



HM Treasury



HM Revenue  
& Customs

# Stamp Duty Land Tax:

## rules for property investment funds

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July 2014





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# Foreword

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The UK Investment Management industry is an important and successful part of the economy. It accounts for 1% of GDP and a similar proportion of UK tax revenues, is a significant employer and is a key part of our wider financial services sector.

While the UK is Europe's leading centre for fund management, often the funds themselves are located elsewhere. About 36% of all assets under management in Europe are managed in the UK but only 11% are domiciled here.

In order to reinforce the UK's position as a global centre of fund management and to develop the UK's position as a centre of fund domicile, the government introduced a package of measures at Budget 2013 to improve the UK's competitive offering to the sector. Together these measures formed the government's *Investment Management Strategy*<sup>1</sup>.

The aim of this strategy is to improve the UK's leading global role in fund management and increase our market share of fund domicile. To this end, the government has already taken concrete action. We have introduced new tax transparent fund vehicles in the form of the authorised contractual schemes and have taken action to simplify the tax system.

Property funds are an important part of the wider asset management industry. As part of the *Investment Management Strategy* the government is therefore keen to ensure we have a framework in place that provides fair and appropriate taxation for this sector, while minimising the risk of tax avoidance and significant costs to the Exchequer.

The government recognises that the way in which stamp duty land tax (SDLT) applies to certain collective investment schemes is perceived by the industry as presenting barriers to their effective use as property funds. At Budget 2014, the government therefore announced that it will consult on the way property authorised investment funds (PAIFs) and co-ownership authorised contractual schemes (CoACSs) are treated for SDLT purposes.

This consultation seeks views on both the case for making changes to the SDLT rules for PAIFs and CoACSs and the potential design of those changes. It is an opportunity for stakeholders to feed in their views to help us assess the case and to ensure that any policy change works effectively to achieve its objectives. The government welcomes evidence and input from the asset management and property sectors, as well as other interested parties.



**David Gauke MP**  
Financial Secretary to the Treasury



**Andrea Leadsom MP**  
Economic Secretary to the Treasury

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<sup>1</sup> <https://www.gov.uk/government/news/uk-investment-management-strategy-launched-by-ministers>



# 1

## Introduction

**1.1** At Budget 2014, the government announced that it will consult on the SDLT treatment of the seeding of property authorised investment funds (PAIFs) and the wider SDLT treatment of co-ownership authorised contractual schemes (CoACs).

**1.2** The government is aware of requests to change the way in which SDLT applies to PAIFs and CoACs investing in land and buildings (from here, referred to as 'property'). Stakeholders suggest that relieving SDLT in certain circumstances could encourage more property funds to set up in the UK and facilitate greater collective investment in UK property.

### Current situation and proposed changes

**1.3 Stamp Duty Land Tax (SDLT)** is generally payable on the purchase or transfer of property in the UK where the amount given is above a certain threshold. SDLT is charged as a percentage of the amount given for property when it is bought or transferred - unless there is a relief or exemption. Higher percentage SDLT rates apply to higher-value transactions. The amount payable can also vary depending on whether the property is being used for residential or non-residential purposes and whether the property is sold as a freehold or leasehold.

**Table 1.A: Rate of SDLT**

Purchase price/lease premium or transfer value	SDLT rate for residential properties	SDLT rate for non-residential properties
Up to £125,000	Zero	Zero
Over £125,000 to £150,000	1%	Zero
Over £150,000 to £250,000	1%	1%
Over £250,000 to £500,000	3%	3%
Over £500,000 to £1 million	4%	4%
Over £1 million to £2 million	5%	4%
Over £2 million	7%	4%
Over £2 million (purchased by certain persons including corporate bodies)	15%	4%

**1.4 Authorised Contractual Schemes (ACSs)** were introduced into legislation in 2013. The first of these has recently been launched and the government understands that several more are currently being planned. These are collective investment schemes that are 'tax transparent', meaning that income accrues to investors directly as it arises. Assets in an ACS are legally held by a depositary on behalf of the unit holders or investors, who are the beneficial owners of the assets. There are two types of ACS: 'co-ownership schemes' (CoACs) and 'limited partnership schemes' (LpACs). Both types are subject to authorisation by the Financial Conduct Authority and are intended for use as schemes authorised under the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive as well as Non-UCITS Retail Schemes (NURS) and Qualified Investor Schemes (QIS).

