INREV

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About INREV: the voice of the European non-listed real estate investment industry

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 funds industry across Europe.

INREV currently has more than 450 members. Our member base includes institutional investors from around the globe including 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 the UK and the rest of Europe. Our fund manager members manage more than 500 non-listed real estate investment funds, as well as joint ventures, club deals and separate accounts for institutional investors.

Introduction

INREV strongly supports HM Treasury's initiatives on both the use of Asset Holding Companies (AHCs) in alternative fund structures and the wider Funds Review; we welcome the opportunity to comment constructively on some of the issues they raise. This second stage consultation on the tax treatment of AHCs in alternative fund structures, in particular, seems an excellent opportunity to help make the UK an attractive location for funds used by institutional investors in real estate. As HMT has noted, the scale of the UK's asset management sector, its good infrastructure and skilled workforce would make it an attractive and compelling location for asset holding companies (AHCs) if certain barriers in the UK tax system could be addressed.

This consultation's aim is "to deliver an appropriately targeted, proportionate and internationally competitive tax regime for AHCs that will remove barriers to the establishment of these companies in the UK". The aims of the consultation are ones which INREV and our global membership base very much welcome. For this initiative to achieve these goals, we stress that the overriding goals of HMT must be to design a new regime for AHCs that is simple, commercially viable and, furthermore, no more complex or costly than, for example, the established regimes in Luxembourg, Ireland and the Netherlands that are already familiar, easily accessible and widely used by our industry. Anything less would, regrettably, result in a regime that would simply not be commercially attractive or widely used in practice. This notwithstanding the clear appetite for a workable UK domiciled fund regime.

We have participated in discussions with HM Treasury ("HMT") and HM Revenue & Customs ("HMRC") during the course of this public consultation. During those discussions, we understand that HMRC are reluctant to sanction a regime in which the AHC, or (alternatively) investors in the AHC, may obtain benefits that are qualitatively superior to the benefits enjoyed by other UK taxpayers. We understand the tax policy challenges of balancing the need for fairness across the widest group of UK taxpayers, while also creating a tax regime which is attractive and compelling to investors and stakeholders. That being said, we would be disappointed if the consultation failed to produce an AHC regime which was attractive to investors owing to a failure in prioritising simplicity, or results in a regime which fails to provide demonstrable benefits and attractions for investing in UK real estate which are comparable to other international structures.

We consider that the focus on narrowly defined eligibility criteria alongside the increased reporting and compliance obligations that would need to be assumed by fund managers when compared to similar regimes elsewhere will not encourage wide take up. We would therefore urge HMT and HMRC to consider the potentially significant wider economic benefits of a popular, well-regulated but well understood and easily accessible regime alongside the positive message this would send that the UK is an open and attractive place to do business in a post-Brexit environment that offers a real choice to both UK and international investors.

We would therefore propose that this consultation only progresses to the next stage of proposed AHC legislation when there is a consensus on key policy goals between HMT, HMRC and industry. We note that HMT issued a Call For Input ("CFI") on 26 January 2021 on the closely related Funds Review. The CFI asks for comments on numerous other proposals that relate to reforms to existing fund structures, as well as the introduction of new fund structures, and the intention of HMT, working with other departments and regulators, to prioritise measures that have the greatest impact and those that can be delivered swiftly.

The CFI requests stakeholders to set out in their responses what they see as priority areas for reform and we would suggest that HMT, working with other departments and regulators, consider priority measures for legislation holistically arising from responses to both the CFI and this consultation on the tax treatment of AHCs in alternative investment funds in tandem. If a consensus on key policy goals of the proposed AHC legislation can be reached between HMT, HMRC and industry, then the reforms introduced could be made to apply to existing fund structures as well as any new fund structures and be prioritised through implementing legislation along with the other priorities identified in the responses to the CFI.

We hope our comments that follow will make a constructive contribution to this important effort.

Eligibility

Question 1: Do you think an AHC regime should include arrangements where some or all investors invest directly at the level of the AHC, as discussed at paragraph 4.25? Can you provide evidence on how common these arrangements are?

The AHC regime must include arrangements that provide flexibility as to the level at which specific investors participate in the structure. By way of background, investment structures commonly include specific (feeder) entry points for different categories of investor and the AHC regime must be able to accommodate this requirement.

