

Residential property developer tax: Consultation on policy design

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 The government's Tax Consultation Framework¹ sets out five stages to the development and implementation of tax policy; we assume this consultation is taking place at Stage 2 (*Determining the best option and developing a framework for implementation including detailed policy design*). The CIOT strongly supports the government's consultation process. As with most consultations, we think Stage 1 (*Setting out objectives and identifying options*) is a valuable part of the process and should not be omitted. A stage 1 consultation would have allowed for a transparent consultative evaluation of different options to achieve the government's policy intent in the way that best balances the competing objectives.
- 1.3 The timescale for developing and implementing a wholly new tax ready for April 2022 is very short – for both the sector and for HMRC. Normally we would expect this process to extend over a longer period to ensure effective implementation and readiness. The limited timescale for development underlines the practical need to align Residential property developer tax (RPDT) to existing legislation and systems as far as possible. An important practical aspect is that software providers will have little time to design and build a RPDT module once the design is finalised. Similarly HMRC will obviously need to have new systems in place to administer and collect RPDT by April 2022 and to produce timely guidance for RPDT in a challenging timescale.
- 1.4 The rate of RPDT is yet to be announced pending decisions on design. We recognise that the design and rate are linked but a reasonably firm indication of the rate range as soon as possible would provide some level of certainty as it impacts residential development projects under negotiation currently. Furthermore, if a quarterly payment regime is adopted for RPDT, a company or group with a 30 April year end could be due to make a quarterly payment as early as July 2021 but without knowing the rate or basis of charge.

¹ <https://www.gov.uk/government/publications/tax-consultation-framework>

- 1.5 A central theme of our response is to adopt existing statutory or accounting definitions as far as possible in designing the new tax, an approach that accords with the government's objective of simplicity and the Office of Tax Simplification's recommendations. Consistency of definitions with divergences only for clear specified policy reasons reduces complexity.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

- 3.1 The government is introducing a new tax on the residential property sector that will seek to raise at least £2 billion over ten years from the largest developers in the residential property development sector. The primary objective of the RPDT is 'to raise revenue to help fund the package of measures designed to bring an end to unsafe cladding'. The government is consulting on the design and administration of the tax to ensure it is proportionate and works as intended, minimising impact on housing supply where possible. The tax will be applied to profits from UK residential development that exceed an annual allowance of £25m.
- 3.2 The consultation indicates the rationale for the focus on the largest residential property developers is not to imply responsibility for historic cladding defects but because they operate in a market that benefits from government funding to address building defects and recent government interventions to support confidence and liquidity in the residential property market (stamp duty land tax (SDLT) reductions and the mortgage guarantee scheme).
- 3.3 CIOT representatives attended a HM Treasury consultation event to discuss the fundamental design of the tax on 16 June 2021.
- 3.4 Our stated objectives for the tax system relevant to this consultation include:
- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.

- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- Responsive and competent tax administration, with a minimum of bureaucracy.

4 Consultation process and timescale

- 4.1 The government's Tax Consultation Framework² sets out five stages to the development and implementation of tax policy; we assume this consultation is taking place at Stage 2 (Determining the best option and developing a framework for implementation including detailed policy design).
- 4.2 The government's objectives in developing the tax involve potentially competing priorities that are therefore challenging to achieve simultaneously and inevitably involve some trade-offs for example, the objective of simplicity versus the aim of operating effectively for groups with multiple activities, not all of which are in scope; the objective of raising tax from the housebuilding sector while minimising adverse effects on wider government objectives to increase housing supply.
- 4.3 The CIOT strongly supports the government's consultation process. As with most consultations, we think Stage 1 (Setting out objectives and identifying options) is a valuable part of the process and should not be omitted. A stage 1 consultation would have allowed for a transparent consultative evaluation of different options to achieve the government's policy intent in the way that best balances the competing objectives.
- 4.4 We assume that the Treasury's own pre-consultation evaluation considered alternative approaches to the RPDT to achieve its objectives such as:
- *Increasing the general Corporation Tax (CT) rate instead of introducing a new tax*
 - *A supplementary CT charge (a super profits charge) solely on entities with residential development profits in scope rather than a new tax*
 - *A revenue-based levy based on percentage of sales or, in the case of build to rent as a percentage of rental yield with the allowance determined on a deemed disposal basis.*
 - *A fixed levy on completed residential properties based for example on the area of a completed dwelling or some other measure such as number of bedrooms.*

In the case of the latter two alternatives, it is noted that the government's core principles, as set out at Chapter 2 of the consultation, reference that 'Taxing profit helps to ensure contributions are proportionate to economic returns and helps to minimise distortions that might come from alternative tax bases'. The economic returns from different trading or investment models are outside our remit. However, there is a tension between the aim of taxing economic returns and the proposal for a charge on notional or deemed profits as proposed in the consultation for build-to-rent investments.