**1.5** The government has not yet published an opinion on the stamp duty land tax treatment of CoACs. However, a strict interpretation of the current legislation could suggest that CoACs be treated as fully transparent for SDLT purposes as they are transparent for taxes on income. This would mean that there could potentially be a liability for SDLT every time there is a change in ownership of units in the scheme (i.e. when investors redeem their units or there is new investment in the fund) as this will cause existing unit holders' share of the underlying property to change. This would be the case even though the underlying properties remain in the scheme and properties have not been bought or sold. The government is aware that meeting this SDLT liability would be burdensome to administer and cause complexity for investors.

**1.6** Stakeholders advise that if SDLT arises from transactions in units in the scheme, then that would act as a barrier to the use of CoACs as a vehicle for holding UK property. This consultation discusses whether changes should be made to the way transactions in units are treated for SDLT purposes so that CoACs are more suitable for investment in property and, if so, how the government could enable this.

**1.7 Property Authorised Investment Funds (PAIFs)** were introduced specifically for investment portfolios primarily comprising of a mix of property (both non-residential and residential), shares in UK Real Estate Investment Trusts (REITs) or shares in similar offshore entities. PAIFs are open ended investment companies which are authorised by the Financial Conduct Authority.

**1.8** The PAIF regime was first introduced to the UK in 2008, and was received as a welcome addition to the UK funds landscape. However, in the wake of the economic downturn, initial take up was lower than expected, leading to further reforms to the regime being made in 2012. Since then the regime has proved more commercially popular with a number of PAIFs subsequently being launched. There are currently 8 PAIFs in existence, with a total of over £6 billion of assets under management.

**1.9** A PAIF pays stamp duty land tax on property that it purchases or that is transferred to it. There is thus a liability for SDLT where an existing property portfolio is transferred into a new or empty PAIF, a process which is known as 'seeding', even though the economic ownership of the property portfolio has not changed. There are some exemptions from SDLT on seeding transactions where the existing portfolio is held in certain types of collective investment schemes. This consultation discusses whether a more general relief from SDLT should be provided for seeding PAIFs and, if so, how this relief would be designed.

**1.10** A summary of the current tax treatment of various types of property funds is set out in Annex A.

## **About this consultation paper**

**1.11** This paper seeks to better understand the wider impact of introducing an SDLT seeding relief for PAIFs and changing the SDLT treatment of transactions in units of CoACs investing in property. The evidence and data gathered will help to inform Ministers' decision on whether these changes should be introduced.

**1.12** The paper also sets out proposals for how these changes could be implemented, if the decision is taken to introduce them, and seeks views on their potential design. A priority of the government is that the changes do not create a new risk of tax avoidance and this paper therefore sets out a number of anti-avoidance provisions. It would be helpful to receive views on whether these are felt to be sufficient or whether there are additional risks of avoidance that they do not address.

**1.13** The government intends to evaluate the case for making the changes discussed against a set of clear criteria:

- the expected effect on the growth of UK-domiciled property funds
- the economic impact of any change, including the likely effect on the property market and the asset management sector
- the impact on policy holders and investors
- the cost to the Exchequer
- the effect on tax compliance and tax avoidance
- the wider costs or risks associated with making the changes mentioned

**1.14** The government has recently announced other policies that may affect certain types of property investment funds, such as the introduction of capital gains tax on non-residents disposing of UK property. This consultation specifically concerns the application of SDLT to the seeding of PAIFs and to the transactions in units of CoACSs. The consultation does not cover wider changes to the taxation of property funds or stamp duty land tax more generally, or changes to other tax reliefs.

**1.15** The remainder of this paper is set out as follows:

- **Section 2** seeks to understand the case for taking action
- **Section 3** discusses various design features of a potential seeding relief for PAIFs
- **Section 4** discusses various design features of targeted SDLT rules for CoACSs
- **Section 5** summarises the questions that the government is asking of stakeholders

## How to contribute to the discussion

**1.16** The government is seeking views from the asset management and property sectors, as well as other interested parties, in response to the questions set out in this paper. In particular, the government is keen to receive quantitative evidence, data and analysis as well as qualitative views.

**1.17** If you wish to contribute your views or have any questions about this paper, please contact: [PropertyFundsSDLT.consultation@hmtreasury.gsi.gov.uk](mailto:PropertyFundsSDLT.consultation@hmtreasury.gsi.gov.uk). Please send comments in response to the consultation questions by 12 September 2014. Wherever possible, please provide evidence to support your answer.

**1.18** A joint team from the Treasury and HMRC will consider written submissions and research provided by respondents. The team is also available to meet with respondents in order to gather a broad range of views.

**1.19** This consultation will be open for 8 weeks. The government believes this is proportionate given the stage of the policy cycle and the number of stakeholders affected. The response to the consultation will be published in the autumn.