A significant number of investment structures already include investment by asset managers directly in the fund vehicle usually through a tax transparent entity. To be successful, the AHC regime must continue to allow this feature.

It is relatively common for investors to access an investment structure at different levels of the holding structure. For example, a Fund with the majority of the investors entering at the fund level may commonly enter a joint venture with a specific partner or partners in relation to a specific underlying asset. This may be particularly common where a Fund does not wish to (or is prohibited from) taking 100% interest in a sizeable investment opportunity or is partnering with a local partner on a development opportunity. The joint venture vehicle would typically be below the level of the Fund with direct entry from co-investors.

Question 2: Are there situations where legal agreements involving investors who invest directly at the level of the AHC are significantly different from those where all investors invest through a CIS or AIF? For example, would different investors' interests be fungible under these arrangements or could there be differences in the way some investors participate in the results of investments?

The degree of preferential treatments afforded to investors has progressively reduced in recent years and there is a general move towards transparency and homogeneity in individual investors' interests. Particular categories of investors may, however, have specific reporting obligations and fund managers are usually obliged to provide relevant financial information to those investors in recognition of their specific requirements.

Accommodating 'side car' investors is one example where there could be a difference especially where the side car investor is only participating in a specific investment as opposed to the returns for the fund as a whole.

ATAD II is another example, albeit that the practice in this area is evolving. The concept being that 'good' investors from an ATAD II perspective are segregated from 'harmful' investors.

Where investors invest at the level of an AHC below the level of a fund vehicle, particularly when in pursuit of a specific joint venture exercise, it is likely that the legal arrangements would differ as they would generally relate to a more specific investment and the features relating to that.

Question 3: Would a broader approach to eligibility, accommodating arrangements of the type discussed in Question 1, create increased risks of abuse or avoidance? If so, how could these be mitigated?

We do not consider that a broader approach to eligibility would increase the risk of abuse and/or avoidance. It is important that the AHC regime is made available to as wide a community of investor as possible in order to ensure as high a take up as possible. We consider that the risks of abuse and/or avoidance will be very limited and, in our opinion, HMRC will have a high degree of real time visibility over the transactions that an AHC structure is party to. This visibility will ensure that the potential for abuse/avoidance will be considerably reduced.

There is also a question of how the regime is policed and what structure will be implemented by HMRC in order to ensure that potential abuse and/or avoidance does not occur. In this regard, we consider that the model adopted by HMRC for the UK REIT regime (which we consider to be very effective) could be considered as a template for the AHC regime.

Question 4: Is the concept of participation a suitable way to identify the investors in an AHC? Would this be consistent with the commercial reality of investment arrangements? Do you have any suggestions for an alternative approach, for example referring to the legal documents used to determine the rights of investors?

The participation concept (i.e., tracing of ultimate beneficial interest) would be the most appropriate way by which to identify investors and to determine ownership interests. This is a philosophy that taxpayers are familiar with and one that is generally well understood by stakeholders.

Question 5: How can regime rules accommodate structures where companies fulfilling the role of an AHC are not directly owned by the ultimate investors or by another AHC?

We do not express an opinion on this question or have addressed it elsewhere.

Question 6: What is the best method to identify the asset manager who provides investment management services to investors in relation to the investments held by an AHC? Do you foresee complications, for example in a structure with multiple layers of AHCs? How can regime rules address these situations?

There will generally be one key fund manager for a particular investment structure; multiple levels of AHCs (outside of a fund of funds scenario) are not, in our opinion, particularly commonplace though we would note that they can exist for bona fide commercial reasons – e.g. facilitating debt financing security packages, facilitating joint venture or owing to a legacy acquired structure.

Question 7: What tests would best ensure that investment decisions are taken by an asset manager who is subject to regulation and has genuine independence from the investors?

We do not consider that the regime will command wide appeal if it is only open to regulated and independent asset managers. The policy imperative should be to create a regime that has wide appeal; in our view, imposing this obligation will only operate so as to reduce the take up of the regime. It should be borne in mind that asset managers may have an equity stake in the venture and may also be in receipt of promote arrangements if the performance of the fund exceeds certain hurdles. the existence of these arrangements could, potentially, taint the independence test specified above and reduce the attractiveness of the regime.

It should be borne in mind that over recent years (with the global financial crisis acting as a key catalyst) there has been a move to align the interests of investors with those of the fund managers and asset managers. A case of ensuring 'goal congruence' so that the interests of all parties are aligned. This move would be in conflict of that commercial trend.

