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Dear Jasmine

RPDT: BPF RESPONSE TO DRAFT LEGISLATION

I attach a copy of the BPF response to the draft legislation on the proposed new residential property developer tax (RPDT). We have also submitted a response direct to HMRC through the online mailbox.

As you can see, our response is very comprehensive. This reflects both the complexity of the new tax and the many questions we have about its application, and the speed at which the Government wants to introduce the RPDT which has limited the time available for a fuller consultation with stakeholders. We do, however, appreciate the positive way that you and HMT/HMRC colleagues have engaged with the sector throughout the consultation process.

We also welcome the decision to exclude BTR and housing associations from the scope of the new tax. We do, however, have some concerns about the proposed legislative approach:

- on BTR, the current draft clauses exempt BTR activity where the development in question is both owned and developed by the same company. However, there are different BTR business models and we are concerned that models which include intra-group transfers or forward funding would unfairly be brought within scope of the RPDT under the current draft. We would ask that the draft legislation is amended to address this inequity. We provide more detail on this in Appendix 1; and

- on affordable housing, the current draft legislation exempts non-profit registered providers of social housing (i.e. housing associations in England) and equivalents across the UK. However, institutionally-funded registered providers are left within scope of the RPDT. This cannot be correct, and runs counter to wider Government policy on encouraging the private sector to invest in affordable housing. As such, we would ask that affordable housing developments delivered by these providers should benefit from the same exemption as those delivered by housing associations. Again, we provide more detail on this in Appendix 1.

As regards our wider comments on the draft legislation which are set out in Appendix 2, I hope you find these helpful. I would just draw out the following points:

- Ministers have publicly and repeatedly stated that this will be a time-limited tax, intended to raise £2bn over 10 years. As such, we would like to see this commitment reflected on the face of the legislation through the inclusion of a “sunset” clause. I know this has previously been dismissed but we still believe that this will be important to reassure the sector about the limited lifespan of the RPDT;

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- it will take time for taxpayers to get used to how the RPDT works. We have therefore made a number of recommendations on how the regime can be simplified. In addition, as discussed in working group meetings with HMT and HMRC officials, we have highlighted where additional guidance including worked examples would help taxpayers understand how the RPDT is intended to work in practice; and

- we would call for a light-touch approach to be taken to compliance during the first full year of the RPDT. This could include more robust and generous transitional arrangements for taxpayers within scope of the new tax, including for those who have developments that are already well-advanced. Given that the RPDT will continue in existence until it has raised £2bn from the sector, this would not result in any loss to the Exchequer.

We would welcome the opportunity to discuss our response.

I look forward to hearing from you.

Rob Wall
Assistant Director

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Appendix 1: Scope of RPDT – Build-to-Rent and Affordable Housing

1. On 12 October 2021, it was announced that:

   (a) RPDT will not apply to build-to-rent profits; and

   (b) an exemption from RPDT will be provided for non-profit affordable housing providers, including their for-profit subsidiaries (in addition to the existing exclusion from RPDT for charities).

Build-to-rent

2. We very much welcome the decision to exclude profits from Build To Rent (BTR) properties from RPDT. The Government has said that no additional legislation is needed to provide for this as BTR property would not be held as trading stock and the developer of the property will not have trading profits (and so the charge to RPDT would not arise in any event).

3. We agree that where BTR property is both owned and developed by the same company, then (under the current draft legislation), RPDT should not be payable. However, this is only one model for BTR activity - and we are concerned that an exemption that only applies to one particular model of BTR investment will create an unlevel playing field and stifle investment in a segment of the market which, while still relatively nascent, is growing fast and plays an important role in delivering the Government's policy objectives in relation to housing. Specifically, greater planning policy emphasis is now on delivering housing supply in 20 key cities, which also account for 80% of BTR delivery.

4. Within the BTR market, some groups establish a separate development company to acquire the land and carry out the development, with the completed BTR property being sold to a group investment company to hold (and manage): the intention of the group is to "develop and hold" but that intention is realised by a two stage process. In such a situation, there will be a company that has an interest in land within section 4 that is trading stock and that will realise trading profits on the intra-group disposal and so, in the absence of additional legislation, RPDT would appear to apply.

5. Also, within the market, a significant number of BTR developments involve a company that develop BTR properties to sell to a third party investor: the model here will generally involve a forward funding (as a result of which the transaction effectively represents an agreement to deliver a completed BTR building to a known (and pre-committed) specific investor). We understand that such transactions represent a substantial majority of current BTR schemes. Again, in the absence of additional legislation, RPDT would apply.

6. We therefore ask the Government to reconsider its proposed approach on excluding BTR from RPDT. In particular, an exemption for BTR properties (by way of adding "BTR property" to the list of buildings not treated as "dwellings" as set out in section 5(2)) should ensure that the development of a BTR property is outside the tax regardless of the way the development is structured (i.e. mirroring the approach taken for student accommodation where it is the end-product of development activity that determines if RPDT is payable, not the development model used to build it).

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7. We appreciate that identifying and drafting a definition of BTR property will require careful consideration to ensure it is appropriately targeted - but we consider that this is the optimum way to ensure that BTR development activity is outside the scope of RPDT.

8. If helpful, we would point out there are existing definitions of BTR, for example, in the glossary to the Government's National Planning Policy Framework:

Build to Rent: Purpose built housing that is typically 100% rented out. It can form part of a wider multi-tenure development comprising either flats or houses, but should be on the same site and/or contiguous with the main development. Schemes will usually offer longer tenancy agreements of three years or more, and will typically be professionally managed stock in single ownership and management control.

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9. Given that planning conditions relating to BTR development will generally be aimed at preventing changes to other uses without re-opening discussions on the overall development, there should be limited risk in terms of units in a developed BTR property being then sold on as "dwellings".

10. There are other drafting options which may be effective in excluding group "develop to hold" BTR activity from RPDT (i.e. where one group company develops and sells to another group company to hold as an investment), but this would still result in some market distortion given that there would be additional (RPDT) costs where an investor contracts with a third party to deliver a completed building. Consideration would also need to be given to the role of joint ventures in this sector (i.e. where there is a "relationship" between developer and ultimate owner, but one that falls short of "tax grouping"). We would be happy to discuss possible options with HMT/HMRC.

Affordable Housing

11. The approach being taken in relation to affordable housing means that certain types of company that develop (and hold) affordable housing will be exempt from RPDT on their development profits.

12. As we set out in our response to the consultation on RPDT, concerns as to impact of RPDT on the viability of affordable housing indicate that an exemption from RPDT can be justified in relation to those who develop and subsequently manage (as registered providers) affordable housing. The proposed exemption in section 2 of the draft legislation only however excludes certain categories of registered provider and we are concerned that (as with the proposed approach to BTR) this risks creating a unlevel playing field in this particular area of the housing sector.

13. There are now a number of institutionally funded registered providers operating within the affordable housing space and they are expected to represent between 15% and 20% of the market within the next two years. The Government has encouraged this private provision, and for example, Homes England have recently announced several private sector providers as part of their strategic partnership procurement of affordable housing. Private sector providers operate in the same way as the not-for-profit providers in terms of a develop and hold strategy, but as is the case with BTR, the institutionally funded registered providers may not themselves carry out the construction but may engage a group development company (or a joint venture company in which they have an interest) to carry out the development utilising forward funding arrangements. As a result, a person would have an

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interest in land held as trading stock and there would be (development) trading profits in that company to which RPDT could apply.

14. Any RPDT payable in connection with development of affordable housing on behalf of such institutionally-funded registered providers would increase the costs of development and disadvantage this particular type of affordable housing provider as compared to the exempted categories. Further, where the development is funded by government grant (which we understand comprise around 50% of the new-built affordable housing marketplace), would be likely passed on the grant provider through increased grant "ask", or fewer homes.

15. Given the importance of building good quality affordable housing to meet the UK's property needs, we ask that the government reconsider its approach to affordable housing. We suggest that the exemption apply to any person that develops affordable housing for sale to a related registered provider (i.e. the development is under a develop to hold model). This would mean that there would be no RPDT where the development is itself done by the registered provider or, as is common with institutionally funded registered providers, where the construction activity is done by a group company (who has an interest in the land) under a forward funding or equivalent model.

