The City of London Law Society

4 College Hill
London EC4R 2RB
Tel +44 (0)20 7329 2173
Fax +44 (0)20 7329 2190
DX 98936 – Cheapside 2
mail@citysolicitors.org.uk
www.citysolicitors.org.uk

James Konya
NRCG Consultation
HM Revenue & Customs
Room 3C/04
100 Parliament Street
London
SW1A 2BQ

Email: nrcg.consultation@hmrc.gsi.gov.uk

14th February 2018

Dear James

Taxing Gains Made by Non-residents on UK Immovable Property

Please find below The City of London Law Society's ("**CLLS**") response to the HM Revenue & Customs ("**HMRC**") and HM Treasury consultation document entitled "Taxing Gains made by non-residents on UK immovable property" and dated 22nd November 2017 (the "**Consultation**").

1 INTRODUCTION

1.1 The CLLS represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

1.2 The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the Consultation has been prepared by the CLLS Revenue Law Committee.

1.3 The Consultation proposes that from April 2019 UK tax will be charged on gains made by non-residents on disposals of all types of UK immovable property. The Consultation proposes that both "direct" and "indirect" disposals of UK immovable property will be brought within the charge to UK tax.

1.4 Unless otherwise indicated, any reference in this letter to:

(a) a disposal by an entity, are to a disposal made by an entity that is not resident in the UK for UK tax purposes;

(b) a "direct" disposal, are to the disposal of an interest in UK immovable property held by the entity itself immediately before the disposal; and

(c) an "indirect" disposal, are to the disposal of an interest in an entity (e.g. shares in a company or units in a unit trust) that owns UK immovable property immediately before the disposal and continues to hold that property interest immediately after the disposal.

2 EXECUTIVE SUMMARY

2.1 The CLLS understands the UK Government's desire to level the playing field in terms of the taxation of disposals of UK immovable property in order that both UK and non-UK investors are taxed on a similar basis. The CLLS is also conscious that a number of other jurisdictions also seek to tax disposals of immovable property located in that jurisdiction by entities that are resident for tax purposes in other jurisdictions.

2.2 We are conscious that one of HM Treasury's priorities is "creating a simpler, fairer tax system" and would urge that to be taken into account in the drafting of any implementing legislation. This is particularly relevant in respect of:

(a) indirect disposals, which under the current proposals create a number of significant obstacles to establishing a regime that is comprehensible, operationally efficient and fair. We highlight in this letter certain of the difficulties that we believe will need to be overcome (e.g. in respect of the 25% ownership test and the property-rich entity test); and

(b) residential property, the current proposal being to effectively retain three regimes; ATED-related gains, NRCGT and the new regime.

2.3 The Consultation proposals will be of specific concern to investors that are exempt from UK tax on chargeable gains (e.g. registered pension funds, overseas pension funds, charities and sovereign wealth funds). It has been common for such entities to invest in UK property via non-UK entities, on the basis that the effective tax rate would remain the same as a result of the fact that the relevant entity was exempt by reason of residence. Exempt investors will be materially disadvantaged by the proposals unless appropriate reliefs and the opportunity to tax efficiently restructure existing non-UK entities that own UK property are provided should the proposals be enacted.

2.4 Whilst we understand the desire of HM Treasury and HMRC to act quickly in implementing the proposals, given the fundamental nature of the proposed changes and the inevitable complexity of any legislation, we would strongly urge that sufficient time is given to ensure that the changes are adopted in a form that enables taxpayers to clearly understand and comply with their obligations.

3 COMMENTS ON THE PROPOSALS

3.1 Effective date of the proposals

3.1.1 The Consultation is drafted on the basis that draft clauses in respect of the proposals will be published in late summer 2018 and that the resulting legislation will be effective from April 2019.

3.1.2 The Government also intends to publish legislation in summer 2018 under which non-UK resident companies that carry on a UK property business or have other UK property income will be charged to corporation tax, rather than being charged to income tax but with effect from April 2020[1] (the "**CT Proposals**").

3.1.3 The proposals set out in the Consultation represent a significant change to the UK's tax system and are likely, particularly in respect of indirect disposals, to require extremely complex and potentially wide reaching new legislative provisions. The current timeline will provide little more than six months for the draft legislation to be considered and debated before implementation. We would strongly advise that, in respect of such a fundamental change to the tax system that will affect entities throughout the world, HM Treasury and HMRC should consider delaying the effective date of the proposals beyond April 2019.

3.1.4 In fact, given that a second fundamental change to the UK tax system affecting non-UK entities is already on the horizon (i.e. the CT Proposals), we consider that it would be preferable for the Consultation proposals and the CT Proposals to be adopted with effect from the same date (e.g. April 2020 or later if deemed appropriate). We consider that this would give HM Treasury and HMRC the best opportunity to present a single, coherent and robust UK tax system to non-UK investors, as opposed to adopting legislation on a piecemeal basis. We consider that this should also reduce the burden on HMRC in putting systems in place to deal with multiple changes to the regime which could lead to unintended legislative consequences and will inevitably lead to a great number of queries from taxpayers seeking to get to grips with two major legislative changes.

3.1.5 We assume that HMRC will also release guidance to provide additional clarification in respect of its understanding and interpretation of the new legislative provisions. Once again, in order to ensure that the transition to the new system is as seamless as possible, we would hope that the draft guidance can be released at the same time as, or as soon as possible after, any draft legislation is made available.

3.2 Direct disposals

Potential for double taxation

3.2.1 The new rules should provide a means to ensure that any gains made in respect of a direct disposal of UK immovable property are not taxed twice, once as a direct disposal by the entity and again as an indirect disposal on receipt of the profits from the entity that made the sale (e.g. as a deemed disposal of an interest in the entity, which still owns UK property).

3.2.2 HMRC should consider incorporating specific legislative provisions intended to prevent a double charge which could, for example, be drafted along the lines of sections 13 or 179ZA TCGA which are intended to have a similar effect.

---

[1] As set out in the HM Treasury and HMRC document published in December 2017 and entitled "Non-resident companies chargeable to income tax and non-resident CGT: summary of responses".

3.2.3 Dividends out of profits of a property-rich entity before any disposal of that entity (including profits realised or increases in value arising before the rebasing date) should not be treated as value shifting and added back in any CGT computation of the gain on disposal (see section 31 TCGA). For example, the provisions do not apply where the relevant arrangements consist of making an "exempt distribution" (see at section 31(7) TCGA) but, given that that term is defined by reference to section 931D CTA 2009, it is unlikely that the exclusion would apply to a non-UK shareholder even after April 2020.

Investors that are exempt from UK CGT

3.2.4 Many UK exempt investors have invested in UK property through non-UK entities, whether by means of an investment in a widely held non-UK investment fund or in a wholly owned non-UK entity. Under the current proposals, any gain on a direct disposal of property by that entity would be subject to UK tax, despite the fact that the ultimate investor would be exempt from CGT if it held the property directly.

3.2.5 We understand that it is not necessarily the Government's intention for investors that are exempt from UK tax on chargeable gains to be worse off as a result of these measures. In order to ensure that exempt investors are not worse off, the new rules should include one or more reliefs such that exempt investors are not materially disadvantaged. Please see further paragraph 4.3 below.