It would be helpful if any cost/benefit analyses of the alternatives, including the effect on housing supply, could be shared with stakeholders so the reasons for rejecting them are transparent.

² <https://www.gov.uk/government/publications/tax-consultation-framework-Technical/documents/subsfinal/PT/2021>

- 4.5 The timescale for developing and implementing a wholly new tax ready for April 2022 is very short – for both the sector and for HMRC. Normally we would expect this process to extend over a longer period to ensure effective implementation and readiness. The Plastics Packaging Tax, for example, was first consulted on in early 2019 for implementation in April 2022 thereby providing an adequate lead in time. The limited timescale for development underlines the practical need to align RPDT to existing legislation and systems as far as possible.
- 4.6 An important practical aspect is that software providers will have little time to design and build a RPDT module once the design is finalised. A constrained timetable is likely to increase costs. We assume engagement with the companies offering leading software packages is in hand or planned. Similarly HMRC will obviously need to have new systems in place to administer and collect RPDT by April 2022 and to produce timely guidance for RPDT in a challenging timescale. The assessment of impacts notes that the government expects there to be one-off and ongoing costs relating to the administration of the tax for HMRC although these costs are not quantified.
- 4.7 It is difficult for sector stakeholders to provide a response to aspects of the consultation, particularly in terms of impacts while the rate is unknown. We recognise that the design and the rate are inextricably related but a reasonably firm indication of the rate range as soon as possible would be helpful to provide some certainty to the sector and investors. The RPDT rate impacts residential development projects under current negotiation.
- 4.8 Stage 5 of the consultation process is ‘Reviewing and evaluating the change’. This stage will be particularly important in the context of a new tax that is stated to be time-limited and aimed at raising £2bn over a decade as Parliament will be asked to enact the measure on that basis. It is therefore important to understand when and to what extent the basis has been borne out. We suggest there is therefore a case for considering a legislative ‘sunset’ clause or mandatory re-authorisation in respect of RPDT.

5 Residential property definition and development activities within scope

Question: Is this definition a reasonable basis for identifying residential property in scope for the tax? Will companies be able to identify profits in scope using this definition

- 5.1 The elements proposed are:
- a house or flat that is considered as a single residence, generally together with the grounds and garden or any other land intended for the benefit of the dwelling
 - any building that is suitable for use as a dwelling, where it is not so used at the relevant time
 - any existing building that is being adapted, restored to, or marketed for, domestic use
 - undeveloped land where a residential building is being or would be constructed on it
 - any undeveloped land or land undergoing a change in use, for which planning permission to construct residential property has been obtained.
- 5.2 The definitions set out in the consultation semi-paraphrase different existing statutory definitions with some changes. For example, ‘any existing building that is being adapted, restored to, **or marketed for**, domestic use’ is part of the existing definition of ‘residential property’ for SDLT in FA 2003 section 116 (1)(a) that reads ‘a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use;’. There is no reference in section 116 to a marketing test. For SDLT purposes HMRC accept that merely marketing a building as having the potential for domestic residential use is not in itself a determinative

test. Is it the intention that merely marketing an existing non-residential building as having the potential for residential use will form part of the new statutory definition of residential property for the purposes of RPDT?

