultation set out the government's proposal for a RIF that breached the restrictions. The investors in the RIF would be deemed to have disposed and reacquired their units in the RIF immediately before the RIF ceased to meet the restrictions. The provision that treats an investor's units as their capital gains asset (section 103D TCGA 1992) would then be disapplied. Consequently, the RIF would instead be taxed in line with first principles – that is, it would be transparent for capital gains purposes on disposals of UK property. Furthermore, to ensure certainty on the basis on which gains would be computed, the RIF would be deemed to be a partnership for capital gains purposes.

2.119 The consultation also stated that the government would consider mitigations to ensure the RIF remained commercially attractive.

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

2.120 Respondents were very clear that tax transparency (and the RIF being deemed a partnership) for capital gains is not desirable, due to the risk of dry tax charges for investors (where a tax charge arises but no cash has been distributed to investors by the RIF to pay that tax charge) and the burden of filing obligations that would result from deemed partnership treatment. Respondents suggested that mitigations should be put in place to ensure that the risk of the RIF becoming tax transparent for capital gains purposes was low. Respondents said that take-up of the RIF may be affected if the mitigations for breaching the restrictions were not sufficient in reducing the risk of tax transparency for capital gains purposes.

2.121 Several respondents said that any such treatment should be targeted to only apply in circumstances where there is a risk of loss of tax. Respondents made suggestions for how targeting could apply. For example, it was suggested that transparency for gains could only apply for an investor who has made a disposal during a period in which the RIF is non-UK property rich. Other respondents suggested that deemed partnership treatment could only be applied to non-UK resident investors.

2.122 One respondent questioned whether a deemed disposal at the point of breaching the restrictions was necessary if there had been no disposals of UK property and if transparency for gains applied from that point onward.

2.123 One respondent suggested that the government should reconsider its position and deem a RIF to be a company, as treaty benefits are unlikely to be important where a RIF is investing in property.

2.124 Several respondents also said that the government should ensure that investors were not taxed twice on the same gain, which they thought could occur if investors were taxed on both a deemed disposal of units (the value of RIF units being directly linked to the value of UK property held by the RIF) and then also gains arising on a disposal of that UK property when the RIF was tax transparent for gains.

2.125 Most respondents agreed that they were not aware of an alternative way that breaches could be dealt with beyond that set out in the consultation.

2.126 One respondent suggested that a holding in a UK property rich RIF should continue to be treated as such if the units were purchased on the basis of the RIF being UK property rich, even where the RIF was no longer UK property rich when the investor disposed of their units, and instead paragraph 11 of Schedule 1A TCGA (which deals with anti-avoidance provisions) should be applied if a treaty claim was made by that investor for exemption on that gain.

2.127 A further respondent suggested that the issue could be dealt with by requiring UK property to be held within a separate sub-fund in a RIF umbrella.

2.128 Respondents said that if a RIF were to cease to meet the restrictions and could not utilise the mitigations provided, such that they may no longer be treated as a RIF, that re-entry into the regime should be permitted.

**Government response**

2.129 The government will include the requirements for each restricted RIF in the eligibility criteria. The result of breaching those restrictions will then be that the unauthorised contractual scheme ceases to be a RIF, unless mitigating provisions apply.

2.130 The government will seek to ensure that the mitigations are proportionate to both protect the tax base and ensure the RIF is commercially viable. Please see the government's response to questions 19-21 for further detail.

2.131 The government considers that there is no reason to prevent an unauthorised contractual scheme which was previously a RIF from re-entering the regime. However, the government expects such occasions to be rare, given the disruption which would be caused for investors by a RIF leaving and re-entering the regime.

2.132 The government considers that a deemed disposal and reacquisition of units is necessary to ensure that the UK maintains taxing rights on value which accrues whilst a RIF is UK property rich, as once the RIF is non-UK property rich disposals by non-UK resident investors will no longer be taxable. The rules will make provision for an eventual disposal following a deemed disposal if a contractual scheme ceased to meet the RIF qualifying criteria.

2.133 The government does not consider that it would be appropriate to depart from the general definition of UK property richness (with a 75% threshold) for the purposes of the RIF regime.