# 2

## The case for taking action

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**2.1** To better inform the government's decision on whether to take action in this area, it is important to fully understand the rationale for any change. As such the government is keen to receive evidence, in particular quantitative data and analysis where possible, on the current size and structure of the property fund industry; the extent to which SDLT may be limiting its growth; and the potential benefits to the sector and the wider economy of making changes to the SDLT rules for PAIFs and CoACs.

### Existing industry structure and case for change

**2.2** There is currently an estimated £60 billion worth of UK property held in investment funds (including those that are UK domiciled and those that are offshore). HM Treasury is aware of data which accounts for about 75% of this market and which estimates that £9 billion of UK property is contained within Non-UCITS Retail Schemes (NURS), £17 billion in UK domiciled Unauthorised Collective Investment Schemes (UCIS) and £18 billion in offshore vehicles, primarily in Jersey. Approximately 95% of these funds invest in non-residential property as opposed to residential property.

**2.3** While a large amount of property is held in investment funds, the total amount of property under management in the UK is far higher. In particular, insurance companies and pension funds are thought to hold as much as £78bn in property assets. Of this it is understood that £42bn is held by insurance companies and £36bn by pension funds. The government understands that there is particular demand from life companies to transfer a portion of their property portfolios into a UK domiciled collective investment scheme. The government would be particularly interested to know how changes to the application of SDLT to the seeding of PAIFs and to the transactions in units of CoACs would affect these businesses.

#### Questions on existing industry structure

1. In your opinion, is the broad assessment of the structure of the property fund market, including its size and the sorts of vehicles used, as set out above, accurate?
2. In terms of both the number of funds and assets under management, what levels of growth have been experienced in recent years by the property fund industry? How does this differ from historical trends?
3. Other than existing investment funds, pension funds and insurance companies, what sorts of businesses and institutions currently hold sizeable property portfolios that might benefit from changes to the SDLT rules for PAIFs and CoACs?

### Questions on the need for change

4. What are the main drivers for companies to transfer their assets into PAIFs or CoACSs? What benefits are expected to accrue as a result and to whom?
5. The effect of making the changes discussed in this paper could potentially result in a large number of property funds being launched at the same time; is there evidence of significant investor demand for such funds that is currently not being met?
6. Property funds pay SDLT when purchasing new properties; why is this less of a barrier to growth than the SDLT that would be paid when assets are used to seed a fund?
7. Is there an urgent need for these changes to be introduced and, if so, what is driving it?

## Expected response and impact of changes

**2.4** To assess the merits of introducing an SDLT seeding relief for PAIFs and changing the SDLT treatment of transactions in units of CoACSs, the government would like to better understand the likely response from industry and the impact that this would have on the asset management sector, property sector and the UK economy more generally. In particular, it would be helpful to have quantitative evidence on the potential value of assets that may be transferred into collective investment schemes and on what timescale. It would also be helpful to receive evidence as to what beneficial effects this may have for the UK economy and to understand what the likely result would be if a seeding relief is not introduced.

**2.5** In broad terms the government understands the main benefit would flow to the asset management sector, with additional benefits to pension funds and life companies wishing to collectivise their current property portfolios which may allow them to structure their operations more efficiently. The government would also expect benefits to flow to those who wished to invest in such funds as well as to the wider economy.

**2.6** The government understands that the insurance sector believes the changes would help to make their UK businesses more competitive by allowing them to structure their operations more efficiently. By transferring assets from other portfolios into PAIFs and CoACSs, they would be able to create larger pools of assets and benefit from economies of scale, attracting increased investment. One possible outcome could also be that funds currently domiciled offshore would come onshore, bringing with them certain administrative and professional services.

**2.7** The government also believes there may be other benefits, although these are assumed to be small. There may be an impact on the UK economy as many property funds invest in the real economy, for example funding the development of shopping centres and student accommodation. It is possible that providing a seeding relief could provide an incentive for more property investment through funds, potentially increasing the supply of UK property. Collectivising property assets rather than disposing of them may also benefit policy holders and investors. More property funds would also mean greater competition within the sector, which could possibly result in more choice and reduced fees and costs for investors.