- 5.3 A further example of imprecise paraphrase is 'undeveloped land where a residential building is being **or would be** constructed on it'. A test involving 'would be' constructed seems unworkably imprecise. Section 116(1)(a) refers only to a building in the process of being constructed. Is the intention to adopt the 'off plan' provisions in FA 2003 Schedule 6B para 7(5) for SDLT Multiple Dwellings Relief such that the scope of RPDT will include profits from the sale of dwellings that are to be constructed under the contract where the seller is responsible for carrying out the development with completion occurring once the construction has completed?
- 5.4 In terms of the definition of residential property, we suggest the better approach, consistent with the government's objective of simplicity and the Office of Tax Simplification's recommendations, is to adopt an existing statutory definition (FA 2003 section 116 is a reasonable starting point that is well understood) and then make any necessary changes to meet the policy intent, stating the rationale for doing so as part of the explanatory notes to the enacting statute so there is a permanent record of the policy intent. There are already subtly different definitions of residential property throughout the tax system including for SDLT, Annual Tax on Enveloped Dwellings (ATED), FA 2004 Schedule 29A (investment-regulated pensions), Capital Gains Tax (CGT), Business Investment Relief for non-UK domiciliaries, capital allowances, inheritance tax, and VAT. Consistency of definition with divergences only for clear specified policy reasons reduce complexity. Subtle variations between definitions of residential property depending upon the tax or context (or indeed within a particular tax itself) make it difficult to apply and to discern the underlying policy over time.
- 5.5 We note the policy decision to include any undeveloped land or land undergoing a change in use, for which planning permission to construct residential property has been obtained in the definition. It is not clear whether the intention is to include the uplift in value from the grant of planning permission in the scope of RPDT or restrict the scope to profits from development. Under the transactions in land rules we note that any gain that accrues prior to a person developing an intention to realise a gain from disposing of developed land is not treated as profits of a trade.
- 5.6 In particular in terms of the scope of RPDT
- Would the scope include any land sale to a residential developer?
 - If it is narrower than that, does it include sale of land with the benefit of residential planning consent?
 - What about land sold without planning consent but with a planning overage? Is that caught? If not, would an overage based on actual residential development be caught?
 - Would a forward funding transaction³ be caught where there is a sale of bare land with a simultaneous development agreement?
 - If not, does the position change if the land is sold at 'golden brick'⁴? It is not unusual for a developer to grant a 999 agreement for lease at golden brick and then build out under the terms of a development agreement.

³ In very broad terms under a forward funding agreement the developer immediately transfers title to the purchaser/fund and agrees to build the development. The purchaser provides the finance to cover the costs of development. Contrast a forward purchase agreement where the developer funds the construction.

⁴ HMRC refer to a concept of 'golden brick stage' for VAT purposes meaning the completion of a building's foundations plus one level of bricks above ground level.

- What happens where a land sale agreement and development agreement are intrinsically linked/interdependent. Do both the land sale agreement and development agreement fall into scope? Will there be a distinction between contracts that are interdependent and those that are not?

5.7 We understand from discussion at the consultative forum on 16 June that the interest in land may be considered to be a primary legislative 'marker' in determining profits in scope. It will be important to define the nature of the interest in land that determines scope and at what stage in the development project. The sale of the land can be completed, and title transferred at different times depending on the nature of the development agreement. As the questions at 5.6 above indicate the interest in the site for development or under development may move or differ in nature and extent (legal or beneficial) during the construction process.

6 Affordable housing, application of existing Corporation Tax exemptions

Question: Do you agree with the approach to affordable housing? What are the implications for housing associations and to what extent would their taxable activities fall in scope?

- 6.1 We note the existing Corporate Tax (CT) exemption for charitable activities will apply to RPDT thereby removing charitable housing associations from scope. However a charitable housing association may develop affordable housing via a trading subsidiary with development profits transferred to the charity through corporate gift aid. Would such profits be in scope of RPDT?
- 6.2 There is also no indication of whether other CT exemptions will be replicated for RPDT, for example for registered pension funds and local authorities. A local authority may be involved in a large-scale residential development joint venture as part of an economic regeneration project. Clarification is requested.

7 Communal dwellings

Questions:

Do you agree with this approach to communal housing?

Do you agree with this approach to student housing?

Is there an alternative to the approach described for retirement housing, which considers provision of care and allied services, that should be considered?

Are there additional forms of communal housing that you believe should be excluded from the definition of residential property for the purposes of the RPDT?