Rebasing

3.2.6 The proposed rebasing as at April 2019 for non-UK entities that own UK property is welcome. However, we understand that the rules are in part intended to encourage investors to come onshore and, therefore, any non-UK entity that becomes resident in the UK for tax purposes should be able to elect to retain the April 2019 rebased value on a subsequent direct disposal, rather than falling back to its historic base cost.

3.2.7 In the absence of a specific provision providing for the benefit of rebasing to be retained, it would potentially be possible to undertake a transaction to effectively engineer a "rebasing" of the property (e.g. by transferring intra-group from one subsidiary to another). However, that would typically require the use of group exemptions (e.g. SDLT group relief) and would create a risk of crystallising tax in the event that the acquiring entity were subsequently sold out of the group (e.g. a clawback of SDLT group relief). It would also be necessary to consider the interaction of such transactions with any anti-avoidance provisions included in the legislation when adopted. The inclusion of an express legislative provision enabling the rebased cost to be retained would obviously provide taxpayers with greater clarity.

Roll-over relief

3.2.8 The confirmation that roll-over relief will apply to non-UK investors under the new proposals is welcome (see paragraph 3.13 of the Consultation). In order to ensure that all taxpayers are treated equally regardless of the jurisdiction in which they are established, we assume that this confirmation will be applied to other existing CGT reliefs. For example, the Consultation suggests that the substantial shareholding exemption in respect of an indirect disposal of shares would be potentially available (see paragraphs 4.24, 4.25 and 4.33) but it would be helpful to have express clarification on this point and on the availability of existing CGT reliefs more generally.

3.3 **Indirect disposals**

Access to and reliance on information

3.3.1 It will be investors in property-rich entities that will be required to assess whether they are potentially within the scope of CGT in respect of any indirect disposal. Investors will need access to detailed and accurate information from the entity in which they are investing (i.e. their percentage shareholding over time and the value of the entity's assets as at a specific date) in order to be able to assess whether they will be within the scope of the new rules.

3.3.2 HMRC will need to consider the extent to which investors will have the ability to acquire the relevant information from the entity, what information investors can oblige an entity to provide them with and the extent to which investors can rely on the information received. In the event that an investor is not satisfied with the information received from an entity, would the investor be able to question that information and require that the entity justify the conclusions it has made (e.g. as to the value of its assets)?

3.3.3 If an investor relies on the information received from the entity in concluding that it should not be within the scope of tax in respect of a disposal (e.g. the property-rich test is not met or its shareholding has not exceeded 25%), will it have any recourse to the entity in the event that the information relied upon proves to be incorrect? In respect of larger entities, the entity may engage a professional services firm to provide the relevant information to investors and potentially seek to require that that firm provide reliance on their advice to investors. However, if the entity were required to provide this information to each investor on request, the cost of that advice would prove to be prohibitive. Would HMRC consider a system under which an entity is required to produce the relevant information annually and investors rely on that information in respect of any disposal during the relevant period?

3.3.4 In the majority of cases, it would be prohibitively expensive for an investor to be required to independently establish the extent of its own shareholding in an entity and the relevant value of the assets of an entity in which it owns shares. Is HMRC intending to include an obligation on entities that own UK real property to make available to investors the information required to assess the potential applicability of the rules? If yes, to what extent would an entity be able to restrict the information that it is required to provide, so as to protect commercially sensitive or confidential information?

3.3.5 Assuming that investors have a means to require an entity to provide them with the information required to be able to assess whether they are potentially within the charge to tax in respect of an indirect disposal, there are still a number of questions to be considered as to the information that an entity will be able to produce.

Property-rich test (valuation requirements)

3.3.6 In order to apply the property-rich test, an entity will be required to periodically value all of its assets, whether tangible, intangible or otherwise. It would be helpful if HMRC could set out the criteria that it will take into account when considering such valuations and provide a means for taxpayers to get a degree of certainty on valuation issues (e.g. a pre-transaction ruling process).

3.3.7 The Consultation refers to the rules in section 356OM of the Corporation Tax Act 2010 in respect of the tracing of value through a structure. Neither that section, nor the associated guidance, provides real clarity as to how value will in fact be traced, referring to the attribution of value "*in whatever way is appropriate in the* *circumstances*"[2]. This flexibility is potentially understandable in the context of an anti-avoidance provision but we do not consider it to be appropriate in respect of a key aspect of the charging provisions under the new proposals. The way in which value is traced through a structure is key to establishing whether a transaction is chargeable and the relevant provisions should be clear and easily applicable in practice.

Property-rich test (trading entities)

3.3.8 It is assumed that the proposals are principally aimed at property investors that hold property in the long term for rental income. However, as drafted, the proposals would also apply to trading businesses that own property for the purposes of their trade (e.g. supermarket companies and utility companies). There is a definite risk that investors in these types of entities could unwittingly be caught by these rules in respect of indirect disposals. HMRC should consider excluding trading entities from the scope of indirect disposals.

Property-rich test (liabilities taken out of account)

3.3.9 We understand why it is proposed that loan liabilities should be ignored in applying the 75% test but consider that could also cause anomalous results. As demonstrated by the example in paragraph 3.3.16 below, it is possible for a UK property to represent a minority of the true "value" of an entity (i.e. because of associated debt) but the entity still be considered property-rich solely because the relevant debt is not taken into account.

3.3.10 Does HMRC intend that all other liabilities should be ignored? It would seem logical that certain liabilities should be taken into account when assessing the property-rich test. For example, we do not see a logical reason why a provision in a company's accounts in relation to dilapidations under a lease or some forms of property derivative (e.g. a put option held by a third party exercisable at a strike price which exceeds prevailing market value of the subject matter of the option or an interest rate swap) should not be taken into account.

Short term fluctuations in value

3.3.11 Given that the property-rich test is applied to the gross asset value of all of the assets held (directly or indirectly) by an entity, there will be many situations in which the value of the assets may fluctuate by large amounts in a relatively short space of time (e.g. financial or other traded assets).

3.3.12 The snapshot nature of the property-rich test would leave entities vulnerable to a short term fluctuation that is entirely outside of the parties' control but could cause a transaction to become taxable that would previously not have been. This would be a particular issue if it were to occur between exchange and completion, with potentially significant implications for investors. This would create a material additional risk in respect of commercial transactions that could prevent certain transactions from going ahead.

3.3.13 Additionally, assuming that any new rules would contain a TAAR that would apply to the property-rich test, it would likely be very difficult for parties to restructure transactions so as to mitigate this risk (e.g. by acquiring a portfolio of shares in order to introduce a buffer to avoid triggering the property-rich test) without falling foul of the TAAR.

---

2 Section 356OM(3) CTA 2010.

3.3.14 For these reasons, HMRC should consider ways to mitigate the risks of the 75% cliff edge incorporated in the property-rich test. This could be done by applying the test over a period of time (e.g. the average value over the last year) or providing a certain number of "safe harbours" (e.g. in the event that the property-rich test is met because of a change in value outside of the control of the parties).