For a large institutional asset management businesses, it is very common for there to be a degree of participation in an investment structure by an "internal client" that may be within the asset managers corporate group. This is often a key cornerstone to the successful launch and growth of new fund structures. Accordingly, it would reduce the attractiveness of the AHC regime if this feature were to be prohibited.

Question 8: What would be an appropriate maximum proportion for asset managers' interests in an AHC, including interests held by individual fund executives? Can you provide details of relevant commercial arrangements?

Subject to the observations about large scale institutional asset management business noted above, an appropriate maximum, if it is to be included, would be 10% which is generally accepted by HMRC as being a proxy for 'de minimis' in certain legislative provisions.

Question 9: How should regime rules ensure that the activities of an AHC are limited to a facilitative, intermediate role between investors and investments?

We do not express an opinion on this question or have addressed it elsewhere.

Question 10: Can you provide evidence about any specific situations where, as part of an AHC's facilitative, intermediate role and for genuine commercial reasons, part of its activity might amount to a trade?

It is often the case that an intermediate AHC is used for the purposes of centralising certain functions within a structure (for example management / accounting or governance services) which are then recharged to underlying SPVs. This can result in a significant cost and administrative saving for fund structures. Such activities could be considered to be a trade in the pursuit of the provision of management and other services. Typically transfer pricing considerations apply on the recharge of any costs.

Question 11: Should eligibility criteria include the requirements set out at paragraph 4.49?

No. We consider that such requirements would fetter the ability of AHC's to pursue specific commercial strategies and reduce the degree of commercial innovation that AHC's may be able to give effect to.

We are not aware of any other part of the UK's legislative codes which specifically impose a minimum capital raise requirement in order to secure entry and would strongly counsel against this for the AHC regime as suggested in paragraph 4.49.

Question 12: How could regime rules safeguard against assets and/or related income being ring-fenced for the benefit of a subset of investors?

We would ensure that the equity rights that may be issued in AHCs are limited in scope by, for example:

- *only allowing a single type of ordinary share together with a single type of preference share and,*
- *vanilla shareholder loans.*

However, we would note that limiting the ability of the AHC to use innovative financing techniques (for bona fide commercial purposes) would impose limitations that other equivalent regimes do not have.

Question 13: Could the proposed approach to eligibility include arrangements that you believe should not be included within an AHC regime?

We do not express an opinion on this question or have addressed it elsewhere.

Question 14: Could the proposed approach to eligibility exclude arrangements there is a good rationale to include within the regime? If so, how might relevant structures be defined? Are there structures designed to facilitate alternative finance arrangements that could be excluded?

Seeking to define 'good' arrangements always runs the risk of excluding reasonable arrangements or quickly becomes a limitation where commercial realities evolve more quickly than the relevant legislation can keep up. If it is necessary to include such limitations, we would encourage principles based rules or targeted anti-avoidance rather than seeking to 'white-list' narrowly defined specific arrangements.

Profit on income received by an AHC

Question 15: Can you provide evidence as to the methods and instruments an AHC might use to return income and capital sums to investors and the commercial, administrative and tax considerations that will inform this choice?

There are a very wide range of strategies that are deployed to return cash and profits to investors. The strategies tend to be hard-wired in at the outset and tend not to change significantly over the term of the fund. Strategies commonly include:

- *Interest on investor loans*
- *Periodic dividend distributions*
- *Capital redemption*
- *Liquidation dividends*
- *Loan repayments*

The precise methods employed to return income and capital to investors will be in large part driven by the commercial investment strategy of the structure. For example, a "Value Add" or "Opportunistic" fund will typically have a "lumpier" return profile as a consequence of the asset base generating a less stable income flow compared to a typical "Core" fund which may have smoother rental flows. This may imply that the predictable return profile of intercompany interest accruals is less appropriate than periodic redemptions and/or liquidations.

Question 16: What advantages or disadvantages could there be in allowing a broader range of deductions to calculate an AHC's profits? Do you consider that the better alternative would involve deductions for specific instruments? Or do you think the regime should take a broader approach based on the totality of amounts returned to investors?

