Reserved Investor Fund Consultation
UK Funds Review Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

9 June 2023

Dear Sir/Madam

Reserved Investor Fund Consultation

PricewaterhouseCoopers LLP (we) welcome the opportunity to respond to the above consultation. We are responding as advisers to a wide range of investors, as well as the alternative investment funds in which they invest. Our response is based on our general experience.

Where we do not believe we are in a position to provide a response, or have no comments, we have indicated this below in the relevant question.

Needless to say, we would be pleased to participate further in this public consultation process.

Questions and Responses to the Reserved Investor Fund Consultation

Question 1: Do you agree that the 'Reserved Investor Fund (Contractual Scheme)', or 'RIF(CS)', is the most appropriate name for the new structure? If you disagree or suggest a different name, please give reasons for your response.

We agree, based on the reasons set out in the consultation document.

Question 2: Would a restricted RIF add value to the existing range of UK fund structures, particularly compared to a structure without such restrictions? What would the relative attractiveness be of the proposed restrictions to the RIF regime?

We understand that interest has been expressed by the industry in the different types of restricted RIF proposed and, in particular, the UK property rich RIF.

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Question 3: Are there investment asset classes besides real estate for which a RIF would be particularly attractive?

We have no comments on this at this point.

Question 4: Do you foresee any legal or administrative issues with the proposed eligibility criteria? Would you recommend that the government include additional requirements for an unauthorised co-ownership contractual scheme that wishes to become a RIF? If so, please explain the reasons for this.

Aside from the regulatory requirements we note that the proposed eligibility requirements for a RIF are broadly in line with those applicable to offshore vehicles (in particular in relation to the fund exemption election) and exempt unauthorised unit trusts.

In relation to the GDO requirement, which has become a feature of recent tax legislation (i.e. the fund exemption election, qualifying asset holding companies and the REIT listing requirement), we continue to encounter issues with the practical application of this test. Whilst we understand that HMRC does not wish to have an automatic clearance process (as is the case in relation to the original application of this test in the context of the offshore funds rules) there may continue to be further requirement for guidance / non-statutory clearance in relation to this test.

We comment further below in relation to how these conditions might interact with the proposed SDLT seeding relief, where the existing relief in relation to PAIFs and CoACSs may need to be modified, given that those two regimes have different conditions to those proposed to apply to a RIF.

We also comment further below in relation to the capital gains issues that may arise where the conditions are not met.

We note that, from a regulatory perspective, the RIF would be both a CIS *and* an AIF. In contrast, in relation to the fund exemption election, the requirement is that the offshore collective investment vehicle (e.g. a Jersey property unit trust or a non-UK co-ownership contractual scheme such as a Luxembourg FCP or an Irish CCF) may qualify by being a CIS (whilst an AIF is also treated as a CIV, AIF status is not itself sufficient to enable a para 12 (2) election - para 12 (2)(e) sch 5AAA TCGA 1992). Whether or not the requirement to be an AIF (as opposed to

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CIS) could limit the uptake of the RIF would depend on the degree to which the AIF status could be challenged (e.g. in relation to joint ventures or single property vehicles).

Care should be taken so that Common Investment Funds (CIFs) - tax exempted, tax transparent pooling vehicles - which are both common and used almost exclusively by UK pension funds with multi sponsorship employment groups, are not inadvertently brought into the regime. We assume that this is not the intention and note that it is stated in the consultation document (at 5.1 on page 32) that the government is not aware of any existing unauthorised co-ownership contractual schemes.

Question 5: Are there any specific tax provisions that should be considered to facilitate RIF investment in asset classes other than real estate?

We have no comments on this at this point.

Question 6: Do you foresee any issues with the government's intended requirements for reporting income to investors, or with replicating the provisions related to excess reportable income arising to RIF investors from an investment in an offshore fund?

We have no comments on this at this point.

Question 7: Should RIFs be added to the list of permitted property categories at section 520 ITTOIA 2005 and do you consider that the structure and nature of RIFs means that individual policyholders would be effectively prevented from introducing personal assets into their life insurance policy?