Changes in value of assets other than UK property

3.3.15 Whilst it is only the gain on the disposal of the property-rich entity that is subject to the new charge to tax, there will be many situations in which that gain bears no meaningful economic or rational relationship with the underlying unrealised gain (if any) on the UK property owned by the entity. The same point applies where there is a loss on the disposal of the property-rich entity or an unrealised loss on the underlying UK property. It seems perverse that an entity with assets including UK property and other assets could become property-rich solely as a result of the other assets declining in value (causing the 75% test to be passed) due to, for example, currency fluctuations. The accounts of the entity may or may not have sterling as a functional currency.

3.3.16 Certain of the implications referred to above are more easily explained by means of an example (please see also the diagrams at Appendix 1 (Example 1 - Property-rich Test) to this letter):

(a) A Hong Kong investor sets up three Jersey companies: Company A, which has two subsidiaries Company B (which it funds with £2m equity) and Company C (which it funds with £1m equity). Therefore, Hong Kong investor's total initial investment is £3m.

(b) Company B takes out an £8m loan to acquire a UK property, which it buys for £10m in May 2019 funded out of a combination of equity (£2m) and the proceeds of the loan (£8m).

(c) Company C buys a French property in May 2019 for £1m funded entirely out of equity.

(d) Over the next 4 years, the value of the UK property remains static but the French property increases in value by 200% to £3m, at which point the Hong Kong investor decides to sell Company A for £5m, being an amount equal to its net asset value (i.e. £5m = £2m (£10m value of the UK property - £8m debt) + £3m value of the French property).

(e) Hong Kong investor has made a £2m gain, which is all attributable to the increase in value of the French property. However, the gross asset value of Company A is attributable to the £10m value of the UK property (debt being ignored) and the £3m value of the French property, such that the value attributable to UK property is 77% and Company A is a property-rich entity. Therefore, the Hong Kong investor would be required to pay UK tax of £340k on its £2m gain (i.e. £2m at 17%), despite the fact that none of that gain is attributable to the UK property.

3.3.17 HMRC should consider ways to prevent such anomalous results from occurring, for example by limiting the scope of the rules to gains in respect of UK property as opposed to other assets (e.g. non-UK property or other assets).

25% ownership test (application to complex capital structures)

3.3.18 At first blush, it would appear that the 25% ownership test should be easy to apply. That should be the case in respect of entities that have a very simple capital structure (e.g. one class of shares and no other equity-like interests). However, a significant number of entities will have complex capital structures with multiple classes of shares (e.g. with different rights), debt on a variety of terms and potentially other complicating factors (e.g. options over shares). We assume that HMRC would seek to apply tests similar to those in Part 5 (Group Relief) of the Corporation Tax Act 2010 in applying the 25% ownership test. Given that the proposals are intended to apply to ownership via all types of entity (i.e. not just companies) in all jurisdictions, the relevant provisions would presumably require significant additional drafting.

3.3.19 However, the 25% ownership test will not necessarily be applied by the company itself but will instead have to be applied by the investors in that company and to every entity that is directly or indirectly owned by that company. In very simple scenarios where a group is ultimately owned by a very small number of investors, each of which has invested pari passu (e.g. each has the same proportion of each class of shares, any shareholder debt and the same rights on a winding up), the 25% ownership test should be reasonably easy to apply. However, that is only likely to be the case in respect of a small number of investments and it will be necessary for investors to be able to gain access to the relevant information to apply the 25% ownership test.

3.3.20 Smaller investors in large quoted entities should be able to take some comfort from the 25% threshold but it would be difficult for even small investors to be able to prove definitively that they are under the 25% threshold. HMRC should consider incorporating a gateway test or other mechanism, such that smaller investors are not required to consider the 25% ownership test.

3.3.21 There is a tension between an investor’s desire to receive information in order to be able to apply the 25% ownership test and the desire of the company in which it invests (and its subsidiary entities) to retain confidential information (e.g. in respect of the capital structure and financing of its group). A potential solution would be for the company to provide the investor with the information that it needs (i.e. its ownership percentage) but that would also present a number of difficulties:

(a) It is unlikely that UK legislation would be able to require non-UK entities to provide the relevant information to investors.

(b) If an obligation were placed on the non-UK entity, would it be required to provide information to each investor on request without limit (the associated compliance cost could become prohibitive)?

(c) Would the investor be able to challenge the information provided and put the company to proof (potential issue in respect of confidential information)?

(d) Would the investor have any recourse in the event that the information provided is incorrect?

(e) Who would be required to pay for the information to be collated and verified?

3.3.22 When taking into account the fact that the ownership test is applied over a rolling 5 year period, the complexity of applying that test increases significantly. This aspect of the 25% ownership test proposal would seem to create a significant additional burden that will be difficult to satisfy.

3.3.23 In developing the 25% ownership test, HMRC must consider the extent to which the investor is itself able to apply the test and ensure that investors are able to access the information required to be able to do so. HMRC should consider ways to make the test more practical, for example, by allowing companies to produce an annual ownership statement for each investor and using that as the basis of the test, rather than requiring up to date information in respect of each disposal. The retention of annual ownership statements for the past 5 years could potentially provide a means to apply the 5 year look back without undue compliance costs.

25% ownership test (impact of 5 year look back on funds)

3.3.24 The 25% ownership test will be met in the event that an investor is treated as owning 25% of an entity at any point in a 5 year period. This could adversely affect certain commercial situations, for example:

(a) it would discourage real estate fund seed investors because they would in all likelihood breach the 25% test at the outset, such that any subsequent disposal would be within the scope to CGT, even if its interest drops below 25% a very short time later (see example in paragraph 3.3.26 below); and

(b) in the event that a real estate fund is coming to the end of its life, investors may rush to try to sell their interests, so as to avoid breaching the 25% threshold as other investors divest (i.e. to avoid being one of the "last men standing").

3.3.25 It is common for a closed ended investment fund to have a series of "closings" in which new investors are admitted. This enables a fund to attract a small number of significant initial investors (often referred to as "cornerstone" investors) at "first close" to enable it to get off the ground and begin investing. Further investors would then be allowed to invest in subsequent "closings" over time.

3.3.26 This is best explained by means of an example (please see also the diagrams at Appendix 2 (Example 2 – 25% Ownership Test) to this letter):

(a) A new fund structured as a JPUT with a limited life of 7 years is established to allow non-UK entities to collectively invest in UK property. A single cornerstone investor ("**Investor A**") makes a commitment of £100m which is drawn down at first close, such that Investor A is the sole investor owning 100%.

(b) Six months later, a second entity ("**Investor B**") agrees to make a commitment of £100m (plus certain fees, known as equalisation payments) at second close. Of this, £50m is drawn down from Investor B and used to repay 50% of Investor A's equity in the fund, such that Investor A and Investor B have each contributed 50% of the capital in the fund. The aim of the equalisation mechanism is to put both investors in the same position economically as they would have been in had they both invested at first close.

(c) Six months later, three further investors each agree to make a commitment of £100m (plus equalisation payments) at final close (the "**Final Close Investors**"). Of the aggregate £300m committed by the Final Close Investors, £60m in aggregate is drawn down and used to part repay each of Investor A and Investor B (i.e. £30m each), such that each of the five investors (i.e. Investor A, Investor B and the Final Close Investors) has invested £20m and holds 20% of the interests in the fund.

(d) The fund buys £100m of UK property shortly after final close and holds it as an investment. Four years later, the value of the UK property held by the fund has doubled to £200m. A third party agrees to buy all of the interests in the fund for £200m (i.e. each investor receives £40m for its interest in the fund).