We propose using existing transfer pricing principles in particular to regulate the quantum and nature of deductions allowed, specifically with reference to financing instruments. Instruments that are in principle similar can be constructed in legally distinct ways but the principles of allowing deductibility of charges on such instruments can, to an extent, ensure equivalence when measured against OECD style transfer pricing principles.

Question 17: To what extent would the outcomes discussed in paragraph 4.65-4.68 be appropriate for AHCs, and to what extent do the rules contemplated as part of the regime make these outcomes more likely? If such outcomes are inappropriate, how can regime rules ensure that an AHC is subject to tax on a suitable measure of profit on taxable income?

We do not express an opinion on this question or have addressed it elsewhere.

Question 18: What is your view on the best method to ensure that an AHC cannot obtain relief for any payments to investors that would reduce its profit below an amount commensurate with its role?

As noted in response to Question 16. above, we would consider that existing transfer pricing methodology and legislation can be utilised to ensure that an appropriate taxable profit margin is retained in the AHC. This is a well understood principle that is used in comparable regimes.

Question 19: Can you provide information on how funds approach transfer pricing for any instruments where deductions are not currently available in the UK? Can you provide examples from existing companies fulfilling the role of an AHC to illustrate any areas of potential difficulty?

Comparing to Luxembourg, holding companies are required to comply with transfer pricing rules and should have relevant documentation in place. By not complying there is a risk that distributions could be re qualified as deemed dividends and thereby subject to WHT. From a UK perspective, given that the UK does not apply WHT on dividends this would need to be considered in the wider concept of the regime.

The transfer pricing regulations could be applied both with respect to the deductibility of charges on individual financial instruments but in addition with reference to the overall profitability of the AHC. HMRC should take comfort from the framework that is delivered through the application of well-understood OECD transfer pricing methods that international investors and fund managers are familiar with. Use of a well-understood framework will not overly burden the AHC structure with new principles to comply with.

Capital gains realised by an AHC

Question 20: Will the proposed treatment of capital gains realised by an AHC provide an effective means of ensuring that AHCs do not pay tax on gains they reinvest or return to investors?

Our preference in designing the AHC regime is to legislate for an exemption for capital gains realised by the AHC.

Fundamentally, our reasoning is that the AHC regime may be attractive to investors if it offers a simple exemption for capital gains on the disposal of investment assets, which is predictable and easily understood. That exemption for capital gains should extend to all investment assets at the level of the AHC and the level of participating investors. We note the UK Government's stated preference is that the AHC regime needs to preserve the tax base in UK real estate assets (and so would, as noted in paragraph 4.79 of the Consultation Document, not extend to disposals of UK land or UK property rich assets). While we note this preference, the imposition of a tax charge at the investor level in respect of disposals of UK land or UK property rich assets will need to be very clearly ring-fenced from the disposal of non-UK land and non-UK property rich assets.

We are also mindful that the UK Government's preference regarding the preservation of the tax base in UK real estate assets risks the resulting AHC regime being potentially less attractive than some comparable international holding company regimes which offer participation without associated taxation of (some or all) realised capital gains.

If an exemption is included in the AHC regime, we recommend that this would need to work in tandem with the UK's double taxation treaties and one would expect a similar model to the participation exemption regime that we see in Europe, applicable to real estate gains. We consider that the existing SSE rules could perhaps be expanded to accommodate this without too much difficulty.

Question 21: Could the relationship between the relief proposed for gains and other potential reliefs available to an AHC create undue complexity or unintended consequences?

We consider that if the AHC regime offered "several interlocking reliefs of exemptions", this offering would be materially less attractive to investors when compared to a simple, effective AHC-internal exemption. From an administrative perspective, the work needed to complete the "interlocking" relief/ exemption analysis would be expensive and time consuming. The comparison with other International competitor structures (such as a Luxembourg-based Sarl real estate structure) would be clear, and adverse. By comparison, the AHC Regime would look complicated and less attractive.

We note the suggestion of a roll-over relief for capital gains (paragraph 4.83 of the Consultation Document). We consider that a roll-over relief is inherently less attractive than a simple exemption-based AHC regime. Utilising a roll-over regime alongside a targeted exemption for certain investment assets would complicate matters and again reduce the attractiveness of a simple regime to investors.

Question 22: How could rules on relief for gains be protected from abuse in a way that is simple and easy to administer? Would a requirement of the kind discussed under 'Eligibility', that AHCs have a policy or practice of reinvesting or returning capital to participants when investment assets are sold, help achieve this aim?