We have no comments on this at this point.

Question 8: Do you have any views on the proposed capital allowances treatment?

Similar to the operation of the CoACS regime, the consultation document suggests that the investors in the RIF would be the 'persons' for the purpose of pooling / claiming capital allowances, unless an election is made so that the RIF itself is able to calculate and apportion capital allowances to each investor under a simplified approach.

There may be benefits/drawbacks to the capital allowances position of each approach, depending on the profile/number of the investors in a given RIF. Therefore, we support the

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availability of a simplified capital allowances approach for RIFs and also that the election to access that approach is optional for each RIF.

Given that assets qualifying for capital allowances may be held prior to electing into the RIF regime, or on ceasing to be subject to the RIF regime if conditions are breached, these circumstances should not have any adverse capital allowances consequences and therefore we would support a similar provision applying to a co-ownership unauthorised contractual scheme to facilitate this.

Under the simplified CoACS regime, a CoACS is not entitled to claim any first year allowances ('FYA', as per CAA 2001 262AC(3)(i)). The CoACS legislation was introduced prior to recent FYA being announced - namely the 'super deduction' and 'full expensing' reliefs. Given these FYA are expected to be available until 2026 (and potentially beyond that date), consideration should be given to the availability of FYA to the corporate investors in RIFs under the simplified approach, just as it would be if capital allowances were computed at the level of each RIF investor. This should avoid a significant disparity in tax relief available compared to investors who choose to invest via another vehicle (eg a partnership).

Similar to how FYA are claimed by mixed partnerships (as detailed in the recently updated HMRC published guidance at CA11145), under the simplified approach the RIF could calculate the capital allowances pools for investors subject to income tax / corporation tax separately, with FYA only being available to the investors subject to corporation tax. This would necessitate separate tracking of capital allowances pools for investors subject to income tax and corporation tax (for disposal value purposes, for example). However this approach will be commonplace in the case of vehicles such as limited partnerships and we would not consider it to add significant additional complexity beyond the existing rules for computing FYA.

9. Do you have any general comments on the proposed capital gains treatment of investors in a RIF, subject to the detailed questions in Chapter 4?

In relation to reorganisations involving a RIF, whilst we note that it is envisaged that, for UK residents, the units are deemed to be an asset and that the provisions in sections 103E to 103I TCGA 1992 may apply, for non-residents, the units are deemed to be shares (eg the provisions in section 135 TCGA 1992 may therefore apply). This mirrors the treatment of a CoACS.

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10. Do you have comments on the proposed capital gains treatment for insurance companies?

We have no comments at this point.

11. Would this proposed rule help facilitate a RIF's investment in REIT? Would any further tax provisions be required to further facilitate a RIF's investment in other property funds?

In relation to RIFs investing into UK REITs we note the following:

1. **REIT listing requirement**

   The consultation document refers to the proposal to allow 'tracing through' a RIF, similar to a CoACS. It is not entirely clear whether this explicit statutory provision would strictly be required (e.g. given HMRC's position on ownership of ordinary share capital through partnerships). Given that there is no requirement to trace through a CIS partnership which meets the GDO condition, if a RIF also meets the GDO condition, it would be consistent to stop the tracing at the GDO RIF also.

2. **REIT "non-close" test**

   We note that the operator of a RIF may exercise voting control over the shares held in a REIT, and therefore may be treated as a single participator for the REIT non-close test (whereas a person acting on behalf of a collective investment scheme partnership is treated as an institutional investor. In contrast, in the non-close test in para 46 schedule 5AAA TCGA 1992, those rights are disregarded. It would therefore be consistent if a similar approach were to be adopted for REIT purposes as that in para 46.

   Also, under the para 46 test a GDO CIS partnership is treated as an institutional investor in its own right and so where RIF also meets the same GDO requirement it would be consistent for that also to be treated as an institutional investor.