(e) In this scenario:

(i) The property-rich test would be met.

(ii) The 25% ownership test would:

(A) be met in respect of the earlier investors (i.e. Investor A and Investor B), each of which held more than a 25% interest in the fund after first and second close; but

(B) not be met in respect of the Final Close Investors, each of which only ever held a 20% interest in the fund.

(iii) The amount of UK tax payable would depend solely on the timing of the investment made:

(A) Investor A and Investor B invested early thus facilitating the fund's launch but as a result would each be subject to UK corporation tax at 17% on the entirety of its £20m gain (i.e. approximately £3.4m of UK tax each); and

(B) Final Close Investors who only invested a short time later and held the same percentage interest in the fund for the majority of its life, would not be liable to pay any UK tax whatsoever, despite also making a £20m gain.

25% ownership test (minimising illogical outcomes)

3.3.27 In order to avoid some of the distortions referred to above, HMRC should consider incorporating a temporal element into the 25% threshold, such that an investor would have to have held at least a 25% interest in the fund for a period of, say, 12 months before it is subject to the indirect disposal rules.

3.3.28 It would also seem odd that an investor which breaches the 25% ownership test before an entity becomes property-rich or even acquires any UK property, should nonetheless be caught by the CGT charge by virtue of having held a 25% interest before that time. HMRC should seek to ensure that the test is drafted such that it is only triggered by a 25% ownership at a point in time when the entity is actually property-rich.

25% ownership test (acting together)

3.3.29 The proposed "acting together" test is too broad. The context in which that concept is used in the corporate interest restriction rules is more subtle. Here it would directly affect whether an entity is subject to tax at all. The more common "connection" test seeks to aggregate entities that are, or should be treated as being, under common ownership for tax purposes, which is more appropriate to the question of whether a person should be subject to tax or not (i.e. has the entity effectively shared in the gain).

3.3.30 Applying the "acting together" concept would bring economically independent entities within the charge to tax solely because they have sought to cooperate in order to further a business opportunity (e.g. in theory the use of a shareholders' agreement by a company, an advisory committee by a fund or independent investors being advised by the same investment manager could be caught). It is almost inevitable that genuine commercial transactions would be adversely affected or even prevented from happening as a result of applying the "acting together" rule in this context. At best, the "acting together" rule should be clearly stated as applying solely in respect of entities that are acting together with the sole or main purpose of avoiding the application of the 25% ownership test.

3.3.31 In addition, the "acting together" test is more open to a subjective interpretation and its interpretation by different entities could lead to unintended results. For example, two entities that are involved in the same business could interpret and apply the rule differently, with one paying tax and the other not.

Partnerships

3.3.32 The reference in paragraph 4.13.2 of the Consultation (referring to the provision in section 356OR CTA 2010) to the disposal of a partnership interest constituting the disposal of an interest deriving its value directly or indirectly from land, suggests that HMRC considers that a disposal of a partnership interest should be treated as an indirect disposal. Where that is the case, the 25% ownership test and the property-rich tests would have to be met in order for the disposal of a partnership interest to be taxable.

3.3.33 For the reasons set out below, we consider that this is the better approach and would be grateful if HMRC could confirm that this is indeed the intended treatment:

(a) The rights associated with a partner's interest in a partnership are often complex (e.g. income and capital sharing ratios can differ or entitlement to the profits be associated only with specific assets) and it would seem logical that a disposal of an interest in a partnership by a partner should not be equated to a direct disposal of the underlying property itself.

(b) If the disposal of an interest in a partnership were treated as a direct disposal of the underlying, neither the property-rich test nor the 25% ownership test would have to be applied in respect of the disposal. Therefore, the disposal by a partner anywhere in the world of any interest in any partnership in any jurisdiction that owns any interest in UK land would potentially be subject to UK CGT. The relevant partner would be required to consider in detail the CGT position of any UK property (regardless of its value), whether the partnership has made a gain in respect of it and, if yes, what that partner's proportionate share of that gain is. This would inevitably create anomalous results and would create a significant compliance burden for both taxpayers and HMRC, but would be unlikely to generate any material tax revenue.

(c) We are conscious that the intention of the proposals is that there be equal tax treatment of UK and non-UK entities, and that HMRC considers that a disposal by a UK partner would be broadly treated as a disposal of a proportion of the underlying assets of the partnership. However, in respect of a UK partner making a disposal, the partner would potentially be subject to tax on all of the assets of the partnership and would (very broadly) be able to rely on the accounts of the partnership to establish whether there is a liability. However, in respect of a disposal by a non-UK partner, that partner would be required to isolate the UK property owned by the partnership from all of the other assets and consider its UK CGT liability in respect of that asset alone. It would seem far more proportionate for non-UK partners to be required to undertake that exercise solely in respect of a partnership that is property-rich (i.e. by treating it as an indirect disposal).

3.3.34 In terms of how this is achieved, whilst a partnership is often referred to as being "transparent" for tax purposes, there is no legislative provision under which the disposal of a partnership interest is treated as a disposal of the underlying assets (e.g. section 59 TCGA effectively treats a disposal by the partnership as being a disposal by the partners but not vice versa). Nonetheless, the approach endorsed under Statement of Practice D12 indicates that a partner that reduces its share in asset surpluses (e.g. on a disposal of an interest in the partnership) should be treated as disposing of a part of the whole of his share in each of the partnership assets. Accordingly, we think express provision would be needed to ensure opacity for partnerships under the new rules. That provision would also need to deal with the possibility that a partnership moves between opacity and transparency (e.g. on a change in residence by the partners) – for example, if a UK resident partner becomes non-UK resident, would that be treated as giving rise to a direct disposal of any UK immoveable property held by the partnership (if so, it would seem to follow that the partner's interest in the partnership (which would subsequently be opaque for tax purposes given that the partner is no longer UK resident) going forward should be rebased for the purpose of the new rules)?

3.3.35 In addition, when considering an indirect disposal of an interest in a partnership (i.e. as opposed to a disposal of assets by the partnership) and the extent to which partners in a partnership are treated as being connected with one another in respect of the indirect disposal, it will be necessary to amend the connection test such that the carve out in section 286(4) TCGA provides that partners are not connected with one another in respect of disposals of partnership interests, as is the case in respect of disposals of partnership assets.

Rebasing

3.3.36 The rebasing of an interest in a property-rich entity as at April 2019 should take effect regardless as to whether the conditions for a disposal to be taxable (e.g. the property-rich test and the 25% ownership test) are met as at April 2019. For example, a non-UK investor that owns 20% of the shares in a property-rich company in April 2019 and subsequently acquires an additional 10% of that company's shares, should be able to use the April 2019 base cost in respect of the shares held in April 2019.

3.3.37 We are surprised that investors will not be able to elect to use historic base cost in respect of an indirect disposal. It is true to say that calculating the base cost associated, for example, with shares in a company is potentially more complex than for a property but, given that the proposals are drafted on the basis that that will be the position in respect of indirect disposals from April 2019 onwards (i.e. the actual base cost of the shares will be used), it is difficult to see the justification for preventing that treatment in respect of shares acquired before April 2019.