### Questions on the likely industry response to potential SDLT changes and wider impacts

8. If a seeding relief were introduced would your business or organisation expect to take advantage of it? If so, what quantum of assets would you expect to transfer into a UK collective investment scheme (and which type) and over what time period?
9. Would the assets transferred be predominately non-residential or residential UK properties? Are there any other types of assets your business or organisation might expect to hold in such funds?
10. How many new funds and of what typical size would your business or organisation expect to set up? How much growth would you expect to see in such funds in the future?
11. Assuming a seeding relief enabled the movement of offshore funds onshore, would your business or organisation expect to redomicile any of your existing funds? What quantum of assets would you expect to be transferred into onshore funds as a result of these potential changes?
12. What extra economic activity (for example the effect on employment, savings or the property market) would result from holding property in PAIFs or CoACSs compared to how they are currently held? Where funds are currently held offshore, would the impact be different? Would any economic activity be forgone?
13. Do you foresee any further potential benefits, for example on other business sectors?
14. What would be the downsides/ risks/ costs of making the changes mentioned? Could the introduction of a number of new funds being launched at the same time have a negative impact?
15. What would your business or organisation's likely response be if a seeding relief was not introduced or changes to the SDLT treatment of CoACSs were not made? What would happen to the property that your business or organisation is intending to transfer into a PAIF or a CoACS?



# 3

## Potential design of an SDLT seeding relief

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**3.1** Seeding refers to the initial transfer of property or an existing property portfolio into a new or empty fund. The ability to seed a property fund is important for attracting investment as the government understands that investors are reluctant to invest in a new fund which does not yet hold any properties. Seeding allows the new fund to generate a track record of investment for prospective investors to review before they invest.

**3.2** Present arrangements allow properties already in certain types of collective investment schemes (CIS) to be transferred into a new PAIF structure without an SDLT charge arising. However where a property portfolio is not held in a unit trust or an authorised investment fund, an SDLT charge will always arise upon transferring it into a PAIF. The government is aware of claims that the SDLT charge has depressed the number of new property funds launched and of requests for an SDLT seeding relief to increase the take-up of PAIFs. In response, the government announced at Budget 2014 that it would consult on the SDLT treatment of the seeding of PAIFs.

**3.3** This chapter discusses the potential design of a potential seeding relief, including the types of funds, transfers and property that would be eligible and certain restrictions that could be applied.

### Potential design of a seeding relief

#### What types of funds would be eligible for the seeding relief?

**3.4** The government's intention is for this seeding relief to only apply to PAIFs, and potentially CoACs. The SDLT treatment of CoACs, however, is discussed in Chapter 4.

**3.5** A PAIF is a diversely owned<sup>1</sup>, open-ended corporate investment vehicle specialising in holding land and property where the point of taxation on the profits of its property investment business lies with its investors. The government believes that if a similar seeding transfer of property was made to a regulated foreign domiciled fund which is deemed to be equivalent to a PAIF, then it may also be eligible, under EU law, for the SDLT seeding relief.

#### What types of property would be eligible?

**3.6** The government previously introduced an SDLT exemption for the initial transfer of assets to a unit trust scheme<sup>2</sup>. However, it was repealed with effect from March 2006 in Finance Act 2006 in response to tax avoidance, where commercial property was being 'enveloped' in property unit trusts for SDLT planning reasons rather than for seeding a genuine collective investment scheme. The exemption in section 64A had no restrictions other than that the transfer was into an empty unit trust scheme in return for units in the scheme.

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<sup>1</sup> PAIFs are required to meet a Genuine Diversity of Ownership (GDO) condition, which can be found at Regulations 9A and 9B of the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964).

<sup>2</sup> See section 64A FA03; Statutory Instrument 2003/2816 and in Part 2 of Schedule 39 to the Finance Act 2004.

**3.7** Given this history, the government is keen to ensure that any seeding relief is carefully designed so that it meets its policy objectives without creating the opportunity for tax avoidance.

**3.8** The government has taken a number of steps to deter properties being held by individuals in corporate structures ('enveloping'), which presents a risk that the shares in these companies can be bought and sold as a way of avoiding SDLT. These include the introduction of the 15% SDLT rate and the annual tax on enveloped dwellings.

**3.9** The government believes that introducing a seeding relief could encourage enveloping of residential property. However, it also recognises that collective investment schemes are increasingly investing in residential property and does not want to limit growth in this area. In light of this, its current thinking is that, if introduced, the relief would be available for the transfer of both residential and non-residential property. The relief would be available for genuine investment in residential property but not for individuals seeking to avoid SDLT on the transfer or purchase of their own properties.

### **What types of transfer would be eligible for the seeding relief?**

**3.10** The government is keen to ensure that only initial seeding of a PAIF is eligible for the relief. The government believes that the main users and beneficiaries of such a relief would be life companies and pension funds; however it does not want to restrict the relief only to these types of companies.