- 7.1 The government believes that a case can be made for the development of purpose-built student accommodation being in scope of RDPT given this accommodation can have similar characteristics, and be in competition with, the wider rental sector. The government asks for views on the merits and practicalities of using self-containment of three basic amenities (kitchen, bathroom and toilet) as a basis for including purpose-built student accommodation within the scope of RPDT.
- 7.2 If the government decides to include purpose-built student accommodation with self-contained basic amenities in the definition of residential property for RPDT, we suggest the existing definition for VAT at VATA 1994 Schedule 8 Group 5 Note 2 provides a useful starting point⁵. However as HMRC's guidance at

⁵ See also [VAT Notice 708](#)

VCONT15380 indicates, newly constructed student accommodation takes various forms and may include elements of self-containment for example cluster flats (collection of study bedrooms each usually with a self-contained bathroom arranged around a communal kitchen and dining area). On the other hand, studio flats (study bedroom with self-contained kitchen and bathroom) are fully self-contained. The proposed definition could then turn on quite fine distinctions around that may not reflect the policy intent.

- 7.3 Provision of care and other services in communal retirement communities is suggested as the determining factor for deciding whether such dwellings are within the scope of RPDT, that is care provision points to profits from development falling out of scope. The existing definition in FA 2003 section 116(3)(c) replicating the definition in VATA1994 Schedule 8 Group 5 Note 4(b) provides a basis to exclude a home or institution providing personal care. However we note here also the often fine distinction between residential care homes and supported retirement living, that can also include a significant element of caregiving, and therefore need to be considered in terms of any exclusion from RPDT if care giving is determinative. We note also that levels of care differ particularly in assisted living developments and may be provided as part of the contract with the occupant albeit at very low levels initially but increasing as a resident's needs change through age or illness.

8 Development activities within scope – build to rent

Question: How should income from the development stage of build-to-rent (BTR) activities be measured for the purposes of the tax? Do groups already recognise build-to-rent income in their development profits? On what basis?

- 8.1 The consultation proposes that RPDT will be levied on an arms-length profit from development based on:
- the notional profit on an arm's length sale, where the property is transferred intragroup on completion; or
 - in the absence of such transfer, the fair value of the property on initial rental, less development cost.
- 8.2 There are inevitably uncertainties in determining notional profit at a point (say, practical completion) when no accounting profit is recognised on the BTR development. Any profit that is recognised is based on assumed sales /market valuation and, if part of a mixed use development also on an apportionment of costs, all of which adds complexity, uncertainty and costs to the calculation for this sector when compared to build to sell. One solution to address uncertainties may be a clearance and/or valuation check facility, however this would have cost and resourcing implications for both HMRC and industry.
- 8.3 The consultation indicates that one of the government's concerns in bringing BTR profits into scope is to prevent distortions arising from, for example, the exclusion of RPDT developments that are rented briefly on completion before being sold or by adversely affecting competition between groups operating different models. To the extent that anti-avoidance is the concern, a simpler solution might be to consider adopting a similar protection to that offered by the three-year development rule for REITs. Where a UK-REIT develops a property with the intention of retaining it as part of the portfolio, but sells it within three years of completion, the disposal may be taken out of the property rental business and any gain, loss or profit arises to the residual business. (CTA 2010 section 556).
- 8.4 The annual allowance of £25m will apply to determine the threshold for notional or imputed development profits at a particular date (completion) for build to rent developments, by contrast a build to sell development

will generally be sold in stages over two or even three accounting periods and therefore the allowance will apply to each stage.

9 Fundamental design – Models 1 and 2

What are the implications of models 1, 2a and 2b for businesses?

Which approach is preferred?

Which of these would be administratively easier for major residential property developers to operate?

Where should the significance test be set for model 1?

What would be the best approach to achieving an apportionment for income and expenditure that is fair without being unduly burdensome?

9.1 In broad terms, the suggested taxing models are:

Model 1: RPDT would apply to a standalone company or to companies within a group that undertake or contribute to the group's UK residential property development activities. The charge would be based on individual company's total profits computed as for CT, including profits from the development of commercial property, but with an exemption for a company with insignificant residential property development, the definition of insignificance to be determined. Suggestions in the consultation include a de minimis percentage of profit or turnover.

Model 2a: RPDT would apply to a standalone company or to companies within a group that undertake or contribute to the group's UK residential property development activities. The charge would be based on the amount of profit, computed as for CT, that relates to residential property development only.

Model 2b: RPDT would apply to the consolidated accounting measure of profit computed in line with UK GAAP in relation to residential property development activity only, adjusting for expenditure incurred other than wholly and exclusively for residential property development and disallowing capital expenditure. For a singleton company there is no difference between 2a and 2b.