We doubt that entities within the AHC regime would be used to "artificially defer tax on capital gains" (paragraph 4.88 of the Consultation Document). We would expect that any regime TAAR, or general anti-abuse rule, would prevent tax-motivated arrangements of this nature. We anticipate that the AHC regime would be used for commercial arrangements which either reinvest returns, or pass such returns to investors to compensate for investment. Any time-limitation on the retention of gains by an AHC (for example, requirement reinvestment or return within a number of years) would be unwelcome for a variety of reasons. Those reasons would include: administrative complexity in "tracking" such gains; complexities regarding partial reinvestments and partial returns in respect of the same gain; the potential for an artificially imposed cliff-edge on any such time-limitation (such as a number of years); and the lack of any international comparator regime imposing a similar time limitation.

We consider that the UK Government's suggestion that AHCs have a policy or practice of reinvesting or returning capital to participants when investment assets are sold is a reasonable one. We consider that such a policy broadly reflects commercial reality in the overwhelming majority of transaction where an AHC would be used. However, we note that such a policy should also allow for commercial flexibility and market conditions. In this regard, we suggest that some form of pragmatic statement, in the legislation or in guidance, regarding the policy being relaxed in the circumstances of market dislocation or genuine commercial necessity would be required. Similar confirmations already exist in respect of other "behaviour-based" exemptions (i.e. the UK investment manager exemption).

We would note that real estate is inherently more illiquid when compared to many other asset classes and therefore it is essential that suitable flexibility is introduced to any such rules. Real estate transactions can take a significant period to develop and execute and can fail for any one of a number of due diligence or transactional reasons when compared to other asset classes. For this reason, expectations around reinvestment or return of capital, whilst reasonable, in their generality will be very challenging to effectively define in legislation.

Withholding tax on payments of interest to investors

Question 23: To what extent could a WHT exemption for payments of interest by AHCs to investors create risks around the diversion of investment income to low tax territories?

We consider that the inclusion of a WHT exemption for payments of interest by AHCs to investors is extremely desirable. Post-BEPS, we consider that the circumstances for investors to create risks for

taxation authorities based on the diversion of investment income to low tax territories have been significantly reduced. The introduction of BEPS minimum standards, including the utilisation of a PPT in double tax treaties and the work of the OECD regarding non-CIV and CIV investment vehicles, makes structures which divert investment income in tax abusive arrangements less attractive.

Question 24: How could regime rules mitigate these risks? Do you think any WHT exemption for AHCs should include a purpose test and/or be limited to interest paid to recipients in qualifying territories?

We suggest that it would be possible to remove the requirement for imposing UK source WHT on returns from an AHC if AHC investors are required to meet a qualified investor status. That status could mirror (broadly) the QII conditions of the UK's SSE, or be based on the requirements of investors which obtain the benefit of the "qualifying private placement exemption" legislation.

We are mindful of trying to avoid the solution to UK source WHT being the broad response of listing investments as quoted Eurobonds on a recognised stock exchange or multi-lateral trading facility. While extremely useful, such listings would be a last resort for an AHC looking to return interest to investors.

A qualifying territories test could also form part of the testing for exemption to ensure that the structure does not facilitate the avoidance of tax.

Income and gains paid to investors

Question 25: How can regime rules ensure that amounts of income returned to investors are treated appropriately for the purposes of UK tax?

We consider that the UK tax code already includes a significant amount of appropriate legislation to safeguard the return of income to investors without a loss of tax to the UK. We note that the methods of return of income to investors are most likely to consist of dividends, interest and repayments on loans (including payments of 'discount' on such loans).

Although existing legislation could be re-purposed to apply to such returns of income, we would encourage the UK Government to consider the introduction of the AHC regime without the significant complexity which would accompany AHCs being within the anti-hybrid mismatches and corporate interest restriction regime, for example.

Question 26: What is your view on the most appropriate method to treat amounts as capital gains in the hands of investors?

Requiring fund managers to trace net capital gains through an investment structure up to investors will be a time-consuming exercise and will require elaborate accounting and reporting systems to be established which will be a significant administrative burden.

