HM Treasury

# Reform of the substantial shareholdings exemption:

## response to the consultation

December 2016

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# Executive summary

Two important themes arose from the consultation responses.

First, it was noted that while the SSE is generally available for disposals and reorganisations within trading groups, the group-level trading requirements at the level of the investing and investee entities mean that it is complex and uncertain to administer.

Second, it was noted that unlike the participation regimes in other EU countries, the SSE is not generally available for large institutional investors that invest in real-estate through intermediate companies.

Respondents considered that proportionate changes to the SSE could help to address these concerns and benefit the UK by reducing the administrative tax burden on businesses and making it a more attractive location for investors to locate their holding platforms and related activities.

In response to this the government has decided to take the following steps:

- **remove the investing company trading condition.** The availability of the SSE will no longer be contingent on the company making the disposal (or the group of which it is a part) satisfying a trading test. This will make the benefits of the SSE more certain for those making decisions on corporate disposals and reduce its sensitivity to activities elsewhere in the group over which it has no control

- **extend the period over which the substantial shareholding requirement can be satisfied from 12 months within two years to 12 months within 6 years prior to disposal.** The SSE will now apply to disposals of shareholdings of less than 10% in situations where a substantial shareholding had been partially disposed of up to 5 years previously. This will make the application of the SSE more certain for companies which may sell their shareholdings in multiple tranches

- **remove the post-disposal investee trading condition.** The availability of the SSE will no longer be contingent on the company being disposed of (or the subgroup of which it is the parent) satisfying the trading test immediately after disposal where the disposal is to an unconnected party. This will improve businesses' certainty that the SSE will apply in situations where it may be difficult to ascertain the trading status of the activities of the company being disposed of immediately after the disposal

- **introduce a broader exemption for companies owned by qualifying institutional investors.** The availability of the SSE to companies which are owned by qualifying institutional investors will no longer be contingent on either the company making the disposal or the company being disposed of satisfying a trading test. A proportional exemption will apply to companies which are more than 25% but less than 80% owned by qualifying institutional investors. This will make the UK a more attractive location for such investors to locate their investment holding platforms

The government thinks that this will provide for a simpler and more internationally competitive regime, which remains safeguarded against abuse and continues to provide value-for-money to the Exchequer.

The government does not believe that the costs and risks of a full participation exemption are proportionate to the benefits to the UK economy at this stage, but will monitor this as part of its wider commitment to a competitive and territorial UK tax system.

# 1 Introduction

1.1 The Substantial Shareholdings Exemption (SSE) is an exemption from corporation tax on capital gains and losses realised on the disposal of certain substantial shareholdings.

1.2 The SSE was designed to address concerns that a corporation tax charge on share disposal gains could be unduly influencing business decisions on restructuring and reinvestment and creating incentives for groups to adopt complex offshore holding structures, reducing transparency and creating unnecessary administrative burdens for businesses and HMRC.

1.3 At Budget 2016 the government announced that it would consult on possible reform of the Substantial Shareholdings Exemption for corporate capital gains. A public consultation, 'Reform of the Substantial Shareholdings Exemption', was launched on 26 May 2016 and closed on 18 August 2016.

1.4 The consultation considered whether there could be reforms to make the SSE simpler, more coherent and more internationally competitive.

1.5 These potential reforms ranged from technical changes to the existing legislation to a more comprehensive exemption for gains on substantial share disposals that corresponds with participation exemption regimes in place in some other EU countries.

1.6 This document summarises the responses put forward during that consultation and sets out the changes the government is making to legislation in response.

1.7 The government is grateful to all those who contributed their views during the consultation process. A list of respondents is provided in Annex A.

# 2 Summary of responses

2.1 This chapter summarises the main points raised in response to the consultation questions, followed by the government's response in chapter 3.

## Drivers for change

2.2 The consultation document asked respondents for their views on the reasons for considering reform of the SSE and revisiting its original policy rationale, and the impact that such reform could have on groups' investment decisions.

Question 1: To what extent does the SSE currently meet its objectives of i) encouraging rational decision making on restructuring and the disposal of trading entities within a group, and ii) reducing incentives to adopt complex offshore holding company structures?

Question 2: What complexities arise in practice for domestic or foreign headed groups in applying the SSE?

Question 3: In what additional situations do you consider the SSE should be available for substantial share disposals and how does this compare to the availability of equivalent exemptions in overseas jurisdictions?

Question 4: To what extent could reform of the SSE impact on the likelihood of groups locating holding companies in the UK, and what are the potential benefits from an economic and fiscal perspective?

### Level of success

2.3 Most respondents agreed that the SSE had been largely successful in ensuring that tax does not drive irrational decision making or provide incentives to adopt offshore structures on restructuring. However, many also noted that there are complexities and uncertainties associated with its application.

2.4 In particular many stakeholders highlighted that there is a lack of clarity and definition in deciding whether a company or a group of companies is trading. While potentially problematic for both the investing company and investee company trading tests, respondents highlighted the specific challenges associated with the investing company test e.g. obtaining and interpreting information for the worldwide group. Respondents explained that it could be particularly difficult for a company to obtain information from its parent companies, and that the potential size of the worldwide group can make this test extremely burdensome. Many felt that the complexities of this detracted from the ability of the exemption to fulfil its policy objectives.