16. We agree that the approach here must be to exclude the developer from the scope of RPDT: for those developers that build affordable housing under a s106 obligation (and on-sell to an unrelated housing association on completion), the cost of that part of their development work needs to be taken into account in calculating their adjusted trading profits.

Appendix 2:Comments on the draft RPDT legislation

1. References to sections below are to clauses of the draft RPDT legislation published on 20 September 2021.

Section 1: Introduction

2. The Consultation Document confirmed that this was intended to be a “time-limited” tax, aimed to raise a total of at least £2bn over a decade.

3. Our view is that this should be provided for in the legislation (in section 1) with the inclusion of a “sunset” clause that reflects this intention, so that, at the end of the relevant 10 year period (i.e. 31 March 2032), any extension to RPDT (a) is conditional on the £2bn target having not been yet achieved and (b) in any event, requires an affirmative vote of Parliament. (As one Parliament cannot bind another, this provision would not prevent the tax being extended if a future Parliament thought it right to do so - but it would mean that the intention of the current government - and Parliament in enacting this tax - is clearly evidenced within the statutory framework and so informs future Parliaments. We also ask that the Explanatory Notes to the Bill reference in “background” the policy underlying this new tax, its intended time-limited nature and the revenue target for similar reasons.

4. We would also like to see in the legislation a requirement for HMT to make a specific report annually to Parliament on the (cumulative) amount raised under RPDT, so Parliament and the sector is able to monitor the revenues raised by RPDT (and so identify when target revenues have been achieved). Again, this links to providing Parliament and key stakeholders with a means to monitor the performance of RPDT against the stated policy aims. We note that HMRC produce general tax-collection statistics annually in any event, but given that RPDT has been proposed as a time-limited tax with reference to a specific revenue target we consider that transparency and accountability (both to Parliament and stakeholders) would be assisted by requiring such a report to be delivered to Parliament.

Section 2: RP developers

General

5. RPDT applies only to “a company”. This presumably has the meaning of s1121 CTA 2010 (as these provisions should presumably be interpreted in accordance with the Corporation Tax Acts by virtue of section 15(2) (and may even be part of the Corporation Tax Acts - but see comments on section 8 below). This definition therefore ensures partnerships cannot themselves be RP developers (also see s1257 CTA 2009) - we comment below on the position of members of partnerships.

6. Please clarify whether RPDT is intended to apply to unincorporated associations? Although it seems unlikely that such would meet the threshold conditions, if not so intended, then it would be preferable to exclude them from RPDT specifically (by adapting the definition of company for these purposes in section 20).

7. In terms of “within the charge to corporation tax”, we assume this means generally (e.g. resident or trading through UK permanent establishment or under s5B(2)(a) CTA 2010). (Note that we comment below on liability under s5B(2)(b) CTA 2009 as a result of the application of the transaction in land rules). We note that a taxable RPDT profit will only arise if the relevant company has a trading profit in any event. Please clarify in guidance.

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8. Further the legislation refers to the developer "undertaking" RPD activities. If the developer is party to a JV structure constituted by a partnership (whether a general partnership, an English LP, a Scottish LP or a LLP) or a tax-transparent unit trust, the partnership/unit trust undertakes the activities even though corporation tax profits (calculated at the level of the partnership) are attributed to partners. We also note section 4 and so, unless it itself contributed the land to the JV, a member would not hold the land (which is held by the partnership) as trading stock (there appears to be no equivalent to s59 TCGA in this context) and so it seems the conditions for a charge to arise would not be met - see comments on section 10. We note that this has been raised with HMRC in discussions on the draft legislation and that it is intended that corporate developers involved in RP development activity through a partnership or other income-transparent entity are liable to RPDT on their share of (partnership etc) profits and that the legislation is to be amended to provide for this. We are of course happy to comment on any revised provisions when available.

9. In terms of JV companies, see comments on section 10.

10. In this context, a number of entities that may invest jointly with a developer in a partnership or equivalent for a particular project may have exemption from UK tax on their profits. We assumed such entities will be exempt from RPDT (noting here the treatment of certain bodies in relation to joint ventures under section 14): please clarify.

Affordable Housing
11. A new section 2(1)(c) was added to legislation on 8 October 2021 which excludes "non-profit housing companies" from RPDT. In addition, a registered provider that is a charity will be excluded from scope. These exclusions link to a policy decision to exempt profits from affordable housing made by certain non-profit entities. Please see comments in Appendix 1.

Section 3: RPD activities

12. The definition is circular. A RP developer is a company that carries on RPD activities. Activities are RPD activities if they are (a) activities within subsection (1) and (b) carried out by a RP developer. Therefore, for activities to be RPD activities, they need to have been carried out by a RD developer - but a person can only be a RD developer if they undertake RPD activities/

13. In relation to section 3(1)(a), the RP developer has to have - or have had - an interest in the land. Where a RD developer has had an interest in the past, should there not need to be a connection between the (past) ownership of land and the (current) RPD activities? For example, assume a developer owned various parcels of land which it then sold off (for example, it decided not to develop in that area). Five years later a new owner decides to start development and independently (i.e. not connected with the sale) decided to appoint the developer to do certain works as a contractor. Would that past interest mean that the developer's profits as contractor were within the charge to RPDT even though their involvement in the development is co-incidental? We note that as the developer is the person that is liable to the tax, then it would have to have an activity relating to that subsequent development for it to be within scope - but this would be possible if it say acted as contractor. We appreciate that any "link" condition may be seen as potentially creating planning opportunities but consider that any such risk could be addressed in how the legislation is formulated. Given that the Explanatory Notes indicate that third party contractors are not intended to be within scope, past ownership of land (absent anything itself) should not be sufficient to give rise to an RPDT liability,

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14. In terms of the definition of activities, the list in subsection (2) is helpful in giving an indication of some of the types of activity intended to be “for the purposes of, or in connection” with the development of residential property (and we would ask that is supplemented by guidance giving “real-world” examples). In some ways, this appears to overlap with “ancillary activities” as some activities could be said to be “ancillary” to the main activity of residential development (as commonly understood) but at the same time may be “in connection with” that development - e.g. infrastructure for a site (see comments below). Although costs (and profits) can be brought into account regardless of whether an activity is “in connection” with section 3(2)(d) or under section 3(2)(g), it would be helpful if guidance on section 3 could address this - both in terms of single developer companies (where all activities are carried out by the same company) and groups (where different members of the group may have different roles in the development and so each member will need to work out it is is carrying out RPD activities).

15. Guidance on “ancillary activities” should also include examples such as, where residential development is undertaken on a single site (e.g. estate) the position in relation to costs incurred on infrastructure and (subject to planning requirements) retail and similar services. Land developed for say common access roads etc would not seem to be within the definition of residential property in section 5 - would however the costs etc. associated with such works be “ancillary” within section 3(2) and so part of RPD activities (and so taken into account in the profit computation under section 9) - or (as above) would they be in connection with the main development?

16. Other aspects of development that could be usefully commented on in guidance in this context would include s106 contributions, planning conditions linked to local infrastructure (e.g. roads, schools, parks etc). We note that s106 obligations may involve the building of affordable homes - but note that this would be within section 3(2)(d) in any event. Again, it would be helpful if guidance could comment on this.

17. Clarity on ”ancillary activities” will be important as a company carrying out “ancillary activities” for a fee (but not “actual” RP development) will be a RP developer if that fee is brought into account as a trading receipt (and subject to a related company owning the relevant land).

18. Further, it would be helpful if guidance could provide information on what activities would be seen as “in connection with land” (as opposed to being “on land”) for the purposes of the tax (or, ideally, if possible within the given timetable, a statutory list as has been included in subsection (2) for section 3(1)(b)).

19. It is unclear from the drafting of the list of activities what would be “in” and what would be “out” of scope in terms of activities within the wider supply chain relating to such construction (for example, the manufacture of modular/pre-fabricated housing:). Although legislative clarity would be preferable , we appreciate that it may be more straightforward to address in guidance.

Overage

20. We note that HMRC have confirmed in discussions on the draft legislation that a company that has disposed of land (on capital account) but subsequently receives an overage payment linked to the profits of the developer would not be seen as carrying out RD development activities: again this should be confirmed in guidance (although a legislative carve-out would be preferable).