Availability of QII SSE under sch 7AC TCGA 1992

We understand that the deemed capital gains opaque treatment of a RIF, absent any specific provisions, would prevent tracing the ownership of ordinary share capital for the purposes of this exemption. However, we note that there is a provision to trace through an exempt unauthorised unit trust, and therefore it would be consistent that for a restricted RIF, whose participators are all exempt from tax capital gains (other than by virtue of residence) - i.e. the same requirement as an EUUT - it should also be capable of being traced through for QII SSE purposes.

We note that in the case of a co-ownership unauthorised contractual scheme, which is not elected/qualified as a RIF/CoACS, it would seem that it can be traced through for QII SSE purposes (see also comments above in relation to the REIT listing requirement).

Tracing ownership through a RIF for NRCG/QAHC purposes

In order to ensure the equivalent treatment to offshore collective investment vehicles (such as Luxembourg FCPs or Irish CCFs) modifications would need to be made to allow tracing through RIFs (eg in relation to para 46(12) Schedule 5AAA TCGA 1992).

Restricted RIFs where the investment policy is not to invest in UK property

We note that the government is minded to consider an exemption mirroring that of para 7B of schedule 5AAA TCGA 1992. Given that this exemption applies for NRCG purposes some modification would need to be made to ensure that it applied in a comparable way eg if a RIF is a deemed company for NRCG purposes (and therefore investments in RIFs could potentially fall within para 7B) they should be capable of being invested into by this type of restricted RIF (subject to the other requirements) notwithstanding that a RIF is not deemed to be a company for (non NRCG) capital gains purposes. Similar investments in offshore CIVs which are deemed companies under para 4 Sch 5AAA TCGA (but not for non NRCG purposes) should be capable of being invested in.

12. Would the proposal outlined here be a viable option to achieve fair SDLT treatment of property acquired by and held by unauthorised co-ownership contractual schemes, whether or not they are within the RIF regime?

The consultation document proposes that unauthorised co-ownership contractual schemes (whether or not they are within the RIF regime) would be treated as a company for SDLT purposes. We agree that this would be a sensible approach. In particular, where an unauthorised co-ownership contractual scheme becomes or ceases to be a RIF, the continuation of deemed company status is sensible to avoid complications that would otherwise inevitably arise.

If the proposal, in such circumstances, is for there to be a clawback of SDLT seeding relief if the RIF ceases to qualify for RIF status before the end of the 'control period' (i.e. a period of time following the last day of the seeding period), it would be helpful to include a temporary grace period of say 12 months during which the RIF could fail to meet the conditions for RIF status so long as the relevant conditions were satisfied at the end of that period (see further comments below).

Care should be taken so that Common Investment Funds (CIFs), tax exempted, tax transparent pooling vehicles, which are both common and used almost exclusively by UK pension funds with multi sponsorship employment groups, are not inadvertently pulled into the regime.

13. Are there any features of the existing CoACS seeding relief that are unsuitable to be applied to RIFs?

We note that the consultation goes on to propose an expansion of the existing SDLT seeding reliefs which apply to the seeding of PAIFs and CoACS so that a seeding relief is available for the seeding of unauthorised co-ownership contractual schemes which elect into the new RIF regime, subject to the satisfaction of a number of conditions, both at the time of purchase and for a period afterwards.

If the proposed RIF seeding relief conditions were to follow the CoACS seeding relief conditions, they would look broadly like this:

1. The purchaser is a RIF;
2. The main subject-matter of the transaction consists of a major interest in land;
3. The only consideration for the transaction is the issue of units in the RIF to a person who is the vendor;
4. The effective date of the transaction is a day within the seeding period;
5. The vendor is required to notify the operator the identity of the beneficial owner of the units and the occurrence of a disposal of units by the vendor which could be a 'relevant disposal';
6. There must not be arrangements in existence by virtue of which, at that or some later time, a person who is the vendor makes or could make a disposal of units in the RIF which is or could be a relevant disposal;
7. The transaction must be effected for bona fide commercial reasons and must not form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax;

8. The RIF satisfies a GDO condition;
9. A portfolio test must be met immediately before the end of the seeding period.

In respect of condition 1, consideration will need to be given to the point in time at which it will be possible for the scheme to satisfy this condition. For example, prior to the acquisition of property, it will not be possible for the scheme to qualify as a RIF. Therefore, seeding relief would not be available for the initial seeding of property if the unauthorised contractual scheme needs to be a RIF prior to the seeding.