**3.11** Therefore the government's current thinking is that, rather than specifying that the property being seeded into the PAIF must be owned by a certain type of organisation, the relief will be applied to any existing property portfolio which is transferred into a new or empty PAIF in return for units in the fund and where the entity or group of entities transferring the property owned 100% of the property prior to the transfer and 100% of the units in the collective investment vehicle immediately post-transfer. Units in the scheme which acquires the property portfolio must be the only consideration for the property.

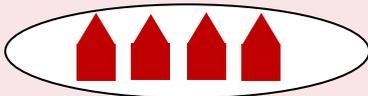
**3.12** The government is also considering whether the property transferred would have to meet a 'portfolio test', in that the relief would not apply on the transfer of a single property but would only be available where a certain number of properties of a certain value were transferred.

**3.13** A definitive level has not been set but, reflecting the government's beliefs about the size of existing property portfolios and the types of properties that may be transferred into PAIFs, for non-residential property this could be set at a minimum value of £100 million and/or a minimum of ten discrete properties contributing a material amount to that total value.

**3.14** In the case of residential property, the minimum value may be the same but the minimum number of distinct residential units may be higher (for example, 100). Possible further safeguards could include a prohibition or tax charge on any individual connected with the fund occupying any residential property forming part of the fund's holdings. This would ensure that funds are not used to "buy" individual properties.

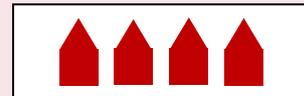
## Scenarios in which a seeding relief would and would not apply

Life Company Ltd property portfolio

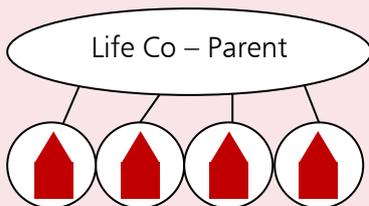


Seeding relief  
used to transfer

Life Company Ltd PAIF

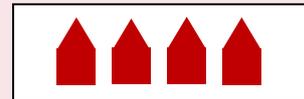


Group Company property portfolio



Seeding relief  
used to transfer

Group Company PAIF

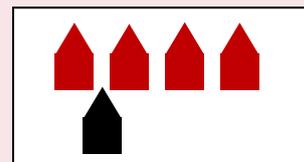


Single property bought by existing fund  
in exchange for shares or cash



No relief on new  
property bought

Life Company Ltd PAIF



### What would the value of the seeding relief be?

**3.15** The seeding relief would remove the full SDLT charge that would otherwise be payable when a PAIF is seeded, if claimed in an SDLT return.

**3.16** The government has considered whether or not there should be an upper limit on the maximum amount of SDLT that can be relieved to limit the potential Exchequer cost. However, it recognises this could present problems for large property portfolios. The government thinks therefore that there should not be an upper limit as long as the transfer represents a single transaction of an existing property portfolio.

### Would there be any further safeguards or conditions on the seeding relief?

**3.17 Avoidance purpose test:** The government is considering limiting the relief so that it would not be available if an avoidance purpose test is satisfied. This may apply where it is reasonable to conclude that the seeding transaction forms part of a scheme or an arrangement of which one of the main purposes is the avoidance of tax/SDLT.

**3.18 Claw-back:** The government is considering introducing a provision to “claw back” the relief in certain circumstances. The claw-back would be triggered if the fund ceased to qualify as a PAIF or if the units received in consideration for the initial seeding are disposed of within, say, 3 years. The relief may be partially clawed back depending on the proportion of units sold. The initial contributor would be wholly liable for any tax. This is because the claw-back would be

triggered only by the actions of the initial contributor, in respect of the units obtained for assets it contributed. It also means that whilst the initial contributor would have to consider the tax effect of any disposal of units during the relevant period, there would be no potential and uncertain effect on unit pricing for the fund or on other unit holders.

**3.19 Power to withdraw relief or to ease/restrict conditions:** The government may include a power for the Treasury to repeal the relief by Statutory Instrument if the relief is used in unintended ways. The power could also provide for varying the conditions under which the relief is granted so that its practical working can be improved or further safeguards (short of repeal) can be put in place.

## Devolution

**3.20** SDLT is a UK wide tax that is centrally set and collected. However from April 2015, SDLT will cease to apply to transactions involving property in Scotland and will be replaced by the Land and Buildings Transaction Tax (LBTT). The LBTT may have different rules for transfers or purchases of Scottish property into funds.

**3.21** The domicile of the fund is not affected by the devolution of SDLT. So a PAIF or CoACS set up in Scotland and investing in property in England, Wales or Northern Ireland will be subject to the rules of SDLT, including the availability of a seeding relief.

**3.22** The government has also announced that SDLT will be devolved to Wales. Further details, including timing, are being worked through.