2.5 A number of stakeholders also stated that the requirement to have held a substantial shareholding for 12 continuous months within two years prior to disposal led to distortion of business decisions and produced arbitrary results.

### Overseas comparisons

2.6 Many respondents noted that the UK has a number of attractive qualities as a holding company location, including the network of double taxation treaties, lack of withholding tax on dividends, and territorial tax regime delivered through branch exemption, dividend exemption and proportionate controlled foreign company rules.

2.7 Whilst acknowledging this, a number of respondents suggested that the UK needed to reform the SSE in order to compete with other EU jurisdictions which offer a broader participation exemption, including countries such as Ireland, Germany, the Netherlands and Luxembourg.

2.8 It was noted that these overseas participation exemption regimes do not generally include trading tests, making them simpler to apply and allowing companies to dispose of non-trading companies such as real-estate companies without a tax charge applying.

2.9 For this reason the majority of respondents said that reform of the SSE would increase the competitiveness and attractiveness of the UK tax regime and encourage groups to relocate their holding platforms and other activities into the UK. It was considered that the changes agreed as part of the OECD BEPS project (e.g. treaty abuse provisions) would act as a further driver here.

2.10 Alongside a direct increase in corporation tax receipts, respondents noted that the on-shoring of holding companies would lead to an indirect increase in tax receipts through take-up of professional services and other back-office functions.

## Options for reform

2.11 The consultation document set out a number of options for reform of the SSE and asked respondents for their views on the respective merits and disadvantages.

### Comprehensive exemption

2.12 The consultation document asked respondents for their views on the case for a comprehensive exemption for share disposal gains, and how the risks associated with such an exemption might be protected against.

Question 5: To what extent do you agree with the parameters set out for a comprehensive exemption?

Question 6: To what extent do you consider that a comprehensive exemption for gains on substantial share disposals, that imposes fewer conditions on the nature of the companies involved in the transaction, could address the concerns raised in the previous chapter?

Question 7: To what extent could the avoidance risks, including enveloping risks, inherent in a comprehensive exemption be dealt with through anti-abuse provisions?

Question 8: Do you consider that the benefits of a comprehensive exemption would be materially reduced if a trading condition was retained at the investee level? Please provide any relevant examples to support this.

Question 9: Are there alternative tests at the investee level that would still provide sufficient protection against abuse?

#### Benefits and avoidance risks

2.13 The majority of respondents agreed with the parameters set out for a comprehensive exemption. Many were particularly supportive of a wide-ranging exemption with minimal requirements as to the nature or activities of the companies involved in the transaction.

2.14 However, most respondents also agreed that there were inherent avoidance risks in a comprehensive exemption, such as companies enveloping assets used in their business and individuals holding property through multiple layers of companies.

2.15 The respondents identified a number of anti-avoidance provisions to address these risks, but emphasised that introducing such anti-avoidance rules would introduce greater complexity and have the potential to create distortions, to the point of nullifying the positive effect of a comprehensive exemption with fewer conditions.

2.16 Some respondents argued that anti-avoidance provisions would be unnecessary, noting that multiple European countries have broad exemptions without substantial conditions attached.

### Investing and investee company tests

2.17 Many respondents suggested that the benefits of a comprehensive exemption would be materially reduced if a trading condition were retained at the investee company level. In particular it was noted that an investee level trading test would prevent the SSE being available where companies are investing in real estate, impacting on where investors and businesses choose to locate their activities.

2.18 Respondents offered a number of alternative tests including a 'business test' such as is implemented in a number of European jurisdictions, a focus on the activities of the company rather than the current criteria, or a black list of certain types of companies which would be excluded from the SSE.

2.19 Some respondents suggested that if the investee test is retained it would be much improved by including real estate activities within the scope of trading.

2.20 For a number of respondents the investing company test was considered to be more problematic, and the retention of the investee company test would be less of a hindrance to accessing and operating the SSE.

## SSE framework

2.21 The consultation document asked respondents for their views on a number of possible changes that could be made within the existing SSE framework, including a change to the application of the trading tests and a change to what is defined as a substantial shareholding.

Question 10: What benefits would there be in focusing the investing and investee conditions on the companies involved in the transaction? How could such a change be protected from abuse?

Question 11: Are there changes that could be made to the definition of qualifying activity that would help to better deliver the SSE's policy objectives while maintaining sufficient protection against abuse?

Question 12: In what situations does the definition of a substantial shareholding prevent large and long-term investments benefitting from the SSE? What is the case for these situations being accommodated?

Question 13: What other substantive reforms could be considered to make the SSE simpler, more coherent and more internationally competitive?

### Focus on companies involved in transaction

2.22 Most respondents were concerned that focusing on the companies involved in the transaction, rather than the group or sub-group, would cause many transactions to fall outside the scope of the SSE. This would lead to distortion of group-structuring decisions.

2.23 Some respondents were concerned that any simplification achieved would be counter-acted by imposing additional anti-avoidance measures which would increase the complexity of applying the exemption.

### Definition of qualifying activity

2.24 Many respondents agreed that removing the investing company trading test, so that only the investee company need assessing on qualifying activity, would better balance the government's aim for a simple and competitive regime with the need for a regime that is protected against opportunities for abuse.