A better approach would be to offer an elective regime whereby fund managers could designate a dividend distribution as being entirely income, entirely capital gain or a mixture of the two. The quantum of a distribution that is funded by a capital gain would reflect any net gain realised on a sale of assets or shares of asset owning SPVs. Consolidated financial statements (such as those required by the UK REIT regime) would enable a tally to be maintained as to the quantum of net income and gains generated by a particular investment structure and used to frank dividend distributions.

We accept that there may be a potential for capital gains to be 'stockpiled' in an AHC structure but this would, in effect, lead only to a deferral of a taxation liability rather than the avoidance of one.

The UK asset management industry is exceptionally sensitive to the risks represented by 'importing' tax compliance and reporting risks to the level of the fund manager rather than it being retained at the level of investors. For this reason, the requirement for 'tracing' or other such mechanisms will represent a very significant obstacle to manager's utilising the regime.

Question 27: How should regime rules ensure that amounts designated as gains cannot displace amounts that should be treated as income in the hands of investors?

Requiring fund managers to prepare consolidated financial statements that disclose the net income and gains realised in an AHC structure will ensure that distributions properly reflect the commercial position. The alternative would be for legislation to be enacted that prescribes income distributed to investors as either income or gain - this would, however, not be the preferred solution.

Question 28: How can an investor's interest in the AHC be appropriately valued in order to determine their proportionate share of any gains? What instruments might investors hold, with what rights attached, and how might these holdings change over time?

If the range of equity instrument that may be issued by an AHC is made limited in number then, practically speaking, this item should not present a significant issue. For example, if an AHC is only able to issue:

- *one class of ordinary share, and*
- *shareholder loans*

then the question of investor's interest in gains becomes largely an academic one.

Question 29: Are there other areas of the tax code that could counteract the intended effect of rules to treat amounts as gains in the hands of investors or produce unintended consequences?

On the basis that it is intended that the AHC regime will be 'stand alone' in form, we consider that it would be considerably more advantageous if bespoke rules were introduced that were particular to the AHC regime.

In practice this should not be too onerous an exercise and would avoid, firstly, the need for investors to look through other areas of the UK tax code in order to establish whether specific anti-avoidance provisions were in point and, secondly, potential conflicts in legislation.

Question 30: How could rules to treat amounts as gains in the hands of investors be protected from abuse? Is there a streamlined test the regime could use to safeguard against conversion of income to capital?

We propose an elective regime whereby the fund manager designates a particular return to investors as being either income or capital.

In order to enable this designation to be made the fund manager will be required to maintain an annual tally of the income and gains realised by a specific AHC and supply HMRC with a reconciliation of the

net income and gains realised plus distributions made. The system would be somewhat akin to that currently in place for UK REITs as regards Property Income Distributions.

We would however emphasise the need for this regime to be simple, easy to apply, with limited downside compliance risk falling on the manager.

Question 31: Should the regime allow certain types of profit on loan relationships of an AHC, such as profit on redemption or disposal of 'distressed' debt, to be treated as capital? Is there an appropriate method that could be used for this purpose?

Profits on conventional loan relationships used to fund real estate ventures should (unless they have an equity character) be classified as income profits.

If, however, an AHC has been established in order to make strategic investments in non-performing loans and/or distressed debt, then the profits realised should be classified as being of a capital nature. In essence the tax classification of a particular transaction will be guided by the overarching commercial strategy of the AHC.

Real Estate

Question 32: Can you provide evidence on the number and type of situations where a fund might wish to use UK SPVs to own and receive overseas property income directly?

UK SPVs are presently only used very infrequently to hold overseas property. One scenario in which they may be used are if the fund vehicle is located in a third jurisdiction but effective management of the asset is to be carried out from the UK and where the UK's Double Tax Treaty with the territory in which the property is located is more favourable than the Double Tax Treaty than the territory in which the fund vehicle is located.

The above example is very much the exception and, in practice, SPVs are more commonly established in the territory in which the asset is held or the territory in which the fund is located.

Question 33: Given the availability of relief in the UK for foreign tax paid, to what extent would the lack of an exemption for overseas property income act as a barrier to the use of UK AHCs to hold overseas property? Can you provide any examples of specific situations affected by this issue? To what extent would this affect the choice to locate master and intermediate holding companies in multi-jurisdictional real estate funds in the UK?

We accept that the UK provided relief for foreign tax paid but consider that an exemption regime would be much simpler to administer and offer certainty to investors that would simply not be available with a credit regime.

