

SDLT: Increased rates for non-resident transactions – draft legislation

To: stamptaxes.budgetfinancebill@hmrc.gov.uk

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Introduction

1. The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £100bn to the economy in 2018 and supported more than 2 million jobs¹. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. The sector is one of the most successful in the world at attracting domestic and overseas long-term investment capital into the renewal of the UK's towns and cities. Such large, long-term, patient investors are critical to the urban redevelopment and regeneration of our country, and crucial for creating and maintaining modern and productive work places.

Policy concerns

3. While we acknowledge that this is a technical stage consultation, we remain concerned these measures could hamper the government's primary objective of supporting home ownership, by penalising those businesses which are actually contributing to the supply of housing in this country - such as build-to-rent providers and those developers who fund development through off plan sales. Build-to-rent in particular is specifically a rental product, and so will never be in competition with owner occupiers or first-time buyers.
4. We are also concerned that these measures will significantly and disproportionately increase the administrative compliance and legislative complexity for both professionals in the industry and individuals who are caught by these measures.

Technical considerations

5. We have set out some brief points in relation to the draft legislation within the appendix. In particular, we are keen to ensure that where exclusions have been granted for various fund vehicles, that the legislation allows for the whole fund structure to be eligible for the relevant exclusions.
6. Please do not hesitate to get in touch if you have any follow up questions.

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Appendix 1: Comments on the legislation

Para 11: Excluded companies (*from the control test*)

7. We welcome the exclusion from the close company control test for REITs and open ended investment companies set out in paragraph 11:

A company is an “excluded company” for the purposes of paragraph 7(3)(c) if it is any of the following—

(a) an open-ended investment company within the meaning of Part 17 of FSMA 2000 (see section 236 of that Act);

(b) a company UK REIT within the meaning of Part 12 of CTA 2010 (see section 524(5) of that Act);

(c) a company that is a member of a group UK REIT within the meaning of Part 12 of CTA 2010 (see section 523(5) of that Act).

8. We note that sub paragraph (c) allows for a member of a REIT group to similarly qualify for the exclusion and would query why the same wording has not been extended to open ended investment companies?
9. In practice it is very common for collective investment funds to have a number of holding companies within their structure that will hold individual real estate assets separately (for a number of commercial reasons – including it being a requirement of the lender in many cases). Therefore, it is very important that any treatment for collective investment funds can be applied in practice to these typical ownership structures.

Para: 15: Co-Ownership Authorised Contractual Schemes (CoACS)

10. We note that CoACS will be deemed to be UK resident, while EEA equivalents will not. While we welcome the treatment for CoACS, given the legislation is clearly seeking to create some alignment between direct and indirect property acquisitions in many cases, the government should consider whether this distinction for EEA equivalents is necessary, given in many cases, the investor make up of many professional managed and widely held funds is likely to be very similar.
11. We consider that it would be preferable to allow for a general exemption for collective investment funds, where they meet certain key criteria – such as being widely held and professionally managed, as in many cases, it is likely that the investor make up will be similar. Furthermore, given these highly regulated and widely held funds will primarily be attracted to professionally managed rental asset classes, like Build-to-Rent, or purpose built student accommodation - a general carve out would actually help preserve much needed capital flows into these asset classes, which would support the construction of homes in the UK, without jeopardising the policy objective of supporting home ownership.

Para 20: What counts as a dwelling

12. The UK residential investment landscape has changed significantly over the last decade – purpose built student accommodation has become increasingly established, build-to-rent is still a relatively young

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asset class – and elderly living accommodation is just starting to get traction from large institutional investors.

13. It is important that the legislation is able to keep up with modern trends in residential investment asset classes to ensure that government are able to be responsive and to provide clarity where new asset classes evolve. To that end, we would suggest that government have the powers to amend this legislation by statutory instrument.