2.25 A number of respondents suggested that a more mechanical test for assessing qualifying activities, for instance taking a percentage of trading rather than non-trading assets and income, would provide greater certainty to business and would make it more practical for large groups to demonstrate their trading status on a global or regional level. Some respondents also suggested that the proportion of non-trading activities a group may undertake while still being considered trading could be increased, e.g. to 50%.

2.26 However, other respondents indicated that they appreciated the pragmatic approach that was currently taken in determining whether a group's activities qualified, and would be concerned that a mechanical approach may result in unintended results.

2.27 As set out above it was noted that the inclusion of real estate income within the scope of qualifying activity would help to ensure that companies could benefit from the SSE on the disposal of real-estate companies in line with regimes in other countries.

### Changes to the substantial shareholding requirement

2.28 Some respondents thought the 10% threshold could be lowered as a definition of a substantial shareholding, since it excluded many transactions involving large and long-term investments. Respondents suggested that this threshold could be brought more in line with several European countries, or that the government could introduce an alternative monetary value threshold in order to capture large investments in very large projects. It was considered that this would help to prevent distortion of decision-making by the businesses which are involved in these transactions.

2.29 Many respondents highlighted difficulties in relation to the condition that a substantial shareholding must be held for a continuous period of 12 months within the two years prior to disposal. This was particularly problematic in situations where a group must dispose of a substantial shareholding in tranches, for instance because it is unable to find a buyer for the entire shareholding. If a tranche of the disposal leaves the group with a sub-10% shareholding it must dispose of the remaining shares within one year of this disposal in order that the subsequent disposal may qualify for the SSE. It was noted that such a swift disposal is not always possible due to changing market conditions, and this may distort commercial decisions about how to structure such a disposal.

## Treatment of funds

2.30 The consultation document asked respondents for their views on the case for targeted reform of the SSE for the funds sector and how funds could be defined if such a reform were considered justified.

Question 14: Is there a case for reform of the SSE to be targeted towards the funds sector? How could SSE-qualifying funds be defined for this purpose?

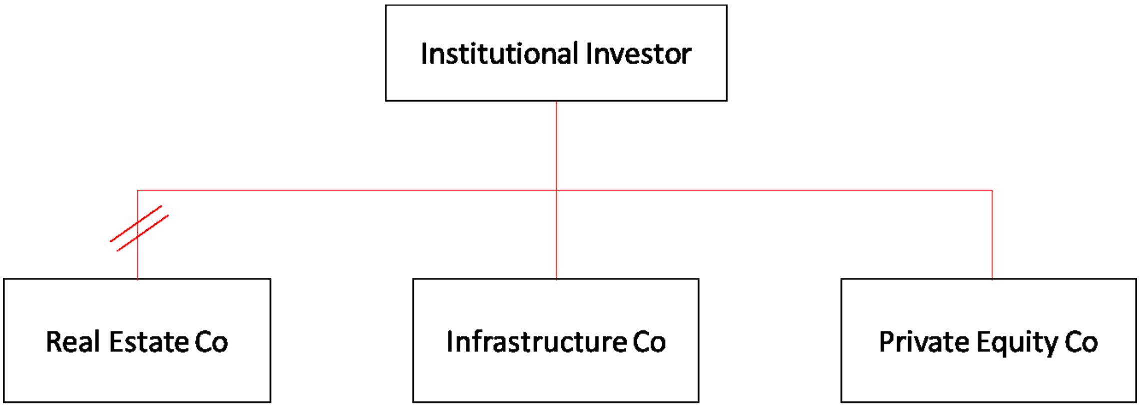
### Targeted solution

2.31 Most respondents were in favour of a targeted exemption for the funds sector if a broad untargeted comprehensive exemption were not possible.

2.32 Certain institutional investors, such as pension or some investment funds, are generally exempt from UK corporation tax on their investment gains, and certain sovereign wealth funds are immune from taxation. This means that gains on the disposal of a direct shareholding are not subject to tax, irrespective of whether the SSE applies.

