Land pooling and the Housing White Paper

OMB Personal tax

01 June 2017

The CIOT has responded to one aspect of the Housing White Paper that considers land pooling as an effective contribution to assembling land for sustainable development

In February the Department for Communities and Local Government published 'Fixing our broken housing market' setting out the government's proposals to boost housing supply and create a more efficient housing market. The White Paper includes a consultation on specific planning proposals including question 6:

Question 6: How could land pooling make a more effective contribution to assembling land, and what additional powers or capacity would allow local authorities to play a more active role in land assembly (such as where 'ransom strips' delay or prevent development)?

The CIOT responded to this question (only) in respect of the taxation consequences that may act as inhibitors to land pooling, and possible solutions. Our comments were prefaced by the fundamental point that in terms of strategic policy it is important that property taxation is part of this wider review of how to address the housing crisis. Tax cannot be sensibly excluded from wider consultations such as this one, a point made in the recent CIOT, IFS and Institute for Government project report 'Better Budgets: Making tax policy better'.

The value of land pooling

The value of a land pooling mechanism is to promote sustainable development by equalising values through a pooling process in recognition that all the land is

integral to the development whether used for high value prime residential or for community infrastructure or green space. It helps to promote a ‘patient capital’ approach rather than the need to maximise short term returns.

By contrast the traditional (un-pooled) development model initially involves the developer securing an interest over the land while planning permission is obtained with final disposal and full payment to the landowners following grant. Release of the land to the developer is deferred which, in turn, leads to a condensed construction phase to maximise short term returns. Landowners also have an incentive to be the last to sign-up to a development because they can gain extra (ransom) value by being the final piece that unlocks the site.

Tax consequences: traditional route v land pooling

Under the traditional model, developers will typically look to ‘option’ land from each landowner, paying a modest upfront option fee to secure the land, but not committing themselves to spending significant sums until the whole site is assembled. The use of options largely provides a favourable tax position giving rise to an effective rate of 10% (if Entrepreneurs’ Relief is available), avoids ‘dry’ tax charges and preserves entitlement to IHT reliefs. These tax consequences provide a strong incentive to a landowner to adopt the traditional route.

An appendix to the submission summarises the tax consequences of some examples of key equalisation routes (an equalisation agreement and land pooling via a trust or a company). In contrast to the traditional model, the examples indicate that achieving effective equalisation is unlikely to offer all of the tax incentives of the traditional route and, in some cases, pooled development will lead to additional tax costs when compared to the traditional model thereby acting as a significant disincentive to adopt that route.

Comparable tax outcomes

While it is not within the CIOT’s remit to fully assess the relative economic costs and benefits of the two models, the point is made that the tax system should in principle not operate so as artificially to promote one and penalise the other. Therefore the submission suggests that ensuring a comparable tax outcome for landowners in adopting the traditional model or pooling route would remove the perverse incentive to adopt the traditional model over pooling. Comparable tax treatments would allow

each route to be judged on its merits and in accordance with (or at least not in opposition to) underlying housing policy if that policy is to promote pooling arrangements.

How might a level ‘tax playing field’ be achieved?

The submission considers briefly a land pooling vehicle that effectively freezes the tax status of the land at the point of entry into the pooling vehicle, preserving the status of the land pre-pooling. An alternative route might be a wider permissive statutory power to grant particular tax treatment to landowners participating in a development that satisfies the defined requirements of a sustainable development with the costs of exercising the power met, at least in part, out of the development.

It is hoped that the submission may lead to further discussion to develop potential solutions.