9.2 Model 1 has the apparent advantage of simplicity but importantly could potentially charge substantial profits outside the purview of the tax, fail to identify all expenditure attributable to in scope activities (for example, in service or holding companies that fall below the significance threshold) and may prompt costly re-structuring absent a high threshold for significance. Even in that case simplicity may be illusory because any 'significance' threshold will require apportionment and division of activities to determine whether it is breached. A group-based turnover-based threshold may be more straightforward than a profits based threshold.

9.3 Model 2 is by definition more closely focused on profits derived from the market that the government regards as benefiting from support. It is therefore more consistent with the underlying policy rationale. However, there will be a significant administrative burden in relation to mixed use developments to determine which profits relate to residential development work with the potential for error, revenue risk to the government and cost to business in carrying out an apportionment. The basis of apportionment is likely to require ongoing HMRC resource to audit the methodology and provide support for business via their Customer Compliance Manager. For certainty the method of apportionment should be set out in RPDT legislation including the extent to which

central costs incurred at holding or service company level that contribute directly or indirectly to in scope activities should be taken into account.

In computing taxable profits based on CT principles, Model 2a is more consistent with the desire to align RPDT with the CT regime as far as possible. Alignment with the existing tax base is likely to lead to proportionately less complexity.

- 9.4 The different models offer advantages and disadvantages to different groups depending on their activities and the nature of their operations, for example a wholly residential property developer group may benefit from adopting model 1 whereas a mixed-use developer might favour model 2a in order apportion out non-residential development activities. Model 2b may be attractive to large groups producing consolidated accounts for profits that derive almost exclusively from residential development. One option might be for an (irrevocable) election into a particular model although recognising an election provides additional complexity in itself.
- 9.5 Software packages will need to reflect the final model(s) adopted before April 2022.

10 Losses

To help inform the design, what are the sector's expectations for future losses?

Do you consider there is any method of allowing carried forward losses, which can provide both fairness and minimal administrative burden?

- 10.1 The government is considering whether losses that are incurred from the introduction of the tax in 2022 should be used to reduce RPDT profits by carry forward. The sector's expectations in relation to future losses are outside our remit. We note however that the question of allowing brought forward losses against RPDT is linked to the disallowance of interest costs to the extent brought forward losses are made up of accrued interest expenses attributable to a development the profits of which will be subject to RPDT.

11 Interest and other funding costs

What are the implications of excluding interest and funding costs from the measure of profits for RPDT purposes?

- 11.1 The consultation indicates that interest and other funding costs will not be allowed as a deduction against RPDT profits to prevent distortions of the RPDT tax base depending on differing models of how interest is allocated. The approach follows the existing models for the banking surcharge and the oil and gas supplementary charge. We note neither model is familiar to the residential property development sector.
- 11.2 One practical issue is how to define and identify interest and other funding costs for the purposes of any RPDT disallowance. A new separate tax definition runs the risk of unintended differences, arbitrage and avoidance. Interest costs will be identified for accounts purposes. Following an accounting definition has the advantage of simplicity and is subject to audit however the amounts disclosed may also be subject to materiality and accounting disclosure is not necessarily tax sensitive. On balance our preference is to align as far as possible with accounting rules explicitly stating in legislation that the existing accounting rules are followed - subject to any specific adjustments.

- 11.3 One such adjustment is in relation to the accounting treatment of interest that forms part of the land purchase price in respect of the work in progress of a property development trade. Where land is acquired on deferred terms, part of the land cost is expensed to interest under UK GAAP and claimed as a deduction for CT purposes.
- 11.4 If the government's sole concern in proposing a full disallowance is to remove the risk of manipulation of levels of borrowing between in scope profits from residential property development and out of scope commercial property activities, one option might be to consider whether aligning with the corporate interest restriction rules including the in-regime anti avoidance rule in TIOPA 2010, section 461 would address that concern.
- 11.5 In terms of the wider implications of excluding interest and funding costs from the measure of profits for RPDT purposes, given the government's objective of raising a defined amount in the target timescale a narrower tax base (allowing funding costs) implies a higher nominal rate.
- 11.6 Although the economic consequences of disallowing interest costs are outside our remit, one aspect for debate might be the extent to which the interest disallowance adversely affects competitiveness in the sector.
- 11.7 Under Model 1 all of the profits of a company that is in scope would be subject to RPDT, including intra group interest received. There is therefore a lack of symmetry if intra group funding costs are non-deductible.