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Section 4: RPD activities - interest in land

General

21. A RP developer (or a related company) only has an interest in land for these purposes where the interest forms part of its trading stock. We note that the legislation includes a specific definition of trading stock in subsection (5)(b) for these purposes only. So, if a related company owns land on capital account and appoints a group company as developer, then that developer's profits from development activity would not be caught as section 4(1)(b) is not met. Please confirm this in guidance.

22. However if a developer decides to appropriate to capital account at the end of the development (perhaps as a result of changed market conditions) we assume that would be within subsection 5(b) (notwithstanding that no actual trading profit was realised) - this is because it "would be disposed of" etc even if appropriation is not itself ordinary course: please confirm whether it is intended that the appropriation (given that an amount is then required to be brought into account) would give rise to RPDT profits.

23. If, however, land was acquired as trading stock, but not developed, and appropriated to capital account - whether of the company or a relevant group member - with any development only after being so appropriated, we assume that section 3 would still be met (because the land was held as trading stock at some point (even though not developed as such)). Here, as the charge is on "adjusted trading profits", there would be no charge in relation to any eventual chargeable gain realised following the subsequent development on capital account (assuming the developer was not themselves providing any services in relation to that development that themselves constituted RPD activities that resulted in RPD profits.

24. We assume (and note that this was confirmed by HMRC in discussions on the draft legislation) that (generally) a person charged to tax under Part 8ZB CTA 2010 on the disposal of land would not be within the scope of RPDT as, although their profits are deemed to be trading profits (see s356OC/OE CTA 2010), the land would not have been held as trading stock - though, for completeness, it seems that if the transaction in land rules apply by virtue of Condition C in s356OB CTA 2010, then RPDT could be in point as the consequence of a disposal of land would be to give rise to a trading profit. Please confirm (and this should be covered in guidance).

25. Based on the above, we recommend that the guidance set out some simple examples showing common development fact patterns (particularly in relation to group development and forward funding structures) to illustrate the application of sections 3 and 4 in practice. This would need to include situations where a number of companies in a group have an interest in the same land (as can often happen as a result of financing requirements) and how the trading stock test applies in this context (taking account of the fact that the "trading" test, based on badges of trade and case law, can be less than clear cut in some cases). In addition, guidance should comment on the definition of "trading stock" for these purposes (and the interaction of the definition with accounting classification/principles/profit recognition).

26. In subsection (2)(b), should this deal with the situation where the RP developer and a member of its group together hold at least 10% in aggregate (the legislation says the developer <u>or</u> the group member - and so does not address where the 10% condition is met through aggregation of interests).

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27. In terms of section 4(2), where a JV company is a RP developer by virtue of itself owning land, the JV company cannot be a related company of a member under section 4(2)) - this is because section 4(2)(a) cannot apply given section 10(4)(b) and section 4(2)(b) works to “relate” a JV company with a RP developer member only: please confirm (and this should be set out in guidance). See also comments on section 10 where a member of a JV (and not the JV) owns an interest in the land on which RP development is being undertaken.

28. In subsection (3) (definition of excluded interest), given that this is intended to be a ten year tax, should a regulation making power be included to allow changes to the definition (see for example paragraph 4(2) Schedule 1B TCGA by way of example).

29. In addition, we refer to our comments on the position of partnerships and unit trusts above: here, the interest in land is held on behalf of the partnership or by the unit trust (and not by members - hence the deeming of s59/59A TCGA which only applies for chargeable gains purposes).

30. Section 4(6) incorporates the meaning of disposal from the TCGA. We note that this differs from the definition used for the purposes of the transaction in land rules (s356OQ) and assume this is intentional.

Build to rent

31. The Government intends that Build To Rent (BTR) activities will not be in scope of RPDT at this point in time. The Government has said that it considers that no change is needed to the legislation to provide for this given section 4 and the fact that the charge is on profits that are derived from “trading profits”.

32. Where a company owns land and undertakes BTR activity on capital account (under a develop to hold) model, we agree that this should generally be the case. Guidance however should clearly set out the exclusion of BTR and explain the basis on which the Government considers BTR is out-with these provisions (with an example).

33. However not all BTR activity is carried out using a (single company) develop to hold structure. A group that undertakes BTR activity may structure its operations so that, although the group overall is “developing to hold”, the land is initially owned by an in-group development company that carries out the construction etc (on trading account) and then, on completion, the BTR property is transferred intra-group to an investment company that holds the property on capital account. The transfer intra-group results in a trading profit for the developer and a market value base cost for the investment company (see s161 and 173(3) TCGA).

34. There are various reasons why a group may structure its development activity in this way (for example, isolating development risk, financing reasons and VAT recovery). If the draft legislation remains in its current form, then a group that “develops to hold” BTR property by utilising a separate development company will be within the scope of RPDT whereas a group that “develops to hold” in a single company is not - even though the end result (development in BTR to hold as an investment) is the same.

35. Further, although we note that, unlike BTR activity in a single company structure, the in-group developer does realise an actual profit on sale, that profit is from an intra-group transaction (and so is not a profit to the group as such).

36. In addition, the developer may not necessarily have all the expertise to carry out the development and so may engage a group contractor company to provide construction services to it (again with the developer transferring the completed property to an investment entity to “hold”). Because of the role of the developer, and its ownership of an interest in the land, the contractor could also be within the scope of RPDT - which it would not be if its services were provided to a single company (develop to hold) investor (as the land would not be held on trading account).

37. We therefore ask the Government to amend the draft legislation to ensure that BTR activity is outside the scope of RPDT where the BTR property is “developed to hold”, whether in a single company within a group or where the group structure means “develop” and “hold” are done by separate companies. See Appendix 1.

Section 5: RPD activities - residential property

38. Should references to “a building” also refer to “or part of a building” to include single properties where part of the building is used for retail or other commercial purposes?

39. Sections 5(1)(a)-(c) follow the approach used elsewhere in tax legislation to defining residential property. However, please clarify whether the use of “designed or adapted” for use as a dwelling is intended to connote a different test to that which applies for SDLT (where the test is by reference to “suitability as to use”. In particular, is it intended the guidance on “suitable for use” as a dwelling in the SDLT manual will apply to “designed or adapted” in section 5(1)(a)?

40. Section 5(1)(d) is “new” and extends this to cover land with planning permission for residential use (whether being sought or obtained). Whilst we can understand why this is included, we are concerned that this is too broad. We would welcome an explanation on this.

41. For example, a company may own a site which is subject to wider master plan for development. As a result, it could have obtained ‘outline planning’ consent for a range of property types which means it is open to the developer to determine which plots within that plan will be developed for which permitted use. If the developer sells one or more plots of that site, they may sell it subject to a contractual obligation to only build offices or retail linked to their plans for the site. The nature of the ‘outline consent’ means that it is theoretically possible that the plot could be developed as residential land (as formal planning permission is still required and the outline permission means residential development is still an option). However, the developer may have, when selling the land, included a contractual undertaking intending to limit development to non-residential. Notwithstanding the developer is not intentionally selling residential land (and has indeed taken steps through negotiating that undertaking to ensure the land is not residentially developed), would the sale be within section 5(1)(c) because of that outline permission? If so, this imposes RPDT on a sale that was not (or at least not intended to be) a sale of residential property. This again should be commented on in guidance.

42. Another example is where a developer applies for permission for residential development, but the local authority refuses to grant it: is that land residential property up and until the permission is refused (such that a sale whilst the application is pending would be within the charge)? If so, does this mean that any works done up until that point “on or in connection with” the land are residential property activities? If the land is then developed as say a commercial building, do any part of the profits have to be attributed to those initial activities for RPDT purposes, or is the change of use to a commercial building at such an

early stage (due to planning etc) sufficient to ensure RPDT cannot apply on the sale? If the land was sold on because the developer did not develop commercial buildings (at a loss say) would that loss be an adjusted trading loss for these purposes because it derives from (intended, but thwarted) residential development?

43. A further example (which is linked to how RDPT profits are calculated) is where a company owns a commercial (office) building which has historically been let out (so is on investment account). A planning application is made to convert into residential (in response to changed market conditions say) and the building is sold to a third party who plans to carry out that redevelopment once the existing leases expire. The sale is then of residential property (within section 5(1)(d)) but as the transaction is on capital account (here, the possible change of use should not itself lead to supervening trading), we assume no RPDT profits can result. We note that HMRC confirmed that this was intended to be out of scope of RPDT in discussions on the draft legislation: again, this should be reflected in guidance.