## Interaction with other government policy

**3.23** In Budget 2013, the government introduced the **Annual Tax on Enveloped Dwellings** (ATED<sup>3</sup>). This tax is targeted on those who seek to avoid tax by “enveloping” residential property worth more than £2 million in a corporate structure, including collective investment schemes. Budget 2014 announced that this threshold would be lowered to £1 million from April 2015 and to £500,000 from April 2016.

**3.24** There are a number of reliefs for genuine commercial use of corporate structures, although these reliefs are restricted if a non-qualifying individual is permitted to occupy a dwelling. It is unlikely that properties in PAIFs and CoACSs will be subject to the ATED charge, particularly as the funds are likely to be diversely owned.

**3.25** The government will introduce **capital gains tax (CGT) on non-residents disposing of UK residential property**, from April 2015. A consultation on how best to introduce the new CGT charge was published on 28 March and closed on 20 June. The government set out its intended approach regarding funds investing in residential property by stating that “*funds that satisfy a GDO requirement should be outside the scope of the extended charge*”. The response to the consultation will confirm the criteria that funds need to meet to be outside the scope of the CGT charge on non-residents disposing of UK residential property.

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<sup>3</sup> The technical guidance to ATED can be found at <http://www.hmrc.gov.uk/so/ated-tech-guide.pdf>

### Questions on the design of a seeding relief

16. Is the potential design of a seeding relief appropriate for such a relief to be useful? If not, how and why would you like it to be changed or extended?
17. Would implementation of any of the features (alone or in combination) listed above cause a significant impediment to the use of these funds? Please explain why.
18. Do the suggested minimum requirements for value and number of properties in the 'portfolio test' seem reasonable?
19. Are there additional risks of avoidance that the safeguards described above do not address? Would any other conditions be helpful in preventing the relief being used in undesirable or unintended ways?
20. What would be the implications of the seeding relief applying to equivalent foreign funds? Would this have any effect on the domicile of the fund you would transfer your property portfolio to?



# 4

## SDLT treatment of co-ownership authorised contractual schemes

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**4.1** When CoACSs are first seeded with property by one investor and that investor then holds all the units in the scheme, there is no SDLT due as the transparent and contractual nature of the scheme means there is no change in effective ownership of the property. As set out in paragraph 1.5, subsequent changes in the ownership of units in the scheme (through new investment or as existing investors redeem their units) can cause SDLT to arise, with the unit holders liable for the tax. This is because a change in the ownership of units represents the transfer of a beneficial interest in the underlying property. Further purchases of property into the CoACS would also be subject to SDLT and this would be payable by the unit holders.

**4.2** As stated in Chapter 1, meeting the liability for SDLT every time there is a change in ownership of units in the scheme would be burdensome to administer and cause complexity for investors. This chapter outlines a proposed approach, if the decision is taken to make changes, which would make CoACSs more suitable and attractive as a vehicle for holding UK property. The main outcome of the proposed changes would be to remove the liability for SDLT on changes in the ownership of units of a CoACS, while ensuring that CoACSs are treated appropriately for SDLT purposes. Views are welcomed on the viability of this proposal.

### Proposed treatment for co-ownership schemes

**4.3** Stakeholders suggested that one way to remove the SDLT liability on changes in unit ownership would be to treat co-ownership schemes as companies in a similar way to that in which unit trust schemes are treated for SDLT purposes<sup>1</sup>. However the government believes this would be inappropriate given the need to maintain the fundamental tax-transparent nature of these schemes.

**4.4** The government is therefore considering an alternative, four-stepped approach which better respects the transparent nature of such schemes.

#### **Step 1: Introduce a new exemption from SDLT which would otherwise arise from transactions in units of a CoACS**

**4.5** To remove the major impediment to using a CoACS as a property-holding vehicle, a new exemption is proposed to remove any SDLT charge which would otherwise arise from transactions in units of a CoACS. This would have the effect of removing SDLT when new units in the CoACS are issued, when current units are transferred or when units are redeemed. The government believes this would remove the burdensome administration of addressing individual investors' liability for SDLT as units are bought and sold.

#### **Step 2: Change the responsibility for paying SDLT from unit holders to scheme operator**

**4.6** To further ease the administrative burden on investors, the government proposes to move the obligation for making SDLT returns and payment from the unit holders to the scheme

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<sup>1</sup> By section 101 of Finance Act 2003

operator. Currently, when a CoACS acquires property, in practical terms the property is acquired by the scheme operator on behalf of the investors. But for SDLT purposes, the investors are treated as the purchasers and are liable for SDLT. The government could introduce legislation so that the scheme operator would be the purchaser for SDLT purposes, with obligations such as notifiability and liability for the tax falling on the operator. The unit holders would still bear the cost of the tax (subject to the terms set out by the scheme operator) but it is expected that this would be less administratively burdensome than the current situation.