12 Annual allowance

Do you agree that the same approach regarding treatment of carried forward losses for the calculation of the profits for the tax should apply for the calculation of profits for the allowance?

- 12.1 The government proposes that the charge to RPDT would only apply to the profits of a company or group which exceed an annual allowance of £25 million based on RPDT profits and that any unused allowance cannot be carried forward to future years.
- 12.2 We agree the final design on the treatment of carried forward losses for the purposes of calculating the profits subject to RPDT should also apply to the calculation of the profits for the purposes of the allowance.
- 12.3 The aim of the £25m RPDT profits threshold is to ensure only the largest residential property developers fall within the scope of RPDT in accordance with the government's aim. However, it may present forecasting issues for a developer whose profits are expected to be close to the £25m threshold. Consideration might be given to a simplified gateway test, for example based on turnover, so that it is possible to assess at an earlier stage whether RPDT is likely to apply.
- 12.4 We note one consequence of the inability to carry forward any unused allowance is an inflexibility in recognising fluctuations in profit for instance a developer who consistently makes £15m per year over a five year period will not be in scope. A developer who makes the same quantum of profits of £30m in year 2 and £45m in year 5 over a five-year period would be in scope. This might cause some distortions in the market. The second developer above might deliberately delay some projects from year 2 to year 3 to keep both years under £25m. Similarly they might seek to advance some of year 5's likely profit into year 4 and/or delay some of it into year 6.

13 Application of £25m threshold to companies across common ownership

Do you think it is more appropriate for the definition of a group for the purposes of this tax to be based on a tax rule or an accounting standard?

Which existing definition of a group for tax or accounting purposes do you think would be most appropriate for this purpose?

What rules, in addition to your preferred group definition, do you consider would be required to ensure that the threshold is applied to a single economic entity?

- 13.1 To some extent the question of whether an accounting or tax definition is the most appropriate will depend upon the final model given that model 1 and 2a adopt a tax base whereas model 2b uses an accounting basis. In the case of a tax definition, we suggest utilising an existing tax definition to align with CT, the group /consortium relief definitions could be considered as a starting point.

14 Joint ventures

What would you consider to be appropriate measures of economic participation in a joint venture?

What would you consider to be an appropriate hurdle for a participator becoming liable to tax in respect of the joint venture?

Do you have any other observations regarding the use of joint venture structures in the UK residential property development sector?

- 14.1 We do not comment on the appropriate level of economic participation in a joint venture that will determine the extent of a participant's RPDT liability beyond our general preference for utilising an existing tax definition. We are pleased there is a commitment to address double taxation in respect of the participants' share of JV profits and the JV liability to RPDT. We note however that an exempt participant will potentially incur an indirect liability to RPDT.
- 14.2 RPDT will apply to existing JV structures. One practical concern is that existing JV agreements may not provide for the availability of sufficient information for a participator to determine their RPDT liability at all or on a timely basis.

15 Rate

Do you agree that the (*listed below*) principles should guide the decision on the rate of the tax?

- 15.1 The CIOT would not normally comment on the level of the rate itself; that is a matter for the government but we offer some comments on the principles used to determine that rate. The principles listed to determine a final tax rate are:
- *the tax burden should be proportionate, and considered in the context of the CT increase to 25 percent*
 - *the tax should raise at least £2 billion over a ten-year period, and the tax base would be an important factor in determining the final rate*
 - *the tax should apply to the largest residential property developers, to ensure that those with the broadest shoulders contribute the most*

- *the tax should not have a disproportionate impact on housing supply, or other government objectives on housing*
- *while the rate may be amended once the tax is in force, it is not intended to fluctuate year-to-year*

If the tax does not raise sufficient revenue over a decade, the government would consider whether to extend the duration past a decade.

15.2 The second bullet notes the tax base as an important factor in determining the final rate. We assume the point is that a broader tax base is linked to a lower tax rate and vice versa.

15.3 The introduction to the consultation links the tax base in broad terms to the profits of those involved in the housing market that have benefited from government funding to address building safety defects and recent interventions on SDLT and the mortgage guarantee scheme. As we note at paragraph 5.7 above the interest in land may be considered to be a primary legislative 'marker' in determining profits in scope. This will have consequences for RPDT incidence and the tax base. There are various types of development agreements that regulate the relationship between developers, purchasers and tenants. Title may be transferred at different stages in the development process (see 5.6 above). Exchange of contracts for the sale of the completed property may take place at an early stage in the development process (for example, when building works are partially complete or before the works commence) or at when the project is complete depending on the funding structure. On the other hand, a third party contractor who contracts only to construct the property but does not acquire an interest in the property will not incur an RPDT liability.