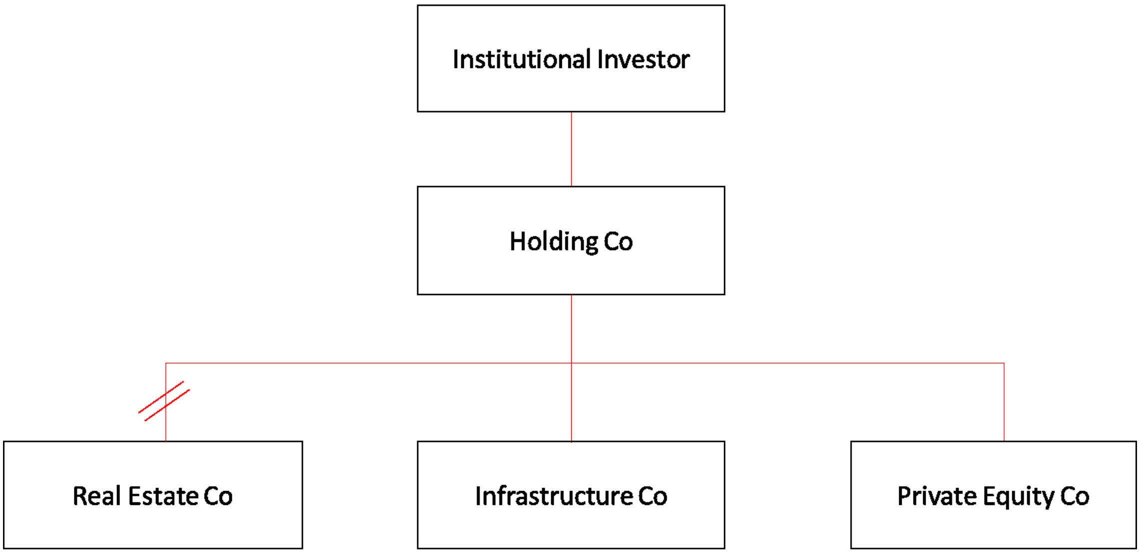
2.33 However UK resident companies owned by these tax-exempt funds are normally taxable. These companies are subject to corporation tax on gains relating to share disposals and cannot generally benefit from the SSE due to the presence of substantial non-trading activities in the groups of which they are a part.

2.34 As previously illustrated in the consultation document and re-represented below in scenario one, if an institutional investor as described in paragraph 2.32 above were to dispose of its interest in Real Estate Co, a UK resident company, it would normally be exempt or immune on any gain or loss.




**Scenario 1**

2.35 Scenario two shows how if Holding Co, a 100% subsidiary of Institutional Investor and parent of a UK resident sub-group, were to dispose of its holding in Real Estate Co it would be chargeable on any gain or loss under current rules as no SSE exemption would apply.




**Scenario 2**

2.36 Respondents noted that while certain funds and institutions may be exempt or immune from tax on direct disposals of UK assets, there are commercial and legal reasons why they may invest in those assets indirectly through a corporate holding structure.

2.37 Respondents stated that some of those holding structures are currently being located in countries which offer competitive exemption regimes for gains on the disposal of shares in non-trading companies. These regimes enable the funds and institutions to align the tax treatment on share disposals by the intermediary companies with the treatment which would apply if they were to invest in the underlying assets directly.

2.38 Respondents confirmed that funds were creating complex structures to manage their investments, amongst other reasons, to benefit from these regimes. Respondents observed that this creates distortion and complexity in how these funds and institutional investors choose to structure their investments.

2.39 Respondents noted that because these structures could not benefit from the SSE the holdings platforms were often held offshore and therefore the UK lost out on any associated substance, e.g. job creation, increases in employment and indirect taxes, and increased investment into the physical infrastructure of the UK.

2.40 For these reasons respondents felt that a targeted SSE exemption for certain funds and investors had a clear rationale. They asserted that it would ensure that funds and institutional investors which are already exempt or immune from tax on direct disposals of UK assets would be able to achieve the same result if they invested in those UK assets indirectly through a UK company. It was noted that any solution would need to be simple and that the qualifying criteria would need to be obtainable.

## Detailed design modifications

2.41 The consultation document asked respondents for their views on a number of specific issues which had been identified in applying the SSE, and any other areas of the legislation that could be clarified or amended for simplicity and greater consistency with the SSE's policy objectives.

Question 15: To what extent does the SSE's focus on ordinary share capital in determining the members of a group create complexity or lead to results that are inconsistent with the policy objective?

Question 16: In what situations could delays in the sale of a residual shareholding result in the loss of SSE treatment, and how should this be rectified?

Question 17: In what situations can the post-sale trading requirement create issues that are not accommodated by the existing winding-up provisions?

Question 18: Are there other areas of the SSE legislation that you consider to be ambiguous or producing outcomes that are inconsistent with the policy intention?

### Ordinary share capital

2.42 Many respondents agreed that the focus on ordinary share capital was overly restrictive, creating complexity and inconsistent results. They suggested that the test for a substantial shareholding should be broadened beyond ordinary share capital, or that there should be an equivalent test for entities which don't have ordinary share capital.

2.43 A smaller number of respondents said that the focus on ordinary share capital did not lead to any inconsistencies.

### Delay in the sale of a residual shareholding

2.44 Many respondents highlighted situations where there is an additional issue of shares to outside investors, e.g. due to an Initial Public Offering, and there is no intention to sell at that time, or where shares are sold down in tranches over a period of time. In this scenario the investing company may be unable to satisfy the substantial shareholding condition on subsequent disposals and the SSE will be lost, though there is no apparent policy objective for the SSE not to apply.

2.45 Respondents agreed that an extension of the period over which the 10% shareholding requirement can be satisfied from two to 6 years would rectify this issue. Some respondents also highlighted that this would serve as a deterrent for tax planning in relation to companies sold at a loss.

2.46 Some respondents suggested that reducing the threshold for a substantial shareholding from 10%, e.g. to 5%, would substantially reduce the risk of this occurring.

### Post-sale trading requirement

2.47 Many respondents highlighted that the post-sale trading requirement may not be met where a sale of a subsidiary causes the investing company to be temporarily non-trading, and that this is rarely because the investing company has been or is about to be wound-up, but is usually because the investing company does not have sufficient remaining trading activities to satisfy the definition of a trading company or group. This result is contrary to the policy objectives, and could be resolved by removing the post-sale trading requirements or the trading requirements more generally.