With a credit regime processes would need to be implemented by the AHC in order to;

- *evaluate the foreign taxes for which credit may be available,*
- *trace the foreign tax associated with specific tranches of income received,*
- *establish the periods in which that was settled in the overseas jurisdiction,*

- *deal with the outcome of any local tax audits (which may be protracted in length) and reference these back to the receipts in the UK,*

These would, inevitably, lead to an increased compliance burden and detract from the relative attractiveness of the regime compared to jurisdictions where full exemption applies.

Question 34: To protect against the risk of loss of tax on UK property income and gains, do you think it would be appropriate for regime rules to specify that an AHC should not own UK land or UK property rich assets? To what extent could this discourage use of AHCs for multi-jurisdictional real estate funds?

We do not think that this is a practical option. The UK, prior to Brexit, was the principal jurisdiction for foreign direct property investment across Europe. Establishing a new regime which excludes UK property investment would be a significant handicap and would detract a significant number of investors from participating.

The imperative should be to create a regime that is attractive to as wide a community of investors rather than to create one that has fundamental, strategic flaws which will dissuade stakeholders from entertaining it as a credible option.

Question 35: If the regime permitted AHCs to own UK land and UK property rich assets, how could rules ensure that the additional deductions and reliefs available to an AHC did not lead to any erosion of the UK tax base in UK property?

One route would be to trace income and gain arising from the holding of UK property and subject them to corporation tax without any specific exemptions. This route would mean that although AHCs would be allowed to hold UK land and property, there would be no additional taxation benefits of them doing so. An alternative method would be to 'ring-fence' income and gains derived from UK property. A similar mechanism is in operation within the UK REIT regime and generally operated effectively.

While these approaches could be introduced it is hard to divine why investors would wish to participate in AHCs if no specific advantages arise to them in doing so.

Stamp Duty and SDRT

Question 36: How significant is the impact of Stamp Duty and SDRT on AHC location, in particular with reference to the points listed at paragraph 4.134? Please provide details of the specific situations where the lack of an exemption would have a significant impact when deciding whether to locate an AHC in the UK.

An exemption from Stamp Duty and SDRT would, inevitably, increase the relative attractiveness to investors. Up-front transactional costs have a disproportionate impact upon project returns and to the extent that an exemption is made available for these would increase the overall desirability of the regime.

We note that the introduction of an exemption from stamp duty and SDRT on a transfer of the shares or loan capital of an AHC is unlikely to place the AHC at an advantage, in practice, as against other UK corporates. In the event that there is no Stamp Duty or SDRT exemption relating to the transfer of shares or loan capital of an AHC, this would create an incentive to locate the AHC away from the UK, such as using a non-UK incorporated company (which may be UK tax resident despite overseas incorporation). HM Treasury and HMRC will be aware that this has become a common feature of many

structures, as taxpayers and stakeholder investors have looked to eliminate Stamp Duty and SDRT transaction costs.

The comparator in designing the AHC regime in respect of Stamp Duty and SDRT is the currently common use of non-UK incorporated companies to achieve a de facto exemption from UK stamp taxes. If an exemption from Stamp Duty and SDRT for transfers of shares or loan capital of an AHC was to be granted, no tax loss to the UK exchequer is likely to arise – as the exemption position would simply mirror the position at present, in practice, using non-UK incorporated companies (or partnerships).

Corporate groups

Question 37: Do you have views on the government's proposed approach to group relief for AHCs?

We agree that, given the specific tax status of AHCs, it is appropriate that AHCs should not be able to either surrender or claim losses as group relief. This is, however, based on the premise that UK assets will be held by the AHC and they will be able to benefit from specific exemptions.

If UK assets held by AHCs will be subject to UK corporation tax without any specific provisions then the surrender of losses should be permitted.

Question 38: Are there other rules relating to corporate groups whose application you think should be modified for AHCs?

We do not express an opinion on this question or have addressed it elsewhere.

Entry and exit from the regime

Question 39: Should the regime accommodate entry by companies already used to hold investment assets prior to becoming AHCs? What issues could arise for these companies? How could regime rules protect against any increased risks of abuse or avoidance?

The regime should cater for existing companies to enter into the AHC regime but it is considered that the level of take up will be limited. The specific tax implications arising would very much depend upon the nature and form of the entity that enters the regime.