44. A similar issue would arise if the developer switched from developing flats say to a hotel (with a changed planning permission if required) and then sells the hotel. The hotel is not residential property. At what point in the project would the developer cease to be a RPD developer of the relevant land - and is there any recognition of RPD profits at that point (and if so, on what basis?).

45. In relation to section 5(2)(b), guidance on what this is intended to cover will be needed given the variety of arrangements for residential accommodation and related care in this sector.

Section 6: RPD Profits or losses

46. We welcome the inclusion of a formula to illustrate how the computation is intended to work. We comment on the constituent parts in relation to sections 9 and 10 below.

47. As a general comment, in each of C, D and E, we suggest that reference is made to “allowable RPD loss relief”, “allowable RPD group relief” and “allowable carried forward group relief) to identify (more clearly) that the loss/group relief that is relevant here is a specific form of relief for RPDT only (i.e. differentiating from “normal” loss and group reliefs). This helps provide clarity in dealing with the tax in returns and in correspondence.

48. Should references to the “developer” in A to E be to the “RP developer” (although the opening words tie this to a RP developer, again clarity would be helped to use this term in the remainder of the section)? (As we make the same point in relation to other sections: it would be helpful to use the defined term throughout for clarity to ensure that the legislation differentiates clearly between provisions that apply to an RP developer and those that reference “developer” more generally.)

Section 7: Chargeable accounting periods

49. This section includes the transitional provisions (i.e. RPDT applies to adjusted trading profits arising on or after 1 April 2022).

50. Where an accounting period straddles commencement, time apportionment applies. There may be circumstances where time apportionment does not give a fair result and so please provide for a “just and reasonable” apportionment as an alternative in such a case, recognising that in many cases the “just and reasonable” result is an apportionment based

on when the profits are realised. This is commonly done when introducing changes that could potentially have a material effect and helps guard against an arbitrary (and unfair) result (e.g. CILR, CIR and also the transaction in land rules in s356OJ CTA 2010).

51. For example, a company has undertaken a large development and has 5 properties left as at 1 January 2022. It sells 4 before April and 1 after. On a time-apportionment basis 75% of the profits would be potentially subject to RPDT rather than 20%: this does not seem an equitable result. Any concerns about manipulating the timing of sales to reduce RPDT profits should be dealt with through the anti-forestalling provision not through imposing time-apportionment.

52. As set out in our response to the consultation, we consider a mechanism should be included within the transitional provisions to grandfather (i.e. exclude) projects which started before legislation was introduced (or at least before the consultation was published). Housing developments can take years to come to fruition – from acquiring the site/design/planning/construction and finally to sale or rental. The viability of the developments that become subject to RPDT as a result of profits arising after 1 April 2022 will have been determined several years ago based on tax rates and laws that were in place at the time. The tax, albeit not strictly retrospective, is accordingly retroactive.

53. A particular issue in relation to development projects that start before 1 April 2022 relates to costs incurred at an early stage that are taken to P&L (and not capitalised within trading stock/work in process). If such costs had been capitalised, then they would be a deduction when working out the overall RPD profit - but because accounting has required them to be taken to P&L, although they should be taken into account in a trading computation, they would not be available to offset RPD profits. We note that this has been discussed with HMRC previously, and we ask that the Government consider further possible ways of allowing relief for such items within the section 9 computation.

Section 8: Charge to tax

54. On the basis that RPDT is taxed "as if" corporation tax, and section 15(2), please confirm whether the RPDT provisions form part of the Corporation Tax Acts (e.g. for definitions etc). Here, "as if" a tax is not the same as "being" the relevant tax and section 15(2), although it refers to all enactments relating to corporation tax, is in the context of a section on tax compliance (not substantive rules)). This is particularly relevant to whether corporation tax definitions apply. Clarity would be helpful.

55. In addition, please confirm that this means that RPDT would rank alongside corporation tax on an insolvency.

56. Should reference to the "developer" (in lines 3 and 4 of section 8(1)) be to the "RP developer"?

Section 9: Adjusted trading profits and losses

57. The charge to tax is on RPD profits at the time at which they are recognised within the developer's trading computations - i.e. by reference (generally) to when they are recognised for accounting purposes. In many cases, this will be on actual sale though as above there may be cases where an accounting profit/loss is recognised without actual profit/loss being realised.

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Section 9(2)(a)

58. RPD activities include preparatory work. What is intended if say a developer starts work on a site and applies for residential planning permission. The application means that the land is residential property and so there are then RPD activities. However, planning permission is not given and so the developer decides to continue with constructing a commercial property - when that property is sold (at a profit) we assume the developer does not have to apportion its profits to charge a portion to RPDT attributable to those initial RPD activities, notwithstanding that its trading profits are from the sale of a non-residential building? (Here, section 3 would be met as the land would be residential property within section 5(1)(d) at the time at which certain activities were carried out and section 4(1)(b) would be met.) A similar issue would arise if usage changed from residential to a hotel.

59. The issue here is how RPDT is intended to apply where (a) the construction activity changes from residential to commercial (whether due to planning consent issues or market conditions) or (b) usage changes from residential to a use that is excluded from being residential within section 5(2). This may be something that can be best clarified in guidance. See also comments on section 5.

60. In relation to JV companies, we comment in section 10 on the use of JV contractors to undertake construction activity on land owned by one or more of its members (and whether a JV contractor of this type would be in scope). If such a JV contractor is in scope, then it may provide construction services to a number of clients - some of which may be third parties (i.e. not RP developer members of the JV). We assume that, given that the JV contractor can only be a RP developer in such circumstances where a related party owns (or has owned) land, any works done on land held by an unrelated person would not be RPD activities - and so profits on those activities would be outside the scope of RPDT? (If so, if the RP developer member owns land jointly with a third party (not a JV member), would the same principle apply?). Please clarify and address in guidance (with examples).

61. Guidance will need to comment on how the apportionment is to be carried out (e.g. if a mixed development with say retail and residential elements), with examples.

Section 10: Attributable joint venture profits and losses

62. We note the policy objective appears to be to apportion to JV members RPD profits and losses (to the extent those profits being below the JV's allowance).

63. Under section 10(1) RPD profits/losses are said to be attributable to the "developer" (by which we assume RP developer?). Does this mean that such profits/losses are only to be attributed to a JV member that is itself a RP developer (within section 3)? And if that is the case, is it intended that this applies where the JV member is a RP developer because of activities unrelated to the JV, or is it only where the RP developer status links to the JV? (See further comments on s10(8)). This would mean a member that does not itself carry out RPD activities does not have such profits/losses attributed to it. In which case, we assume liability to RPDT on those non-attributed amounts remains with the JV company. Please confirm - and this should be explained clearly in guidance.

64. In relation to section 10(4), a JV may be structured as a JV subgroup (with holding companies).

65. There is a degree of circularity in the definition of relevant JV company as it applies to a JV company that does not itself own land. This is because a JV company would only be a

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RP developer if it or a related company has (or had) an interest in land (section 3(1) and section 4).

66. If the JV is a “relevant joint venture company” as defined in section 10, an RP developer that holds a 10% interest in that JV company will be a “related party”. However, account can only be taken of the interest of that RP developer in the land for these purposes under section 4(2) if the JV company is itself a RP developer (section 10(4)) - and unless that interest is taken into account the JV company cannot be a RP developer. The application of this condition to JV companies that do not themselves hold land (but say undertake activities in relation to land owned by a JV member) is therefore unclear.

67. There can be situations where a company wants to develop residential land for sale, but does not itself carry out the works (it engages a contractor). That contractor is itself set up as a JV between the developer company and a third party (and here the third party may provide the construction expertise). In such a case, is the JV company intended to be a RP developer: the member that owns the land, if a RP developer, will be within scope on its profits from the development on sale and will have paid fees to the JV for its construction services: is it intended that the JV contractor’s profits are within scope because of the person to whom it is providing services? We ask as the Explanatory Notes say in relation to section 3 that: “This means that profits from similar activities undertaken by companies acting purely as third-party contractors who are not the RP developer do not come within the charge to the tax” and the JV company is here not grouped with the RP developer (although related).

68. Section 10(6) allocates profits to the (RP?) developer where it holds 10% of the JV company. “Connection” however (within section 4(2)) in terms of ownership of land is 10% held by the developer or a related company. Is the distinction intended?