Conditions 2, 4, 5, 6 and 7 are not controversial.

We know that Condition 3 causes unnecessary complexity where the seeding transaction is within the scope of VAT. Where the transfer is standard rated and does not satisfy the conditions to be treated as a transfer of going concern or is not VAT exempt, the transfer will give rise to output VAT which the transferor will be required to settle and input VAT which the RIF should be able to recover. This gives rise to a cash flow mismatch because if the RIF is only allowed to issue units in consideration for the transfer, it cannot remit input VAT recovered to the transferor to enable the transferor to settle its VAT liability. The RIF will then have a significant sum of cash which it may not have a need for. If it were to distribute this surplus cash, it would need to do so *pari passu* to all unit holders and not just to the transferor to whom units have been issued in respect of the seeding.

Limiting consideration to only the issue of units in the RIF seems unnecessarily restrictive in this context and we propose that the condition should instead be drafted so that 'the only consideration for the transaction is the issue of units in the RIF to a person who is the vendor, other than the payment of any VAT that may be due in respect of the transaction.'

Condition 8: Imposing a GDO condition may not be appropriate or relevant for the RIF where it is already required to meet either the GDO or the non-close condition in order to qualify as a RIF. We do not see any need to impose an additional condition on the RIF simply for SDLT seeding relief purposes i.e. qualification as a RIF should simply be sufficient for the RIF to be a qualifying transferor.

As noted above, consideration needs to be given as to when the condition must be met. For example, the RIF may be close prior to, or upon the initial seeding of property, but will become non-close once subsequent investors have participated into the scheme. Thought should be given to whether seeding relief should be made available if the intention is for the scheme to become non-close, but potentially withdrawn if the scheme does not become non-close by the end of the control period (or other grace period).

Condition 9: Imposing a portfolio test i.e. by reference to a minimum property value or number of properties, seems overly restrictive. In effect, it would restrict seeding relief to those transactions which meet the portfolio criteria on day 1 because there would be too much uncertainty to rely on being able to market the fund to sufficient participants by the end of the seeding period. It would also limit the usefulness of the vehicle for institutional investors.

In addition to the relief proposed, we understand that a number of existing Exempt Unauthorised Unit Trusts (EUUTs) have expressed an interest in converting to a RIF and therefore suggest that consideration be given to SDLT relief equivalent to the Authorised Unit Trust to PAIF conversion relief under regulation 3 of SI 2008/710 (Stamp Duty Land Tax (Open-ended Investment Companies) Regulations).

14. The length of the control period for PAIF and CoACS seeding reliefs is three years. Would a similar period be appropriate for RIF seeding relief claims?

The 36 month control period effectively freezes a fund for this period of time.

Life companies and pension funds need to be free to realise assets in order to meet liabilities as the fall due. They also need to be able to respond quickly to market conditions by rebalancing their AUM where they find they are overweight in any particular asset class, such as real estate.

Where a Life company or pension fund seeds a RIF which claims seeding relief and issues units to the Life company/pension fund, the value of units issued will be priced on the basis that relief is available. Commercially, the RIF will then need to impose a minimum holding period on the seed investor to ensure that it does not suffer an SDLT clawback should the investor need to sell units in the secondary market. A three year clawback period is therefore highly restrictive and we know from experience in the PAIF/CoACS market that this is a significant blocker for persuading such investors to seed assets into these vehicles.

A clawback period of, say, 12 months, should still allow for a management of anti avoidance whilst encouraging a realistic investment opportunity.