We do not anticipate that the entry into the AC regime needs to convey particular advantages for the AHC (and indirectly) investors, such as a rebasing of investment assets on the entry into the regime. Rather, we envisage the AHC regime being an elective regime which a company can enter once the membership requirements in the regime are satisfied. We consider that the attractiveness of the AHC regime would be materially reduced if the administrative conditions (imposed by HMRC) were extensive, or subject to HMRC approval – as opposed to a simple notification being provided by the AHC in question.

We consider that it would be undesirable for HMRC to have powers to take unilateral action to eject an AHC from the regime. By contrast, we consider that exit from the AHC regime could be managed through the consequences of failure to meet the statutory conditions of the regime resulting in the relevant legislation mandating that regime benefits cease to available with effect from the date of failure.

Question 40: In situations where a company leaves the AHC regime, how can regime rules provide against loss of tax? For example, what is the best way to ensure that gains not yet charged to tax, reinvested or returned to investors become taxable? Should this be via a deemed disposal from the perspective of the investors or via a charge in the AHC?

We consider that a deemed disposal by the AHC (resulting in a UK tax charge in the AHC itself) would be the preferred route by which to collect this liability.

We do not want to introduce into the AHC a mechanism whereby HMRC are able to imposed a secondary UK tax liability on the investors if the AHC is not able to settle its UK tax liability.

Question 41: Where a company that has claimed the benefits of the AHC regime is wound up and is subsequently found not to have met eligibility criteria, what is your view on the best method to ensure that any additional tax due can be collected?

We consider that the principal liability should fall on the AHC. Where the Directors have deliberately sought to take advantage of the regime, then a personal liability to them should arise.

Question 42: Should a new accounting period begin for tax purposes when a company enters or exits the AHC regime?

Given that this is a specific and new regime we consider that a new accounting period should commence once a company enters and/or exits from the regime.

Question 43: Can you provide details of any situations where an AHC might temporarily cease to meet the regime eligibility conditions? How should regime rules approach situations of this type?

The AHC may temporarily cease to meet the conditions in the event of a change of investors during the period that the AHC is in existence. In such instances, an AHC should be given a grace period within which to take steps to meet the eligibility conditions.

We also consider that circumstances of temporary cessation of eligibility as a result of market dislocation (or similar event) should not result in removal of an AHC from the regime. Guidance could be used to clarify (and provide examples) the statutory scope of the regime in this regard, and how HMRC expects the regime to work in practice.

Other tax issues

Question 44: What situations are there where current rules in any of the areas listed at paragraph 4.148 could act as a barrier to locating AHCs in the UK? Are there any other issues the government should consider in this regard? Please provide information to illustrate the extent to which these issues could affect take-up of an AHC regime.

The CFC rules in relation to real estate largely operate in a manner that do not significantly impact upon a majority of real estate operations. CIR continues to be a challenge but the legislation includes elective provisions that AHCs may be able to benefit from.

We recommend that, as far as possible, the AHC regime should operate in a manner which is simple and predictable. It is understood that there are some areas (such as the employment related securities rules) where inter-connectivity of the AHC regime with other anti-avoidance legislation is unavoidable.

However, if a TAAR is to be included in the AHC regime (as we anticipate is a possibility), this could be relied on assist with the creation of a regime which is as simple and predictable as possible without needing the inclusion of very extensive statutory provisions.

Question 45: How should any issues identified in your answer to Question 44 be addressed?

We do not express an opinion on this question or have addressed it elsewhere.

Question 46: Can you provide specific examples of existing overseas companies fulfilling the role of an AHC, in order to test the full effects of the proposed regime and of draft legislation?

We do not express an opinion on this question or have addressed it elsewhere.

Anti-avoidance

Question 47: Please highlight any inherent features of the proposed regime that you consider protect it against abuse, and set out what additional anti-avoidance rules you consider might be desirable.

We do not express an opinion on this question or have addressed it elsewhere.

Reporting and monitoring

Question 48: What information, either listed in paragraph 4.156 or otherwise, do you think HMRC should collect to maintain the AHC regime as low risk and provide a high-level understanding of how it is used?

We do not express an opinion on this question or have addressed it elsewhere.

Question 49: Do you have suggestions for an XBRL taxonomy for these items? What are your views on whether tagging would be a convenient and reliable method to ensure that information is provided?

We do not express an opinion on this question or have addressed it elsewhere.