**4.7** However, taken together, steps 1 and 2 would mean that SDLT would not arise from either seeding property into a CoACS or transferring units in the scheme. The government is concerned that this could allow CoACSs to be used in ways wider than that which it intends and which might in some cases leave the regime open to abuse. Therefore the Government proposes accompanying changes to ensure the appropriate SDLT treatment on the acquisition of property.

### **Step 3: Introduce an SDLT charge on CoACSs acquiring property from connected parties**

**4.8** To ensure the appropriate SDLT treatment when property is acquired for the scheme, the government proposes to introduce an SDLT charge on the market value of any property acquired from unit holders or other connected parties. This would apply to all transactions, including the initial seeding of property into a CoACS.

### **Step 4: Introduce a seeding relief for CoACSs fulfilling certain criteria**

**4.9** The government is aware of the concerns regarding the SDLT charge on the seeding of PAIFs and believes these concerns would apply equally to an SDLT charge on the seeding of CoACSs. It therefore proposes to introduce a seeding relief for CoACSs, but to restrict it to only those schemes and transactions which fulfil certain criteria. A similar approach to that described in Chapter 3 in relation to a seeding relief for PAIFs would apply, although other criteria may also need to be considered. For example, the scheme would have to meet the genuine diversity of ownership condition that PAIFs must meet as a matter of fundamental PAIF qualifying rules. This would allow only CoACSs used for genuine collective investment purposes to claim the relief.

**4.10** Sub-funds of a scheme would be regarded as separate schemes. Further provision may be necessary to specify or clarify who the vendor is for SDLT purposes when there is a disposal of property, which may be relevant for determining whether transactions are linked or whether group relief is available.

**4.11** There may also be further provisions necessary either for particular types of transactions (such as scheme mergers) or to clarify how reliefs such as group relief would apply.

**Table 4.A: Summary of current and proposed SDLT treatment of CoACSs.**

	Seeding of a CoACS	Changes in ownership of units in a CoACS	Subsequent acquisition of property by a CoACS
<b>Current SDLT treatment of a CoACS</b>	No liability for SDLT (no change in ownership of property).	Liability for SDLT, payable by new and existing unit holders (reflects change in percentage ownership of underlying property).	Liability for SDLT, payable by unit holders.
<b>Proposed SDLT treatment of a CoACS</b>	Liability for SDLT, payable by scheme operator.  But seeding relief removes charge (on fulfilment of certain criteria).	No liability for SDLT (transactions exempt for SDLT purposes).	Liability for SDLT, payable by scheme operator (on behalf of unit holders).

## Consistency

**4.12** The government believes that any change to the SDLT treatment applied to CoACSs may also, under EU law, be extended to certain similar foreign schemes that are transparent for tax on income (in the United Kingdom) but which are not partnerships. Such foreign schemes would also have to meet any conditions that applied to CoACSs.

### Questions on the SDLT treatment of CoACSs

21. Would the proposal outlined here be a viable option to achieve fair SDLT treatment of property acquired by and held in a co-ownership scheme? If not, how and why would you like it to be changed?
22. Would a seeding relief as described in Chapter 3 be tenable for CoACSs?
23. What would be the implications of the same SDLT treatment applying to equivalent foreign funds? Would this have any effect on the domicile of the fund you would transfer your property portfolio to?



# 5

## Summary of questions

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**5.1** The full list of consultation questions is set out below. Wherever possible, please provide evidence to support your response.

### Questions on existing industry structure

1. In your opinion, is the broad assessment of the structure of the property fund market, including its size and the sorts of vehicles used, as set out above, accurate?
2. In terms of both the number of funds and assets under management, what levels of growth have been experienced in recent years by the property fund industry? How does this differ from historical trends?
3. Other than existing investment funds, pension funds and insurance companies, what sorts of businesses and institutions currently hold sizeable property portfolios that might benefit from changes to the SDLT rules for PAIFs and CoACs?

### Questions on the need for change

4. What are the main drivers for companies to transfer their assets into PAIFs or CoACs? What benefits are expected to accrue as a result and to whom?
5. The effect of making the changes discussed in this paper could potentially result in a large number of property funds being launched at the same time; is there evidence of significant investor demand for such funds that is currently not being met?
6. Property funds pay SDLT when purchasing new properties; why is this less of a barrier to growth than the SDLT that would be paid when assets are used to seed a fund?
7. Is there an urgent need for these changes to be introduced and, if so, what is driving it?