15. Do you foresee any issues with the proposed Stamp Duty or SDRT treatment?

The consultation document indicates that unauthorised co-ownership contractual schemes will continue to be transparent for STS purposes (paragraph 3.44). We understand this to mean that the acquisition by the scheme of the beneficial interest of the underlying scheme property shall be treated as being acquired by the participants who are therefore primarily liable for any STS. The document reaffirms this by stating that this default position would be retained for unauthorised contractual schemes that are not RIFs, but that in the case of a RIF, the operator would be able to account for the stamp duty/SDRT on behalf of the participants if allowed by the scheme's contractual agreement.

We assume that the reference to the scheme being transparent does not suggest that it is HMRC's intention for a transfer of units in a RIF to be subject to STS given the proposals set out in 3.46 for a mirroring of the reliefs in paragraph 25A(1)(c) of Schedule 13 to Finance Act 1999 and section 90(7B)(b) of Finance Act 1986.

However, this may imply that HMRC's view of the current law applying to a transfer of units in an unauthorised contractual scheme is that a transfer of units in a scheme that is not a RIF, may give rise to a transfer of a beneficial interest in any underlying marketable securities that are scheme property, for SDRT purposes.

This is not consistent with our understanding of HMRC's view from our prior experience. Although the document does not discuss the existing stamp duty and SDRT treatment of the transfer of an interest in an unauthorised co-ownership contractual scheme itself, we understand that the transfer of a unit in such a contractual scheme should not attract stamp duty or SDRT. This is based in our understanding that the existing view of HMRC Stamp Taxes in relation to non-UK contractual schemes, such as the French and Luxembourg FCPs and Irish CCFs, is that the subject matter concerning a transfer of a unit in these fund vehicles concerns an interest in the scheme itself rather than an interest in underlying scheme property. Therefore, where the scheme property includes 'stock or marketable security' for stamp duty purposes or a 'chargeable security' for SDRT purposes, a transfer of a unit in the fund does not involve a transfer of an interesting in the underlying for STS purposes, nor are the units themselves either 'stock or marketable security' or 'chargeable securities'. Consequently, there is no stamp duty or SDRT charge on either the transfer of the direct interest in the contractual scheme, or the indirect interests in any chargeable securities held by the FCP/CCF.

The consultation indicates that the current treatment would be retained as the default position for unauthorised co-ownership contractual schemes that are not RIFs, but that respondents to the earlier call for input have requested that the CoACS stamp tax rules be replicated for RIFs.

We are therefore assuming that for unauthorised co-ownership contractual schemes that are not RIFs, the treatment outlined above will apply (i.e. the scheme will pay SD/SDRT on acquisitions of securities but that no SD/SDRT will apply on a transfer of units in the scheme itself).

In respect of unauthorised co-ownership contractual schemes that are RIFs, the consultation document indicates that the same SD/SDRT reliefs which apply to CoACS will be replicated, i.e. (i) acquisitions of securities by the RIF, (ii) transfers of securities between sub schemes of an umbrella RIF, and (iii) transfers of units in the RIF, will not attract STS.

For the reasons noted above, it is not clear to us why relief (iii) would be required given our understanding that a transfer of a unit in an unauthorised co-ownership contractual scheme would not be subject to stamp duty or SDRT on first principles?

16. Do you have any comments on the VAT treatment of the management of a RIF?

If management of a RIF(CS) will not be VAT exempt, unlike a CoACS, then they may prove to be more limited in their attractiveness, with a possible exception in respect of commercial property investment.

17. Are there any circumstances other than that outlined in paragraph 4.11 that the government should be considering to ensure that the RIF tax regime aligns with the government's policy of taxing non-UK resident investors on gains on disposals of UK property?

We have no comment on this at this point.

18. Would take-up of the RIF be affected, and if so to what extent, if section 103D TCGA was disapplied where a restricted RIF breached a restriction? Are there alternative ways that a breach could be dealt with?