2.48 A significant number of respondents considered that the timescale for winding-up which the SSE currently requires of "as soon as is reasonably practicable in the circumstances" is too narrow. This may not happen for a number of reasons which should not affect the availability of the SSE.

2.49 Some respondents also noted that the investing company has no influence over the trading status of the investee company after disposal, and so this should not affect the availability of the SSE for the investing company.

### Other issues

2.50 Aside from the issues raised above, stakeholders highlighted a number of areas which were considered ambiguous or producing outcomes that are inconsistent with the policy intention, including:

- the definition of substantial non-trading activities being considered to be 20% of activities is too broad, and excludes companies and groups which are in reality trading
- the inability to apportion the activities of joint ventures to the parent company can reduce a group's overall percentage of trading activities in situations where the bottom tier joint venture is undertaking significant trading activity
- where companies lend surplus funds intra-group this may be considered a non-trading activity and thereby reduce the group's percentage of trading activities. Clarity would be welcome that this should be considered neither trading nor non-trading activity
- complications arise in situations where part of the consideration for the disposal of a company is paid at a later date as part of an earn-out arrangement. Where the future payment depends on the results of the investee company in future, and the company results subsequently give rise to a higher pay out than was reflected in the valuation of the right at the time of disposal, the excess amount is treated as consideration for the disposal of the right and is therefore not covered by the SSE.

This is due to the application of the decision in the case of Marren v Ingles, but there is no policy reason that the SSE should not apply

# 3 Government response

3.1 This chapter sets out the government's response to the consultation and its next steps in reforming the substantial shareholdings exemption.

3.2 The key decisions that the government has taken are to:

- remove the investing company trading condition
- extend the period over which the substantial shareholding requirement can be satisfied from 12 months within two years to 12 months within 6 years prior to disposal
- remove the post-disposal investee trading condition
- introduce a broader exemption for companies owned by qualifying institutional investors

## Removing the investing company trading condition

3.3 The government welcomes respondents' support of the core principles of simplification and reform of the SSE outlined in the consultation. There was strong support for the need to make the SSE rules easier for companies to apply and to increase business certainty about when the SSE is available. In response **the government will remove the requirement that the investing company be a trading company or part of a trading group**. This will provide that all companies which have substantial shareholdings in trading companies or sub-groups will be exempt on their gains and losses on those disposals. This simplifies the regime and reduces the administrative burden on businesses and the tax authorities.

3.4 Many respondents were in favour of a comprehensive exemption which would remove the trading requirements at both investing and investee company levels. The government considered these submissions carefully, and decided that the additional benefit of removing the investee trading condition was not proportionate to the avoidance risk and cost that this would entail.

3.5 By removing the trading condition at investing company level, together with the removal of the post-disposal investee trading condition outlined below, the SSE is significantly simplified while remaining protected from abuse. The government is committed to a fair tax system which is simple to administer, and will continue to monitor the SSE to ensure that it is delivering on its policy objectives and is not placing an undue administrative burden on businesses.

## Extending the period over which the substantial shareholding requirement can be satisfied

3.6 The government acknowledges that there are situations in which the current requirement that a substantial shareholding must be held for 12 months within the two years prior to disposal can result in loss of the SSE which is not aligned with the policy objective. **The government will therefore extend this period to 12 months within the 6 years prior to the disposal**. In situations where a prior disposal has left a sub-10% shareholding to be disposed of, this will allow 5 years within which the disposal of the residual shareholding will be covered by the SSE. This will provide greater certainty for companies in situations where shareholdings are being sold in tranches.

## Removing the post-disposal investee trading condition

3.7 The government welcomes respondents' input on the situations in which the requirement that investing and investee companies are trading immediately after disposal results in loss of the SSE which is not aligned with the policy objective.

3.8 The government notes that removal of the investing company trading requirement will resolve the issue in many of these situations, however, in order to ensure that this requirement is not a hindrance to businesses' commercial activities in any of the situations put forward, **the government will also remove the requirement that the investee company be trading immediately after the disposal** where the disposal is to an unconnected party. However, as above, the requirement for the investee company to be trading prior to the disposal will be retained.