69. In relation to section 10(7), this is effectively a transfer of a RPD loss - and hence both parties need to agree (as the JV then loses the benefit of that loss). We assume the two-year period by reference to the RD developer accounting period is because the loss impacts their tax payments for that period (and so a “the later of” two years of end of developer and JV period would not be possible)? Where a loss is transferred to a JV member, it seems reasonable to assume that the loss would have “value”: in a JV context, there may be a commercial need to recompense the JV for the use of the loss, In that context, could the legislation provide that any payment for the loss (up to the amount of the loss) would be a tax nothing (as is the case under both group relief and s171A TCGA transfers).

70. Section 10(8) is intended to determine the amount of profits/losses to be attributed to the RP developer member. In the case of a JV contractor (which is a RP developer by virtue of providing construction services on land owned by a RP developer member) is the attribution limited so it only applies where the JV member would be a RP developer in relation to the particular land in question - or does it apply simply because the member is a RP developer generally? (This links in part to the meaning of developer in section 10(1).)

71. To illustrate this query, assume a JV contractor has two members (“A” and “B”) with A (only) having an interest in land for which the JV contractor was appointed to provide construction services and as a result of which the JV contractor is an RP developer.

72. The JV contractor’s profits in relation to the contract with the land owned by A would be RPD profits. A share of those profits would be attributed to A under section 10. It seems that under section 10, B is also required to bring into account its share of the JV’s RPD profits if

B is a "developer" (in its own right) notwithstanding that B cannot itself a RP developer of that land (it does not itself have an interest in the land and neither A nor the JV contractor are related companies). Given the structure of the tax appears to require a RP developer to only be in scope in terms of profits from the development of land it owns (see Explanatory Notes on section 3 for example), this would mean that B is taxed on profits that would not be RPD profits if it itself provided the relevant services. Is this intended?

73. Guidance will need clear examples as to how the attribution is intended to work. The guidance could also usefully explain the "why" and not just the "what" to provide context.

Section 11: Reliefs (and Schedule 1)

74. We welcome the inclusion of the ability to offset adjusted trade losses (whether of the RP developer or a group company) against RPD profits. As a general comment, please can these new reliefs in section 11(b)(c) in Parts 2 and 3 reference "RPDT" in their title to differentiate them from "normal" group relief in the legislation (although very much based on the structure of loss relief and group relief as it applies for CT generally, these are distinct reliefs for a new tax and so it would be helpful for the legislative terms to reflect this to minimise any risk of conflating the two). Equally in the headings to paragraphs 2 and 3 please amend to "carry forward of an adjusted trading loss" and "carry forward of adjusted trading losses.....".

75. Guidance should also confirm how these provisions operate - i.e. in a parallel universe to the normal loss reliefs. For example, it seems that there is no requirement that "normal" loss relief claims have to reflect RPD loss relief (for group relief this seems to be confirmed by paragraphs 9(4) and 17(4) and for carry forward relief, there is no restriction on normal relief in any event given sections 45A(1) and 45B(1) CTA 2010). A simple example in guidance, showing a RP developer using its RPD losses to offset its (and/or a group member's) RPD profits but separately perhaps surrendering those losses to a non-RP developer group member would therefore be helpful.

Part 1 - carry forward (same RP developer)

76. Part 1 provides for carry forward (same company) RDPT loss relief only. "Normal" trading loss rules allow a 12-month carry back: we are unclear why an equivalent has not been included given that the loss provisions have generally been structured to replicate "normal" loss relief (including CILR). Similarly, we note there is no equivalent to terminal loss relief (allowing carry back for up to three years).

77. Paragraph 2 includes a condition that the RP developer remains a RP developer in the next ("later") period (mirroring the continuing need to carry on a trade condition in "normal" group relief). To be an RP developer, you need to be undertaking RP development activities in a period. It is possible that a development may be completed, and there is a gap before further activities are undertaken - but then RP development activities are resumed. Paragraph 2(1)(c) appears to mean that the "old" losses would then be lost. Is this intended? Could the provision allow the loss to continue to be available where, although not a RP developer in the later period, the company is such a person in a 'further period" - with the loss in suspense until then (i.e. replicating the capital gains model). If RPDT is to remain a time-limited tax, then this may be able to be managed - but if the tax is to extend beyond the intended 10 year period, this flexibility should certainly be provided for (particularly given the limits on the amount that is available to carry forward in section 12(5) by reference to the allowance).

78. In relation to paragraph 2(5)(6), please see our comments on section 12. Further consideration needs to be given to the overlap with section 12(5) (and clear examples should be included within guidance). It seems that:

- Year 1: RP developer makes a loss (so A+B = 0), no RPDT as no RPD profits. That loss may be (current year) group relieved against RPD profits of another RP developer in the group.
- Year 2: RP developer makes a profit. The (remaining - after current year group relief) loss from year 1 is C for section 6 purposes. It can offset the RPD profit - but subject to a version of CILR in section 12. Section 12(5) seems intended to define the amount that, after use up to the relevant maximum in year 2, can be carried forward to the next year. Subparagraphs (5) and (6) seem intended to serve the same function but take a different (simpler) approach - query if the subparagraph (5) “excess amount” definition needs to be included in section 12(5) to tie the two together - as if section 12(5)’s purpose is to determine what that excess amount is, it would be helpful to state this within section 12.
- Year 3: Assuming after applying 12(5) in year 2 there is a loss remaining, that loss is now E for section 6 purposes (and the excess amount from paragraph 2(6) and so within paragraph 3). (This assumes no carry forward group relief in year 2). If the RP developer makes profits, the remaining loss can be used to offset it (year 3 being the “further period” - and paragraph 2 is effectively applied to govern how that loss is used (and again section 12(5) will apply as will paragraph 2(5)(6) with any loss still remaining after that (the excess amount for year 3) carrying to year 4 - provided the RP developer still is a RP developer.

Is this right?

79. Guidance should confirm that, once a RPD loss is identified, carry forward against RPD profits is then by reference to Schedule 1 and section 12 (and so none of the carry forward normal loss provisions are imported into these provisions).

80. In terms of specific drafting comments, paragraph 2(5) refers to a “maximum deduction” as permitted by section 12: however, there is no reference to “maximum deduction” as a term in section 12. Although it can be inferred that this must be the deduction allowed within the relevant maximum (i.e. of an amount no greater than the relevant maximum), we would suggest you define this in section 12 so the interaction between these two is unclear (in the context of some challenging drafting - which seeks to replicate CILR concepts into a single section - this could be helpful even if not considered strictly necessary).

81. As above, please look to tie-in paragraphs 2(5)(6) more closely with section 12(4)(5)..

82. In paragraph 3(1)(b) is “the excess amount” referred to the excess amount in respect of the specific loss that was carried forward to the preceding period (i.e. in the example above, the year 1 loss that was within paragraph 2 in year 2) or is it any excess amount (e.g. from a pre-year 1 loss) - we ask as these provisions seem to apply separately to a given year’s losses (rather than creating a single pool of carry forward losses that is added to but carried forward as a composite amount) and the drafting could clarify this further.

Part 2: Group relief (current year)

83. Could “relief group” be redefined as “RPDT relief group” for clarity and the relief called “RPDT group relief” throughout (see comment above) and (in paragraph 9) “allowable RPDT group relief”? These terms, which could be replicated in the CT600, would minimise the risk

of mistaking RPDT claims for normal group relief activity - and would mean that paragraph 10, for example, more clearly distinguished the two (when applying the rules of one to the other).

84. Paragraph 6 duplicates paragraph 14: a single interpretation could be in Part 4 for both Parts 2 and 3? See also comments on section 1 concerning the extent to which these provisions are within the Corporation Tax Acts - this suggests not, and if so a definition of company (borrowed from s1121 CTA 2010) should be included in section 20 which would cover this point in any event.

85. Paragraph 7(1)(b) states that RPDT group relief is only available for a surrender-able amount if Part 1 relief is not given. Is this correct given that Part 1 is carry forward relief and Part 2 seems to relate to current year relief (i.e. it allows surrender of a loss that a company "has" in a period, which we assume means a loss arising in that period - and so the question of whether relief is available in the next (i.e. later) period cannot arise (unlike the position for carry forward group relief which is separately dealt with in Part 3)?

86. In relation to paragraph 7(3) and paragraph 8, what is the intention in terms of documenting/evidencing claim and consent? Will group relief simplified arrangements apply?