3.3.38 The inability to elect to adopt historic base cost in respect of an indirect disposal would disadvantage investors who acquired their interests in those entities during one of the historic peaks in the market. The peaks and troughs in the valuation of UK property provide a definite risk that an investor would suffer tax on an amount greater than the economic profit that it has made (e.g. if it acquired its interest in the company at the peak of the market, values as at April 2019 are depressed and a subsequent recovery means that the interest is sold for more than the original acquisition cost).

3.3.39 There is a risk that this would disproportionately affect entities that have pooled their investment with others in order to acquire multiple properties. An entity that owns 100% of a single asset SPV, has greater flexibility to be able to decide how best to get its money back out of the investment. For example, it would have the option to seek to effect either a direct disposal of the property or an indirect disposal of the entity that owns the property. However, in the event that there are a number of investors in an entity and not all of them wish to get their money back, the investor would be required to dispose of its interest in the property owning vehicle (i.e. an indirect disposal) and would be required to use the April 2019 rebased cost, even if that would be disadvantageous. This would potentially prevent the investor from making a tax loss to match its economic loss.

3.3.40 We assume that the reference in the Consultation to "rebasing" is to an adjustment to the acquisition cost of the shares and that any other deductible expenditure (e.g. costs and fees of acquisition and/or disposal) will continue to be deductible in the usual way.

3.4 **Advisers' role in reporting transactions**

3.4.1 Placing an obligation on advisers to inform HMRC of transactions undertaken by their clients would present a number of professional (e.g. confidentiality) and practical (e.g. ability to verify information provided by clients) issues for advisers.

3.4.2 We consider that the current SDLT rules provide a helpful comparison in respect of reporting for direct disposals. The majority of purchasers request that their UK advisers assist them with satisfying their SDLT reporting requirements but the obligation itself remains the sole responsibility of the client.

3.4.3 We consider that this is a logical position because an adviser is by its very nature not able to compel its client to act in a particular manner (e.g. to dictate the basis on which its client wishes to undertake its compliance obligations). In respect of direct taxes (as compared to SDLT), this is still more relevant because an adviser is unlikely to be in possession of all of the information necessary to be able to accurately calculate whether tax is due (e.g. detailed information as to historic deductible expenditure and the availability of any reliefs).

3.4.4 In respect of indirect disposals, advisers would be unlikely to be in possession of information that would be necessary to establish whether the transaction would be chargeable at all (e.g. as to the relative value of property owned by an entity and the percentage shareholding that the vendor and/or connected entities held in the previous 5 years). Even if advisers were in possession of such information, that information would likely have been provided to them by their clients and it would not be possible for the adviser to independently verify it, so as to be able to confirm whether a transaction is in fact subject to tax or not.

4 **ADDITIONAL COMMENTS AND REQUESTS**

4.1 **Process**

Given the magnitude of the proposed changes and the likely complexity of the draft legislation (particularly as regards indirect disposals), we consider that it would be advisable for there to be detailed industry consultation on the draft legislation and that it should only be implemented after industry has been given sufficient time to provide comments on the draft legislation and iron out any potential technical issues identified.

4.2 **Availability of existing reliefs**

4.2.1 With the exclusion of ATED related gains and NRCGT which were considerably more restricted in their application when compared to the current proposals, UK CGT has historically been relevant only to entities that are resident in the UK for UK tax purposes. HMRC should consider including a general provision that would seek to ensure that legislative provisions (e.g. reliefs) apply to non-UK entities despite any UK centric drafting issues. There will inevitably be many situations in which this will be in point but one example is set out in paragraph 3.2.3 above (i.e. in respect of section 31 TCGA). In the absence of equivalence, there is a risk that taxpayers would seek to claim that the provisions are discriminatory and should in any event be interpreted in a manner that provides equal treatment to all[3].

4.2.2 It is anticipated that non-UK corporates will cease to be income tax payers and will come within the corporation tax regime from April 2019 (for chargeable gains) and April 2020 (for income (i.e. under the CT Proposals)). HMRC should confirm the

---

3 The applicability of "equivalence" arguments will to some extent depend on the outcome of the Brexit negotiations but should be considered nonetheless.

position as to the use of any historic income tax losses and that those losses will be able to be used against profits otherwise chargeable to corporation tax.

4.3 **Impact on exempt investors**

4.3.1 The UK tax system has provided certain entities with exemption from UK tax on the gains made from their investments, obvious examples being pension funds, charities and sovereign wealth funds. Nevertheless, exempt investors have also invested in non-UK entities that are until April 2019 themselves exempt by virtue of being centrally managed and controlled outside the UK and, therefore, falling outside the scope of UK CGT (save in certain circumstances in respect of residential property).

4.3.2 There are many reasons that exempt investors may choose to invest via a non-UK entity, for example:

(a) only the entity itself benefits from an exemption (e.g. a registered pension scheme) and not any subsidiary of that entity. There are often commercial reasons for not wanting to hold an investment directly (e.g. holding via a limited company prevents litigation liabilities being visited on the registered pension scheme) but also a need to ensure that returns to investors are maximised by not introducing unnecessary tax into the investment structure, such that a non-UK entity was traditionally considered to be a simple and effective solution; and

(b) in order to pool investment with other entities and diversify asset level risk. Where the other investors are themselves not subject to UK CGT by virtue of being non-UK, it currently makes sense for both to invest in a non-UK entity, so as to avoid there being UK tax in the investment entity where there would be no UK tax if the property were held directly.

4.3.3 The current proposals provide for any direct disposal by a non-UK entity to be subject to UK tax, regardless of the identity of the investors in that entity. The same result would also apply in respect of an indirect disposal by an entity that is all or part owned by an exempt investor (e.g. the disposal of a property-rich subsidiary by a holding company that is itself owned by an exempt investor).

4.3.4 Therefore, exempt investors will likely suffer UK tax on transactions that would not otherwise currently be taxable in respect of indirect disposals of properties or entities. This would obviously present a significant reduction in the post-tax returns to those exempt investors and/or restrict their ability to realise their assets in a tax efficient manner (e.g. if required to make an indirect disposal to avoid triggering tax, which would in all likelihood be for a reduced consideration as a result of the latent gain in the entity disposed of). In respect of registered pension schemes, we assume that the additional tax burden would also require an actuarial readjustment to take account of the reduced post-tax proceeds available, potentially causing or accentuating pension funding deficits.

4.3.5 HMRC should consider incorporating exemptions or reliefs that enable exempt investors to maintain the status quo in respect of the taxation of direct disposals made by entities in which exempt investors own an interest. There are many ways that this could be achieved, for example:

(a) treat an entity that makes a direct disposal as transparent for CGT purposes, such that it is the investors that are treated as making any chargeable gain, enabling exempt investors to take advantage of their existing exemption. This option may be operationally complex in respect of a structure that has several tiers of entities and could potentially create a material compliance burden. Therefore, consideration should be given as to whether it would be more appropriate for this approach to be available on the basis of an election by the relevant entity (or each relevant entity in respect of a structure with multiple tiers);

(b) enable an entity that makes a direct disposal to claim relief on gains in proportion to the percentage of investors in that entity that are exempt from tax on chargeable gains in the UK – we note that this should be worded to ensure that charities can benefit[4]; or

(c) extend the "qualifying institutional investor" provisions recently adopted in the context of the substantial shareholding exemption to apply to disposals of assets other than shares (e.g. property and interests in other entities (e.g. unit trusts and partnerships)).