See comments in relation to question 19 below.

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19. What, if any, legislative or administrative easements would be required for unintended breaches by a UK property rich RIF?

Given the close parallels with the fund exemption election, and the driver for a UK based vehicle (e.g. as an alternative to a Jersey Property Trust or Irish Common Contractual Fund), ensuring that such a vehicle, or it's investors, are in no worse position from a UK tax perspective when compared to offshore vehicles will, of course, be paramount to its successful adoption. In particular, no charge should arise to investors on first electing into the restricted RIF regime, no dry tax charges should otherwise crystallise (consistent with the deferral mechanism present within the fund exemption regime), and there should be the option to re-enter the regime following a breach of conditions (as with the fund exemption election).

However it is not possible to simply duplicate the fund exemption regime since the default position (e.g. following certain breaches of conditions) for the fund exemption election is that the fund vehicle itself becomes taxable, whereas the proposed default position if not a RIF (i.e. before entry/after exit) is transparency for capital gains purposes. Consequently, following the fund exemption regime (e.g. in relation to breaches) would potentially result in more adverse consequences for investors. Also, the consequences of entry into the RIF regime differs from the fund exemption election (in the latter case the 'fund' is not transparent for investors prior to the election being made).

Therefore, we consider that further detailed discussion of how these provisions can be formulated will be required and we look forward to further engagement in relation to this. In particular, whilst the provisions relating to a breach of the UK property condition in relation to the fund exemption election may have some limited adverse consequences for all investors, and act as a deterrent, in the case of a RIF, these consequences could be significantly worse. Consequently, in the case of a RIF, the focus should be more targeted at the potential loss of tax (e.g. investors potentially disposing of an interest in the RIF when it is no longer UK property rich, rather than adversely impacting on investors who do not dispose of an interest in the RIF at such a time (given that in many cases the UK property condition may be met again at a later date). One option could be to make re-entry to the RIF regime retrospective to the time of the breach except insofar as to how investor gains are calculated during the intervening period.

20.To what extent would such restrictions on a RIF's ability to invest more than 25% of its total asset value in non-UK property assets limit take-up?

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Given that we understand that interest has been expressed by the industry in such a restricted RIF, this should not generally prevent take up.

21. What commercial appetite would there be for a RIF that was only open to investors who are exempt from tax on gains?

We understand that interest has been expressed by the industry in such a restricted RIF. However, we note for certain purposes that this would not achieve the same result. See also comments above in relation to a seeding relief in relation to EUUTs.

22. Would there be appetite for a RIF that is restricted from investing in UK property?

We have no comments on this at this point.

23. Do you have any suggestions about how the base cost of an investor could be computed on a disposal of UK property for a non-UK property rich RIF where the RIF was only transparent for gains at the point of a disposal of UK property or where there was a change of investor?

We agree with the comments in the consultation document that significant additional complexity will arise in relation to an unrestricted RIF and this would need to be subject of further discussion.

24.Do you agree that the RIF would need to be deemed to be a partnership for gains throughout the period it is non-UK property rich to give a basis for capital gains computations if option 2 were applied to a RIF which transitions between UK property rich and non-UK property rich?

See comments in relation to question 23 above.

25. Do you think that applying option 2 to a RIF that transitions between UK property and non-UK property rich could achieve the government's aim of taxing non-UK resident investors on gains of disposals of UK property?

We consider that option 2 should also be considered in the context of a breach of conditions of a restricted RIF.

26. Do you consider that there are any more effective ways by which the government could ensure non-UK resident investors in a non-UK property rich RIF are taxed on gains on disposal of UK property? If so, please provide a detailed explanation of how this would work, and the advantages and disadvantages of applying a different treatment.

See comments in relation to question 23 above.

27. To what extent could difficulties with tax transparency for gains be overcome through the way in which the RIF is structured, for instance using a separate class of units or sub-fund in an umbrella RIF to hold UK property?

We do not readily see how this would overcome these issues.