87. In relation to paragraph 9(3), the formula in section 6 sets out an order of priority of reliefs so we are unclear as to the purpose of this subparagraph (particularly given the different position of item D as compared to section 6). Perhaps this should instead state that deduction is after Part 1 Schedule 1 reliefs but before Part 3 Schedule 1 reliefs in accordance with section 6, or follow the approach in paragraph 2(3)? Further is the substitution of paragraph 9(3) for s137(4)(b) as per paragraph 10(2) correct - given how RPD profits are calculated, would it be more appropriate to instead reference C in section 6 (particularly as paragraph 9(3) references "deduction" twice).

88. In relation to paragraph 9(4), we note that s137(7) CTA 2010 states that "relief is not to be given more than once whether by giving group relief or by giving some other relief". RPDT, although not corporation tax, would be another relief and so we agree this needs to be addressed. However, we are concerned that this subparagraph may not be sufficient by itself: this means that RPDT relief can be given (if Part 5 relief is claimed) but would not necessarily deal with the ability to claim group relief under Part 5 where RPDT relief is claimed (i.e. does RPDT relief preclude group relief even if group relief does not itself preclude RDPT relief). As consequential amendments are not included in the draft legislation, is it intended to amend s137(7) so that the principle applies both ways?

Part 3: carry forward group relief

89. Could the relief be called "carried forward RPDT group relief" throughout (see comment above) and (in paragraph 17) "allowable carried forward RPDT group relief"? These terms, which could be replicated in the CT600, would minimise the risk of mistaking RPDT claims for normal group relief activity - and would mean that paragraph 18, for example, more clearly distinguished the two (when applying the rules of one to the other).

90. In relation to paragraph 7(3) and paragraph 8, what is the intention in terms of documenting/evidencing claim and consent? Will group relief simplified arrangements apply?

91. In relation to paragraph 17(3), the formula in section 6 sets out an order of priority of reliefs so we are unclear as to the purpose of this subparagraph. Perhaps this should

instead state that deduction (item E within section 6) is after Part 1 Schedule 1 reliefs and Part 2 Schedule 1 reliefs in accordance with section 6, or follow the approach in paragraph 2(3)?

92. In relation to paragraph 17(4), we note that s188CK(9) CTA 2010 states that "relief is not to be given more than once whether by giving group relief or by giving some other relief". RPDT, although not corporation tax, would be another relief and so we agree this needs to be addressed. However, we are concerned that this subparagraph may not be sufficient by itself: this means that RPDT relief can be given (if Part 5 relief is claimed) but would not necessarily deal with the ability to claim group relief under Part 5 where RPDT relief is claimed (i.e. does RPDT relief preclude group relief even if group relief does not itself preclude RPDT relief). As consequential amendments are not included in the draft legislation, is it intended to amend s188CK(9) so that the principle applies both ways?

93. In relation to paragraph 18(2)(a) and paragraph 18(2)(c), references to s188CB are kept - is it intended (as seems implicit within paragraph 17(1) is to be read into those provisions as a claim under s188CB: if so, would it be clearer to say at the end of paragraph 18(2) }(and accordingly references to s188CB CTA 2010 in those provisions are to be taken as references to paragraph 17(1))"?

94. Should s188DC(3)(3A) CTA 2010 be omitted (given it relates to a CILR specific issue)?

Part 4: Supplementary
95. In paragraph 19, the payment should also be a "tax nothing" for corporation tax purposes (and not just RPDT).

96. In terms of the application of the change in company ownership provisions, importing Part 14 in its entirety means that a number of provisions that, on the facts, could never be relevant are applied to RPDT (given that RPDT losses can only offset RPDT profits). We appreciate the timing issue but would ask that (a) the importation of Part 14 is more targeted (e.g. ss673 (change in trade) and 676CA (carry forward group relief) only) and (b) in any event adapted so that references to a major change in trading activities/business should be limited to RPD activities only (as what else the company does is presumably irrelevant). Also, Part 14 applies to carry forward relief and carried forward group relief (but not group relief per se which is dealt with by "arrangements" and "overlapping periods" etc). If (a) is not possible given the timetable, then (b) can hopefully be accommodated and the guidance explain what is intended (and should the provisions require amendment, we ask that an amendment along the lines of (a) be made at the same time?)

97. Given that Part 14 is intended to apply, should not Chapter 1, Part 22 CTA 2010 (transfers of trades) allow RPDT losses to transfer to a successor company that carries on the same RPD activities: i.e. where the trade from which RPD profits are calculated transfers, the succession provisions apply to both trade losses and adjusted trade losses?

Section 12: Reliefs – restrictions

98. As discussed at a meeting with HMRC to discuss the draft legislation, worked examples of how these provisions apply would be helpful. We ask that these are provided as soon as practicable to inform any further comments on this section. In particular, as our comments indicate, the drafting of these provisions (and lack of commentary as to purpose) means that it is challenging to discern the policy intent. Our comments are therefore generally in the form of questions as to how the provisions are intended to work.

99. The intention appears to be to replicate CILR in relation to carry forward loss relief, with the allowance (which determines whether a company is within the charge to RPDT) doubling as a form of deductions allowance: the complication comes from the fact that the allowance applies to net profits (after reliefs - or rather after C. D and E in section 6) but the restriction would generally have to apply to profits before the allowance can apply. Section 12 therefore seems to be trying to deal with this - but the hybrid approach taken (with different restrictions/limits applying at different stages of the computation) risks confusion. Further, the Explanatory Notes do not provide any guidance on how these provisions work: we would ask that the approach is at least explained in the summary of responses to be published on or around the Budget date so that developers can understand (broadly) what is proposed ahead of draft guidance later this year.

100. In terms of subsection (2), this seems to mean that where a company's gross RPD profits are less than (or equal to its allowance) then carried forward losses must be used to offset those profits in full (if available) and so it cannot use the allowance to conserve the benefit of loss relief. This means (effectively) that there is no restriction applicable in this case - losses must be used to full capacity, and the allowance then "shelters" any net profit remaining. Is this correct?

101. Therefore, assuming an allowance of £25m, if a company has RPD profits of £20m and carried forward RPD losses, then the relevant maximum would be £20m (being the amount that would reduce "that amount" (which we assume is the A + B amount) to nil.

102. In terms of drafting, first, the section may be helped if a defined term were introduced for "A + B" (e.g. total RDP profits?) particularly as A + B is only <u>part</u> of the calculation in section 6 - subsection (2) basically borrows two defined terms from section 6 to determine (gross) RPD profits (which is not a concept referenced in section 6). In any event, the tailpiece to subsection (3) should also apply to (2).

103. Secondly, the language of subsection (2) is however only apt to cover where "A + B" (i.e. total gross RPD profits) < developer allowance given it is only where there is a difference between the two that there is an amount to be reduced (even though we acknowledge that the outcome is the same in both cases). This would suggest limiting subsection (2) to this fact-pattern and providing separately for where A + B = developers allowance in a new subsection (3)

104. Where A + B = developers allowance then the relevant maximum is (we assume) an amount equal to the developer's allowance (as above, as there is no difference between the amounts, no number can therefore "reduce" a difference that does not exist). If subsection (2) is not to be subdivided to apply to the two options (A B < allowance and A + B = allowance) we suggest this be amended to state that the relevant maximum is an amount equal to the "A + B" amount (as this is the amount needed to reduce A + B to nil (if indeed A + B is "that amount" within this subsection)?

105. Where A + B > allowance, then the full value of the allowance appears to be preserved in the current year by subsection (3), with loss relief is available to offset up to 50% of the excess - and so only 50% of the excess will be taxable. This clearly advantages groups with higher profits - and hence it seems that subsections (4) and (5) apply - which cut across the We therefore have a number of questions on what then happens - and would ask that the clauses be revisited (in particular, how they operate should be clearly identifiable from the legislation itself).

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106. First, current year group relief (if any) reduces the relevant maximum. So, if there is £25m allowance and £30m profits, then subsection (3) means carry forward loss relief offsets up to £2.5m of the profits (i.e. the 50% of profits over the allowance), but (unlike CILR) any current year group relief is offset against that £2.5m in priority to other amounts - and itself acts as a further limit on carry forward relief. (Under CILR, it is an "in-year relief" and so would offset the £5m, and then carry forward losses can be offset against 50% of that £5m (as reduced by group relief)). Given that the explanatory notes say these provisions corresponds to CILR, why is this difference here? In particular, it would be helpful in terms of administrative burden for the same conceptual approach to apply to RPDLR as to CILR.