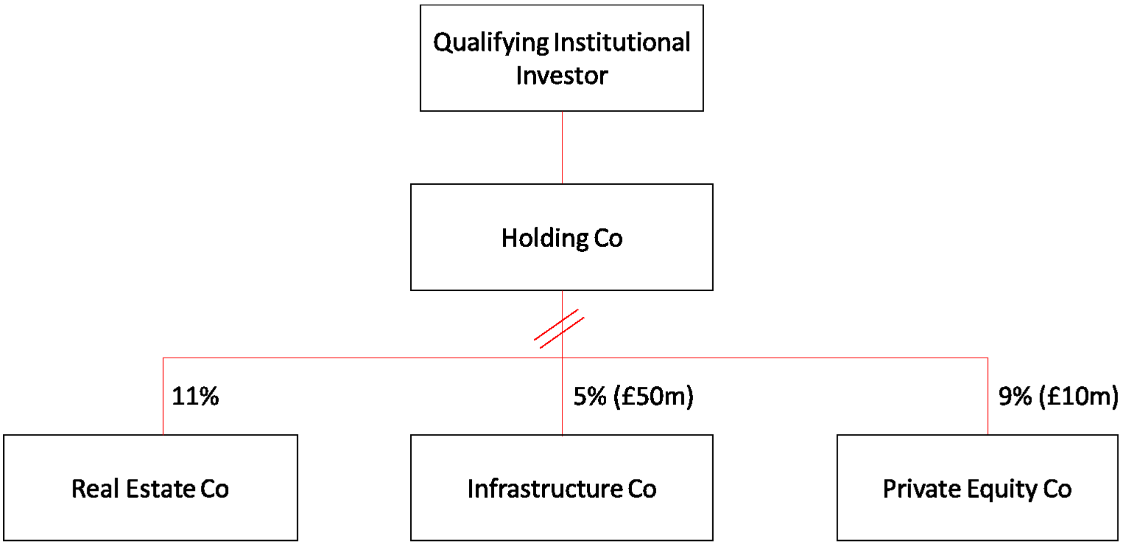
## Introducing a broader exemption for qualifying institutional investors

3.9 The government recognises the case for aligning the tax treatment, through SSE, for investors who are exempt or immune from tax on gains and losses on investments which they make directly, but are currently subject to tax on gains and losses made on investments held through UK resident companies.

3.10 The government will therefore introduce a broader exemption for companies that are owned by certain defined institutional investors, promoting the UK as a place where global investors can establish and manage their investments in trading businesses, infrastructure projects and real estate.

3.11 Under this exemption **UK companies owned by qualifying institutional investors will be exempt from gains and losses on disposals of substantial shareholdings without regard for the trading status of the investing or the investee companies or sub-groups**. In addition, under the extended exemption, the substantial shareholding condition may be met if the investing company's shareholding is below 10% but the cost of which on acquisition was at least £50 million. This will allow large investments which do not meet the 10% threshold due to the scale of the investment project to nevertheless qualify for the SSE.

3.12 To illustrate, in scenario three below if Holding Co, a 100% subsidiary of a Qualifying Institutional Investor, were to dispose of its three investments, under this exemption it would be exempt on any gains or losses arising from the disposals of Real Estate Co or Infrastructure Co, but would be chargeable on any gains or losses arising from the disposal of Private Equity Co, as the substantial shareholding requirement is not met based on Holding Co's percentage shareholding or level of monetary investment.




**Scenario 3**

3.13 A company will be considered to be owned by qualifying institutional investors if such investors own the ordinary share capital of that company either directly or indirectly through one or more other companies, taking this definition of indirect ownership from sections 1155 to 1157 of the Corporation Tax Act 2010.

3.14 If ownership of the company or any intermediary companies is held through a partnership then the ownership will be attributed to the partners.

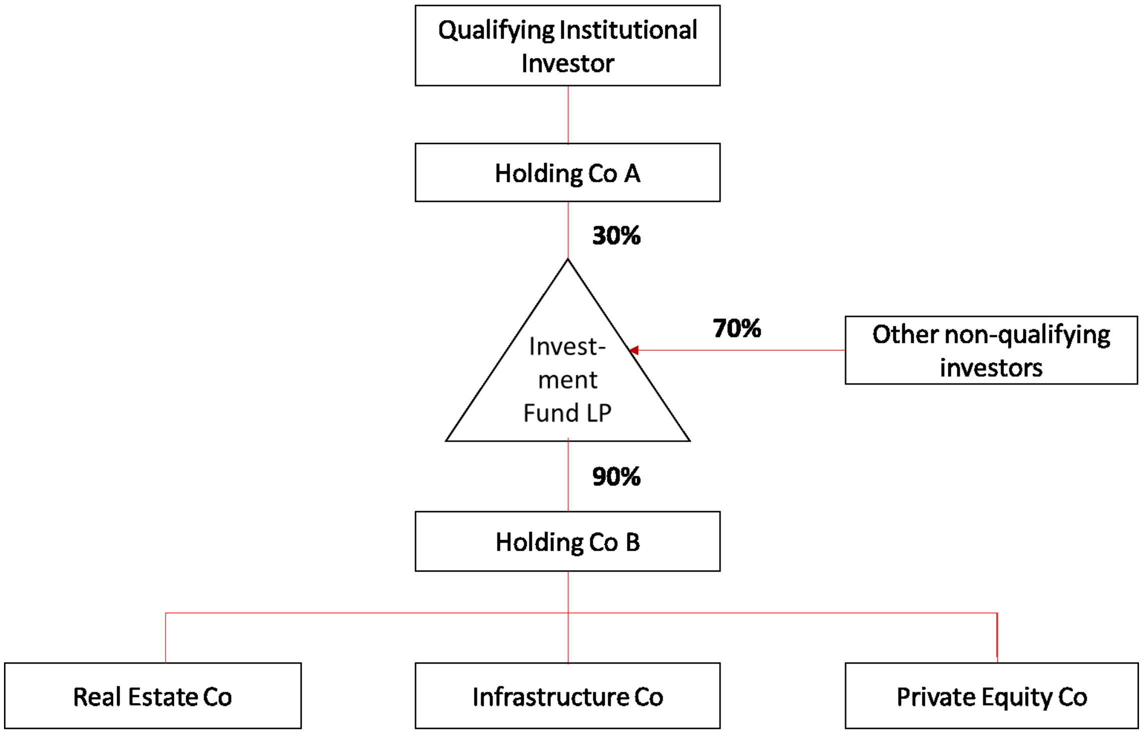
3.15 However, where qualifying investors invest in large trading companies which have autonomy in their decision making, the policy objective is not to allow those trading companies to benefit from SSE on disposal of non-trading companies. For this reason companies are not considered owned by qualifying institutional investors if the share capital is held indirectly through a company which is listed on a recognised stock exchange.

