EXPLANATORY MEMORANDUM TO

THE RESIDENTIAL PROPERTY DEVELOPER TAX (ALLOCATION OF ALLOWANCE) REGULATIONS 2022

2022 No. 266

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument provides the technical requirements needed to allow HMRC to administer the allowance for the Residential Property Developer Tax in relation to groups of companies and joint ventures. It sets out provisions relating to the nomination of a company to allocate the allowance on behalf of a group and the information groups and joint ventures must provide HMRC.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument is being made to set out the administrative requirements of how a group of companies, or a joint venture, should inform HMRC of how they wish to use their allowance.

6.2 Part 2 of Finance Act 2022 ("the Act") introduced a new tax – the Residential Property Developer Tax (RPDT) – targeted at the largest residential property developers to help fund cladding remediation following the Grenfell fire tragedy.

6.3 Section 43 of the Act provides that a company subject to the tax shall have an allowance of £25 million for each 12-month accounting period (or reduced by a pro-rata amount where the accounting period is less than 12 months). Where a company is a member of a group, this allowance must be shared equally between all group members subject to Corporation Tax, unless the group nominates an allocating member and submits to HMRC an allocation statement.

6.4 The regulations make provision for the nomination of a company in a group, for the submission of an allowance allocation statement and for changes in the company that is nominated. The allowance allocated to a residential property developer is determined according to the nominated company's accounting period and where a new company is nominated then it will be able to make the allocation for its predecessor's last accounting period. Where a new nominated company's accounting period overlaps with that of its predecessor, the length of the new company's accounting period for these purposes is reduced accordingly.

6.5 Section 44 of the Act provides for the calculation of the allowance for a joint venture company where an excluded body has a substantial interest in that joint venture. The regulations ensure excluded bodies in joint ventures do not benefit from an allowance, unless they submit an allowance statement to HMRC. An 'excluded body' for the purposes of RPDT is a company that is not liable to the tax, for example an overseas company that is not subject to UK tax.

6.6 However, Section 44(5) of the Act allows for the regulations to disapply section 44, if the application of that section would have no effect on the liability of that UK joint venture. For example, if an excluded body has an interest in a UK joint venture company that has profits of less than £25 million then this means they would not need to submit an allowance statement to HMRC.

7. Policy background

What is being done and why?

7.1 The government announced on 10 February 2021 that it would introduce a new RPDT as part of its Building Safety Package. The tax is one of the government's measures to bring an end to unsafe cladding, provide reassurance to homeowners and support confidence in the housing market.

7.2 Given the significant costs associated with the removal of unsafe cladding the government believes it is right to seek a fair contribution from the largest developers in the residential property development sector to help fund it.

7.3 The tax will apply to companies with profits arising from United Kingdom residential property development, although a charge to tax only arises on residential property development profits exceeding £25 million a year. This will be achieved by providing an allowance for a company or group of companies to use against their profits for a period. If the period is twelve months, the allowance will be £25 million. If it is less than twelve months, the £25 million allowance is reduced on a pro rata basis. Where this allowance is not exceeded, there will be no need to report residential property development profits. The computation of profit will start from the same basis as for Corporation Tax before adjustments are made to identify only the profits that relate to the residential property development activity. There will also be a restriction in respect of finance costs.

7.4 Profits in excess of this allowance will be taxed at a rate of 4%.

7.5 The regulations then provide that one company must be nominated as the allocating member for a group before the £25 million allowance can be allocated by the group between its companies. The allocating member may then allocate the allowance between one or more residential property developers within the group. Any allowance not allocated to other group companies will be for the allocating member to use if it is a residential property developer.

7.6 If the allocating member of a group changes, the allowance is determined by reference to the accounting period of the allocating member at the start of the period. Therefore, a change of allocating member does not change the allocation period until a new period starts.

7.7 Where a group nominates an allocating member, the regulations set out the information that member may provide HMRC as part of an allocation statement. This information will be required if a group wishes to decide how to allocate their allowance between one or more group members.

7.8 The allocation statement may be amended by the allocating member, and the regulations further provide for the information needed to make the amendment, and the time limits for the amendment.

7.9 The legislation for the RPDT introduces the concept of a notional allowance to ensure joint ventures with 'excluded bodies' are subject to the same level of taxation as groups and joint ventures with no excluded bodies. To take advantage of a notional allowance, a nominated company must submit a notional allowance statement. The regulations provide for the information needed in the statement, and the time limits within which the statement must be made.

7.10 The primary legislation for the RPDT requires that, where a joint venture has an 'excluded body' as a member, they calculate the allowance for each period. These regulations allow for this to be disapplied where it is clear such a calculation would have no impact on the liability of the joint venture. This helps reduce the administrative burden of calculating the residential property developer tax due.

7.11 Groups subject to the RPDT may have an ultimate parent this is not in the UK. Regulations therefore allow for the nomination of another member of a group to submit a notional allowance statement and set out how that nomination must be made. This helps reduce the administrative burden for multi-national groups.

7.12 The notional allowance statement may be amended by the nominated company, and the regulations further provide for the information needed to make the amendment, and the time limits for the amendment.

7.13 The regulations also make provision for tax returns to be amended in consequence of an allowance allocation, a notional allowance allocation or an amendment to such an allocation.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 These regulations do not amend existing regulations and so no consolidation is required.

10. Consultation outcome

10.1 No formal consultation on the administrative provisions within this instrument has taken place.

10.2 A full consultation on the design of the RPDT took place from 29 April to 22 July 2021 followed by a 4-week technical consultation on the RPDT clauses within the Finance (No. 2) Bill, which took place from 20 September to 15 October 2021. The consultation summary of responses can be found on the Residential Property Development consultation pages at: https://www.gov.uk/government/consultations/residential-property-developer-tax-consultation.

10.3 The government responded to representations made during these consultations by limiting the scope of the tax in some situations (specifically around not-for-profit registered housing associations and purpose-built student accommodation) and putting beyond doubt a technical point about certain 'build licences' to ensure a level playing field.

10.4 HMRC has also informally engaged with stakeholders on the content of the instrument to make sure it works as intended.

11. Guidance

11.1 This is a new tax for which guidance does not already exist. However, before this instrument comes into force, all GOV.UK guidance relevant to this policy will be published.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies. Any impact on house process and transactions is expected to be negligible, as new builds account for a small share of overall market transactions.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument was published on 27 October 2021 alongside the draft legislation for the Finance (No. 2) Bill and is available on the website at: https://www.gov.uk/government/publications/residential-property-developer-tax. It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to keep this instrument under review to ensure it meets the government's policy objectives. Receipts arising from the RPDT will be published separately in HMRC accounts.

14.2 The instrument does not include a statutory review clause because it relates to a tax or duty, and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015

15. Contact

15.1 Philip Donlan at HMRC, email: philip.donlan@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Martyn Rounding, Deputy Director for Corporation Tax Structure, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.