107. In relation to subsection (4), please confirm what this provides for as a pre-condition to subsection (5). It seems that if A + B > allowance, and the RP developer has carry forward losses, then subsection (3) applies to restrict the amount of relief for those losses. But this then raises the question of what relief would have been available but for that subsection (the total amount). Is the total amount the lower if (a) the maximum amount of carried forward RPD losses available to that company (i.e. its own losses and any claim made for carry forward RPD loss relief) or (b) either (i) A + B (as disregarding the allowance that is the "cap" on loss relief) or (ii) because of the effect of the allowance, i.e. amount of "A + B" - that exceeds the allowance? A clear definition is required.

108. As above, we note that the charge to tax is on RPD profits in excess of the allowance, with RPD profits are A + B less loss reliefs, which suggests that "there would otherwise be available amount" is the lower of the maximum amount of losses as compared to A + B. But subsection (3)'s effect is to restrict carry forward loss relief by reference to A + B in excess of the allowance which suggests the "would otherwise" could be the lower of the maximum amount of losses and the amount of profits that subsection (3) applies to (A + B - Z) - the equivalent to relevant profits in CILR. Subsection (5) adds to the complexity by inferring that losses up to the amount of the allowance are not amounts used here - as it provides that losses of an amount up to the level of allowance cannot be carried forward.

109. In any event, how does current year group relief fit into this (given in section 6 it is after own carry forward relief (C) but before group carry forward relief (E) - and section 12 deals with both)?

110. We set out below some simple numerical examples to illustrate how the provision seems to work - please confirm that our understanding is correct?

111. Assume the company referenced above (£30m profit/£25m allowance) has access to carried forward relief of £3m. The total amount would be £3m. The restriction means that only £2.5m can be used. Section 12(5)(b) applies and so no amount can be carried forward to a further period. So net RPD profits are £30m less £2.5m losses, and so only £2.5m is taxable but £0.5m of losses are effectively deemed to have been used (without restriction) against the first £25m of profits (in that further carried forward is prevented by subsection (5)).

112. Assume the company had such relief of £6m, would the total amount be £6m (i.e. Z is ignored which (subsection 5(a) infers) or £5m? In any event, the restriction means that only £2.5m can be used. And so again £2.5m of profits is brought into charge (£30m less £2.5m losses less allowance) and no losses are carried forward.

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113. In both cases, the total amount is less than the allowance, and so all the losses are effectively deemed to have been used (under subsection (5)(b)).. This means that a company with losses may be at a disadvantage in terms of preserving carry forward relief in terms of the effect of the allowance as opposed to company reliant on claiming carry forward group relief - subject to how the allowance is allocated across the group.

114. A third example would be to assume the losses were £27m. Here, it seems that the total amount would be £27m (again based on subsection (5)(a) - but again note it is unclear, bar subsection (5)(a), how the contra to subsection (3) is worked out in terms of the role of the allowance - but because subsection (5)(a) suggests that the total amount may be an amount in excess of the allowance, this seems to be the only way the provisions can be intended to work). This means that the company is in effect deemed to use losses of an amount equal to £25m and so can carry forward £2m to the next period, although subsection (3) means it can use £2.5m of that £27m to offset the 50% of profits above the allowance (£5m) under subsection (3).

115. For completeness a further example involves £75m profits and £27m losses. The subsection (3) restriction means that the losses can be used to offset profits above the allowance (i.e. £50m profits - meaning that £25m losses can be used, reducing profits to £50m to which the £25m allowance then applies). If the total amount is £27m, then £2m can be carried forward still under subsection (5). Is this right? (However, if the profits were £80m, the application of the restriction seems to mean all the losses can be used - in which case we assume subsection (4) would not be satisfied as there is no reduction in the amount available and so carry forward amounts are determined by normal principles (i.e.no losses remain: is this right?).

116. Overall, this suggests that the provisions result in larger groups (with higher profits) being able to preserve (some) carry forward loss relief - unlike developers where profits are only just above the allowance are: is that the intent?

117. As above, we ask that the clauses be revisited and that any redrafting aims to provide clarity as to their operation (and intent) - and we would be happy to comment on any recast provisions (noting it would be helpful in any event to see HMRC's examples and a statement as to policy intent).

Section 13: Allowance

118. We note the amount of the allowance will be announced at the Budget. The consultation suggested it would be £25m and explained that the measure was intended to be focused on the largest corporate undertakings. On this basis, and noting the extent of the additional compliance obligations (a parallel CT reporting system with stand-alone compliance obligations), we do not consider that the allowance should be less than £25m. In addition, even though this tax is intended to be a 10-year tax, the amount of the allowance should be indexed (or at least subject to review say every 2 years) to ensure the measure remains targeted at the largest undertakings. (If the tax could potentially apply for more than 10 years, then indexation/review is even more important to prevent fiscal drag.)

119. We note that the provisions are very much modelled on the reporting arrangements for CILR/CCLR "deductions allowance" which similarly applies group wise. Unlike the CILR provisions, these provisions apply to the worldwide group (CILR has a definition of group that only includes companies within the charge to corporation tax: we assume the same should apply here (although it does not currently).

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120. Further, these provisions appear to be more reliant on regulations (under the CILR provisions, regulations have not yet been made). Please confirm that drafts will be made available for consultation (and made) in advance of 1 April 2022 so RP developers are clear as to the actions that need to be taken to benefit from the allowance.

121. It seems that an allocating member gets the allowance automatically, but that a receiving member has to "claim" it to be able to benefit. Is that correct? Under the CILR rules for allocating deductions allowance, re all group members (including the nominated company) had to "specify" allowance within their returns but not claim it as such. Is there a reason why a different model (requiring a claim) has been applied here? Please see comments on section 15.

122. Also, if an allowance statement is sufficient to "set" the allocating member's allowance amount, without it needing to claim, why can it not have a similar function for other group members who then simply reflect their allocated allowance in their returns? If a claim is needed, do the regulations need to cover the making of such claims.

123. In any event, please confirm that the CT600s will include boxes relating to "claiming" the allowance given its importance in terms of liability for the tax.

124. If subsection (5) is intended to only apply where the RP developer is not a member of a group, could this be stated clearly: i.e. "In any case in which the RD developer is not a member of a group (and so none of (1) - (3) apply)....". Clarity (including where it is "stating the obvious") around such a key aspect of the rules is helpful. Presumably pro-rata reductions are day count: this was stated in CILR, should it be specified here too?

125. The default position in section 13(4) and (5) has been discussed with HMRC given concerns as to the outcome. If a group is limited to UK companies, that would be helpful here. However, as HMRC will be aware from returns which companies are RP developers in a group, a default that shares the allowance around the RP developers of that accounting period would be preferred (e.g. as per the CIR model of a default pro-rata allocation). If HMRC is concerned as to lack of information about who is in a group, then a box could be added to the tax return to alert companies to the need to nominate a company.

126. In subsection (8)(b), should the reference to "developer" be to "receiving member"?

127. Is it intended that the nomination of an allocating member needs to be filed with HMRC? (We note that this is not required under CILR notwithstanding equivalent power-making provisions). If a group already has a nominated company under CILR, can that carry over if unless the group elects otherwise?

128. What is intended in terms of regulations under subsection (10) in terms of the practicalities for this, including time limits? We assume that, as for CILR, an allocating member can be appointed retrospectively - given the nature of the default, it would be helpful for this aspect in particular to be confirmed within the primary legislation (particularly if a time limit applies to that application). The process should be straightforward (i.e. ideally it should not involve all group members, including dormant ones, have to sign the nomination as is the case under CILR) - noting here the amendments that have since needed to be made to the CILR rules because of this "all members sign" requirement.

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129. Section 13(9)(a) implies that an RP developer has to be the allocating company whilst section 13(1) applies only where an RP developer "is" the allocating company (implying an alternative where a non-RP developer is allocating company is possible): please clarify.

