

Advanced tax certainty for major projects



To: advancedtaxcertainty@hmtreasury.gov.uk; and advancedtaxcertainty@hmrc.gov.uk

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Introduction

The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs.

We promote the interests of those with a stake in the built environment and represent a broad range of investors, owners, managers and developers of real estate as well as those who support them. Our members include the largest UK residential and commercial landlords and have hundreds of billions of pounds of assets under management, including over 100,000 privately rented homes and hundreds of millions of square feet of commercial real estate space. Their investments help drive economic success, provide essential infrastructure and create great places where people can live, work, and relax.

Advanced Tax Certainty for major projects

The importance of stability and certainty in the tax and regulatory environment cannot be underestimated as a factor which influences both investor appetite and investment appraisals. Uncertainty represents risk – which adds cost to investments, and ultimately affects the viability of projects. If we want to attract more investment into this country – and deploy capital where it's needed, more quickly – tax and regulatory certainty should be a top priority for Government.

To that end, we welcome this consultation to introduce a clearance process for those making major investments in the UK. This will help provide better certainty for those undertaking very large investment projects.

However, we would note that in order to support investment to address some of the Government's national challenges – including building 1.5m homes and delivering New Towns – while cumulatively, these are all clearly major projects – in reality, the majority of individual investments that will deliver on these national challenges will be smaller to medium sized projects, which will not benefit from the tax certainty clearance service that is proposed by this consultation.

Given how important stability and certainty are for all investment projects – Government should seek to ensure that tax certainty is prioritised more broadly – and especially in the context of our national challenges.

Our response to the consultation questions is set out in appendix 1. Please do not hesitate to get in touch if you would like to discuss our response further. We would also be delighted to engage further on how improved tax certainty can be delivered more broadly for smaller to medium sized investments – that will cumulatively deliver our national objectives – like developing 1.5m homes.

Yours Sincerely,

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Appendix: Response to consultation questions

Chapter 2: Eligibility

- 1. What is the impact of giving eligibility to corporate entities that are or will be subject to CT and are directly undertaking major investment projects? Does this exclude any other structures investing in major projects which would significantly benefit from being in scope?**

Restricting eligibility to only corporate entities will be too limited. In the context of real estate investment, it is very common for investors to club together in joint ventures or other pooled structures, like partnerships and other transparent vehicles. It would be helpful if the eligibility criteria can be broad enough to capture common joint venture and pooling vehicles.

We would also note that restricting the clearances to corporation tax is also restrictive. Both SDLT and VAT are incredibly material taxes for real estate investment – and the Construction Industry Scheme (CIS) also adds complexity as well as significant cash flow risk. It would be helpful if the new clearance process could also extend to these taxes.

- 2. How can advance tax certainty provide material wider benefit beyond the entity receiving the clearance?**

Anonymous publication of clearances setting out key points cleared could be helpful, especially if there is then an ability to indirectly apply this to other situations. However, we would query whether there could be confidentiality concerns – as, even if anonymised, certain large projects would likely still be identifiable.

However, for each clearance given, HMRC should consider whether improvements to the legislation or guidance could be made which would provide greater certainty over how the rules should be applied – and avoid the need for clearances for similar scenarios.

- 3. What is the best way of quantifying the fixed and intangible investment for the purposes of assessing whether a project meets the threshold? Do you agree that authorised project spend is a suitable metric?**

Authorised or projected project spend is a sensible starting point. However, there is a risk that this test alone would risk this clearance process being used disproportionately for investments in areas with higher land values. Some thought should be given to a second set of tests which recognises where a project would be particularly valuable to a local community - or indeed where we have an acute need or undersupply of a particular infrastructure.

- 4. Is there a set amount of expenditure that would prompt you to seek a clearance or certainty, or would this be more attributable to the amount of tax and uncertainty in treatment?**

Where the amount of tax is material (or could be material), relative to the investment – obtaining certainty over the correct tax treatment will be critical to making an informed investment decision. It is important to note that depending on the tax being considered, the amounts involved may be material relative to the initial construction cost of transaction cost – or they may be material in the context of the annual returns.

5. Are there supplementary criteria, which are objective and measurable, which could capture projects below the quantitative threshold which are nevertheless of a national or strategic importance, are highly impactful on a relative basis within their sector, or that have large growth potential despite starting small?