16 Interaction with Gateway 2 Levy

Do you have any initial views on the cumulative impact of the RPDT and the Gateway 2 levy?

16.1 Will the Gateway 2 levy be deductible in calculating RPDT profits?

17 Reporting and registration requirements

17.1 **Do you agree that the RPDT should be reported using the same periods as for CT?**

We agree with aligning the existing reporting and registration requirements with CT as far as possible.

17.2 **Do you see any difficulties applying the CT rules for accounting periods to any of the models and if so, how could they be overcome?**

None identified.

17.3 **For models 1 and 2a would there be any difficulties for a given company in knowing that the group's thresholds for the RPDT have been satisfied? If there is a requirement for separate registration, is 90 days from the end of the accounting period a reasonable timeframe?**

17.4 As noted above, the £25m profits threshold will present considerable forecasting issues for a developer whose profits are expected to be close to the £25m threshold.

In terms of a 90-days timeframe for registration, we note that a liability for payment may already have been triggered if payment is aligned to the instalment payment regime.

18 Payment and compliance

18.1 If possible, would including RPDT amounts within quarterly instalment payments be preferable? Or would this create any issues?

The government proposes RPDT will apply to accounting periods ending on or after 1 April 2022. Therefore a company/group with an accounting period ending 30 April or 30 June is within the charge in respect of a deemed accounting period covering the post 1 April period but without knowing the rate or basis of charge. An instalment payment could be due as early as July 2021. If the government is wedded to quarterly payments we suggest the commencement date should apply to accounting periods beginning on or after that date. Otherwise payment in respect of the first accounting period should be by reference to the CT payment period of 9 months and 1 day after the accounting period. There is precedent for a transitional approach for quarterly instalment periods for non-resident landlords becoming liable to corporation tax.

18.2 Do you agree that allowing a nominated company to act on behalf of the group would reduce the compliance burden?

We agree provided all group companies have the same accounting period.

18.3 Do you foresee any difficulties with the nominated company calculating and reporting RPDT liability on behalf of the whole group?

We do not foresee any difficulties on the basis that it mirrors the current group payment arrangement provisions.

18.4 Are there any practical issues around the nominated company accessing information from the rest of the group?

18.5 Would specific rules be needed for companies whose AP does not coincide with the nominated company's AP?

Please see above at 18.2.

19 Anti-avoidance

Do you have any views on avoidance risks generally, and how these should be minimised? Do you have any observations on the proposed anti-avoidance provisions, or other avoidance risks?

19.1 We have no comments.

20 Commencement

20.1 Do you have any comments on the proposed commencement date?

RPDT will apply to profits recognised in accounting periods ending on or after 1 April 2022. We reiterate that the timescale for developing a wholly new tax ready for April 2022 is challenging.

20.2 Where an accounting period straddles 1 April, the consultation notes it will be necessary to create two deemed accounting periods: pre and post 1 April 2022 and to time-apportion RPDT profits accordingly. Consideration needs to be given to the basis of apportionment of pre and post 1 April 2022 RPDT profits. For example, the value of properties under construction as at April 2022 may not properly reflect the market value at completion, whereas the market value at April 2022 will be based on the value of the work in progress. However, it will be necessary to provide for the apportionment of RPDT profit from 1 April 2022 by reference to completion values and to exclude RPDT profit apportioned to pre- April 2022 periods. Depending on the basis adopted, consideration may need to be given to how to treat build to rent developments that were completed before 1 April 2022 but first let after that date.

21 Compliance

21.1 Do you think it would be necessary to introduce additional rules to ensure compliance or to make administration of the tax easier?

We agree the compliance requirements should largely mirror CT compliance. As this tax is new and introduced in a short timescale we would like to see a light touch approach in the initial period following implementation of the tax with a focus on assisting businesses that are trying to be compliant but making genuine mistakes, with enforcement penalties reserved for deliberate non-compliant behaviour during this period.

22 Assessment of impacts

22.1 The questions raised are largely outside our remit and we do not comment further.

23 Acknowledgement of submission

23.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

21 July 2021