3.16 The aim of this definition of ownership is to ensure that gains and losses on disposals of substantial shareholdings made by companies which are owned by qualifying institutional investors are made exempt under the SSE. This meets the policy objective of aligning the tax treatments of direct and indirect gains and losses on disposals of investments held by qualifying institutional investors.

3.17 The ownership of a company by qualifying institutional investors is considered, for the purposes of the broader exemption, immediately before the disposal of the company's shareholding.

3.18 This definition of ownership will mean that the broader exemption will apply if a company is owned by qualifying institutional investors at any level of its ownership structure, irrespective of any intermediary entities, unless, as above, share capital is held through a company listed on a recognised stock exchange.

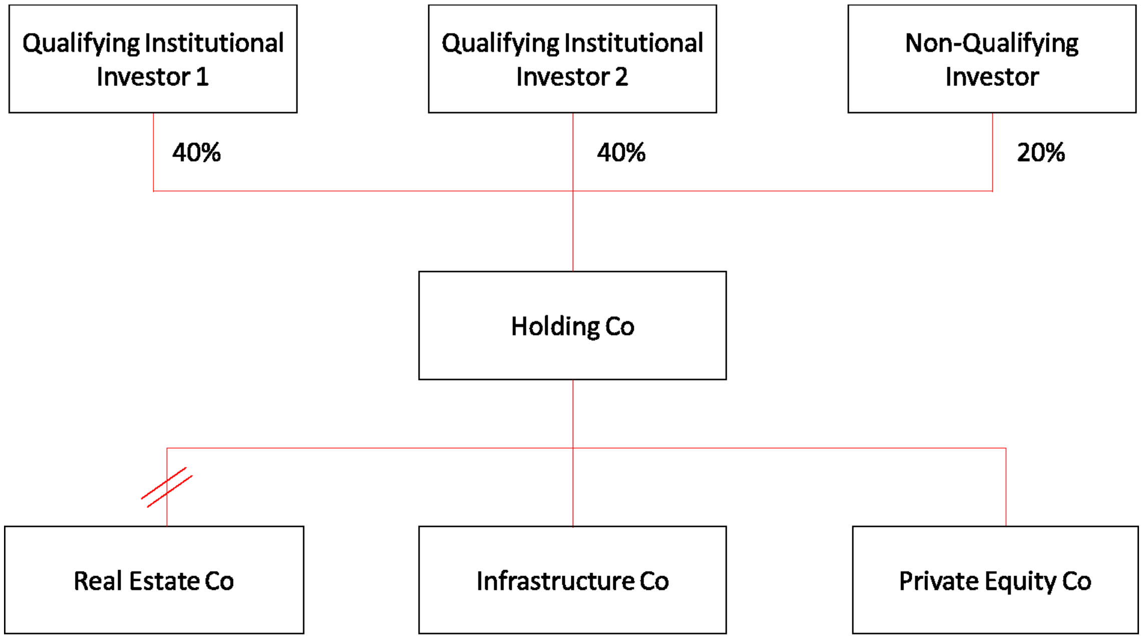
3.19 This is illustrated in scenario 4 below, in which Holding Co B would be considered 27% owned by Qualifying Institutional Investor (30% x 90%) through the intermediary company Holding Co A and the limited partnership Investment Fund LP.