From a real estate perspective, significant redevelopment/regeneration schemes could well benefit from this, in particular those involving complex land assembly and/or multiple landowners coming together in joint venture. It is worth noting that it is typical for regeneration projects to be done in phases – therefore, it would be helpful if qualification criteria could have regard for the total spend across all phases.

Chapter 3: Scope

6. In which areas of UK tax legislation would advance tax certainty have the most impact on investment decisions? Where possible please give examples of where lack of certainty has had a negative effect on an investment decision.

See below some examples of areas where obtaining certainty is difficult – or where the importance of certainty is particularly important or material to an investment.

1. Certainty over how much interest cost on debt will be tax deductible over the life of the investment will be very material (**corporate interest restriction rules**).
 2. How much of the investment will be eligible for **capital allowances** will be material.
 3. Application of the **Transaction in Land Rules** – having certainty on whether returns will be treated as trading or investment for tax purposes will be material in most cases.
 4. **VAT recoverability** for construction work generally will be material – but there is particular uncertainty over how this is applied on sale of a dwelling in the course of construction (namely the application of '**Golden Brick**') – more clarity would be helpful for modular development in particular, and this area is also particularly relevant for transfers of S.106 affordable housing units to registered housing associations.
 5. **Business rates and council tax on empty units** – when a property is developed, the units will be empty until occupiers have been found – which will be an unknown amount of time. In addition to the normal holding costs (insurance, interest costs, security etc), council tax or business rates will also generally be charged on those newly developed units from a certain date after completion of construction (approximately 3 months after a 'Completion Notice' is served). Given there will be uncertainty over how long it will take to find an occupier – this additional tax on newly developed buildings exacerbates that uncertainty and adds significant additional uncertainty and cost – especially to large scale residential developments, and speculative commercial developments.
7. Are there areas for which certainty would be of value that are not currently addressed by the non-statutory clearance process? What do you see as potential benefits and barriers to their inclusion?
- We would propose to extend this new clearance service for SDLT and VAT, given they are particularly material in the context of real estate transactions. We would also reiterate the specific points raised in question 6.

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- 8. Who do you consider should be bound by an advance certainty clearance and to what extent. What form should that take?**

No comment.

- 9. What are the circumstances under which you consider it important to be able to continue to rely on a clearance?**

The more stability we have in the tax environment, the more reliable and valuable the tax clearances will be.

Chapter 4: Process

- 10. Do you consider that an early engagement facility would be helpful and why?**

Yes, very helpful – applying for a clearance takes time and resource – so some early dialog to consider whether this is the right approach, with ideally some initial steers, would be helpful.

- 11. How would this process work with typical commercial decision making timescales?**

Commercial decision making will rely on quick decisions – to that end, if the new process will rely to some extent on the existing clearance system, it will be important to also make sure that these processes are fit for purpose and able to turn around decisions efficiently.

- 12. What facility would be helpful for unsuccessful clearance applications? Do you consider for example that the process should include reconsideration by HMRC on request?**

Yes, some ability to reconsider an application, or feedback on why a clearance wasn't possible, would be helpful.

- 13. Do you consider a scoping meeting to obtain clarity on scope of clearance, timing and inputs to be useful? What would a scoping conversation need to include?**

See response to question 10 – continued dialog and engagement will generally be helpful to support the process, and manage expectations.

- 14. Are there process elements you would consider helpful during the clearance consideration phase?**

No comment.

- 15. What do you consider the advantages and disadvantages of publishing summarised and anonymised clearances to be? Has publication by other clearance jurisdictions aided tax certainty as a result?**

Anonymous publication of clearances setting out key points cleared could be helpful for tax payers more broadly, where there is an ability to indirectly apply this to other situations. However, we would query whether there could be confidentiality concerns – as, even if anonymised, certain large projects would likely still be identifiable.

- 16. What would you wish to see in terms of engagement for clearances where impacted post issuance by legislation, ownership, case law or key facts and assumption changes?**

No comment.

Advanced tax certainty for major projects



17. What should a renewals process look like, and is 5 years an acceptable trigger point?

Most large regeneration projects will take well in excess of 5 years to complete, so we would suggest a longer period would be more helpful – more commensurate with the planning and development timeframes for a large project.