2.134 The government continues to consider that to deem a RIF to be a company would materially increase the risk that investors in UK contractual schemes would face difficulty in accessing the benefit of the UK's Double Taxation Agreement network, to the effect that benefits might be denied. The government considers that this risk would be in respect of all contractual schemes, including CoACS, and not only those investing in real estate.

2.135 It may be possible that the issues related to NRCG could be overcome by holding UK property in a separate sub-fund within a RIF umbrella, as UK property richness is assessed at sub-fund level, not umbrella level. The tax rules will facilitate use of umbrella structures and therefore fund managers can choose to use them if appropriate. Please also see the government's response to question 27.

UK property rich RIF

2.136 The consultation explained that the government considers a RIF which is required to be UK property rich (i.e. 75% of the value of its total

assets is derived from UK property) would satisfactorily address much of the demand from industry for an unauthorised contractual scheme.

2.137 Respondents were invited to comment on the extent to which mitigations were necessary for minor and temporary breaches of the UK property rich condition.

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

2.138 Respondents agreed that mitigations for breaches were needed for the UK property rich RIF to be commercially viable.

2.139 Respondents noted that the risk of loss of tax on disposals of UK property only arises where a non-UK resident investor exits at a point when the RIF is non-UK property rich.

2.140 Respondents distinguished breaches of the UK property rich condition that may apply on launch of the fund and those that occur during the life of the fund.

*Entry and exit*

2.141 Respondents said that on launch of a UK property rich RIF, the RIF may temporarily breach or not initially meet the UK property rich condition where the manager is drawing down capital to acquire UK property, as cash is considered when determining whether the UK property rich requirement is met. Respondents suggested that those breaches would usually last only for a few days or sometimes for less than a day.

2.142 Some compared the position to that of an offshore collective investment vehicle, which can make an election for exemption when it is UK property rich before it starts to make disposals of UK property. Up to this point an equivalent offshore CIV, such as a non-UK contractual scheme, is subject to tax at fund level if a disposal of UK property occurs, as it is deemed to be a company for the purposes of Schedule 5AAA TCGA. As a result of the default treatment for an offshore CIV, respondents said the same issues do not arise, i.e. an investor's tax treatment is not changed by virtue of the fund being non-UK property rich and investor exits do not result in a potential loss of tax arising as a result. Respondents also said that in the case of an offshore CIV the manager would only make an exemption election when the risk of it ceasing to be UK property rich (which would result in a deemed disposal and reacquisition of investors units) was reduced.

2.143 Some respondents said the government could consider retrospective notifications into the regime (although it was noted certain conditions would have to apply to prevent investor exits) or rollover of gains on entry into the regime to prevent dry tax charges if the RIF were transparent for capital gains due to being non-UK property rich for a period before it can notify into the RIF regime.

*Temporary breaches*

2.144 Respondents said that during the life of the fund, a cash subscription by a new investor held temporarily to fund redemptions by one or more existing investors may result in the RIF ceasing to be UK property rich for a short period of time. Similarly, respondents also flagged the situation where UK property is sold before acquisition of a new UK property and where UK property is sold to fund redemptions of one or more investors. In some cases, with respect to the reinvestment of proceeds, respondents said that breaches can last longer than a few days.

2.145 It was suggested that on a temporary breach the RIF should not be subject to tax transparency for capital gains during that period, subject to the UK property rich condition subsequently being satisfied again. It was suggested, similar to responses to question 18, that to the extent temporary breaches of the UK property rich conditions arise, the rules are targeted at the loss of tax. Respondents said that, to the extent that a deemed disposal of investors units is needed, the government should seek to avoid dry tax charges for investors.

2.146 Overall, respondents said that the rules relating to NRCG should not result in a worse outcome than that which applies to an offshore CIV that has made an exemption election.

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

2.147 Most respondents said that the restriction should not limit take-up of the RIF, provided that provisions are made for mitigating temporary breaches and the regime does not result in a worse outcome for investors compared to those invested in an offshore CIV.