4.3.6 Going forward, it would be helpful to create a new vehicle that would be better adapted to being used by exempt investors. For example, the UK does not currently provide an unauthorised vehicle with the tax characteristics that would enable an exempt investor to hold an investment via another entity. In order to dovetail with exempt investor status, it would be helpful to have an unauthorised limited liability vehicle that is similar to a Co-Ownership Authorised Contractual Scheme ("**CoACS**"), which is transparent for income tax, effectively exempt from CGT on disposals of assets and does not suffer stamp tax charges in respect of transfers of interests in it (i.e. effectively an onshore JPUT).

4.4 **Developers**

4.4.1 The direct tax treatment of property developers typically depends on whether the developer's intention is to sell the property once developed (i.e. the property is held as trading stock) or to hold the property as a source of rental income (i.e. the property is held as an investment asset). The proposals in the consultation will be relevant to developers in the latter category.

4.4.2 A property development is likely to take a number of years to move from its initial planning stages through to practical completion and becoming income producing. Therefore, there is a large number of developments being undertaken by non-UK entities that have been underway for a significant period of time. These developments would have been contractually entered into on the basis of the existing legal framework, including in respect of tax (i.e. without taking into account, the proposed rebasing or UK tax on any eventual disposal).

4.4.3 We understand that when a development project reaches practical completion there is a significant uplift in value, reflecting the fact that there is no longer a "development risk" (e.g. risk that the building will not be completed and will not be capable of generating income). In respect of any development that does not manage to reach practical completion before rebasing in April 2019, the entirety of that significant uplift in value will fall into the charge to UK direct tax where it would not have done so previously.

4.4.4 Whilst developers will try to ensure that developments reach practical completion before the April 2019 rebasing, that will obviously not be possible for all. Given that the proposed change of law could not have been foreseen, one could argue that this is akin to a retrospective change in law. HMRC should consider providing grandfathering for developments that have passed a certain milestone (e.g. a direct tax equivalent of "golden brick" for VAT purposes), so as to avoid the cliff edge in respect of rebasing for developments that are ongoing.

---

4 We understand that there are some potential technical issues with the current exempt unauthorised unit trust rules because charities are not strictly exempt from tax on all chargeable gains (since it is necessary to test to what use they put those gains), even though in practice exemption would be expected.

4.5 **Secondary liabilities**

The Consultation proposes that it will be possible to recover tax owed by a non-UK entity from a UK representative or related company (see paragraph 7.16 of the Consultation). In respect of an indirect disposal, in the event that the tax were recoverable from the entity that is the subject of the indirect disposal (i.e. the "target" entity), that would present material commercial issues and would potentially prevent commercial transactions from taking place. It is requested that HMRC make it clear in the legislation that that is not the intention.

4.6 **Restructuring**

4.6.1 There has been a push in recent years to attract investment to the UK and to encourage entities to invest through UK vehicles. The proposals in the Consultation are likely to provide an additional incentive for investors to establish in the UK and to hold UK immovable properties through UK entities.

4.6.2 In respect of existing investments that are held in non-UK entities, there is likely to be significant interest in restructuring those investments, so as to hold them in the UK but a number of barriers to restructuring existing entities (including from a tax perspective) exist. To the extent that a restructuring requires a UK property to be transferred, there is a potential charge to SDLT that would be prohibitive. Even if an exemption is potentially available, so as to avoid the initial upfront charge (e.g. SDLT group relief or PAIF / CoACS seeding relief), the risk of subsequent SDLT clawbacks would still prevent many investors (e.g. registered pension schemes that may need to redeem units unexpectedly to pay members) from restructuring.

4.6.3 HMRC should consider ways to enable existing entities to come onshore without incurring SDLT charges in certain prescribed circumstances (e.g. assuming that there is no material change in beneficial ownership). For example, HMRC could consider providing for there to be an SDLT "holiday" to provide a window for entities to restructure in accordance with certain pre-determined criteria. Alternatively, a number of limited restructuring reliefs could be put in place to enable people to transfer from a certain type of offshore entity to an equivalent onshore entity, in a similar way to the SDLT relief provided to enable an Authorised Unit Trust to restructure as an Open-Ended Investment Company (an "**OEIC**") in the Property Authorised Investment Fund ("**PAIF**") context. For example, relevant restructurings could potentially enable a non-UK property unit trust (e.g. a JPUT) to become either an OEIC (e.g. so as to be able enter the PAIF regime) or an exempt unauthorised unit trust.

4.6.4 In addition to SDLT, consideration should be given to the other tax implications of bringing a structure onshore. For example, a non-UK entity would benefit from the rebasing of UK immovable property to its market value as at April 2019. It would discourage entities from coming onshore in the event that onshoring would effectively cause them to lose the benefit of that rebasing and revert to historic base cost. See further paragraphs 3.2.6 and 3.2.7 above.

5 **RESPONSES TO SPECIFIC QUESTIONS**

Please see the table in the Schedule to this letter for responses to the specific questions raised in the Consultation document. Certain of the information produced in that table has been referred to in the body of this letter but, where appropriate to specific questions, additional responses have been included in the table that are not found in the body of this letter.

6 POINTS OF CONTACT

Should you have any queries or require any clarifications in respect of our response or any aspect of this letter, please feel free to contact Paul Shaw by telephone on 020 3400 3291 or by email at paul.shaw@blplaw.com.

Yours faithfully

Christopher Bates

Chair City of London Law Society Revenue Law Committee

SCHEDULE

TAXING GAINS MADE BY NON-RESIDENTS ON UK IMMOVABLE PROPERTY

CONSULTATION – RESPONSE TO QUESTIONS

Question No.	Question	Response
Chapter 2 Scope of the Measure		
Question 1)	Are there any issues specific to non-residents when considering how they fit into the UK definitions of persons chargeable to UK tax (CGT or CT)?	
Question 2)	Do you see any issues or complications arising with respect to rebasing which need to be addressed?	It would be beneficial to have certainty as to the acceptability of valuations. For example, certainty as to what valuations HMRC will accept (e.g. third party red book) without challenge. Alternatively, the ability to agree valuations with HMRC would be desirable (e.g. a pre-transaction ruling system). We assume that rebasing is in respect of acquisition cost only and that any other expenditure that is incurred after the rebasing which is deductible in addition to the deemed reacquisition cost will continue to be deductible. Given that the new rules are timed to have effect around the time of Brexit, there is definite potential for the market to be disrupted. This could lead to an inability for valuers to provide accurate valuations (as was seen shortly after the Brexit vote) and potentially a short term drop in values. On that basis, there is a definite risk that a snapshot valuation (e.g. as at 5 April 2019) would not truly reflect the value of the relevant property. HMRC should consider whether a more equitable method could be adopted (e.g. value as at any date within a window of, say, 2 years). Dividends paid by a property-rich entity before its disposal which reflect the unrealised profit on the rebased property should not be regarded as value shifting or depreciatory (see further paragraph 3.2.3 above).
Chapter 3 Direct disposals		
Question 3)	Do you agree with the basic principle that gains on direct disposals within these new rules	Yes. It would also be helpful for HMRC to indicate any areas in which it considers