### Questions on the likely industry response to potential SDLT changes and wider impacts

8. If a seeding relief were introduced would your business or organisation expect to take advantage of it? If so, what quantum of assets would you expect to transfer into a UK collective investment scheme (and which type) and over what time period?
9. Would the assets transferred be predominately non-residential or residential UK properties? Are there any other types of assets your business or organisation might expect to hold in such funds?
10. How many new funds and of what typical size would your business or organisation expect to set up? How much growth would you expect to see in such funds in the future?
11. Assuming a seeding relief enabled the movement of offshore funds onshore, would your business or organisation expect to redomicile any of your existing funds? What quantum of

assets would you expect to be transferred into onshore funds as a result of these potential changes?

12. What extra economic activity (for example the effect on employment, savings or the property market) would result from holding property in PAIFs or CoACSs compared to how they are currently held? Where funds are currently held offshore, would the impact be different? Would any economic activity be forgone?
13. Do you foresee any further potential benefits, for example on other business sectors?
14. What would be the downsides/ risks/ costs of making the changes mentioned? Could the introduction of a number of new funds being launched at the same time have a negative impact?
15. What would your business or organisation's likely response be if a seeding relief was not introduced or changes to the SDLT treatment of CoACSs were not made? What would happen to the property that your business or organisation is intending to transfer into a PAIF or a CoACS?

### **Questions on the design of a seeding relief**

16. Is the potential design of a seeding relief appropriate for such a relief to be useful? If not, how and why would you like it to be changed or extended?
17. Would implementation of any of the features (alone or in combination) listed above cause a significant impediment to the use of these funds? Please explain why.
18. Do the suggested minimum requirements for value and number of properties in the 'portfolio test' seem reasonable?
19. Are there additional risks of avoidance that the safeguards described above do not address? Would any other conditions be helpful in preventing the relief being used in undesirable or unintended ways?
20. What would be the implications of the seeding relief applying to equivalent foreign funds? Would this have any effect on the domicile of the fund you would transfer your property portfolio to?

### **Questions on the SDLT treatment of CoACSs**

21. Would the proposal outlined here be a viable option to achieve fair SDLT treatment of property acquired by and held in a co-ownership scheme? If not, how and why would you like it to be changed?
22. Would a seeding relief as described in Chapter 3 be tenable for CoACSs?
23. What would be the implications of the same SDLT treatment applying to equivalent foreign funds? Would this have any effect on the domicile of the fund you would transfer your property portfolio to?

## **Details of how to respond**

**5.2** Please send your responses to: [PropertyFundsSDLT.consultation@hmtreasury.gsi.gov.uk](mailto:PropertyFundsSDLT.consultation@hmtreasury.gsi.gov.uk) or Enterprise and Property Tax team, 1 Horse Guards Road, London, SW1A 2HQ by 12 September 2014.

# A

## Current tax treatment of different property funds

	ACS co-ownership scheme	ACS limited partnership	PAIF	Authorised Unit Trust	REIT	Jersey Property Unit Trust	Registered pension schemes
<b>Seeding fund with property</b>	No SDLT	No SDLT	Fund pays SDLT	Fund pays SDLT	Fund pays SDLT	Fund pays SDLT	Fund pays SDLT
<b>Purchases of property by fund</b>	All investors pay SDLT	All investors pay SDLT	Fund pays SDLT	Fund pays SDLT	Fund pays SDLT	Fund pays SDLT	Fund pays SDLT
<b>Profits of the funds – income and distribution</b>	Investor taxed on property income	Investor taxed on property income	Investor taxed on property income distribution	Fund taxed on property rental income (so not a suitable vehicle)	All investors taxed on property income distribution	Outside the scope of UK tax; likely to be tax transparent for UK investors	Exempt from IT and CT
<b>Disposing of property in the fund</b>	No CGT	Investors pay CT or CGT (subject to exemptions)	No CGT or CT	No CGT	No CGT or CT (within income ring-fence)	Outside the scope of UK tax	Exempt from CGT
<b>Investors disposing of units</b>	Investors pay CT or CGT (subject to exemptions)	No CGT	Investors pay CT or CGT (subject to exemptions)	Investors pay CT or CGT (subject to exemptions)	Investors pay CT or CGT (subject to exemptions)	Investors pay CT or CGT (subject to exemptions)	Exempt from CGT





## **HM Treasury contacts**

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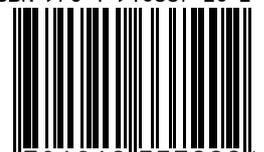
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