2.148 Respondents said that if all three restricted regimes are introduced that would provide sufficient flexibility.

**Government response**

2.149 The government will proceed with a RIF which is required to be UK property rich.

2.150 The government recognises the importance of ensuring there are appropriate mechanisms in place to ensure that temporary changes in the status of the fund do not cause the RIF to breach the UK property rich restriction.

2.151 The government considers that the type of mitigation needed may vary between launch of the fund, temporary breaches that occur during the life of the fund and those that may occur on winding up.

2.152 The government will continue to work with respondents on the technical design of such mitigations.

Exempt investor RIF

2.153 The consultation explained that the government was willing to consider a restricted RIF that was only open to investors who are exempt from UK tax on gains (other than by reason of residence).

2.154 The consultation explained that this type of restricted RIF would remove risks to the Exchequer, as such investors would not be liable to tax on gains on disposal of UK property. Therefore, it would be possible to treat the investors' units as their capital gains asset and disregard any interest in the underlying property of the fund (as in a CoACS) regardless of the assets held by a RIF.

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

2.155 Most respondents said that there was appetite for a RIF that was only open to investors who are exempt from tax on gains. Respondents said investors who are exempt from tax on gains regularly invest in similar offshore CIVs. Respondents suggested that there may be a desire for EUUTs to convert to a RIF for investors who are exempt from tax on gains.

2.156 However, some respondents suggested that EUUTs may already cater for this demand. One respondent suggested that there would be a requirement for co-investment by the manager alongside exempt investors. However, the government's proposal does not accommodate this.

**Government response**

2.157 The government will proceed with a RIF that is only open to investors who are exempt from tax on gains (other than by reason of residence).

2.158 The government will continue to work with respondents on the technical design of mitigations for temporary breaches of the condition that all investors must be tax exempt.

Non-UK property RIF

2.159 The consultation explained that the government would consider introducing a restricted RIF for investment in assets other than UK property, such as equities, government or corporate bonds, or non-UK property.

2.160 The government explained that as this type of restricted RIF would not be invested in UK property, the NRCG risks should not arise.

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

2.161 Some respondents said that there would be appetite for a RIF that is restricted from investing in UK property, and that type of RIF could be used for investment in intellectual property, securities, or credit. However, it was noted that an absolute prohibition on UK

property may prevent a RIF being used as a real estate debt fund, as explained in paragraph 4.30 of the consultation.

2.162 Some respondents said that the VAT costs associated with RIFs may be a blocker to using a RIF for assets other than commercial property which has been opted to tax (see the response to question 16).

2.163 Respondents also said take-up of this type of RIF may be influenced by the level of risk related to the RIF becoming tax transparent for capital gains.

**Government response**

2.164 While the government acknowledges that there may be reasons for lower take-up of a RIF which is open to asset classes other than UK property, the government wishes to allow maximum flexibility for different investment strategies and so will also provide for a non-UK property RIF.

2.165 The government will continue to work with respondents on the technical design of mitigations where there are temporary breaches of the requirement not to hold UK property.

## Proposal for an unrestricted RIF

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

2.167 The government identified two potential options that could facilitate the delivery of an unrestricted RIF regime.

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

2.168 The first option proposed was to treat the investors' units in the non-UK property rich RIF as their capital gains asset and disregard their interest in the underlying property of the RIF, except at the point where there was a disposal of UK property, or where there was a change in the RIF's investor base.

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

2.169 There were limited responses to this question. Of those who responded, the majority were concerned with the computational complexity this approach would entail and that complexity would discourage investors. Respondents felt if this approach was adopted there would need to be further discussions to develop computational rules.

2.170 Two respondents believed such an approach would not be too complex, particularly as it only applied for limited events and it would be for the RIF operator to provide investors with the relevant information.

2.171 A few respondents viewed this as no different to ongoing tax transparency for capital gains.

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

2.172 A further option is to treat the investors' units in a non-UK property rich RIF as their capital gains asset and disregard their interest in the underlying property of the RIF, except throughout the period the RIF is non-UK property rich.

2.173 This option would mean that whenever a RIF is not UK property rich, it would be transparent for gains and treated as if a partnership.