Question No.	Question	Response
	should be computed using the same computational rules as other chargeable gains?	that its guidance may differ for disposals by non-UK entities.
Question 4)	Further to the specific modifications identified, are any other changes needed to recognise differences in how the tax system applies to non-residents?	
Question 5)	For businesses: Will the proposals for direct disposals mean that your company will now be required to register for UK CT?	
Question 6)	For businesses: Will the proposals for direct disposals lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.	
Question 7)	For individuals: Will the proposals for direct disposals mean that you will be required to pay Capital Gains tax for the first time?	
Chapter 4 Indirect disposals		
Question 8)	Do you consider that the rules for indirect transactions are fair and effective?	We assume that the current intention is that the 75% "property rich" test will be based on a snapshot of the value of the assets of the entity as at the time of the disposal. In cases where the value of the relevant entity's UK property is close to the 75% threshold, this would create a potential valuation issue and it would be helpful for there to be a tolerance level. In the event that there is a TAAR, it should include a tax avoidance motive to prevent uncertainty and target true avoidance (e.g. an incidental acquisition of assets should not be caught unless the sole or main purpose of the acquisition was to breach the 75% test). The 5 year 25% ownership test will pose a number of potential issues. In the funds context, this would potentially cause issues for investors both at the inception of the fund (e.g. seed investors would in all likelihood breach the 25% test and would be subject to tax on any subsequent disposals for the next 5 years)

Question No.	Question	Response
		and towards the end of the fund's life (e.g. investors would want to exit the fund before others, so as to prevent breaching the 25% threshold). The five year look-back for the 25% ownership test, the way the property-rich entity test works and the lack of linkage between the gain on the underlying UK property and the gain on the shares in the entity can produce perverse and unfair results especially where the entity owns other significant assets or has significant liabilities (save for plain vanilla loan finance to acquire the entity's assets).
Question 9)	Are any other conditions necessary to ensure the policy is robust in meeting the objective of taxing non-residents on gains on indirect disposals?	
Question 10)	For businesses: Will the proposals for indirect disposals mean that your company will now be required to register for UK CT?	This will depend on the implementation of HMRC's proposal to bring non-UK entities within the charge to corporation tax (i.e. the CT Proposals). On the basis of the CT Proposals, we assume that it is only non-UK companies that are in receipt of rental income from UK property that will be brought within the charge to corporation tax and, therefore, an indirect disposal (i.e. via the sale of shares) would not of itself cause the entity making the disposal to be brought within the charge to corporation tax.
Question 11)	For businesses: Will the proposals for indirect disposals lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.	This measure will inevitably lead to an increased administrative burden, which will necessarily have cost implications. Assuming that investors will expect to be provided with information as to their percentage shareholding and the relative value of the assets of the entity, it will be necessary to collate and maintain the relevant information and to periodically have professional services firms verify that information.
Question 12)	For individuals: Will the proposals for indirect disposals mean that you will be required to pay Capital Gains tax for the first time?	
Chapter 5 Disposals of residential property		
Question 13)	Do you consider that it is right to harmonise ATED-related CGT given the changes proposed in this document?	The current complexity of the ATED related gains and NRCGT regimes is difficult for both taxpayers and advisers. A

Question No.	Question	Response
		single all-encompassing non-UK CGT regime would definitely be preferable. However, the proposal to retain ATED-related gains, NRCGT and the new rules (see paragraph 5.12) is contrary to the idea of having a single simplified system. In the event that it is considered necessary to retain a charge to CGT in respect of ownership in the period from 6 April 2013 (when ATED related gains was introduced) to the inception of the new rules, it would be preferable to have a single set of rules instead of retaining all three regimes. In order for taxpayers not to be in a worse position, HMRC could consider giving taxpayers the option of choosing to calculate gains on the basis of the historic rules or the new regime for the relevant periods. Investors could choose whether to incur the costs of calculating gains on all three bases or use the simplified new regime. The proposal to have rebasing as at different dates for widely held (i.e. April 2019) and closely held (i.e. April 2015) companies is also unfortunate. The intention to produce a single simplified regime would be better achieved with all non-UK entities rebasing as at market value in April 2019.
Question 14)	Are there any issues, risks, or complexities created by harmonising the ATED-related CGT rules in the manner proposed, and how can these be addressed?	The retention of three regimes is unfortunate. It would be preferable to have a single uniform regime applying to all UK property. The removal of the exemptions for widely held companies and entities that satisfy the genuine diversity of ownership criteria is also unfortunate. A large number of investment funds that wholly or mainly invest in UK property have been structured through non-UK entities as a simple and efficient way of attracting both UK and non-UK capital. Many of these funds have significant investment from UK exempt entities (e.g. registered pension funds and charities). Going forward these entities will be subject to UK CGT and this will significantly reduce the after tax returns to those exempt investors. HMRC should consider both the introduction of reliefs for entities that have exempt investors and providing a means for those entities to restructure without incurring additional tax costs (e.g. via SDLT reliefs).
Question 15)	For businesses: Will the	

Question No.	Question	Response
	proposals for disposals of residential property mean that your company will now be required to register for UK CT?	
Question 16)	For businesses: Will the proposals for disposals of residential property lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.	Businesses that are already within the charge to NRCGT and ATED related gains will welcome the simplification of the system going forward.
Question 17)	For individuals: Will the proposals for disposals of residential property mean that you will be required to pay Capital Gains tax for the first time?	This would be the case for certain individuals.
Chapter 6 Collective Investment Vehicles		
Question 18)	Do you agree with the general approach to ownership of non-residential property through CIVs outlined above?	A considerable amount of UK real property is owned by investment funds that are established in other jurisdictions (e.g. Jersey and Luxembourg are common examples). A number of these investment funds have been established for significant periods of time (often decades) and were set up for reasons that are unrelated to tax. For example, such jurisdictions have been selected: (a) because the jurisdiction has an attractive regulatory regime; (b) so as to access investment vehicles that are well suited to a wide variety of investors; or (c) as a means to encourage investment by non-UK entities. Whilst such funds do attract non-UK investors, UK exempt investors have invested large sums of money in such funds as well. Investing in non-UK funds was considered a reasonable course of action for exempt investors on the basis that the fund vehicle would not be subject to tax on disposals and, therefore, the UK exempt investor would not be putting itself in a worse position than if it invested directly. The decision to remove the diversity of ownership exclusion from the CGT charge means that is no longer the case and that exempt investors will be in a materially worse position. In the event that HMRC is not willing to retain the diversity of ownership exemption, it should provide another means by which exempt investors are not worse off as a result of the changes. For example, this could potentially be done by deeming the relevant entities to be

Question No.	Question	Response
		transparent for UK CGT purposes, such that the entity is able to claim relief in proportion to its exempt investors or potentially by extending the new qualifying institutional investor exemption included in the substantial shareholding exemption to include disposals of UK property and disposals of interests in vehicles that do not have shares (e.g. units in a unit trust) (see further paragraph 4.3.5 above). HMRC has sought to make the UK an attractive place for investment and has in recent years created a number of attractive investment vehicles. However, as indicated above, many non-UK entities were established before certain of the current UK CIVs were developed (e.g. REITs, PAIFs and CoACS). Were those entities to be established today, they may well have opted to structure themselves as a UK CIV. HMRC should seek to encourage non-UK CIVs to restructure as a UK CIV (e.g. by providing a relief from SDLT in respect of the transfer of assets to a new structure, as is the case for an AUT that becomes an OEIC).
Question 19)	Will the proposals for CIVs mean that you will now be required to register for UK tax?	
Question 20)	Will the proposals for CIVs lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.	
Question 21)	Are there changes needed to the rules for CIVs, particularly around exemptions, to ensure a robust system of taxing non-residents on gains on disposal of interests in UK property?	
Question 22)	Are there any specific circumstances where the treatment of gains on non-residential UK property should be different to the treatment of gains on UK residential property in the context of a CIV?	
Question 23)	Do you have any further comments on the taxation of gains on non-residential UK property held through CIVs?	

