

Comments on Disposals of assets by non-UK residents and payments on account etc (Clause 6 and Schedules 1 & 2)



Non-resident institutional investors are a crucial part of the UK real estate sector, owning around £140 billion of commercial property, and will continue to be even after the UK's departure from the EU in 2019. The draft Finance Bill will substantially change the tax treatment on non-resident investors in UK real estate as they will be fully brought into the system for the taxation of property gains accruing after April 2019. This transition should occur as smoothly and fairly as possible, however.

As the European association for institutional investors in non-listed real estate vehicles, the majority of which qualify as collective investment vehicles (CIVs), INREV is particularly concerned about the potential impact on CIVs where the fund or its investors are overseas, which are commonly used within the real estate industry and play a major role in channelling investment into UK property by overseas investors.

We understand from colleagues in UK property associations that HMRC has been very constructively engaged with the industry on the taxation of CIVs. We share the goal of the British Property Federation (BPF) and the Association of Real Estate Funds (AREF) to develop a system that avoids multiple taxation of gains (both within the fund itself and as between investor and the fund regarding the same gain), and that ensures exempt investors should benefit from the same tax relief whether they invest collectively or directly in UK property.

The proposals set out in the summary of responses document for a special funds exemption and for transparent offshore funds to be able to elect for transparency for gains are welcome steps forward and we will continue engaging with officials on the practical details. However, given the complexity of these measures, care must be taken to get the proposals right, even considering the funds industry's desire to see final legislation that confirms how they will be taxed, which will enable them to start to put the necessary systems in place to ensure proper compliance.

Given the BPF's and AREF's on-going engagement with HMRC, INREV does not propose to comment in detail on the tax treatment of CIVs. However, we would like to focus on a key point for our members, which is the definition of Qualifying Institutional Investors within the Substantial Shareholding Exemption (SSE). A point that has consistently made in recent months has been the need to amend the SSE rules in light of the proposals on non-residents gains.

When Government consulted on changes to the Substantial Shareholding Exemption and associated definition of a Qualifying Institutional Investor (QII), the rules were not relevant to institutional investors who were exempt on gains by virtue of being non-resident. The QII definition therefore excludes swathes of overseas institutional investors – including many overseas pensions funds, insurance companies, charities and not-for profit endowments that are exempt from tax in their own jurisdictions and this position needs to be rectified.

INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. We provide guidance, research and information related to the development and harmonisation of professional standards, reporting guidelines and corporate governance within the non-listed property fund industry across Europe.

INREV currently has 430 members, including institutional investors from around the globe such as pension funds, insurance companies and sovereign wealth funds, as well as investment banks, fund managers, fund of funds managers and advisors representing all facets of investing into non-listed real estate vehicles in Europe.

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INREV welcomes the opportunity to comment and hope to provide a meaningful contribution to HMRC's work. We remain available should you have any specific questions about the non-listed fund industry.