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

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

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

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

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

2.174 Of those who responded to question 24, all agreed that deemed partnership treatment for capital gains was needed for periods when the RIF was not UK property rich. Respondents' main concerns with this approach was the expected level of complexity and the risk of dry tax charges on chargeable gains accruing from deemed disposals.

2.175 Respondents felt this approach was unattractive particularly for UK resident investors, as the disposal of any asset by the RIF during a

period in which it was not UK property rich would mean that they realised a chargeable gain due to operation of Statement of Practice D12.

2.176 With respect to dry tax charges, most respondents expressed a preference for deferral or holdover of all deemed chargeable gains until the investor exited or the RIF wound up. It was highlighted that investors may rely on the distribution of disposal proceeds to settle their tax liabilities. This would make recycling of proceeds into new assets difficult.

2.177 Most respondents agreed on the need for there to be a deemed disposal when the RIF transitioned between being UK property rich and non-UK property rich. One respondent suggested that deemed disposals were only needed for non-resident investors, as UK investors were taxable in all cases whereas non-resident investors were only chargeable to the extent of the NRCG rules.

2.178 Almost all who responded to question 26 could not see another option available to provide for an unrestricted RIF. One respondent said a deemed partnership treatment should only apply to non-UK resident investors, although they acknowledged that would lead to complexities such as in relation to base cost.

2.179 Most stakeholders who responded to question 27 considered that the use of an umbrella structure with different sub-funds could be a good solution provided there was no tax friction on investors and assets to move across sub-funds. Respondents did not consider that using different unit classes would address administrative and operational complexities.

2.180 All respondents to question 28 agreed that the risk of tax transparency for capital gains was a strong deterrent to establishing a RIF that is not UK property rich and holding UK land except potentially for investors who are tax-exempt for capital gains purposes. The operational complexity and the need for investors to make UK tax filings were the primary reasons given.

**Government response**

2.181 The government does not intend to proceed with the unrestricted RIF at this time. It is clear stakeholders view this option as operationally complex and likely to be unattractive to most investors. While the government appreciates the potential wider investment strategies this approach could provide for, the resultant computational complexity and administrative aspects would likely result in reduced investor uptake.

## Reporting obligations for a RIF on disposals of UK property

2.182 To align with the reporting obligations for non-UK CIVs, the government intends to include provisions that require the operator of a RIF to annually report disposals of UK land and details of the investors in a RIF to HMRC.

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

2.183 All respondents agreed that it is reasonable to apply similar reporting requirements as those which apply to a non-UK CIV. Several suggested that it could involve greater operational costs.

**Government response**

2.184 The government will require information to be provided with respect to capital gains for the purpose of ensuring non-UK resident investors are subject to tax on disposals of UK land and will continue to seek input from respondents on the design of those rules.

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

2.185 The consultation sought views from respondents on the treatment of unauthorised co-ownership contractual schemes that do not fall within the Reserved Investor Fund regime.

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

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

2.186 Respondents to question 30 made points that were consistent with the responses in respect to breaches of the conditions. Responses indicated that a loss of status would likely to lead to a winding up of the RIF. Respondents agreed the relevant date is when the uncured breach first occurred.

2.187 With respect to question 31, respondents said that certainty would be preferable and agreed that the tax treatment of a RIF that exits the regime would need to be considered.

2.188 As explained in the responses to question 12, respondents were supportive of the proposal to treat all unauthorised co-ownership contractual schemes as companies for SDLT purposes, rather than limiting to RIFs only. This was said to ensure parity of treatment across schemes which elect into the RIF regime, those which don't, and those which obtain authorisation.

2.189 As set out in response to question 15, for the purposes of STS, clarification was also sought on whether units would be considered to be stock or marketable securities in the scenario where a RIF loses its RIF status.

**Government response**

2.190 It is not the government's intention to tax advantage an unauthorised co-ownership contractual scheme which is not a RIF. However, the tax treatment of an unauthorised contractual scheme which is not a RIF needs to be considered, as it is possible to establish an unauthorised contractual scheme outside of the RIF regime and for a RIF to cease to meet the eligibility conditions.

2.191 Both a RIF and an unauthorised contractual scheme that is not a RIF will be tax transparent for income on first principles.