Section 14: Allowance - joint venture companies

130. What is meant by a "body" in subsection (1)? A company is a body corporate: is that a "body"?

131. In terms of a "body not liable to the tax", is that because they are not a RD developer (whether because not within the charge to corporation tax or because they do not undertake activities - see comments on section 10) and/or an entity that is not subject to UK tax (e.g. a sovereign immune investor)? The explanatory notes suggest this is about not being subject to UK corporation tax - but liability to RPDT as an RP developer involves two conditions. If this is only about entities that are outside the charge to corporation tax, please clarify the drafting.

132. In terms of the definition of relevant JV company, see comments on section 10.

133. Guidance, with examples, will be needed to explain what this means in practice. In particular, it will need to set up what this means for B (in terms of compliance and generally) and the interaction of financial year (for B) and accounting period for the JV company.

134. In particular, it seems that if B owns 20% of the JV company, then the JV company either gets 80% of the £25m (under (a)) or 80% of £25m plus a "top-up" allocated to it by B out of its notional allowance of £25m which (at most) will not exceed 20% of that notional allowance (assuming B is a member of the JV for the relevant 365 days. It seems that this is possible for any JV company in which B has an interest (if more than one); in which case we assume that B cannot allocate more than its £25m in total - this seems implicit from "out of its allowance for year X", but query if this should be referenced specifically (as is done for group deductions allowance under CILR) as the only "maximum" is B's percentage interest.

135. It will be important that any compliance obligations on B are proportionate and simple, particularly given that B is not subject to the tax itself. So, for example, if it has more than one JV interest, would it not make sense for a single statement to be possible for more than one JV?

136. We are unclear as to why regulations should provide for the JV company to amend B's allowance statement.

Section 15: Collection, management and payment of tax (and Schedule 2)

137. See comments above relating to application of Corporation Tax Acts to RPDT given section 15(2): we note that the explanatory notes suggest section 15(2) is limited to tax administration matters. The reference to "all enactments relating to CT generally" creates uncertainty.

138. We understand reporting will be done through the CT600 which will be amended to include RPDT pages/boxes (but not a separate CT600X set of pages). We agree this with approach: it is important to ensure that additional compliance (in particular reporting, filing of statements and claims) is kept to a minimum. In particular, as the allowance means that this tax is directed at larger corporate taxpayers, those companies will already be complying with

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(and filing the required claims, forms, statements and returns) general corporation tax rules, CILR and CIR and RPDT will add to this. As such larger corporate taxpayers are generally in group structures (often with a material number of members), we ask that additional administrative burdens under this regime be minimised as much as possible.

139. We assume new pages/boxes will be consulted on in due course to ensure that they work for the new tax and for taxpayers,

140. In relation to paragraph 2(3) Schedule 2, we assume that a RP developer has to file if it has an adjusted trading loss in a chargeable accounting period. Although it does not have any liability, this is not within the new paragraph 7A(2) and the person is still a RP developer (we assume "residential property developer" should be "RP developer" and references in paragraph 7A to "developer" should be to "RP developer" for consistency with section 2 and paragraph 3 of this Schedule?).

141. The tax return also seems to require items A - E only and its overall RPD profits: please confirm (in guidance) what (if any) supporting documents need to be submitted.

142. In relation to the new paragraph 7A(1)(e), see comments on section 13 and whether the allowance allocated to a group member has to be claimed (and if so how?) or whether sufficient that specified by being included in the CT600 as per this requirement? (HMRC will have the allowance statement to check against as per section 13).

143. Given the timing of instalment payments by reference to an accounting period, that the Finance Bill (which should contain near final legislation) will only be printed 5 months before RPDT comes into force and the need for companies to familiarise themselves with RPDT and how the calculations work etc, we ask the government to consider excluding RPDT in relation to any accounting period that ends on or before 31 March 2023 from quarterly instalment payments. We therefore do not comment on paragraph 3 as this should (if this is done) be deleted.

Section 16: Requirement to provide information about payments

144. In principle, we agree that HMRC should have data on RPDT payable (see comments on section 1). However, any obligation to notify payments of the tax should be proportionate and not add significant additional compliance for companies (given all the other reporting and compliance obligations).

145. In particular, we are concerned because this cuts across the general approach of treating RPDT as corporation tax so it can be dealt with as part of normal CT reporting. Further, this is not a simple "one-off" requirement given how it could impact quarterly instalment payments. Given this is said to be solely for monitoring purposes, would it not suffice for a company to notify the amount in its tax return, and set out (if required) when that payment has been made (e.g. the amount of instalments made or to be made)? This would mean that there was a slight lag, but we see little basis for treating RPDT differently to other taxes.

146. In any event, any obligation to report payment should be a "no later than x days" after payment - with x being a minimum of 30 days.

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147. If this links to HMRC's own systems for recording receipt of RPDT (given it is to be paid as if corporation tax), can the systems not reconcile receipts with tax return data (i.e., is there a software "fix" that avoids the need for this provision.

Section 17: Anti-forestalling - accelerated profits

148. Guidance on this provision should be published shortly after the Finance Bill is printed, in priority to other guidance given it is in effect now (assuming the provisions are enacted).

149. In (a) we assume trading profits mean trading profits computed on normal trading principles? And that apportionment (as per section 9(3)) would apply here?

150. We assume that any such "forestalled" profits are added to post-commencement profits and then adjusted under section 9, with the total then brought in as A and then the rules apply as normal to an (increased) A: is that correct?

Section 18: Groups

151. No comments.

Section 19: Miscellaneous provisions (Schedule 3)

152. No comments on paragraph 1.

153. It would be helpful to understand why paragraph 2 is considered necessary: i.e. in what situations it is intended to apply. Equally, it would be helpful to understand how this is intended to operate in the context of section 9. The starting point for RPD profits is to take trading profits (under normal principles) and then adjust to remove non-RPD activity profits by apportionment. At what stage in this is an "intra-self" transfer pricing adjustment to apply: it would not be relevant to the starting "trading profits" and the separating out (by apportionment) of non-RPD activity would not naturally be interpreted to include an "intra-self" transfer pricing adjustment. In any event, guidance on "own" transfer pricing will be needed (particularly given that, in general, a person cannot deal with themselves.

154. We do not understand why paragraph 3 has been included. The starting point for RPDT profits is trading profits (section 9). Transfer pricing will have been taken into account when working out those profits. We do not see why anything further is needed to deal with intra-group transactions.

Section 20: Interpretation

155. No comments: specific points on definitions have been picked up in comments on relevant sections.

Section 21: Regulations

156. We recommend that a general regulation-making power is included so amendments can be made with a specified period of enactment to correct any aspects of the rules that are subsequently identified as not working as intended.

General comments

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157. *Financing costs*: We understand that a policy decision has been made to exclude financing costs. We note that if a developer borrows to fund their development activity, interest costs are a "real cost" of that development and so to exclude them from the calculation of RPD profits artificially inflates the amount of profit realised. Further, as a practical matter, adjusting trading profits to exclude interest may be a cumbersome exercise, particularly where such costs have been capitalised over the life of the development. Given that the corporate interest restriction in any event protects the Exchequer from excessive interest relief (no special provision was made for developers when CIR was introduced) and the allowance means that groups affected by this measure will be reporting under CIR (i.e. interest costs will be above the de minimis), we are disappointed that this decision to exclude funding costs has been taken and ask that it be reconsidered. In the context of RPDT being a time-limited tax, we acknowledge that this may have been seen as simplifying the computation but do not agree that this is necessarily the case.

158. *Draft guidance*: As discussed at a working group meeting on the draft legislation, detailed guidance (including appropriate worked examples) will be very important in assisting taxpayers understand and meet their obligations under RPDT. We understand that draft guidance will be made available for consultation and would ask that this is prioritised after the Finance Bill has been published given the commencement date of this new regime is less than 6 months away.

159. *Notification of uncertain tax treatment*: Further, having publicly available "known" positions of HMRC on new legislation is particularly important given our understanding that RPDT is intended to be within the scope of the notification of uncertain tax treatment provisions (as it is treated "as if" corporation tax and is so within the scope of the draft provisions as published on 20 July 2021). In any event we ask that, as this is new legislation, it is excluded from the uncertain treatment rules for accounting periods for a minimum of the first two years of the regime (i.e. so the uncertain treatment rules only include it from a specified date, if at all).

160. *Compliance - penalties etc*: In that context, please confirm whether HMRC will be operating a "light touch" in terms of penalties etc relating to compliance in the first reporting cycle for RPDT and if so, how this is intended to be communicated to affected taxpayers.