Question No.	Question	Response
Chapter 7 Reporting and compliance		
Question 24)	Do you foresee any difficulties with the reporting requirements for the seller?	Placing an obligation on advisers to inform HMRC of transactions undertaken by their clients would cause advisers issues in terms of the confidentiality of their clients' information and create considerable uncertainty where the advisers do not have full information about their clients' affairs and the history of the entity in question in which their clients may have only ever have held a minority interest. In respect of direct disposals, we consider that the current SDLT rules provide a helpful comparison in respect of reporting. The majority of purchasers would request that their UK advisers assist them with satisfying their reporting requirements but the obligation itself remains the sole responsibility of the client. We consider that this is a logical position because an adviser is by its very nature not able to compel its client to act in a particular manner (e.g. to dictate the basis on which its client wishes to undertake its compliance obligations). In respect of direct taxes (as compared to SDLT), this is still more relevant because an adviser is unlikely to be in possession of all of the information necessary to be able to accurately calculate the amount of tax that is due (e.g. detailed information as to historic deductible expenditure and the availability of any reliefs). In respect of indirect disposals, advisers would be unlikely to be in possession of information that would be necessary to establish whether the transaction should be subject to tax in the first place (e.g. as to the relative value of property owned by an entity and the percentage shareholding that the vendor and/or connected entities would have held in the previous 5 years) and would be reliant on its client to provide such information in any event. In addition, professional advisers should not be expected to independently verify information provided to them by their clients.
Question 25)	Do you foresee any difficulties with the charge on the UK group company?	No specific difficulties in addition to those with existing rules.
Question 26)	Do you agree with the proposal to use the normal CT Self-	In respect of entities that are already registered for UK corporation tax, it would

Question No.	Question	Response
	Assessment framework?	be logical to use the existing system in order to report and pay tax. We assume that an entity that is not within the charge to UK corporation tax (e.g. if it does not itself directly own UK property) would be required to submit a return notifying HMRC of the disposal. However, given the potential size and complexity of disposals, the final calculation of the amount of tax due should not be required until the tax is due in accordance with the self-assessment regime. In respect of an indirect disposal, it is quite possible that the entity making the disposal would not have any other UK tax obligations and it would seem unnecessary to have to register for CT self-assessment for a single disposal. HMRC should consider whether a self-assessment filing could be made without the need to register for corporation tax.
Question 27)	Will the proposed information and reporting requirements lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.	The third-party reporting requirements cited in paragraph 7.13 of the Consultation would be problematic for UK advisers. Any disposal of a UK property or a vehicle that may own UK property "could" potentially fall within these rules. Advisers would be reliant on information provided to them by their clients in order to establish whether a transaction is potentially chargeable or not. Advisers should not be placed under an obligation to verify information provided by their clients in order to establish whether they should inform HMRC of the potential for a transaction to be subject to charge under these rules. It is often the case that advisers may only deal with a limited part of a transaction (e.g. producing a report on title to UK property) and may not be involved in the actual sale of the entity being disposed of or informed of the conclusion of the transaction either at all or until sometime later. The adviser may only be reporting to the entity itself without any relationship with the owners of the entity or reporting to funders of the underlying property. In these circumstances, advisers would simply not have sufficient knowledge to be able to provide relevant information to HMRC. This would create a risk that advisers might consider making "protective disclosures" in respect of every transaction, so as to ensure that their reporting obligations are satisfied.

Question No.	Question	Response
		Needless to say, that situation would be very unlikely to provide HMRC with meaningful information and would likely create a significant administrative burden for HMRC.
Question 28)	For third-party advisors: what is the best way to ensure the proposed information and reporting requirements do not lead to an undue increase in your administrative burdens or costs? Please provide details of likely one-off and ongoing costs in respect of any options or proposals.	The proposal to place a reporting obligation on third party advisers would be problematic. Advisers would not be in possession of sufficient information to be able to know whether any client should be subject to tax in respect of a disposal of an interest in an entity that owns UK property. For example, an adviser would be reliant on its client / its client's other advisers to inform it: (a) of the percentage value of UK property owned by an entity; and (b) whether its shareholding has breached the 25% threshold in the last 5 years (e.g. whether it is connected to any other shareholder). In the event that any reporting obligation is placed on advisers, it should only require the adviser to report a minimum of information (i.e. the fact that the adviser is aware of the existence of a transaction that could, if the relevant conditions were met, be taxable). A requirement to provide additional information would present material issues to advisers in terms of confidentiality opposite its client and accuracy of information provided to HMRC (i.e. advisers will often be unable to verify information provided by clients).
Question 29)	What channels and methods should HMRC use to raise awareness of this change in the law, to ensure that affected non-residents will know that they are impacted?	In respect of direct disposals, it would seem logical to provide for tax payable on any gain on disposal to be taxed under self-assessment alongside the rental income charged under the NRLS. HMRC could also consider sending appropriate information to any non-UK entity that submits an SDLT return in respect of the acquisition of a property, informing them of their obligations on the eventual disposal and potentially to non-UK entities cited on the SDLT return as vendors informing them of their obligations in respect of CGT. In respect of indirect disposals, we assume that HMRC does not currently have direct contact with owners of entities that own UK property. HMRC should be receiving information from or in respect of any entity that beneficially owns UK property under the NRLS and, therefore,

Question No.	Question	Response
		that would seem to be the best way of providing information to owners in respect of indirect disposals. HMRC could consider placing an obligation on an entity that owns UK property to inform HMRC in the event of a qualifying change of ownership.

Revenue Law Committee Members

Chris Bates (Norton Rose Fulbright LLP) (Chairman)
E-mail: chris.bates@nortonrosefulbright.com

Ms H. Barclay (Macfarlanes LLP)
Ms B. Coleman (Ropes & Gray LLP)
C. Hargreaves (Freshfields Bruckhaus Deringer LLP)
P Harle (Hogan Lovells International LLP)
M. Lane (Slaughter and May)
N. Mace (Clifford Chance LLP)
D. Oswick (Simmons & Simmons LLP)
J. Scobie (Kirkland & Ellis LLP)
P Shaw (Berwin Leighton Paisner LLP)
Ms C.G. Vanderspar (Eversheds Sutherland LLP)
D. Winter (Linklaters LLP)
C. Yorke (Allen & Overy LLP)
I. Zailer (Herbert Smith Freehills LLP)