2.192 As explained in the government response to questions 12-14, the government confirms that it will treat schemes which elect into the RIF regime as companies for SDLT purposes. Unauthorised co-ownership contractual schemes that are not RIFs will remain transparent for SDLT purposes.

2.193 As explained in the government response to question 15, for STS purposes the government confirms that it considers that the status of the units of an unauthorised co-ownership contractual scheme will be the same as the current status of the units of a CoACS, and that this status will apply whether or not the unauthorised co-ownership contractual scheme is a RIF.

2.194 For capital gains purposes, the government's intention is to deem an unauthorised contractual scheme that falls outside the RIF regime to be a partnership. The RIF would become a partnership from the point the uncured breach occurred.

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

2.195 Respondents expressed a wide range of views in response to this question. Where these responses are relevant to other parts of the consultation (e.g. VAT or capital allowances), these have been covered in their respective sections of this document.

2.196 A number of respondents indicated their views on the RIF's viability through stating their intention to launch such a vehicle if and when they are able.

2.197 Many respondents also made comments regarding how the RIF would interact with other fund vehicles within a structure, how other fund vehicles might transition into a RIF and how a RIF might transition into other fund vehicles. Broadly, these comments encourage seamless interaction between RIFs and other fund vehicles, with minimal friction when they invest in each other and minimal tax consequences when they convert from one to another.

2.198 Notwithstanding specific comments relating to REITs and QAHCs (see question 11) and EUUTs (see question 14) there was a further request that that it should be possible for a RIF to convert to an LTAF CoACS to allow for greater diversity of ownership in the vehicle.

2.199 The government will continue to seek input from respondents on the design of the rules.

# Chapter 3
# Conclusions and next steps

3.1 The government is grateful for the extensive and productive engagement with stakeholders during the consultation period, and for the many thorough written responses.

3.2 The government continues to believe that the case for proceeding with the RIF proposal is strong and will begin legislating for the RIF in the Spring 2024 Finance Bill. The detailed tax rules will be provided for by secondary legislation, which the government intends to engage with stakeholders on in due course.

3.3 All feedback provided via the consultation has been carefully considered. Where possible, the government has set out its position on specific aspects raised by stakeholders in the previous chapter.

3.4 The government is confident the RIF will be a fund vehicle which serves as a valuable addition to the UK's fund range. The policy design is intended to ensure that RIFs benefit from the simplicity and certainty which respondents have requested.

3.5 The government may also contact respondents where further engagement on certain specific aspects of policy design would be helpful. If you did not respond to this consultation and would like to be included on this contact list, please contact UKFundsReview@hmtreasury.gov.uk.

# Annex A

# List of respondents

A.1.1 The government is grateful for the contributions of those who responded to the consultation, who have been listed below:

- Abrdn
- Allen & Overy LLP
- Alternative Investment Management Association (AIMA)
- Alvarez and Marsal LLP
- Apex Group
- Association of Investment Companies (AIC)
- Association of Real Estate Funds (AREF)
- Aviva Investors
- British Property Federation (BPF)
- Bryan Cave Leighton Paisner LLP (BCLP)
- Chartered Institute of Taxation (CIOT)
- CMS Cameron McKenna Nabarro Olswang LLP
- Curlew Capital Ltd
- DBICON
- Deloitte UK
- Dentons LLP
- Depositary & Trustee Association (DATA)
- Ernst & Young LLP
- Europa Capital
- European Association for Investors in Non-Listed Real Estate Vehicles (INREV)
- Eversheds Sutherland LLP
- Forsters LLP
- FTI Consulting
- Grant Thornton
- Investment Association (IA)
- Investment Property Forum (IPF)
- KPMG LLP
- Legal & General
- Melville Rodrigues Consulting LLP
- Newcore Capital Management LLP
- Osborne Clarke LLP
- PricewaterhouseCoopers LLP (PwC)
- Travers Smith LLP
- RSM UK
- RWK Goodman LLP
- Schroders Capital
- Simmons & Simmons LLP

**HM Treasury contacts**

This document can be downloaded from www.gov.uk

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