**Scenario 4**

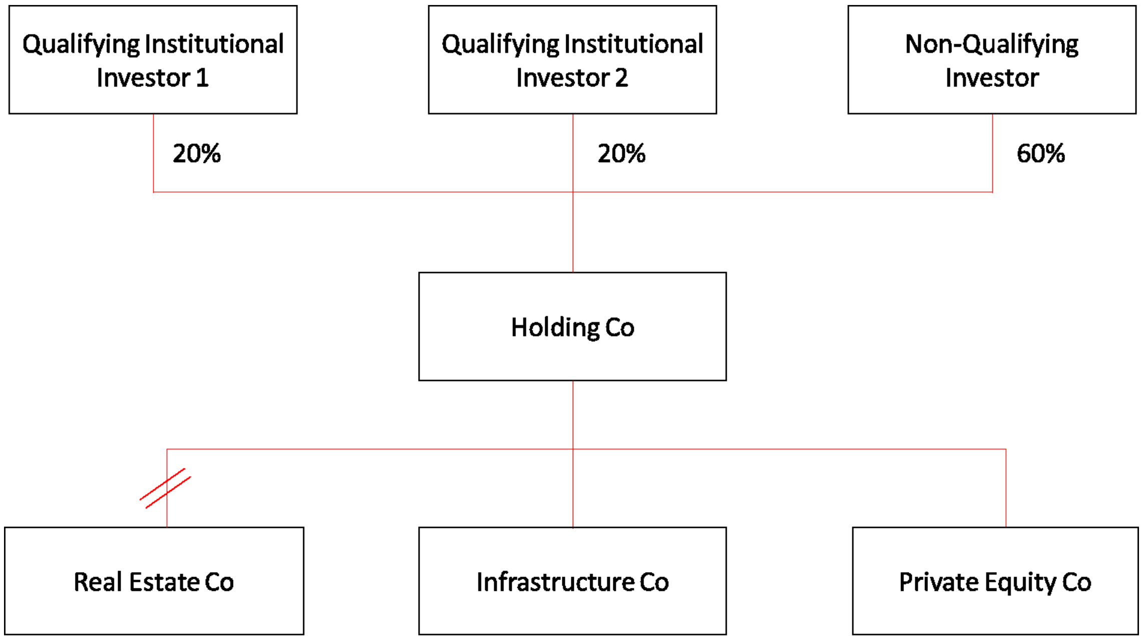
3.20 Respondents highlighted that it is common for this class of investors to invest jointly with other investors, some of whom may remain chargeable to tax on their gains and losses on disposals of certain shareholdings. To accommodate this scenario **the government will implement a system of proportionate exemption for disposals of non-trading companies or sub-groups by companies which are at least 25% owned by one or more qualifying institutional investors**, by reference to ordinary share capital. Where 80% or more of a company's ordinary share capital is owned by one or more qualifying institutional investors the gains and losses of a disposal of a substantial shareholding will be exempt in full.

3.21 To illustrate, in scenario 5 below, if Holding Co were to dispose of its wholly owned subsidiary Real Estate Co, under the new exemption it would be fully exempt on any gains or losses. This is because of its 80% total ownership by qualifying institutional investors.




**Scenario 5**

3.22 In scenario 6 however, Holding Co would be exempt on 40% of its gains and losses on a similar disposal, in proportion to its total ownership by qualifying institutional investors. This is because its ownership by qualifying institutional investors is over 25% but less than 80%.




**Scenario 6**

3.23 The investors which the government intends to include in the definition of qualifying institutional investors are:

- pension scheme trustees and managers
- companies carrying on "life assurance business", as defined by section 56 of the Finance Act 2012
- persons immune from UK tax on their gains by reason of sovereign immunity
- charities
- investment trusts
- widely marketed UK investment schemes, including authorised investment funds and the trustees of exempt unauthorised unit trusts

3.24 The government has reached this definition on the basis that inclusion of these investors meets the policy objective of aligning the tax treatments of direct and indirect gains and losses on disposals of investments.

3.25 The investors being targeted by this definition fall into two categories. The first category is investors that are exempt from tax on gains or are immune from taxation as a result of their status, i.e. pension funds, charities, and persons immune from UK tax on their gains by reason of sovereign immunity. The second category is UK funds that are exempt from tax on gains in order to pass the incidence of tax onto the investors in the fund, which in some cases is achieved through a withholding tax on distributions.

3.26 The latter category does not include overseas equivalent funds which are not exempt from UK tax on gains due to status, but instead fall outside of the scope of UK tax due to their residence.

3.27 The above definition also does not include every type of UK fund, notably excluding real estate investment trusts (REITs). This is due to a number of factors including the fact that their exemption from tax on gains is limited to gains on assets used in property rental business, which distinguishes them from other UK funds. However, the government will continue to consider whether there is a case for including REITs within this definition.

3.28 The government aims to provide an approach that is simple and well-understood but also remains targeted and safeguarded against abuse. The government believes that the proposal above achieves this balance.

# A List of respondents

- The 100 Group
- Anonymous
- The Association of Business Recovery Professionals ("R3")
- The Association of Investment Companies
- The Association of Real Estate Funds
- AstraZeneca UK Ltd
- BBA
- BDO LLP
- Blackrock
- British Land Plc
- British Private Equity & Venture Capital Association
- British Property Federation
- British Telecommunications Plc
- Caterpillar UK Holdings Ltd
- The CBI
- The Chartered Institute of Taxation
- The City of London Law Society
- Computershare Investor Services Plc
- Consortium of fund managers
- Deloitte LLP
- Ernst & Young LLP
- Eversheds LLP
- G4S Plc
- Goodman UK Ltd
- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants of Scotland
- The Investment Association
- IP Group Plc
- Kingston Smith LLP
- KPMG LLP

- The Law Society
- Legal & General Group Plc
- The Miller Partnership
- Moore Stephens LLP
- Pinsent Masons LLP
- PricewaterhouseCoopers LLP
- Public Sector Pension Investment Board
- Quintain Ltd
- Ropes & Gray International LLP
- RSM UK Tax and Accounting Ltd
- Simmons & Simmons LLP
- Sky Plc
- Slaughter & May
- Sony Corporate Services Europe Ltd
- Standard Life Plc
- TheCityUK
- Veolia UK Ltd
- Virgin Money Plc
- Weil, Gotshal & Manges LLP

**HM Treasury contacts**

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If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gsi.gov.uk