28.To what extent would transparency for gains mean that a manager would not in practice choose to establish a RIF to hold UK property where it was not anticipated that the RIF would be UK property rich?

See comments in relation to question 23 above.

29. Do you foresee any issues with applying similar reporting obligations to a RIF as those that apply to a non-UK CIV that has made an exemption election?

Other than to note that there is now more familiarity with these provisions, we have no further comments on this at this point.

30.Do you have any views on the point from which a RIF should lose its status, if it fails to meet any of the eligibility criteria?

Generally, as a fund vehicle, if the RIF were to be compared to the UK REIT regime for example, it should not lose its status except in the most extreme cases of breach, after both the entity and AIFM receive direct warning from HMRC. Any grace period HMRC gives the entity, AIFM, and depositary should be commensurate with the severity of a breach to allow all parties reasonable time to address the breach using the tools available to them in the Deed governing the entity.

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However, we note that the breach of the UK property rich requirement, in the case of such a proposed restricted RIF, needs to be dealt with in such a manner that protects the UK's taxing rights (see further comments above).

In relation to the 'non-close' test, we note that this would be modelled on the fund exemption election, and therefore there is already some precedent for a period of grace. However, given that the impact of losing RIF status on the investors would not be the same as that in relation to the fund exemption election (i.e. - it may have more adverse consequences - see comments above), this may warrant further consideration.

31. Do you foresee any issues with the tax treatment of a co-ownership contractual scheme that falls outside both the RIF and CoACS regimes? Should the government consider providing for the treatment of such an unauthorised co-ownership contractual scheme in legislation?

As noted above, we agree that such a scheme should be deemed to be a company for SDLT purposes in order to avoid issues if it begins or ceases to be regarded as a RIF.

In relation to stamp duty and SDRT, for the reasons outlined above, the fact that the exemption available in respect of the units in a CoACS would no longer be available would not be an issue in practice (on the basis that such an exemption would not appear to be necessary).

We also refer to comments in our response to question 8 above regarding the continuity of the capital allowances treatment if it begins or ceases to be regarded as a RIF.

Whilst we note that in the consultation document it is stated that no such scheme exists currently; were such a scheme to exist prior to the implementation of the proposed changes, consideration should be given to the proposed treatment of such a scheme.

See also comments above in relation to a CIF.

32. Do you have any further views on the viability of the RIF design proposal, not otherwise covered?

UK Withholding tax

Under first principles, it would appear that the person responsible for withholding tax would need to determine the beneficial owner of any payments made to a RIF (e.g. the payment of a PID by a REIT, or yearly interest).

REITs investing into RIFs

1) Application of s.535A CTA 2010

To be consistent with the treatment of the disposal of an interest in offshore CIV by a UK REIT, relief would need to be extended to the disposal of an interest in a RIF.

2) Impact on REIT "group" (e.g. where the RIF owns a company which holds a UK property).

Notwithstanding the deemed treatment of the RIF for non-resident capital gains purposes, for REIT purposes the RIF may not be treated as having ordinary share capital. Given the requirements to (directly or indirectly) own ordinary share capital, the REIT capital gains exemption extend to shares in companies held via a RIF. If the company is not part of the REIT group the gain on the disposal of any property by the company would be taxable, and if the company is sold, there would be no rebasing of the property as the company would not be leaving a REIT group. However, we note that it is proposed that the RIF could potentially make a fund exemption election in relation to the company. In comparison, if it were a JPUT, instead of a RIF, the JPUT could potentially either make a fund exemption election or a transparency election (in the latter case the JPUT would not break the REIT group - similar to a UK co ownership unauthorised contractual scheme which is not a RIF).

In the case of a co ownership unauthorised contractual scheme, which is not elected/qualified as a RIF/CoACS, it would seem that ownership can be traced through the RIF for capital gains purposes also.

If it would be helpful to further discuss any of these points, please do not hesitate to contact us on + 44 7803 853 922

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For and on behalf of PricewaterhouseCoopers LLP

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